

FIRST DIVISION

CAMILO F. BORROMELO,

Petitioner,

- versus -

ANTONIETTA O. DESCALLAR,

Respondent.

G.R. No. 159310

Present:

PUNO, *C.J.*, Chairperson,

CARPIO,

CORONA,

LEONARDO-DE CASTRO, and

BRION, *JJ.*

Promulgated:

February 24, 2009

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DECISION

PUNO, *C.J.*:

What are the rights of an alien (and his successor-in-interest) who acquired real properties in the country as against his former Filipina girlfriend in whose sole name the properties were registered under the Torrens system?

The facts are as follows:

Wilhelm Jambrich, an Austrian, arrived in the Philippines in 1983 after he was assigned by his employer, Simmering-Graz Panker A.G., an Austrian company, to work at a project in Mindoro. In 1984, he transferred to Cebu and worked at the Naga II Project of the National Power Corporation. There, he met respondent Antonietta Opalla-Descallar, a separated mother of two boys who was working as a waitress at St. Moritz Hotel. Jambrich befriended respondent and asked her to tutor him in English. In dire need of additional income to support her children, respondent agreed. The tutorials were held in Antonietta's residence at a squatters' area in Gorordo Avenue.

Jambrich and respondent fell in love and decided to live together in a rented house in Hernan Cortes, Mandaue City. Later, they transferred to their own house and lots at Agro-Macro Subdivision, Cabancalan, Mandaue City. In the Contracts to Sell dated November 18, 1985¹ and March 10, 1986² covering the properties, Jambrich and respondent were referred to as the buyers. A Deed of Absolute Sale dated November 16, 1987³ was likewise issued in their favor. However, when the Deed of Absolute Sale was presented for registration before the Register of Deeds, registration was refused on the ground that Jambrich was an alien and could not acquire alienable lands of the public domain. Consequently, Jambrich's name was erased

1[1] Exhibit "I," Original Records, p. 104.

2[2] Exhibit "K," *id.* at 105.

3[3] Exhibit "L," *id.* at 106-109.

from the document. But it could be noted that his signature remained on the left hand margin of page 1, beside respondent's signature as buyer on page 3, and at the bottom of page 4 which is the last page. Transfer Certificate of Title (TCT) Nos. 24790, 24791 and 24792 over the properties were issued in respondent's name alone.

Jambrich also formally adopted respondent's two sons in Sp. Proc. No. 39-MAN,4[4] and per Decision of the Regional Trial Court of Mandaue City dated May 5, 1988.5[5]

However, the idyll lasted only until April 1991. By then, respondent found a new boyfriend while Jambrich began to live with another woman in Danao City. Jambrich supported respondent's sons for only two months after the break up.

Jambrich met petitioner Camilo F. Borromeo sometime in 1986. Petitioner was engaged in the real estate business. He also built and repaired speedboats as a hobby. In 1989, Jambrich purchased an engine and some accessories for his boat from petitioner, for which he became indebted to the latter for about ₱150,000.00. To pay for his debt, he sold his rights and interests in the Agro-Macro properties to petitioner for ₱250,000, as evidenced by a "Deed of Absolute Sale/Assignment."6[6] On July 26, 1991, when petitioner sought to register the deed of assignment, he discovered that titles to the three lots have been transferred in the name of respondent, and that the subject property has already been mortgaged.

On August 2, 1991, petitioner filed a complaint against respondent for recovery of real property before the Regional Trial Court of Mandaue City. Petitioner alleged that the Contracts to Sell dated November 18, 1985 and March 10, 1986 and the Deed of Absolute Sale dated November 16, 1987 over the properties which identified both Jambrich and respondent as buyers do not reflect the true agreement of the parties since respondent did not pay a single centavo of the purchase price and was not in fact a buyer; that it was Jambrich alone who paid for the properties using his exclusive funds; that Jambrich was the real and absolute owner of the properties; and,

4[4] Exhibit "C," *id.* at 87-89.

5[5] Exhibit "H," *id.* at 101-103.

6[6] Exhibit "O," *id.* at 155.

that petitioner acquired absolute ownership by virtue of the Deed of Absolute Sale/Assignment dated July 11, 1991 which Jambrich executed in his favor.

In her Answer, respondent belied the allegation that she did not pay a single centavo of the purchase price. On the contrary, she claimed that she “solely and exclusively used her own personal funds to defray and pay for the purchase price of the subject lots in question,” and that Jambrich, being an alien, was prohibited to acquire or own real property in the Philippines.

At the trial, respondent presented evidence showing her alleged financial capacity to buy the disputed property with money from a supposed copra business. Petitioner, in turn, presented Jambrich as his witness and documentary evidence showing the substantial salaries which Jambrich received while still employed by the Austrian company, Simmering-Graz Panker A.G.

In its decision, the court *a quo* found—

Evidence on hand clearly show that at the time of the purchase and acquisition of [the] properties under litigation that Wilhelm Jambrich was still working and earning much. This fact of Jambrich earning much is not only supported by documentary evidence but also by the admission made by the defendant Antoniet[t]a Opalla. So that, **Jambrich’s financial capacity to acquire and purchase the properties . . . is not disputed.**^{7[7]}

x x x

On the other hand, evidence . . . clearly show that before defendant met Jambrich sometime in the latter part of 1984, she was only working as a waitress at the St. Moritz Hotel with an income of ₱1,000.00 a month and was . . . renting and living only in . . . [a] room at . . . [a] squatter area at Gorordo Ave., Cebu City; that Jambrich took pity of her and the situation of her children that he offered her a better life which she readily accepted. In fact, this miserable financial situation of hers and her two children . . . are all stated and reflected in the Child Study Report dated April 20, 1983 (Exhs. “G” and “G-1”) which facts she supplied to the Social Worker who prepared the same when she was personally interviewed by her in connection with the adoption of her two children by Wilhelm Jambrich. So that, if such facts were not true because these are now denied by her . . . and if it was also true that during this time she was already earning as much as ₱8,000.00 to ₱9,000.00 as profit per month from her copra business, it would be highly

^{7[7]} Decision, *id.* at 294.

unbelievable and impossible for her to be living only in such a miserable condition since it is the observation of this Court that she is not only an extravagant but also an expensive person and not thrifty as she wanted to impress this Court in order to have a big saving as clearly shown by her actuation when she was already cohabiting and living with Jambrich that according to her . . . the allowance given . . . by him in the amount of \$500.00 a month is not enough to maintain the education and maintenance of her children.**8[8]**

This being the case, **it is highly improbable and impossible that she could acquire the properties under litigation or could contribute any amount for their acquisition** which according to her is worth more than ₱700,000.00 **when while she was working as [a] waitress at St. Moritz Hotel earning ₱1,000.00 a month as salary and tips of more or less ₱2,000.00 she could not even provide [for] the daily needs of her family so much so that it is safe to conclude that she was really in financial distress when she met and accepted the offer of Jambrich to come and live with him because that was a big financial opportunity for her and her children who were already abandoned by her husband.****9[9]**

X X X

The only probable and possible reason why her name appeared and was included in [the contracts to sell dated November 18, 1985 and March 10, 1986 and finally, the deed of absolute sale dated November 16, 1987] as buyer is because as observed by the Court, she being a scheming and exploitive woman, she has taken advantage of the goodness of Jambrich who at that time was still bewitched by her beauty, sweetness, and good attitude shown by her to him since he could still very well provide for everything she needs, he being earning (*sic*) much yet at that time. In fact, as observed by this Court, the acquisition of these properties under litigation was at the time when their relationship was still going smoothly and harmoniously.**10[10]** [Emphasis supplied.]

The dispositive portion of the Decision states:

WHEREFORE, . . . Decision is hereby rendered in favor of the plaintiff and against the defendant Antoniet[t]a Opalla by:

1) Declaring plaintiff as the owner in fee simple over the residential house of strong materials and three parcels of land designated as Lot Nos. 1, 3 and 5 which

8[8] *Id.* at 295-296.

9[9] *Id.* at 296.

10[10] *Id.* at 297.

are covered by TCT Nos. 24790, 24791 and 24792 issued by the Register of Deeds of Mandaue City;

2) Declaring as null and void TCT Nos. 24790, 24791 and 24792 issued in the name of defendant Antoniet[t]a Descallar by the Register of Deeds of Mandaue City;

3) Ordering the Register of Deeds of Mandaue City to cancel TCT Nos. 24790, 24791 and 24792 in the name of defendant Antoniet[t]a Descallar and to issue new ones in the name of plaintiff Camilo F. Borrromeo;

4) Declaring the contracts now marked as Exhibits “I,” “K” and “L” as avoided insofar as they appear to convey rights and interests over the properties in question to the defendant Antoniet[t]a Descallar;

5) Ordering the defendant to pay plaintiff attorney’s fees in the amount of ₱25,000.00 and litigation expenses in the amount of ₱10,000.00; and,

6) To pay the costs.**11[11]**

Respondent appealed to the Court of Appeals. In a Decision dated April 10, 2002,**12[12]** the appellate court reversed the decision of the trial court. In ruling for the respondent, the Court of Appeals held:

We disagree with the lower court’s conclusion. The circumstances involved in the case cited by the lower court and similar cases decided on by the Supreme Court which upheld the validity of the title of the subsequent Filipino purchasers are absent in the case at bar. It should be noted that in said cases, the title to the subject property has been issued in the name of the alien transferee (Godinez et al., vs. Fong Pak Luen et al., 120 SCRA 223 citing Krivenko vs. Register of Deeds of Manila, 79 Phils. 461; United Church Board for World Ministries vs. Sebastian, 159 SCRA 446, citing the case of Sarsosa Vda. De Barsobia vs. Cuenco, 113 SCRA 547; Tejido vs. Zamacoma, 138 SCRA 78). In the case at bar, the title of the subject property is not in the name of Jambrich but in the name of defendant-appellant. Thus, Jambrich could not have transferred a property he has no title thereto.**13[13]**

Petitioner’s motion for reconsideration was denied.

Hence, this petition for review.

11[11] *Id.* at 297-298.

12[12] *Id.* at 71-83.

13[13] *CA rollo*, pp. 225-226.

Petitioner assigns the following errors:

- I. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DISREGARDING RESPONDENT'S JUDICIAL ADMISSION AND OTHER OVERWHELMING EVIDENCE ESTABLISHING JAMBRICH'S PARTICIPATION, INTEREST AND OWNERSHIP OF THE PROPERTIES IN QUESTION AS FOUND BY THE HONORABLE TRIAL COURT.
- II. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT JAMBRICH HAS NO TITLE TO THE PROPERTIES IN QUESTION AND MAY NOT THEREFORE TRANSFER AND ASSIGN ANY RIGHTS AND INTERESTS IN FAVOR OF PETITIONER.
- III. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN REVERSING THE WELL-REASONED DECISION OF THE TRIAL COURT AND IN IMPOSING DOUBLE COSTS AGAINST HEREIN PETITIONER (THEN, PLAINTIFF-APPELLEE).**14[14]**

First, who purchased the subject properties?

The evidence clearly shows, as pointed out by the trial court, who between respondent and Jambrich possesses the financial capacity to acquire the properties in dispute. At the time of the acquisition of the properties in 1985 to 1986, Jambrich was gainfully employed at Simmering-Graz Panker A.G., an Austrian company. He was earning an estimated monthly salary of ₱50,000.00. Then, Jambrich was assigned to Syria for almost one year where his monthly salary was approximately ₱90,000.00.

On the other hand, respondent was employed as a waitress from 1984 to 1985 with a monthly salary of not more than ₱1,000.00. In 1986, when the parcels of land were acquired, she was unemployed, as admitted by her during the pre-trial conference. Her allegations of income from a copra business were unsubstantiated. The supposed copra business was actually the business of her mother and their family, with ten siblings. She has no license to sell copra, and had not filed any income tax return. All the motorized bancas of her mother were lost to fire, and the last

one left standing was already scrap. Further, the Child Study Report**15[15]** submitted by the Department of Social Welfare and Development (DSWD) in the adoption proceedings of respondent's two sons by Jambrich disclosed that:

Antonietta tried all types of job to support the children until she was accepted as a waitress at St. Moritz Restaurant in 1984. At first she had no problem with money because most of the customers of St. Moritz are (*sic*) foreigners and they gave good tips but towards the end of 1984 there were no more foreigners coming because of the situation in the Philippines at that time. Her financial problem started then. She was even renting a small room in a squatters area in Gorordo Ave., Cebu City. It was during her time of great financial distress that she met Wilhelm Jambrich who later offered her a decent place for herself and her children.**16[16]**

The DSWD Home Study Report**17[17]** further disclosed that:

[Jambrich] was then at the Restaurant of St. Moritz when he saw Antonietta Descallar, one of the waitresses of the said Restaurants. He made friends with the girl and asked her to tutor him in [the] English language. Antonietta accepted the offer because she was in need of additional income to support [her] 2 young children who were abandoned by their father. Their session was agreed to be scheduled every afternoon at the residence of Antonietta in the squatters area in Gorordo Avenue, Cebu City. The Austrian was observing the situation of the family particularly the children who were malnourished. After a few months sessions, Mr. Jambrich offered to transfer the family into a decent place. He told Antonietta that the place is not good for the children. Antonietta who was miserable and financially distressed at that time accepted the offer for the sake of the children.**18[18]**

Further, the following additional pieces of evidence point to Jambrich as the source of fund used to purchase the three parcels of land, and to construct the house thereon:

(1) Respondent Descallar herself affirmed under oath, during her re-direct examination and during the proceedings for the adoption of her minor children, that Jambrich was the owner of the properties in question, but that his name was deleted in the Deed of

15[15] Exhibit "G," Original Records, pp. 97-100.

16[16] *Id.* at 100.

17[17] Exhibit "F," *id.* at 92-96.

18[18] *Id.* at 93.

Absolute Sale because of legal constraints. Nonetheless, his signature remained in the deed of sale, where he signed as buyer.

(2) The money used to pay the subject parcels of land in installments was in postdated checks issued by Jambrich. Respondent has never opened any account with any bank. Receipts of the installment payments were also in the name of Jambrich and respondent.

(3) In 1986-1987, respondent lived in Syria with Jambrich and her two children for ten months, where she was completely under the support of Jambrich.

(4) Jambrich executed a Last Will and Testament, where he, as owner, bequeathed the subject properties to respondent.

Thus, Jambrich has all authority to transfer all his rights, interests and participation over the subject properties to petitioner by virtue of the Deed of Assignment he executed on July 11, 1991.

Well-settled is the rule that this Court is not a trier of facts. The findings of fact of the trial court are accorded great weight and respect, if not finality by this Court, subject to a number of exceptions. In the instant case, we find no reason to disturb the factual findings of the trial court. Even the appellate court did not controvert the factual findings of the trial court. They differed only in their conclusions of law.

Further, the fact that the disputed properties were acquired during the couple's cohabitation also does not help respondent. The rule that co-ownership applies to a man and a woman living exclusively with each other as husband and wife without the benefit of marriage, but are otherwise capacitated to marry each other, does not apply.^{19[19]} In the instant case, respondent was still legally married to another when she and Jambrich lived together. In such an adulterous relationship, no co-ownership exists between the parties. It is necessary for each of the partners to prove his or her actual contribution to the acquisition of property in order to be able to lay

¹⁹[19] Art. 144, Civil Code; Art. 147, Family Code.

claim to any portion of it. Presumptions of co-ownership and equal contribution do not apply.^{20[20]}

Second, we dispose of the issue of registration of the properties in the name of respondent alone. Having found that the true buyer of the disputed house and lots was the Austrian Wilhelm Jambrich, what now is the effect of registration of the properties in the name of respondent?

It is settled that registration is not a mode of acquiring ownership.^{21[21]} It is only a means of confirming the fact of its existence with notice to the world at large.^{22[22]} Certificates of title are not a source of right. The mere possession of a title does not make one the true owner of the property. Thus, the mere fact that respondent has the titles of the disputed properties in her name does not necessarily, conclusively and absolutely make her the owner. The rule on indefeasibility of title likewise does not apply to respondent. A certificate of title implies that the title is quiet,^{23[23]} and that it is perfect, absolute and indefeasible.^{24[24]} However, there are well-defined exceptions to this rule, as when the transferee is not a holder in good faith and did not acquire the subject properties for a valuable consideration.^{25[25]} This is the situation in the instant case. Respondent did not contribute a single centavo in the acquisition of the properties. She had no income of her own at that time, nor did she have any savings. She and her two sons were then fully supported by Jambrich.

Respondent argued that aliens are prohibited from acquiring private land. This is embodied in Section 7, Article XII of the 1987 Constitution,^{26[26]} which is basically a reproduction of

20[20] Art. 148, Family Code; *Rivera v. Heirs of Romualdo Villanueva*, G.R. No. 141501, July 21, 2006, 496 SCRA 135.

21[21] *Bollozos v. Yu Tieng Su*, No. L-29442, November 11, 1987, 155 SCRA 506.

22[22] *Id.* at 517, citing *Bautista v. Dy Bun Chin*, CA-L-6983-R, 49 O.G. 179.

23[23] *Legarda and Prieto v. Saleeby*, 31 Phil. 590 (1915).

24[24] *Government v. Avila*, 38 Phil. 38 (1918).

25[25] *Ignacio v. Chua Beng*, 52 Phil. 940 (1929); *Acosta v. Gomez*, 52 Phil. 744 (1929); *Cruz v. Fabie*, 35 Phil. 144 (1916).

26[26] SECTION 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

Section 5, Article XIII of the 1935 Constitution,^{27[27]} and Section 14, Article XIV of the 1973 Constitution.^{28[28]} The capacity to acquire private land is dependent on the capacity “to acquire or hold lands of the public domain.” Private land may be transferred only to individuals or entities “qualified to acquire or hold lands of the public domain.” Only Filipino citizens or corporations at least 60% of the capital of which is owned by Filipinos are qualified to acquire or hold lands of the public domain. Thus, as the rule now stands, the fundamental law explicitly prohibits non-Filipinos from acquiring or holding title to private lands, except only by way of legal succession or if the acquisition was made by a former natural-born citizen.^{29[29]}

Therefore, in the instant case, the transfer of land from Agro-Macro Development Corporation to Jambrich, who is an Austrian, would have been declared invalid if challenged, had not Jambrich conveyed the properties to petitioner who is a Filipino citizen. In **United Church Board for World Ministries v. Sebastian**,^{30[30]} the Court reiterated the consistent ruling in a number of cases^{31[31]} that if land is invalidly transferred to an alien who subsequently becomes a Filipino citizen or transfers it to a Filipino, the flaw in the original transaction is considered cured and the title of the transferee is rendered valid. Applying **United Church Board for World Ministries**, the trial court ruled in favor of petitioner, *viz.*:

[W]hile the acquisition and the purchase of (*sic*) Wilhelm Jambrich of the properties under litigation [were] void ab initio since [they were] contrary to the Constitution of the Philippines, he being a foreigner, yet, the acquisition of these

27[27] SECTION 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.

28[28] SECTION 14. Save in cases of hereditary succession, no private land shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

29[29] 1987 Constitution, Art. XII, Sec. 8. Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.

30[30] G.R. No. L-34672, March 30, 1988, 159 SCRA 446.

31[31] *Sarsosa Vda. de Barsobia v. Cuenco*, G.R. No. L-33048, April 16, 1982, 113 SCRA 547; *Godinez v. Pak Luen*, G.R. No. L-36731, January 27, 1983, 120 SCRA 223, *Vasquez v. Li Seng Giap & Sons*, 96 Phil. 447 (1955); *Herrera v. Luy King Guan*, G.R. No. L-17043, January 31, 1961, 1 SCRA 406; *Yap v. Maravillas*, G.R. No. L-31606, March 28, 1983, 121 SCRA 244; and *De Castro v. Tan*, G.R. No. L-31956, April 30, 1984, 129 SCRA 85.

properties by plaintiff who is a Filipino citizen from him, has cured the flaw in the original transaction and the title of the transferee is valid.

The trial court upheld the sale by Jambrich in favor of petitioner and ordered the cancellation of the TCTs in the name of respondent. It declared petitioner as owner in fee simple of the residential house of strong materials and three parcels of land designated as Lot Nos. 1, 3 and 5, and ordered the Register of Deeds of Mandaue City to issue new certificates of title in his name. The trial court likewise ordered respondent to pay petitioner ₱25,000 as attorney's fees and ₱10,000 as litigation expenses, as well as the costs of suit.

We affirm the Regional Trial Court.

The rationale behind the Court's ruling in **United Church Board for World Ministries**, as reiterated in subsequent cases,^{32[32]} is this – since the ban on aliens is intended to preserve the nation's land for future generations of Filipinos, that aim is achieved by making lawful the acquisition of real estate by aliens who became Filipino citizens by naturalization or those transfers made by aliens to Filipino citizens. As the property in dispute is already in the hands of a qualified person, a Filipino citizen, there would be no more public policy to be protected. The objective of the constitutional provision to keep our lands in Filipino hands has been achieved.

IN VIEW WHEREOF, the petition is **GRANTED**. The Decision of the Court of Appeals in C.A. G.R. CV No. 42929 dated April 10, 2002 and its Resolution dated July 8, 2003 are **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court of Mandaue City in Civil Case No. MAN-1148 is **REINSTATED**.

SO ORDERED.

^{32[32]} *Hko Ah Pao v. Ting*, G.R. No. 153476, September 27, 2006, 503 SCRA 551; *Muller v. Muller*, G.R. No. 149615, August 29, 2006, 500 SCRA 65; *Lee v. Republic*, G.R. No. 128195, October 3, 2001, 366 SCRA 524.

REYNATO S. PUNO

Chief Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice

RENATO C. CORONA

Associate Justice

TERESITA J. LEONARDO-DE CASTRO

Associate Justice

ARTURO D. BRION

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO

Chief Justice
