

SECOND DIVISION

G.R. No. 236659 – BERNARD B. BENASA, *Petitioner*, v.  
PRESENTACION R. MAHOR, *Respondent*.

Promulgated:  
AUG 31 2022



x-----x

SEPARATE CONCURRING OPINION

LEONEN, J.:

There is no required period to establish cohabitation. It is the intention of two persons to openly live together as husband and wife that determines cohabitation and not the time they physically spent together.

This case involves a petition for accounting, inventory and reconveyance of real properties with damages filed by petitioner Bernard B. Benasa (Benasa) against respondent Presentacion R. Mahor (Mahor), on the basis of co-ownership of properties under Article 148 of the Family Code.

Benasa and Mahor were childhood sweethearts. In 1974, they started their relationship despite Mahor being married to Pablo Mahor (Pablo). Benasa worked as a seafarer and regularly remitted monthly allotments to Mahor. He alleged that these funds have been used to buy their house at No. 24, Redwood Street, Fairview Park, Quezon City (Fairview Park Residence). He claimed that he would stay in this house with Mahor each time he returns to the Philippines.<sup>1</sup>

Benasa retired in 1999. He asked Mahor to make an inventory and accounting of all the cash remittances and properties that he had raised during their cohabitation, but to no avail. Their relationship turned sour and eventually separated.<sup>2</sup>

On January 26, 2012, Benasa filed a Petition for Accounting, Inventory, Reconveyance, and Surrender of Possession of Real Properties with Damages against Mahor before the Regional Trial Court.<sup>3</sup> He prayed that the Regional Trial Court order Mahor to:



---

<sup>1</sup> *Rollio*, p. 57-58.

<sup>2</sup> *Id.* at 58.

<sup>3</sup> *Id.* at 55-56.

1. Submit a complete and proper accounting report and/or inventory of all the monies and properties entrusted to her by [Benasa] from 1974-1999;
2. Give, remit or surrender all the monies entrusted to her by [Benasa] from 1974-1999, in the amount of \$ 585,755.89 plus P200,927.00.
3. Give or surrender all personal properties owned by [Benasa], which are being kept by the former inside the house found at 23 Redwood St., Fairview Park, Quezon City;
4. Reconvey all the properties which she acquired or purchased using the money of [Benasa] and for the said purpose, [Mahor] be required/ordered to execute the Deed of Reconveyance in favour of [Benasa] and to, consequently, surrender possession of the said real properties in favour of the latter;
5. Pay Four Million Pesos (P 4,000,000.00) as and by way of Moral and Exemplary damages; and
6. Pay costs of suit and litigation.<sup>4</sup>

Mahor was declared in default after failing to file an answer despite substituted service of summons. Benasa presented evidence *ex parte*.<sup>5</sup>

Benasa's evidence consisted of allotment slips and passbooks amounting to US \$585,755.89 and P200,927.00, inventory and photographs of real and personal properties allegedly in Mahor's possession, several love letters, and intimate photographs.<sup>6</sup>

The Regional Trial Court denied the petition finding that Benasa failed to establish the fact of cohabitation. It found that his relationship with Mahor was a simple love affair and not a marital cohabitation or manifestations of conjugal life. It noted that his work as a seafarer requires him to be abroad most of the time, and his remittances of allotments were insufficient to establish the mutual aid and assistance that is required for marital cohabitation. It stated that while there were photos with inscriptions at the back, it was not established that these were written by Mahor, or that it pertained to them.<sup>7</sup>

Benasa's claim for accounting was also dismissed because the Regional Trial Court found no evidence showing that he sent specific instructions for Mahor to spend the remitted money to buy the properties. His claim for the return of the personal properties was also denied due to his failure to establish his right to possess. It found he was unable to prove that the money he sent were used to purchase these properties. Hence the trial court presumed that these properties were conjugal in nature and belongs to Mahor and her husband (collectively, the Mahor Spouses).<sup>8</sup>

---

<sup>4</sup> Id. at 55.

<sup>5</sup> Id. at 56.

<sup>6</sup> Id. at 58-60.

<sup>7</sup> Id. at 60-61.

<sup>8</sup> Id. at 62-63.

The Court of Appeals affirmed the decision of the trial court. It held that Article 148 may be applied to the property regime of the parties retroactively. However, there was no proof of cohabitation because they did not live under one roof since Benasa was working outside the country as a seafarer. Moreover, the properties acquired were registered under the names of the Mahor Spouses during the subsistence of their marriage. The Court of Appeals applied the presumption that properties acquired during the marriage are conjugal in nature. It also affirmed the trial court's findings that Benasa failed to prove ownership of the personal properties inside a house registered to another person. His familiarity with the properties was considered to be self-serving and without evidentiary value.<sup>9</sup>

The *ponencia* reversed the ruling of the lower courts and granted Benasa's petition.<sup>10</sup>

It held that Article 148 of the Family Code governs the property relations between Benasa and Mahor.<sup>11</sup> It found that there is sufficient evidence to establish their cohabitation. While Benasa was a seafarer, he maintained his relationship with Mahor and manifested his intent to return to the place he considers as their residence or dwelling through his actions.<sup>12</sup> It noted: (i) the letters in Benasa's possession pertaining to his communication with Mahor, exchanged during 1974 to 1999; (ii) the dated film photographs displaying their affection for one another, with some even taken on the properties they shared; (iii) Benasa's large remittances of his salary as an overseas Filipino worker, and (iv) his living in the Fairview Park property when he returns from his work overseas.<sup>13</sup>

The *ponencia* further ruled that considering Article 148 applies, the properties they acquired in cohabitation shall be owned in them in common in proportion to their actual respective contributions.<sup>14</sup> Thus, it held that Benasa has a right to the real properties as a co-owner, and he is entitled to an accounting, inventory, and reconveyance of a portion of the properties.<sup>15</sup> It found that his remittances from his salaries should be considered as his contribution towards the co-owned properties. While there was no writing showing that the real properties were held for Benasa's benefit, the registration in the sole name of Mahor does not foreclose the possibility of their co-ownership. This is especially considering Benasa's evidence of his contributions to acquire the properties, including several slips and passbooks covering the period of 1974 to 1999, with the remittances amounting to US\$585,755.89 and ₱200,927.00.<sup>16</sup> Mahor was even added as an alternative

---

<sup>9</sup> *Ponencia*, p. 6.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 9-10.

<sup>13</sup> *Id.* at 10.

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

<sup>15</sup> *Id.* at 10-11.

<sup>16</sup> *Id.* at 11.

party in the passbooks, showing that she was given access to it for her benefit. Thus, in one of her letters to Benasa, she referred to allotments she received from him to be deposited in a bank account. It also noted that Mahor wrote on the back of a photograph of the Fairview Park property, stating the property was bought from her allotment, in reference to Benasa's remittances to her. The amounts sent by Benasa cannot be considered a meager sum, and is sufficient to prove his contribution in their cohabitation and the acquisition of the contested properties.<sup>17</sup>

The *ponencia*, however, ruled that Benasa failed to sufficiently prove his right to the personal properties in the Fairview Park property. It found that the inventory and photos were self-serving and inadequate, as it identified only the property, and did not show that he was the one who purchased them. It also held that Benasa's insistence that Mahor was unemployed and could not have afforded the properties is a "patronizing assumption unsupported by evidence."<sup>18</sup>

The *ponencia* remanded the case to the Regional Trial Court for the accounting, reception of evidence, and evaluation for the proper determination of the ownership and share of the properties in accordance with Article 148 of the Family Code.<sup>19</sup> It also granted moral damages and attorney's fees to Benasa.<sup>20</sup>

The dispositive portion of the *ponencia* reads:

**ACCORDINGLY**, the petition is **GRANTED**. The Decision dated July 19, 2017 and the Resolution dated January 8, 2018 of the Court of Appeals in CA-G.R. CV No. 108032, upholding the Decision dated September 8, 2016 and the Resolution dated November 14, 2016 of the Regional Trial Court are hereby **REVERSED** and **SET ASIDE**. Further:

1) The instant case is **REMANDED** to Branch 78, Regional Trial Court, Quezon City. Respondent, Presentacion R. Mahor, is hereby **ORDERED** to make and submit a complete and proper accounting report and/or inventory of all the money [and] properties entrusted to her by petitioner, Bernard B. Benasa, from 1974-1999; and

2) Further, Presentacion R. Mahor is **ORDERED** to pay Bernard B. Benasa PHP 100,000 as and by way of [m]oral and [e]xemplary damages; and PHP 10,000 as attorney's fees. ℓ

---

<sup>17</sup> Id. at 13.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id. at 14.

**SO ORDERED.**<sup>21</sup> (Emphasis in the original)

I concur with the *ponencia*.

**I**

There are several circumstances that indicate that petitioner and respondent cohabited for a period of time for Article 148 of the Family Code to apply.

Cohabitation pertains to the act of living together as husband and wife. It indicates sharing the same dwelling. It does not cover an arrangement in which one only visits another for a period of time. Furthermore, in cohabitation, there is an assumption of relations akin to that of married persons, including holding themselves out to the public as such.

As cited by the *ponencia*, *Ocampo v. People*,<sup>22</sup> states:

The term "cohabit" means to dwell together, in the manner of husband and wife, for some period of time, as distinguished from occasional, transient interviews for unlawful intercourse. And, whether an association, for illicit intercourse, has been such as to constitute an unlawful assumption of the conjugal relation, is, in every case a question of fact, and the extent of such association as to constitute a cohabitation within the meaning of the law, is a matter of court's appreciation.<sup>23</sup> (Citations omitted)

In *Ong v. Court of Appeals*,<sup>24</sup> this Court discussed that to constitute cohabitation, it must be open and public, and not done in secret:

Nor can it be said that there was proof of cohabitation in this case. While Saturnina Caballes testified that she and Manuel Ong lived together for four months as husband and wife in order to justify a finding of cohabitation, the relationship was *not open and public* so as to constitute cohabitation. While the parties are *not required to hold themselves out as husband and wife, neither must they act clandestinely or secretly*, otherwise they will be considered to have merely engaged in illicit sexual intercourse.<sup>25</sup> (Emphasis supplied, citations omitted).

Thus, aside from dwelling in the same house as husband There is no evidence indicating that petitioner resides elsewhere whenever he comes home in the Philippines. Many overseas Filipino workers, especially seafarers, do not stay in the Philippines for long periods of time because of

<sup>21</sup> Id. at 14–15.

<sup>22</sup> 72 Phil. 268 (1941) [Per J. Moran, First Division].

<sup>23</sup> Id. at 269.

<sup>24</sup> 339 Phil. 109 (1997) [Per J. Mendoza, Second Division].

<sup>25</sup> Id. at 119.

the nature of their work. It is no different from local workers who leave their homes to go to their places of work, and then come back after work hours. Workers come home for resting, recharging, and keeping their personal belongings. In the same way, many seafarers come home in the Philippines to rest and recharge after their contracts expire.

In petitioner's case, if the only reason he is not at the Fairview Park residence for a time is because of his work as a seafarer, his being gone for months at a time is not necessarily inconsistent with his cohabitation with respondent. If he comes back to the Philippines when his contract ends and comes home to the Fairview Park residence with respondent, not anywhere else, it cannot be said that his stays in the Fairview Park residence are transient or occasional, or only for illicit sexual intercourse.

It must also be noted that the required period for cohabitation is not fixed. In *Ocampo*, this Court held that dwelling together as husband and wife in the same house for seven days and nights is sufficient to constitute a cohabitation.<sup>26</sup>

In the instant case, petitioner's conduct with his coaccused was not confined to isolated interviews for unlawful intercourse. He and his coaccused dwelt together as husband and wife in the same house in Naga, Camarines Sur, where they were *seen attending shows and dances*; again, in Tiwi, Albay, they dwelt together as husband and wife in the same house for *seven days and nights where they slept together and alone in one room*. We are of the opinion and so hold that such association is sufficient to constitute a cohabitation within the meaning of the law even disregarding proofs of actual sexual intercourse.<sup>27</sup> (Emphasis supplied)

*People v. Pitoc*<sup>28</sup> discussed that the period of time in cohabitation may be a week, a month, a year, or longer:

Hence, the question involved here is whether within the meaning of the law, the defendant cohabited "with a woman who is not his wife."

The word cohabit has many different meanings, each depending upon the sense in which it is used. Here, we have a law intended to prohibit a married man from keeping a mistress in his dwelling or anywhere else under "scandalous circumstances." Hence, the meaning of the word cohabit here must relate and be confined to the subject-matter of the law itself. When used in that sense, it should be construed to mean "to dwell or live together as husband and wife; to live together as husband and wife although not legally married; to live together in the same house, claiming to be married; to live together at bed and board."

Words and Phrases, vol. 2, page 1243, says:

<sup>26</sup> *Ocampo v. People*, 72 Phil. 268 (1941) [Per J. Moran, First Division].

<sup>27</sup> *Id.* At 270.

<sup>28</sup> 43 Phil. 758 (1922) [Per J. Johns, En Banc].

“‘Cohabit’ means, according to Webster, first, to dwell with another in the same place; second, to live together as husband and wife.

“Bishop, in his work on Marriage, Divorce, and Separation, par. 1669, says to ‘cohabit’ is to dwell together, so that matrimonial cohabitation is the living together of a man and woman ostensibly as husband and wife.

“The word ‘cohabit’ is said to mean to dwell or live together as husband and wife. And as used in Pub. St. c. 207, par. 4, providing that whoever, having a former wife living, marries another or continues to cohabit with such second wife, is guilty of bigamy, etc.

“‘Obviously the legal sense of the term, as used in Acts 1877-78, p. 302, c. 7, par. 7, making it criminal for persons not married to cohabit together, is to live together in the same house as married persons living together or in the manner of husband and wife.’

*“To ‘cohabit,’ according to the sense in which the word is used in a penal statute, means dwelling together as husband and wife, or in sexual intercourse, and comprises a continued period of time. Hence the offense is not the single act of adultery; it is cohabiting in a state of adultery; and it may be a week, a month, a year, or longer, but still it is one offense only.*

“To ‘cohabit’ means to dwell together, inhabit or reside in company, or in the same place or country. Specifically, ‘to dwell or live together as husband and wife,’ often with reference to persons not legally married, and usually, but not always, implying sexual intercourse.”<sup>29</sup> (Emphasis supplied, citations omitted)


Thus, unlike residency or citizenship requirements where a fixed period is required to qualify, the length of time is not set in cohabitation.

In this case, the intermittent periods when petitioner was in the Philippines should not be the sole basis for concluding that his stays with respondent were not long enough to constitute cohabitation.

Considering the nature of the relations between petitioner and respondent, spanning 25 years, with continued allotments from the former to the latter, it cannot be concluded that petitioner and respondent did not cohabit.

---

<sup>29</sup> Id. at 761-762.



**II**

Since there was cohabitation between petitioner and respondent, and it was established they are not capacitated to marry each other, Article 148 of the Family Code applies. It reads:

ARTICLE 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

This provision applies to the property relations of those who cohabited as husband and wife but are incapacitated to marry. The regime of limited co-ownership also applies to those who started their cohabitation prior the effectivity of the Family Code.<sup>30</sup> Based on the provision, property relations under Article 148 has the following requirements: (1) cohabitation of the parties as husband and wife; (2) acquisition of monies and properties during the period of cohabitation; and (3) proof of actual contribution. Co-ownership is limited only to the extent of what is proven by the parties.<sup>31</sup> Moreover, the burden of proof is on the party asserting an affirmative issue on the strength of their own evidence.<sup>32</sup> The standard of evidence required to prove actual contribution is preponderance of evidence.<sup>33</sup>

Once a limited co-ownership is established, Article 148 of the Family Code governs the property relations of the parties. A trust relationship is subsumed under the regime of a limited co-ownership.<sup>34</sup>

I agree with the *ponencia* that petitioner was able to substantiate all the requirements of Article 148 and establish a regime of limited co-ownership with respondent.<sup>35</sup>

---

<sup>30</sup> *Saguid v. Court of Appeals*, 451 Phil. 825, 829, 836 (2003) [Per J. Ynares-Santiago, First Division].

<sup>31</sup> *Id.* at 829.

<sup>32</sup> *Id.* at 837.

<sup>33</sup> *Joaquino v. Reyes*, 478 Phil. 343, 355 (2004) [Per J. Panganiban, First Division].

<sup>34</sup> *Mallilin, Jr. v. Castillo*, 389 Phil. 153, 164 (2000) [Per J. Mendoza, Second Division].

<sup>35</sup> *Ponencia*, p. 10.



Records show proof of petitioner's actual contributions and respondent's receipt thereof:

- (1) Summary of Allotment with respondent designated as allottee/beneficiary as early as February 1982;<sup>36</sup>
- (2) Authorization Form of Philippine Hanse Ship Agency where petitioner designated a certain "Pressy Mahor" as allottee for the amount of US \$765.00;<sup>37</sup>
- (3) Allotment Slip of NAESS Shipping Philippines, Inc. dated December 7, 1983 where petitioner authorized respondent to collect US \$701.60;<sup>38</sup>
- (4) Respondent's letter acknowledging receipt of the June and July 1990 allotments amounting to ₱12,471.88 and ₱15,439.45;<sup>39</sup>

These allotments form part of petitioner's salaries as a seafarer. Respondent had been designated as petitioner's allotment beneficiary as early as 1982. Her letters also show that she received these benefits, deposited them in bank accounts, and reported the balance to petitioner. In one of her letters, respondent reported a savings account amounting to ₱67,318.34 as of July and opened a US dollar account for them:

And the total amount of our S/A now is P67,318.34 as of July. I think your \$190.00 dollars increase is already added in my July allotment daddy coz last June I got only P12,471.88 while this July I got P15,439.45 with a difference of P2,967.57. Am I right daddy? Is my addition okay? Our balance should have been P77,318.34 have I not transferred to our Express teller the P10,000 daddy. I also opened our \$ account in the same bank daddy. I asked them if it can also be a joint acct. even if you are not here but they said they need also your signature so I am the only one named in the book daddy. Will this be okay with you daddy? Kasi sayang din yun araw na dadaan without any interest of our \$s. One thing more daddy I am afraid to keep cash here at home.<sup>40</sup>

Petitioner also attached the passbooks with Savings Account Number 11-2546 in Philtrust Bank registered in respondent's name and Far East Bank and Trust Company Passbook Savings Account Number 4503-0039-83 which appears to be registered in the names of petitioner "or" respondent.<sup>41</sup> Petitioner is the owner of the allotments given to respondent and deposited in these accounts, and any other joint deposits that they have. It bears emphasis that Article 148 provides that the same rules apply for joint deposits of money and evidence of credit acquired during the period of cohabitation.

---

<sup>36</sup> RTC records, pp. 120-124.

<sup>37</sup> Id. at 125.

<sup>38</sup> Id. at 126.

<sup>39</sup> Id. at 164.

<sup>40</sup> Id.

<sup>41</sup> Id. at 127-128.

I also agree with the *ponencia* that there appears to be an acknowledgment that the Fairview Park residence was bought from the allotments of respondent.<sup>42</sup> In his Amended Judicial Affidavit, petitioner presented two photographs of a house which he identified as No. 24 Redwood Street, Fairview Park, Quezon City.<sup>43</sup> At the back of these photos were similar handwritten notes:

Dearest daddy,


It's me in front [of] our new house I bought from my allotment.

Love & Care,

Honey<sup>44</sup>

In his testimony, petitioner clarified that he was the “daddy” being referred to in the photograph.<sup>45</sup> Moreover, respondent’s letters also refer to him as “daddy” and was signed “honey.” Thus, there is preponderance of evidence that petitioner actually contributed as regards the Fairview Park residence. Its belated registration in 2001 under the names of respondent and the heirs of the late Pablo does not defeat petitioner’s interest over the property.

**ACCORDINGLY**, I vote to **REMAND** the case to the Regional Trial Court for proper accounting, inventory, and return of all the money and properties given by petitioner Bernard B. Benasa to respondent Presentacion R. Mahor during their cohabitation.



**MARVIC M. V. F. LEONEN**  
Senior Associate Justice

---

<sup>42</sup> *Ponencia*, p. 13.

<sup>43</sup> RTC records, p. 161.

<sup>44</sup> *Id.*

<sup>45</sup> TSN dated November 4, 2015, p. 6.

