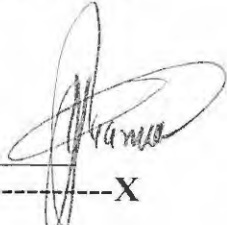


SECOND DIVISION

G.R. No. 253450 – LANI NAYVE-PUA, Petitioner, v. UNION BANK OF THE PHILIPPINES, Respondent.

Promulgated:

JAN 22 2024



X

X

DISSENTING OPINION

LEONEN, J.:

I dissent.

The mortgaged property was bought in 1978, while Stephen and Lani Pua were living together and before their marriage in 1983. Their property relations during their cohabitation is governed by Article 147 of the Family Code,¹ which applies to the cohabitation of parties who are legally capacitated and not barred by any impediment to contract marriage.

Under Article 147, the presumption of equal co-ownership between parties arises when property is acquired during cohabitation. It states:

ARTICLE 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.

. . . (Emphasis supplied)

¹ Article 147 of the Family Code applies in this case by virtue of Article 256, which allows for the retroactive effect of the Family Code as long as it does not prejudice or impair vested or acquired rights. In this case, no vested rights will be impaired since Article 147 of the Family Code is merely a remake of Article 144 of the Civil Code, as interpreted and applied in jurisprudence. See *Paterno v. Paterno*, 868 Phil. 206, 225–226 (2020) [Per J. J. Reyes, Jr., First Division], citing *Valdes v. Regional Trial Court, Br. 102, Quezon City*, 328 Phil. 1289, 1295 (1996). [Per J. Vitug, First Division].



This Court discussed the nature of co-ownership under Article 147 of the Family Code in *Valdes v. RTC, Br. 102, Quezon City*:²

Under this property regime, property acquired by both spouses through their *work* and *industry* shall be governed by the rules on *equal* co-ownership. Any property acquired during the union is *prima facie* presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall still be considered as having contributed thereto jointly if said party's "efforts consisted in the care and maintenance of the family household."³ (Emphasis supplied, citation omitted)

Thus, properties acquired by the parties while they lived together are presumed obtained by their joint efforts and owned by them in equal shares. Joint effort includes the care and maintenance of the family and household.⁴

Proof of the property's acquisition during cohabitation suffices to render the legal presumption operative. As with any presumption, it is nonetheless rebuttable by clear and convincing evidence⁵ showing either exclusive ownership or the actual material contribution of each party. In *Paterno v. Paterno*:⁶

It must be borne in mind that the presumption that the properties are co-owned and thus must be shared equally is not conclusive but merely disputable. The petitioner may rebut the presumption by presenting proof that the properties, although acquired during the period of their cohabitation, were not obtained through their joint efforts, work and industry. In such a case, the properties shall belong solely to the petitioner. If the respondent is able to present proof that she contributed through her salary, income, work or industry in the acquisition of the properties, the parties' share shall be in proportion to their contributions. In the event that the respondent had not been able to contribute through her salary, income, work or industry, but was able to show that she cared for and maintained the family and the household, her efforts shall be deemed the equivalent of the contributions made by the petitioner.⁷

Clear and convincing evidence is more than preponderance of evidence but less than proof beyond reasonable doubt.⁸

Here, since the property was bought during cohabitation of the parties, the presumption of co-ownership stands even if the title is in the name of only one of the parties.

² 328 Phil. 1289 (1996) [Per J. Vitug, First Division].

³ *Id.* at 1297.

⁴ *Tan-Andal v. Andal*, G.R. No. 196359, May 11, 2021 [Per J. Leonen, *En Banc*].

⁵ *Id.*

⁶ 868 Phil. 206 (2020) [Per J. J. Reyes, Jr., First Division].

⁷ *Id.* at 232.

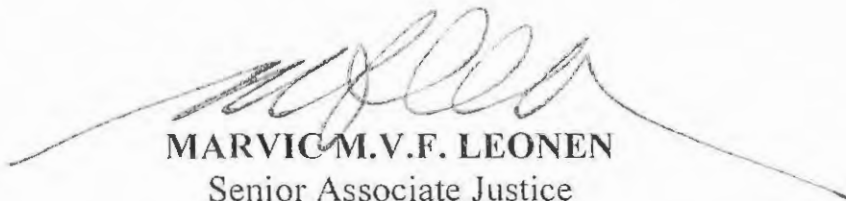
⁸ *Tan-Andal v. Andal*, G.R. No. 196359, May 11, 2021 [Per J. Leonen, *En Banc*].

In *Spouses Go v. Yamane*,⁹ the Court held that the title and deed of sale covering the property in the name of only one spouse is not clear and convincing evidence to reverse its conjugal nature. Applying by analogy in this case, mere registration of the property in the name of “Stephen Pua, of legal age, single” is not sufficient to reverse the presumption of co-ownership.

Furthermore, this Court previously held that “the mere issuance of a certificate of title does not foreclose the possibility that the real property may be under co-ownership with persons not named therein.”¹⁰ In another case, the Court held that evidence apart from the certificate of title is important to determine the real ownership of the contested property.¹¹

In sum, absent any clear and convincing evidence to the contrary, the mortgaged property bought during their cohabitation is a common property of Stephen and Lani. Article 147 of the Family Code expressly states 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.” Therefore, the mortgage of the property without Lani’s consent is void.

ACCORDINGLY, I vote to **GRANT** the Petition.



MARVIC M.V.F. LEONEN
Senior Associate Justice

⁹ *Spouses Go v. Yamane*, 522 Phil. 653, 665 (2006) [Per C.J. Panganiban, First Division]. See also *Philippine National Bank v. Garcia*, 734 Phil. 623, 633 (2014) [Per J. Brion, Second Division].

¹⁰ *Lachayan v. Samoy, Jr.*, 661 Phil. 306, 317 (2011) [Per J. Villarama, Jr., Third Division].

¹¹ *Adriano v. Court of Appeals*, 385 Phil. 474 (2000) [Per J. Gonzaga-Reyes, Third Division].