328 Phil. 1289

FIRST DIVISION

[G.R. No. 122749, July 31, 1996]

ANTONIO A. S. VALDES, PETITIONER, VS. REGIONAL TRIAL COURT, BRANCH 102, QUEZON CITY, AND CONSUELO M. GOMEZ-VALDES, RESPONDENTS.

D E C I S I O N

VITUG, J.:

The petition for review bewails, purely on a question of law, an alleged error committed by the Regional Trial Court in Civil Case No. Q-92-12539. Petitioner avers that the court *a quo* has failed to apply the correct law that should govern the disposition of a family dwelling in a situation where a marriage is declared void *ab initio* because of psychological incapacity on the part of either or both of the parties to the contract.

The pertinent facts giving rise to this incident are, by and large, not in dispute.

Antonio Valdes and Consuelo Gomez were married on 05 January 1971. Begotten during the marriage were five children. In a petition, dated 22 June 1992, Valdes sought the declaration of nullity of the marriage pursuant to Article 36 of the Family Code (docketed Civil Case No. Q-92-12539, Regional Trial Court of Quezon City, Branch 102). After hearing the parties following the joinder of issues, the trial court, [1] in its decision of 29 July 1994, granted the petition; *viz:*

> "WHEREFORE, judgment is hereby rendered as follows:
>
> "(1) The marriage of petitioner Antonio Valdes and respondent Consuelo Gomez-Valdes is hereby declared null and void under Article 36 of the Family Code on the ground of their mutual psychological incapacity to comply with their essential marital obligations;
>
> "(2) The three older children, Carlos Enrique III, Antonio Quintin and Angela Rosario shall choose which parent they would want to stay with.
>
> "Stella Eloisa and Joaquin Pedro shall be placed in the custody of their mother, herein respondent Consuelo Gomez-Valdes.
>
> "The petitioner and respondent shall have visitation rights over the children who are in the custody of the other.
>
> "(3) The petitioner and respondent are directed to start proceedings on the liquidation of their common properties as defined by Article 147 of the Family Code, and to comply with the provisions of Articles 50, 51 and 52 of the same code, within thirty (30) days from notice of this decision.

> "Let a copy of this decision be furnished the Local Civil Registrar of Mandaluyong, Metro Manila, for proper recording in the registry of marriages."[2] (Italics ours)

Consuelo Gomez sought a clarification of that portion of the decision directing compliance with Articles 50, 51 and 52 of the Family Code. She asserted that the Family Code contained no provisions on the procedure for the liquidation of common property in "unions without marriage." Parenthetically, during the hearing on the motion, the children filed a joint affidavit expressing their desire to remain with their father, Antonio Valdes, herein petitioner.

In an Order, dated 05 May 1995, the trial court made the following clarification:

> "Consequently, considering that Article 147 of the Family Code explicitly provides that the property acquired by both parties during their union, in the absence of proof to the contrary, are presumed to have been obtained through the joint efforts of the parties and will be owned by them in equal shares, plaintiff and defendant will own their 'family home' and all their other properties for that matter in equal shares.
>
> "In the liquidation and partition of the properties owned in common by the plaintiff and defendant, the provisions on co-ownership found in the Civil Code shall apply."[3] (Italics supplied)

In addressing specifically the issue regarding the disposition of the family dwelling, the trial court said:

> "Considering that this Court has already declared the marriage between petitioner and respondent as null and void ab initio, pursuant to Art. 147, the property regime of petitioner and respondent shall be governed by the rules on co-ownership.
>
> "The provisions of Articles 102 and 129 of the Family Code finds no application since Article 102 refers to the procedure for the liquidation of the conjugal partnership property and Article 129 refers to the procedure for the liquidation of the absolute community of property."[4]

Petitioner moved for a reconsideration of the order. The motion was denied on 30 October 1995.

In his recourse to this Court, petitioner submits that Articles 50, 51 and 52 of the Family Code should be held controlling; he argues that:

"I

> "Article 147 of the Family Code does not apply to cases where the parties are psychological incapacitated.

"II

"Articles 50, 51 and 52 in relation to Articles 102 and 129 of the Family Code govern the disposition of the family dwelling in cases where a marriage is declared void ab initio, including a marriage declared void by reason of the psychological incapacity of the spouses.

"III

"Assuming arguendo that Article 147 applies to marriages declared void ab initio on the ground of the psychological incapacity of a spouse, the same may be read consistently with Article 129.

"IV

"It is necessary to determine the parent with whom majority of the children wish to stay."[5]

The trial court correctly applied the law. In a void marriage, regardless of the cause thereof, the property relations of the parties during the period of cohabitation is governed by the provisions of Article 147 or Article 148, such as the case may be, of the Family Code. Article 147 is a remake of Article 144 of the Civil Code as interpreted and so applied in previous cases;[6] it provides:

"ART. 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

"In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

"Neither party can encumber or dispose by acts inter vivos of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

"When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation."

This peculiar kind of co-ownership applies when a man and a woman, suffering no legal impediment to marry each other, so exclusively live together as husband and wife under a void marriage or without the benefit of marriage. The term "capacitated" in the provision (in the first paragraph of the law) refers to the legal capacity of a party to contract marriage, i.e., any "male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38"[7] of the Code.

Under this property regime, property acquired by both spouses through their *work* and *industry* shall be governed by the rules on equal co-ownership. Any property acquired during the union is *prima facie* presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall still be considered as having contributed thereto jointly if said party's "efforts consisted in the care and maintenance of the family household."[8] Unlike the conjugal partnership of gains, the fruits of the couple's separate property are not included in the co-ownership.

Article 147 of the Family Code, in substance and to the above extent, has clarified Article 144 of the Civil Code; in addition, the law now expressly provides that -

(a) Neither party can dispose or encumber by act inter vivos his or her share in co-ownership property, without the consent of the other, during the period of cohabitation; and

(b) In the case of a void marriage, any party in bad faith shall forfeit his or her share in the co-ownership in favor of their common children; in default thereof or waiver by any or all of the common children, each vacant share shall belong to the respective surviving descendants, or still in default thereof, to the innocent party. The forfeiture shall take place upon the termination of the cohabitation[9] or declaration of nullity of the marriage.[10]

*When the common-law spouses suffer from a legal impediment to marry or when they do not live exclusively with each other (as husband and wife),*only the property acquired by both of them through their actual joint contribution of money, property or industry shall be owned in common and in *proportion to their respective contributions.* Such contributions and corresponding shares, however, are *prima facie* presumed to be equal. The share of any party who is married to another shall accrue to the absolute community or conjugal partnership, as the case may be, if so existing under a valid marriage. If the party who has acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner already heretofore expressed.[11]

In deciding to take further cognizance of the issue on the settlement of the parties' common property, the trial court acted neither imprudently nor precipitately; a court which has jurisdiction to declare the marriage a nullity must be deemed likewise clothed with authority to resolve incidental and consequential matters. Nor did it commit a reversible error in ruling that petitioner and private respondent own the "family home" and all their common property in equal shares, as well as in concluding that, in the liquidation and partition of the property owned in common by them, the provisions on co-ownership under the Civil Code, not Articles 50, 51 and 52, in relation to Articles 102 and 129,[12] of the Family Code, should aptly prevail.

The rules set up to govern the liquidation of either the absolute community or the conjugal partnership of gains, the property regimes recognized for valid and voidable marriages (in the latter case until the contract is annulled),are irrelevant to the liquidation of the co-ownership that exists between common-law spouses. The first paragraph of Article 50 of the Family Code, applying paragraphs (2),(3), (4) and (5) of Article 43,[13] relates only, by its explicit terms, to voidable marriages and, exceptionally, to void marriages under Article 40[14] of the Code, i.e., the declaration of nullity of a subsequent marriage contracted by a spouse of a prior void marriage before the latter is judicially declared void. The latter is a special rule that somehow recognizes the philosophy and an old doctrine that void marriages are inexistent from the very beginning and no judicial decree is necessary to establish their nullity. In now requiring for purposes of remarriage, the declaration of nullity by final judgment of the previously contracted void marriage, the present law aims to do away with any continuing uncertainty on the status of the second marriage. It is not then illogical for the provisions of Article 43, in relation to Articles 41[15] and 42,[16] of the Family Code, on the effects of the termination of a subsequent marriage contracted during the subsistence of a previous marriage to be made applicable pro hac vice. In all other cases, it is not to be assumed that the law has also meant to have coincident property relations, on the one hand, between spouses in valid and voidable marriages (before annulment) and, on the other, between common-law spouses or spouses of void marriages, leaving to ordain, in the latter case, the ordinary rules on co-ownership subject to the provision of Article 147 and Article 148 of the Family Code. It must be stressed, nevertheless, even as it may merely state the obvious, that the provisions of the Family Code on the "family home," i.e., the provisions found in Title V, Chapter 2, of the Family Code, remain in force and effect regardless of the property regime of the spouses.

WHEREFORE, the questioned orders, dated 05 May 1995 and 30 October 1995, of the trial court are **AFFIRMED**. No costs.

SO ORDERED.

Padilla, Kapunan, and Hermosisima, Jr., JJ., concur.
Bellosillo, J., on leave.

---

[1] Hon. Perlita Tria Tirona, presiding.

[2] Rollo, p. 22.

[3] Rollo, p. 42.

[4] Rollo, pp. 38-39.

[5] Rollo, pp. 24-25.

[6] See Margaret Maxey vs. Court of Appeals, 129 SCRA 187; Aznar, et al. vs. Garcia, et al., 102 Phil. 1055.

[7] Art. 5.Any male or female of the age of eighteen years or upwards not under any