



Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**NICXON L. PEREZ, JR.,\***  
 Petitioner,

**G.R. No. 233365**

Present:

- versus -

PERALTA, *C.J.*, Chairperson,  
 CAGUIOA,  
 ZALAMEDA,  
 DELOS SANTOS,\* and  
 GAERLAN, *JJ.*

**AVEGAIL PEREZ-SENERPIDA,**  
 assisted by her husband MR.  
**SENERPIDA,**  
 Respondent.

Promulgated:

**MAR 24 2021**

X-----X

**DECISION**

**CAGUIOA, J.:**

Recalling the 1971 landmark case of *Matabuena v. Cervantes*<sup>1</sup> (*Matabuena*) where the Court *en banc* was confronted with a question of first impression, whether the ban on a donation between spouses during the marriage applied to a common-law relationship, the Court is faced with a similar predicament in this case. This time the question is whether the gratuitous disposition of property acquired during a common-law relationship or cohabitation of a man and a woman without the benefit of marriage or under a void marriage requires the consent of both as is required from a lawfully married couple. But unlike in *Matabuena* where there was then a lacuna in the law, the Family Code has a provision which may be appropriately applied in this case.

Before the Court is the Petition for Review on *Certiorari*<sup>2</sup> (Petition) under Rule 45 of the Rules of Court filed by petitioner Nicxon L. Perez, Jr.

\* "Nicxon Perez," "Nicxon Perez, Jr." and Nicxon L. Perez, Jr." in some parts of the *rollo*.

\* Designated additional Member per Raffle dated March 8, 2021.

<sup>1</sup> 148 Phil. 295 (1971).

<sup>2</sup> *Rollo*, pp. 17-31, excluding Annexes.

(Nixon) assailing the Decision<sup>3</sup> dated April 7, 2017 and Resolution<sup>4</sup> dated August 15, 2017 of the Court of Appeals<sup>5</sup> in CA-G.R. CV No. 105393. The CA Decision dismissed Nixon's appeal and affirmed the Decision dated February 24, 2015 rendered by the Regional Trial Court (RTC) of Olongapo City, Branch 72<sup>6</sup> in Civil Case No. 135-0-2010<sup>7</sup> for Annulment of Donation and Title with Prayer for Temporary Restraining Order and a Writ of Preliminary Injunction. The CA Resolution denied Nixon's motion for reconsideration.

### *The Facts and Antecedent Proceedings*

The CA Decision narrates the factual antecedents as follows:

Spouses Eliodoro Q. Perez (Eliodoro) and Adelita M. Perez (Adelita) x x x [were] the registered owners of a parcel of land known as Lot 2 Block 9 of the consolidation subdivision plan (LRC) Psc-13291 with a total area of 350 square meters located at Barangay Sta. Rita, Olongapo City [(subject property)] and covered by Transfer Certificate of Title (TCT) No. T-7396.

[Out of the marriage of Eliodoro and Adelita, which was celebrated on December 10, 1975 at Infanta, Pangasinan were born two children, Avegail and Adonis Perez (Adonis).<sup>8</sup> Prior to his marriage with Adelita, Eliodoro was married and had several children, one of whom was Nixon Perez, Sr., who sired Nixon.]<sup>9</sup>

On [October 29, 1995], a sworn statement denominated as Renunciation (*sic*) and Waiver of Rights [(RWR)] was executed by Adelita in favor of her husband Eliodoro. Said instrument was inscribed on TCT No. T-7396 on [July 20, 2004].

On [July 27, 2004], Eliodoro donated the said parcel of land to [Nixon] without the conformity of Adelita. TCT No. T-7396 was cancelled and in *lieu* thereof, TCT No. 12547 was issued to [Nixon]. Subsequently, a Real Estate Mortgage was executed by [Nixon] in favor of Rolando Ramos on [November 16, 2009].

[On February 1, 2005, Eliodoro filed against Adelita a petition for declaration of nullity of marriage under Article 36 of the Family Code before the RTC of Olongapo City, Branch 73 (RTC-Branch 73) and was docketed as Civil Case No. 44-0-2005. On June 15, 2005, RTC-Branch 73 rendered a Decision (Marriage Nullity Decision) declaring the marriage between Eliodoro and Adelita void *ab initio*. On July 11, 2005, an entry of judgment was issued, stating that the Marriage Nullity Decision became final and executory as of July 6, 2005.<sup>10</sup>]

<sup>3</sup> Id. at 33-46. Penned by Associate Justice Marie Christine Azcarraga-Jacob with Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser concurring.

<sup>4</sup> Id. at 48-49.

<sup>5</sup> Thirteenth Division and Former Thirteenth Division.

<sup>6</sup> For brevity, RTC Branch 72 which is the RTC of this case is referred to as RTC.

<sup>7</sup> Civil Case No. 135-O-2010 in some parts of the *rollo*.

<sup>8</sup> *Rollo*, p. 54.

<sup>9</sup> Id. at 75.

<sup>10</sup> Id. at 19.



Eliodoro died on [June 28, 2008]. On [April 14, 2009], an Extrajudicial Settlement Among Heirs with Waiver was executed and signed by his legitimate and compulsory heirs.

On [September 30, 2010], x x x Avegail Perez-Senerpida [(Avegail)] brought an action [before RTC-Branch 72 in Civil Case No. 135-0-2010] for Annulment of Donation and Title with Prayer for a Temporary Restraining Order and a Writ of Preliminary Injunction against [Nixon]. [Avegail] alleged that she is one of the children of the late Eliodoro and Adelita. Eliodoro executed solely a Deed of Donation [(DoD)] involving the subject property on the basis of the alleged [RWR] executed by her mother Adelita. She claimed that the [RWR] and [DoD] are clearly prejudicial to her interest because it affected her future inheritance or legitime. Thus, the said documents, together with TCT No. T-12547 in the name of [Nixon], should be annulled.

[Nixon] filed his Answer (With Counterclaims) in which he denied [Avegail's] allegation that Adelita is part owner of the subject property together with the late Eliodoro and argued that even if she was indeed part owner, she has no more right thereon when she executed the [RWR] on [October 29, 1995]. [Nixon] also denied that undue influence was exerted upon the late Eliodoro in executing the [DoD]. [Nixon] further alleged that the late Eliodoro was of sound mind at the time he executed the [DoD] voluntarily as an act of pure liberality and generosity in exchange for his years of honest and faithful service to him; that the [RWR] and [DoD] did not prejudice [Avegail's] legitime as several properties had already been adjudicated to her which even far exceeded her legitime; that there was failure or neglect on the part of [Avegail] for an unreasonable length of time to question the validity of the [RWR]; that [Avegail] filed the instant case against him in order to discourage him from testifying in Civil Case No. 110-0-2010, a case against [Avegail's] brother, Adonis M. Perez; and that [her] action has absolutely no basis, as the donation is not inofficious, and the prayer for moral and exemplary damages as well as attorney's fees and cost of suit has no legal or factual basis.

In her Reply x x x, [Avegail] contended that her mother, Adelita, was a part owner of the [subject property] considering that the [RWR] she executed in favor of the late Eliodoro was null and void as it was not supported by any valid consideration; that [Nixon] exerted undue influence on the late Eliodoro in the execution of the [DoD]; that she and her mother were clearly prejudiced by the execution of the [RWR] and the [DoD]; that she filed the instant case in good faith in order to protect her interest arising from the malicious and illegal execution of the said [DoD]; that she never received more than her alleged share of the legitime; that she just discovered recently the existence of the [DoD] and [RWR], hence, laches is not applicable herein; and that if ever [Nixon] suffered damages and incurred expenses by way of attorney's fees, he has no one to blame but himself for refusing to satisfy her valid claim.

[In the meantime, six years after the Marriage Nullity Decision had become final and executory, Adelita filed on July 5, 2011 a petition for annulment of judgment (Annulment of Judgment Petition) against the heirs of Eliodoro, who are the children of Eliodoro by his first marriage, on the ground of lack of jurisdiction over her person and the subject matter



before the Court of Appeals,<sup>11</sup> and was docketed as CA-G.R. SP No. 120119.]<sup>12</sup>

After [trial], the [RTC-Branch 72] rendered the x x x Decision dated [February 24, 2015 (RTC Decision)], disposing as follows:

*WHEREFORE, in the light of the foregoing, the court finds the instant action meritorious, and hereby orders the following:*

*1. Annulment of the Renunciation and Waiver of Rights executed by Adelita Perez in favor of Eliodoro Perez;*

*2. Annulment of the Deed of Donation executed by the late Eliodoro Perez in favor of Nixon L. Perez, Jr.;*

*3. Nullification of the Transfer Certificate of Title No. T-12547 in the name of Nixon L. Perez, Jr.;*

*4. Cancellation by the Registry of Deeds of T.C.T. No. T-12547 in the name of Nixon L. Perez, Jr.; and*

*5. Issuance of another title over the subject property in the name of Eliodoro Perez.*

*SO ORDERED.*<sup>13</sup>

Nixon appealed to the CA.

Meanwhile, in relation to the Annulment of Judgment Petition, the CA, after giving due course thereto and because of the allegations therein, among others, that Adelita was not duly served any summons or a copy of Eliodoro's second petition for declaration of nullity of marriage (second petition) and that the Marriage Nullity Decision was rendered barely four months from the filing of the second petition and without the required report of the prosecutor on the presence or absence of collusion between her and Eliodoro, the CA, in its Resolution<sup>14</sup> of March 5, 2012 referred the Annulment of Judgment Petition to the Executive Judge of the RTC of Olongapo City for assignment to a judge for further reception of evidence.<sup>15</sup>

Branch 75 of the RTC of Olongapo City received the respective evidence of Adelita and Nixon, with the other respondents heirs of Eliodoro<sup>16</sup> not participating because they were residing in the United States of America.<sup>17</sup> After the parties' submission of their respective memoranda,

<sup>11</sup> Fifth Division and Special Former Fifth Division.

<sup>12</sup> *Rollo*, p. 55.

<sup>13</sup> *Id.* at 34-36.

<sup>14</sup> *Id.* at 51.

<sup>15</sup> *Id.* at 55.

<sup>16</sup> Eulalia Perez-Gaerlan, May Perez-Africa, Corazon Perez-Cagungan, Hermelinda Perez-Malloy, and Lilibeth Perez-Wong. *Id.*

<sup>17</sup> *Rollo*, pp. 55-56.

the RTC of Olongapo City, Branch 75 ordered the transmission of the entire records of the case to the CA.<sup>18</sup>

The CA, Special Former Fifth Division, rendered a Decision<sup>19</sup> dated September 22, 2015, denying the Annulment of Judgment Petition filed by Adelita.<sup>20</sup> Adelita filed a motion for reconsideration, which was also denied by the CA in its Resolution<sup>21</sup> dated January 13, 2016. Adelita filed before this Court, Second Division, a petition for review on *certiorari* assailing the said Decision and Resolution of the CA. On March 16, 2016, the Second Division denied Adelita's petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction in that case.<sup>22</sup>

### ***Ruling of the CA***

Going back to the present case, the CA in its Decision dated April 7, 2017 found the appeal filed by Nixon bereft of merit.<sup>23</sup> The CA noted that at the time of the donation made by Eliodoro in favor of his grandson Nixon, he was still legally married to Adelita given that Eliodoro died on June 28, 2008.<sup>24</sup> As such, Eliodoro should have first secured the conformity of his wife, Adelita, as expressly required under Article 98 of the Family Code, which provides that: "Neither spouse may donate any community property without the consent of the other."<sup>25</sup>

As to the RWR, the CA affirmed the RTC's ruling that the property regime of Eliodoro and Adelita was the absolute community property (ACP), there being no marriage settlement between them, and under Article 89 of the Family Code, which provides that: "No waiver of rights, interests, shares and effects of the absolute community property during the marriage can be made except in case of judicial separation of property," the RWR is considered a prohibited waiver.<sup>26</sup>

The CA further agreed with the RTC that there being no material consideration given by Eliodoro to Adelita in exchange for the execution of the RWR, it partook the nature of a donation or grant of gratuitous advantage between spouses, which is prohibited under Article 87 of the Family Code, which states that "[e]very donation or grant of gratuitous

---

<sup>18</sup> Id. at 57.

<sup>19</sup> Id. at 53-62. Penned by Associate Justice Florito S. Macalino, with Associate Justices Ramon M. Bato, Jr. and Samuel H. Gaerlan (now a Member of the Court) concurring.

<sup>20</sup> Id. at 62.

<sup>21</sup> See id. at 63.

<sup>22</sup> Id. Resolution dated March 16, 2016 in G.R. No. 222230 (*Adelita M. Perez v. Heirs of Eliodoro Q. Perez*) rendered by the Second Division composed of Associate Justice Antonio T. Carpio, Chairperson; and Associate Justices Arturo D. Brion (on leave), Mariano C. Del Castillo, Marvic M.V.F. Leonen (on official leave), and Jose C. Mendoza, Members.

<sup>23</sup> Id. at 40.

<sup>24</sup> Id.

<sup>25</sup> Id. at 40-41.

<sup>26</sup> Id. at 41.



advantage, direct or indirect, between the spouses during the marriage shall be void.<sup>27</sup>

In fine, the CA and the RTC ruled that the RWR and the DoD are void contracts that produce no legal effect whatsoever.<sup>28</sup> The dispositive portion of the CA Decision states:

**WHEREFORE**, premises considered, the instant appeal is hereby **DISMISSED** for lack of merit.

Accordingly, the assailed *Decision dated 24 February 2015* of the Regional Trial Court (RTC), Third Judicial Region, Branch 72, Olongapo City is **AFFIRMED**.

**SO ORDERED.**<sup>29</sup>

Nixon filed a Motion for Reconsideration dated May 6, 2017, which the CA denied in its Resolution<sup>30</sup> dated August 15, 2017.

Hence, the instant Petition. Avegail filed a Comment and/or Opposition<sup>31</sup> dated January 19, 2018.

### *The Issues*

The Petition states the following issues to be resolved:

1. Whether the ruling of the CA and the RTC violated the rule on *res judicata* when they did not treat as final and executory the earlier Decision in the declaration of nullity of marriage case (Civil Case No. 44-0-2005<sup>32</sup>).
2. Whether the CA and the RTC erred in ruling that the property regime of Eliodoro and Adelita was still covered by the ACP despite the final decision declaring their marriage void *ab initio*.
3. Whether the DoD executed by Eliodoro in favor of Nixon is valid.<sup>33</sup>

### *The Court's Ruling*

The Petition is partly meritorious.

---

<sup>27</sup> Id.

<sup>28</sup> Id. at 42.

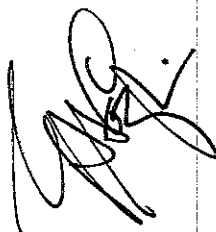
<sup>29</sup> Id. at 45.

<sup>30</sup> Id. at 48-49.

<sup>31</sup> Id. at 73-84.

<sup>32</sup> "Civil Case No. 44-O-2005" in some parts of the *rollo*.

<sup>33</sup> *Rollo*, p. 21.



The first two issues will be resolved jointly as they involve the correctness of the lower courts' finding that the earlier Marriage Nullity Decision declaring as null and void the marriage between Eliodoro and Adelita did not attain finality prior to Eliodoro's death on June 28, 2008.

While the rule is that a question of fact may not be entertained in a Rule 45 *certiorari* petition, this case is exceptional because of the **patent** error in the lower courts' factual finding.

It cannot be denied that the fact which is determinative of the issues in this case is the date when the June 15, 2005 Marriage Nullity Decision of RTC-Branch 73 in Civil Case No. 44-0-2005 — declaring the marriage between Eliodoro and Adelita celebrated on December 10, 1975 void *ab initio* pursuant to Article 36 of the Family Code — became final and executory. If the Marriage Nullity Decision had become final and executory prior to Eliodoro's death on June 28, 2008, then the marriage between Eliodoro and Adelita would have been void from the beginning. On the other hand, a contrary finding would make their marriage valid and subsisting until Eliodoro's death. The finding of the CA and the RTC is the latter.

The RTC Decision in this case states that the RTC took into consideration the fact that the Marriage Nullity Decision in Civil Case No. 44-0-2005 had not yet become final at the time of Eliodoro's death as the same had been assigned to another judge for reception of evidence pursuant to the Resolution of the CA, Fifth Division<sup>34</sup> dated March 5, 2012, and such being the case, the RTC deemed the marriage between Eliodoro and Adelita to be valid and subsisting from the time of its celebration up to Eliodoro's death on June 28, 2008.<sup>35</sup> The CA Decision in the present case agreed with the RTC's finding and it even quoted the RTC: "this Court deems the marriage between Eliodoro and Adelita Perez to be valid and subsisting from the time of its celebration up to the death of Eliodoro on June 28, 2008."<sup>36</sup>


To recall, the facts attendant to the said March 5, 2012 Resolution of the CA in relation to the Annulment of Judgment Petition filed by Adelita above mentioned are as follows:

Adelita filed before the CA the Annulment of Judgment Petition under Rule 47 of the Rules of Court, which was docketed CA-G.R. SP No. 120119 (*Adelita M. Perez, petitioner, v. The Regional Trial Court of Olongapo City, Branch 73, and The Heirs of Eliodoro Q. Perez, respondents*), to nullify the

<sup>34</sup> Based on the copy of the March 5, 2012 Resolution in CA-G.R. SP No. 120119, *Adelita M. Perez v. The RTC of Olongapo City, et al.*, attached to the Petition as Annex "D", it was issued by the Former Fifth Division. *Id.* at 51.

<sup>35</sup> *Rollo*, p. 22.

<sup>36</sup> *Id.* at 40.



Marriage Nullity Decision, on the ground of lack of jurisdiction over the subject matter and her person.<sup>37</sup>

The Annulment of Judgment Petition was filed on July 5, 2011 or six years after the Marriage Nullity Decision became final and executory on July 6, 2005.<sup>38</sup>

After giving due course to the Annulment of Judgment Petition, the CA, in its **Resolution of March 5, 2012** referred the said petition to the Executive Judge of the RTC of Olongapo City for assignment to a judge for further reception of evidence because of the allegations therein, among others, that Adelita was not duly served any summons or a copy of Eliodoro's second petition and that the Marriage Nullity Decision was rendered barely four months from the filing of the second petition without the required report of the prosecutor on the presence or absence of collusion between her and Eliodoro.<sup>39</sup>

Branch 75 of the RTC of Olongapo City received the evidence of the parties, and after the submission of their respective memoranda, the said RTC ordered the transmission of the entire records of the case to the CA.<sup>40</sup>

The CA, Special Former Fifth Division, rendered a Decision<sup>41</sup> dated September 22, 2015 in the Annulment of Judgment Petition (CA-G.R. SP No. 120119), **denying** Adelita's Petition for Annulment of Judgment.<sup>42</sup> The CA ruled therein that RTC-Branch 73 obtained jurisdiction over Adelita's person by her receipt of the summons in the second petition and, although the said RTC had no subject matter jurisdiction over the second petition, laches and estoppel barred Adelita from challenging the Marriage Nullity Decision.<sup>43</sup> The CA noted that in Adelita's Counter-Affidavit dated June 29, 2012, in a case for bigamy filed by Nicxon Perez, Sr., she utilized the nullity of her marriage to Eliodoro as defense, to wit:

<sup>37</sup> See Decision dated September 22, 2015 of the CA, Special Former Fifth Division in CA-G.R. SP No. 120119, *supra* note 19.

<sup>38</sup> *Rollo*, p. 55. A certified photocopy of the Entry of Judgment dated July 11, 2005 issued by the Clerk of Court of the RTC of Olongapo City, Branch 73 that the Decision dated June 15, 2005 rendered in Civil Case No. 44-0-2005, *Eliodoro Q. Perez v. Adelita M. Perez*, with the following dispositive portion:

**WHEREFORE**, in view of the foregoing, judgment is hereby rendered declaring the marriage between plaintiff **ELIODORO Q. PEREZ** and defendant **ADELITA M. PEREZ** which was celebrated on **December 10, 1975** at the Infanta, Pangasinan as **null and void ab initio** pursuant to Article 36 of the **New Family Code**.

Upon finality of this Decision, let a copy hereof be furnished the Municipal Civil Registrar of Infanta, Pangasinan and the National Statistics Office, Quezon City for proper annotation in their Book of Marriages, after payment of proper legal fees.

had on July 6, 2005 become final and executory, is attached to the Petition as Annex "C". *Id.* at 50.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 55-57.

<sup>41</sup> *Supra* note 19.

<sup>42</sup> *Id.* at 62.

<sup>43</sup> *Id.* at 58-61.



“a. **When I married Gil Ballares<sup>44</sup> on July 18, 2005 at Subic, Zambales my marriage to Eliodoro Q. Perez was already nullified** by the Regional Trial Court of Olongapo City, Branch 73 in Civil Case No. 44-0-05 entitled ‘Eliodoro Q. Perez vs. Adelita Perez’ as per the decision rendered by the said court on June 15, 2005 x x x;

b. In fact, an entry of judgment was already issued in the said nullity of marriage case by making the said decision final as of July 6, 2005, a copy of the said entry of judgment is hereto attached as Annex ‘2’ hereof x x x.<sup>45</sup>

The CA Decision in the Annulment of Judgment Petition was elevated to the Court via a petition docketed as G.R. No. 222230 (*Adelita M. Perez v. Heirs of Eliodoro Q. Perez*), which the Court, through its Second Division, denied for failure of the petition to sufficiently show any reversible error in the assailed judgment to warrant the exercise by the Court of its discretionary appellate jurisdiction in the said case.<sup>46</sup>

The Court notes that both the CA Decision in the Annulment of Judgment Petition and the Resolution of the Court denying the petition in G.R. No. 222230 were appended to the Petition. Avegail in her Comment and/or Opposition<sup>47</sup> did not present any evidence controverting the existence and validity thereof.

In light of the foregoing, both the RTC and the CA committed a **patent** error in their factual finding in this case that the marriage between Eliodoro and Adelita remained valid and subsisting until Eliodoro’s death on June 28, 2008. While the RTC Decision was rendered on February 24, 2015, or prior to the CA Decision in the Annulment of Judgment Petition dated September 22, 2015, the RTC could not have mistaken the March 5, 2012 Resolution of the CA in CA-G.R. SP No. 120119 in connection with the Annulment of Judgment Petition to mean reception of further evidence in the second petition for declaration of nullity of the marriage between Eliodoro and Adelita that was filed by the former because that Resolution emanated from the CA in its disposition of the Annulment of Judgment Petition. In other words, if the RTC entertained any doubt, it should have verified from Branch 75 what the hearing for reception of further evidence was all about. After all Branch 72 (the RTC of this case) and Branch 75 are both located in Olongapo City. Another option of the RTC would have been to await the outcome of the Annulment of Judgment Petition filed by Adelita with the CA inasmuch as the resolution of the issue in the said petition — the annulment of the Marriage Nullity Decision — was inextricably linked with the instant case.

<sup>44</sup> “Gil Y. Baniñares” in some parts of the *rollo*.

<sup>45</sup> *Rollo*, pp. 61-62.

<sup>46</sup> *Supra* note 22.

<sup>47</sup> *Supra* note 31.

On the part of the CA, at the time it rendered its Decision<sup>48</sup> on April 7, 2017 in the present case, the CA Decision in the Annulment of Judgment Petition in CA-G.R. SP No. 120119 had already been rendered more than a year earlier, or on September 22, 2015. A mere perusal of the March 5, 2012 Resolution of the CA issued in connection with the Annulment of Judgment Petition would have made the CA to be circumspect and make a verification as to whether the RTC's finding in this case in relation to that March 5, 2012 Resolution was factually accurate.

Based on the Court's mere reading of the CA Decision in the Annulment of Judgment Petition, the factual mistake of the RTC and the CA in this case becomes readily patent, justifying the relaxation of the rules on the instant Rule 45 *certiorari* Petition.

Since the Marriage Nullity Decision became final and executory on July 6, 2005, as confirmed with finality in the CA Decision in the Annulment of Judgment Petition in CA-G.R. SP No. 120119, prior to Eliodoro's death, then the marriage between him and Adelita, which was celebrated on December 10, 1975 at Infanta, Pangasinan, was null and void *ab initio* pursuant to Article 36 of the Family Code as declared in the Marriage Nullity Decision.<sup>49</sup>

Since the marriage between Adelita and Eliodoro was judicially decreed to be void *ab initio* or from the beginning, the RTC and the CA here in this case clearly erred in their ruling that the ACP regime governed their property relations.

Parenthetically, and to digress a moment, even if their marriage was not declared void from the beginning, the RTC and the CA would still have erred because the applicable property regime should have been the conjugal partnership of gains (CPG). Pursuant to Article 105 of the Family Code, the provisions of Chapter 4, Conjugal Partnership of Gains, shall apply to CPG already established before the effectivity of the Family Code, without prejudice to vested rights. Since the marriage between Eliodoro and Adelita was celebrated on December 10, 1975 and the CPG was then the applicable property regime between validly married spouses, absent any contract executed before the marriage, then that property regime continued.<sup>50</sup>

Nixon is thus correct in his contention that the lower courts in the present case erred in applying Article 89 of the Family Code, which provides in part that: "No waiver of rights, interests, shares and effects of the absolute community of property during the marriage can be made except in case of judicial separation of property."<sup>51</sup> Unquestionably, Article 89 cannot justify

---

<sup>48</sup> Supra note 3.

<sup>49</sup> Id. at 53.

<sup>50</sup> See CIVIL CODE, Art. 118.

<sup>51</sup> See *rollo*, p. 27.



the nullification of Adelita's RWR since Adelita and Eliodoro were not validly married.

Nixon correctly cites Article 147 of the Family Code as the applicable provision and the rules on co-ownership govern the property acquired during the cohabitation or "common law" marriage of Eliodoro and Adelita.<sup>52</sup>

Article 147 of the Family Code 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. (144a)

It must be noted that the subject property was registered in the names of Eliodoro and Adelita, as spouses, and there being no proof to the contrary, the subject property is presumed to have been obtained by their joint efforts, work or industry, and was owned in equal shares by them pursuant to Article 147.

What then is the effect of the Marriage Nullity Decision (in CA-G.R. SP No. 120119) on the RWR executed in 1995 by Adelita in favor of Eliodoro over the subject property?

Nixon contends that the RWR is valid on the ground that Eliodoro and Adelita, being mere co-owners of the subject property, either of them

---

<sup>52</sup> Id. at 25.



could donate or waive their respective shares therein provided that the consent of either partner was obtained.<sup>53</sup>

On this score, Nicxon is mistaken. The RWR is void pursuant to Article 87 of the Family Code, which provides:

ART. 87. Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. **The prohibition shall also apply to persons living together as husband and wife without a valid marriage.** (133a) (Emphasis supplied)

Undoubtedly, the RWR was without valuable or material consideration as found in the present case by the RTC and affirmed by the CA. The CA Decision in this case states:

x x x As correctly found by the trial court, no material consideration was given to Adelita in exchange of the execution of the Renunciation and Waiver of Rights. It thus partakes the nature of a donation or grant of gratuitous advantage between spouses which is prohibited under [Article 87 of the Family Code, which provides “every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void x x x.”] Clearly, Adelita’s waiver of her rights over the subject property through the [RWR] is not allowed.

[Nicxon’s] argument that there was material consideration given to Adelita in exchange for her [RWR] is likewise unfounded. Adelita’s admission that she received her share from the conjugal partnership of gains was made on [March 2, 2005] when she executed an affidavit as maintained by [Nicxon]. It must be recalled, however, that the [RWR] was executed on [October 29, 1995] or ten (10) years prior to the execution of the affidavit. Hence, at the time Adelita renounced and waived her rights, there was no material consideration extended to her.<sup>54</sup>

While both the CA and the RTC correctly ruled in this case that the RWR is void based on Article 87 of the Family Code, their reliance on that provision of the Article referring to “[e]very donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void” is incorrect — borne out by the fact that they erroneously believed that the marriage between Eliodoro and Adelita was valid and subsisting until Eliodoro’s death. To be clear, therefore, the provision of Article 87 that squarely applies to the case is: “The prohibition shall also apply to persons living together as husband and wife without a valid marriage.”

Parenthetically, the Court takes this opportunity to dispel the notion that assuming the marriage between Eliodoro and Adelita was valid at the

<sup>53</sup> Id.

<sup>54</sup> Id. at 41-42.



time the RWR was executed and it had valuable or material consideration, the RWR would have been valid. The RWR would still be void because the sale between the spouses during their marriage is proscribed under Article 1490 of the Civil Code,<sup>55</sup> which provides:

ART. 1490. The husband and the wife cannot sell property to each other, except:

(1) When a separation of property was agreed upon in the marriage settlements; or

(2) When there has been a judicial separation of property under Article 191. (1458a)

The reason behind the prohibition is to protect third persons who may have contracted with a spouse, believing in the existence of certain properties, and who could easily be defrauded by removing such property by transfer to the other spouse.<sup>56</sup>

Going back to Article 87 of the Family Code, the reason for the prohibition is explained thus:

x x x This provision refers to donation *inter vivos*. It is dictated by the principle of unity of personality of the spouses during the marriage, and is intended to avoid possible transfer of property from one spouse to the other due to passion or avarice. The intimate relations of the spouses during the marriage places the weaker spouse under the will of the stronger, whatever the sex, so that the former might be obliged, either by abuse of affection or by threats of violence, to transfer some properties to the latter. The law seeks to prevent such exploitation in marriages which might have been contracted under this stimulus of greed.

x x x The prohibition of this article also applies to the parties in what are called "common law" marriages; otherwise, the condition of those who incurred guilt would turn out to be better than those in legal union.<sup>57</sup>

Indeed, in the landmark 1971 *en banc* Decision in *Matabuena*, wherein the donation of a parcel of land made in 1956 by Felix Matabuena in favor of Petronila Cervantes while they were living together before their marriage in 1962 was invalidated, the Court emphatically pronounced:

x x x While Art. 133 of the Civil Code considers as void a "donation between the spouses during the marriage," policy considerations of the most exigent character as well as the dictates of morality require

<sup>55</sup> This article is on Sales, thus it applies even in the case of the Family Code.

<sup>56</sup> Araceli Baviera, SALES, p. 16, citing X Manresa, *Comentarios al Código Civil Español* (5<sup>th</sup>. Ed., 1950), p. 123.

<sup>57</sup> Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, VOLUME I WITH THE FAMILY CODE OF THE PHILIPPINES, 1990 Edition, pp. 375-376, citing 9 Manresa 265-267; *Buenaventura v. Bautista*, 50 O.G. 3679 and *Matabuena v. Cervantes*, supra note 1.

that the same prohibition should apply to a common-law relationship. x x  
x

1. As announced at the outset of this opinion, a 1954 Court of Appeals decision, *Buenaventura v. Bautista*, interpreting a similar provision of the old Civil Code speaks unequivocally. If the policy of the law is, in the language of the opinion of the then Justice J.B.L. Reyes of the Court, "to prohibit donations in favor of the other consort and his descendants because of fear of undue and improper pressure and influence upon the donor, a prejudice deeply rooted in our ancient law; 'porque no se engañen despojandose el uno al otro por amor que han de consuno' [according to] the Partidas (Part. IV, Tit. XI, LAW IV), reiterating the rationale 'Ne mutuato amore invicem spoliarentur' of the Pandects (Bk. 24, Tit. 1, De donat, inter virum et uxorem); then there is every reason to apply the same prohibitive policy to persons living together as husband and wife without benefit of nuptials. For it is not to be doubted that assent to such irregular connection for thirty years bespeaks greater influence of one party over the other, so that the danger that the law seeks to avoid is correspondingly increased. Moreover, as already pointed out by Ulpian (in his lib. 32 *ad Sabinum*, fr. 1), 'it would not be just that such donations should subsist, lest the condition of those who incurred guilt should turn out to be better.' So long as marriage remains the cornerstone of our family law, reason and morality alike demand that the disabilities attached to marriage should likewise attach to concubinage."

2. It is hardly necessary to add that even in the absence of the above pronouncement, any other conclusion cannot stand the test of scrutiny. It would be to indict the framers of the Civil Code for a failure to apply a laudable rule to a situation which in its essentials cannot be distinguished. Moreover, if it is at all to be differentiated, the policy of the law which embodies a deeply-rooted notion of what is just and what is right would be nullified if such irregular relationship instead of being visited with disabilities would be attended with benefits. Certainly a legal norm should not be susceptible to such a reproach. If there is ever any occasion where the principle of statutory construction that what is within the spirit of the law is as much a part of it as what is written, this is it. Otherwise the basic purpose discernable in such codal provision would not be attained. Whatever omission may be apparent in an interpretation purely literal of the language used must be remedied by an adherence to its avowed objective. In the language of Justice Pablo: "El espíritu que informa la ley debe ser la luz que ha de guiar a los tribunales en la aplicacion de sus disposiciones."<sup>58</sup>

The jurisprudence on the nullity of donations between the parties of a common-law relationship or exclusive cohabitation or union of a man and a woman without a valid marriage found its way into the present Article 87 of the Family Code.

Given the express prohibition under Article 87 of the Family Code, the RWR executed by Adelita in favor of Eliodoro in respect of the subject property is void.

<sup>58</sup> *Matabuena v. Cervantes*, supra note 1, at 298-300. Citations omitted.



Proceeding to the third issue, given the nullity of the RWR, is the DoD that Eliodoro executed in favor of Nicxon over the subject property valid?

If the marriage between Eliodoro and Adelita was valid and their property regime was either the ACP or the CPG, the donation would definitely be void pursuant to Articles 98 and 125 of the Family Code, which provide:

ART. 98. Neither spouse may donate any community property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the community property for charity or on occasions of family rejoicing or family distress.  
(n)

x x x x

ART. 125. Neither spouse may donate any conjugal partnership property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the conjugal partnership property for charity or on occasions of family rejoicing or family distress. (174a)

It has been opined that a donation made by the husband, without the consent of the wife, would be subject to attack as a fraudulent alienation, or an alienation impairing the interest of the wife in the conjugal partnership property.<sup>59</sup>

For onerous dispositions or encumbrances of any community property or conjugal partnership property by a spouse, the written consent of the other spouse or an authority of the court is required. In the absence of such consent or authority, the disposition or encumbrance shall be void; however, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.<sup>60</sup>

Thus, among married couples wherein the ACP or the CPG is their property regime, the consent of both spouses is required under the Family Code whether the disposition is gratuitous or onerous.

Under a regime of separation of property, pursuant to Article 145 of the Family Code, each spouse shall own, dispose of, possess, administer and enjoy his or own estate, without need of the consent of the other. Understandably, each spouse can donate or alienate onerously his or her own estate without the need of obtaining the other spouse's consent.

<sup>59</sup> Arturo M. Tolentino, *supra* note 57, at 462, citing De Buen: 6 Colin & Capitant 308.

<sup>60</sup> Articles 96 and 124 of the Family Code.



Under Article 147 of the Family Code, which covers the exclusive cohabitation of a man and woman as husband and wife without the benefit of marriage or under a void marriage, there is unfortunately no direct prohibition on donation of any property acquired during the cohabitation by one party without the consent of the other.

It is true that Article 147 provides that the property acquired during the cohabitation shall be governed by the rules on co-ownership and pursuant to Article 493 of the Civil Code, in a co-ownership: "Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved[; b]ut the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership."

With Article 493 of the Civil Code as basis, Eliodoro could have alienated onerously or gratuitously his part or share in the subject property to Nicxon without the consent of Adelita, who was half co-owner thereof, and the alienation would have been limited to the half portion allotted to Eliodoro upon termination of the co-ownership or partition.

Even the donation by Eliodoro of the entire subject property to Nicxon, without the consent of Adelita, could produce valid effect under Article 493, which would be limited to his share. The Court, in *Bailon-Casilao v. Court of Appeals*,<sup>61</sup> explained the effect of the sale of the whole property by a co-owner, in this wise:

As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale [*Punsalan v. Boon Liat*, 44 Phil. 320 (1923)]. This is because under the aforementioned codal provision [(Article 493)], the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common. [*Ramirez v. Bautista*, 14 Phil. 528 (1909)]. x x x<sup>62</sup>

In *Paulmitan v. Court of Appeals*,<sup>63</sup> the Court reiterated that the sale by one co-owner of the property owned in common without the consent of the others did not vest in the buyer ownership over the entire property, but merely transferred to the buyer the undivided share of the seller, making the buyer the co-owner of the subject property.

Consequently, if Article 493 of the Civil Code were to be applied, the donation to Nicxon of the subject property could only affect the one-half

<sup>61</sup> 243 Phil. 888 (1988).

<sup>62</sup> Id. at 892-893.

<sup>63</sup> 290 Phil. 376 (1992).





share of Eliodoro and the one-half share of Adelita could not have been transferred to Nicxon by virtue of the DoD.

***However***, Article 493 of the Civil Code cannot supersede, and must yield to, Article 147 of the Family Code, which expressly mandates that: “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.” The reason for this amendment to Article 144<sup>64</sup> of the Civil Code rule, as it is now expressed in the Family Code, is this:

x x x If the parties are allowed to dispose of their shares in said properties like in a true co-ownership, it will destroy their relationship. The Family Code, as already stated, would like to encourage the parties to legalize their union some day and is just smoothing out the way until their relationship ripens into a valid union.<sup>65</sup>

One eminent civil law expert distinguishes ordinary co-ownership and “**special co-ownership**” under Article 147 in this manner:

x x x In ordinary co-ownership, a co-owner may validly alienate or encumber his undivided share in the common property without the consent of the other co-owners. This article [(Article 147)] creates an exception in the special co-ownership it recognizes between parties living together as husband and wife. As long as the cohabitation lasts and the co-ownership exists, no disposition *inter vivos* of such undivided share can be validly made by one party without the consent of the other.<sup>66</sup>

Given the above express prohibition of a party to the cohabitation to encumber or alienate by acts *inter vivos* even his or her share in the property acquired during the cohabitation and owned in common, without the consent of the other party until after the termination thereof under Article 147, then the donation of any property acquired during the cohabitation by one party without the consent of the other can only be but void. The rules on ordinary co-ownership cannot apply to vest validity on the undivided share of the disposing party. The donation is simply void.

If a disposition of a party’s share in the property under special co-ownership created by virtue of Article 147 without the consent of the other party is proscribed by law, then, **and with more reason**, should the disposition of the entire property under such special co-ownership by a party without the other party’s consent be considered void as well.

<sup>64</sup> ART. 144. When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership. (n)

<sup>65</sup> Alicia V. Sempio-Dy, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES (1991 rep.), p. 207.

<sup>66</sup> Arturo M. Tolentino, supra note 57, at 496-497.

To conclude, while the Court finds merit in Nicxon's contention that the lower courts in the present case erred in finding that the property regime between Adelita and Eliodoro was governed by the ACP as their marriage subsisted until Eliodoro died, the DoD to him of the subject property is, nonetheless, void as this is a prohibited disposition under Article 147 of the Family Code.

*A Final Note*

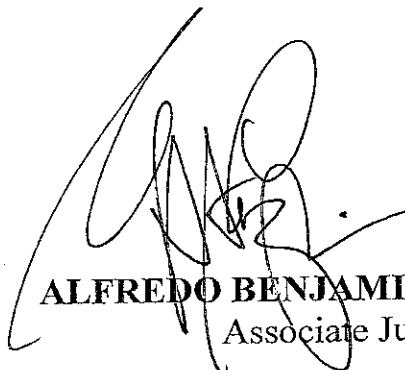
*Matabuena* equalized common-law relationships between a man and a woman, on the one hand, and validly married spouses on the other, in respect of the nullity of donations made between the parties. This case similarly pronounces that the prohibition against a spouse to donate any absolute community property or conjugal partnership property without the consent of the other spouse equally applies to common-law relations or cohabitations of a man and a woman without a valid marriage or under a void marriage.

**WHEREFORE**, the Petition is hereby **DENIED**. Accordingly, the Decision dated April 7, 2017 of the Court of Appeals in CA-G.R. CV No. 105393 is **AFFIRMED** for the reasons stated herein. However, the Decision dated February 24, 2015 of the Regional Trial Court of Olongapo City, Branch 72 in Civil Case No. 135-0-2010 is **MODIFIED** as follows:

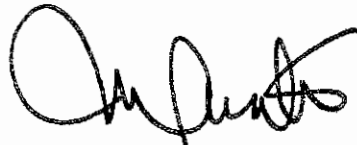
**WHEREFORE**, in the light of the foregoing, the court finds the instant action meritorious, and hereby orders the following:

1. **Nullification** of the Renunciation and Waiver of Rights executed by Adelita Perez in favor of Eliodoro Perez;
2. **Nullification** of the Deed of Donation executed by the late Eliodoro Perez in favor of Nicxon L. Perez, Jr.;
3. Nullification of the Transfer Certificate of Title No. T-12547 in the name of Nicxon L. Perez, Jr.;
4. Cancellation by the Registry of Deeds of T.C.T. No. T-12547 in the name of Nicxon L. Perez, Jr.; and
5. Issuance of another title over the subject property in the name of Eliodoro Q. Perez and Adelita M. Perez.

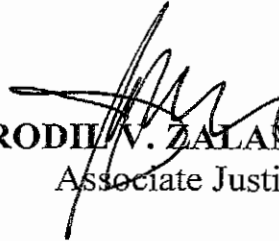
**SO ORDERED.**

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

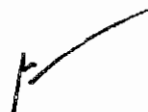
WE CONCUR:



**DIOSDADO M. PERALTA**  
Chief Justice  
Chairperson



**RODIL V. ZALAMEDA**  
Associate Justice



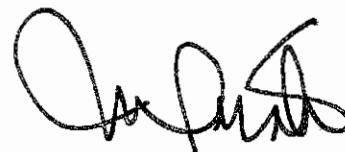
**EDGARDO L. DELOS SANTOS**  
Associate Justice



**SAMUEL H. GAERLAN**  
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.



**DIOSDADO M. PERALTA**  
Chief Justice

