



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 05 January 2022 which reads as follows:

“G.R. No. 220695 (Cecilia A. Sia, Marianita A. Hofileña, Kathrina Grace A. Sia, Kim Patrick A. Sia and Eduardo Hofileña v. Rosita Tan¹). – Before the Court is a petition for review on *certiorari* filed by Cecilia A. Sia (Cecilia), Marianita Hofileña (Marianita), Maria D. Butac (Maria),² Kathrina Grace A. Sia (Kathrina Grace), and Kim Patrick A. Sia (Kim Patrick) (collectively, petitioners) assailing the Decision³ dated October 3, 2014 of the Court of Appeals (CA), as well as the Resolution⁴ dated September 30, 2015 in CA-G.R. SP No. 123648. The assailed CA decision affirmed the Order⁵ dated October 27, 2011 of the Regional Trial Court (RTC), Branch 52, Manila in Criminal Case No. 02-198502 for Estafa.

The Antecedents

Cecilia was one of the accused in *People of the Philippines v. Jaime Tan, Alberto Cordero Sy and Cecille Sia a.k.a. Cecilia Ang Sia*, for Estafa filed before the RTC, and docketed as Criminal Case No. 02-198502, while respondent Rosita Tan (Rosita) was the private complainant. In a decision dated January 14, 2010, the RTC acquitted all of the accused, but nonetheless found accused Jaime Tan and Cecilia civilly liable.⁶ The *fallo* reads:

WHEREFORE, all the accused are acquitted on ground of reasonable doubt.

Accused Jaime Tan and Cecille Sia a.k.a. Cecilia Ang Sia are directed to pay jointly and severally complainant Rosita Tan the sum of Php450,000[.]00 with legal rate of interest at 12% per annum from the date of extrajudicial demand until the amount is fully paid.

¹ *Rollo*, p. 234. The People of the Philippines was dropped as a respondent in this case pursuant to the Court’s Resolution dated March 4, 2020.

² *Id.* at 9. As stated in the Petition, Maria passed away during the pendency of the case.

³ *Id.* at 144-151. Penned by Associate Justice Melchor Q.C. Sadang with Associate Justices Celia C. Librea-Leagogo and Franchito N. Diamante concurring.

⁴ *Id.* at 42-43.

⁵ *Id.* at 65-70. Penned by Acting Presiding Judge Ruben Reynaldo G. Roxas.

⁶ *Id.* at 144-145.

With respect to accused Alberto Cordero Sy, he is hereby excluded from the civil obligation for faucity [sic] of evidence against him.

With costs against the accused J. Tan and Cecilia Ang Sia.

SO ORDERED.⁷

Upon Rosita's motion, the RTC ordered the issuance of a writ of execution. Pursuant to said writ, Branch Sheriff Monique A. Castillo (Sheriff Castillo) levied on the rights, interest, and participation of Cecilia in a 531-square meter lot situated in Sta. Mesa Heights, Quezon City (subject property), covered by Transfer Certificate of Title (TCT) No. 311120 (T-158737). The public auction of the levied property was initially set on August 17, 2011.⁸

However, on August 9, 2011, Cecilia, together with third-party movants Marianita, Maria, Kathrina Grace, and Kim Patrick filed an Urgent Motion to Suspend Auction Sale and to Exclude Family Home from Levy and Execution⁹ (urgent motion). They contended that: (1) as shown in TCT No. 311120 (T-158737), the subject property is co-owned by Maria, Cecilia, married to Raymundo Sia (Raymundo), and Marianita, married to Eduardo Hofileña (Eduardo); (2) the co-owners contributed funds for the construction of a duplex house on the subject property; (3) since its acquisition on February 7, 1984, the subject property has been constituted as the family homes of Cecilia and her family, including her mother, Maria, who lives with her, and Marianita and her family; (4) upon the death of Raymundo in 2004, his share was transmitted to Cecilia and their children, Kim Patrick and Kathrina Grace; (5) as the subject property is their family home, it must be excluded from execution sale or levy; and (6) inasmuch as the subject property is owned in common, the co-owners who are not judgment debtors cannot be bound by any judgment stemming from an action *in personam*, such as the civil aspect of the criminal case.¹⁰

During the hearing of Cecilia's urgent motion on August 15, 2011, the RTC deferred the auction sale until further notice.

Rosita filed a Comment/Opposition (To Exclude Family Home From Execution)¹¹ arguing that: (1) the third-party movants have no standing to question the writ of execution because it is limited to the rights, interest, and participation of Cecilia; (2) under the law, only one family home may be established on the same lot, but it appears that more than one residential unit was built on the subject property; and (3) even if the subject property were to

⁷ Id. at 65.

⁸ Id. at 145.

⁹ Id. at 145.

¹⁰ Id. at 145-146.

¹¹ Id. at 146.

be considered a family home, its actual value exceeds ₱300,000.00, the maximum amount fixed by the Family Code for exemption from execution.

The assailed Order of the RTC

On October 27, 2011, the RTC issued the assailed Order¹² denying the urgent motion, thus:

WHEREFORE, premised on the foregoing considerations, the Urgent Motion to Suspend Auction Sale and to Exclude Family Home from Levy and Execution is **DENIED** for lack of merit. Consequently, the suspension of the auction sale is hereby lifted. Sheriff Monique A. Castillo is directed to proceed and schedule anew the auction sale of the property covered by TCT No. 311120 (T-158737) but limited only to the undivided one-third share therein corresponding to the rights, interest and participation of accused Sia.

SO ORDERED.¹³

Petitioners filed a Motion for Reconsideration and Supplemental Motion for Reconsideration¹⁴ which the RTC also denied in an Order dated February 7, 2012.¹⁵ Hence, petitioners filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court, against Rosita, the People of the Philippines,¹⁶ the RTC, represented by Acting Presiding Judge Ruben Reynaldo G. Roxas, and Sheriff Castillo.¹⁷

While the petition was pending, petitioners filed a manifestation informing the CA of the RTC's Order directing the sheriff to proceed with the auction sale scheduled on April 12, 2012. Thereafter, petitioners filed their memorandum.¹⁸

Having failed to file a comment to the petition, Rosita was deemed to have waived her right to do so.¹⁹

The Ruling of the CA

In a Decision²⁰ dated October 3, 2014, the CA denied the petition and affirmed the RTC's Orders, to wit:

¹² Id. at 65-70.

¹³ Id. at 69.

¹⁴ Id. at 146.

¹⁵ Id. at 140.

¹⁶ Id. at 147.

¹⁷ Id. at 104.

¹⁸ Id. at 147.

¹⁹ Id.

²⁰ Id. at 144-151.

WHEREFORE, the petition is **DENIED**. The Orders dated October 27, 2011 and February 7, 2012 of respondent judge are **AFFIRMED**. The prayer for issuance of TRO and preliminary injunction is **DENIED** for lack of merit.

SO ORDERED.²¹

Petitioners filed a Motion for Reconsideration,²² which the CA denied in a Resolution²³ dated September 30, 2015.

Thus, the instant petition.

Issue

Petitioners submit the sole issue of whether the CA erred in not ruling that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction²⁴ in issuing its assailed Orders dated October 27, 2011 and February 7, 2012.

Petitioners insist that the RTC committed grave abuse of discretion, to wit: (1) in making the following rulings: (a) the subject property is not a family home;²⁵ (b) two family homes cannot be constituted on the subject property;²⁶ (c) a family home cannot be constituted on a co-owned parcel of land;²⁷ (d) petitioners must prove that the cost of the family home does not exceed the ₱300,000.00 limit under the Family Code;²⁸ and (e) there was no proof offered to show that the value of the duplex house on the subject property is less than ₱300,000.00;²⁹ (2) in ignoring the fact that the money judgment in this case is not among the exceptions to the exemption from execution;³⁰ (3) in disregarding petitioners' argument that the family home is indivisible, and therefore, the beneficiaries who have a right thereto cannot be deprived thereof without their consent;³¹ and (4) in rejecting petitioners' contention that the subject property cannot be sold without the consent of the co-owners.³²

In summary, the main issue to be resolved is whether or not the subject property is a family home, as defined under the law, that is exempt from execution.

²¹ Id. at 151.

²² Id. at 153-159.

²³ Id. at 42-43.

²⁴ Id. at 24.

²⁵ Id.

²⁶ Id. at 26.

²⁷ Id. at 28.

²⁸ Id. at 29.

²⁹ Id. at 31.

³⁰ Id. at 31.

³¹ Id. at 32.

³² Id. at 34.

Our Ruling

The petition is denied for lack of merit.

The family home is a sacred symbol of family love and is the repository of cherished memories that last during one's lifetime.³³ It is the dwelling house where the husband and wife, or an unmarried head of a family reside, including the land on which it is situated.³⁴ It is constituted jointly by the husband and the wife or by an unmarried head of a family.³⁵ It is the sanctuary of that union which the law declares and protects as a sacred institution; and likewise a shelter for the fruits of that union. It is where both can seek refuge and strengthen the tie that binds them together and which ultimately forms the moral fabric of our nation.³⁶

It has been said that the family home is a real right that is gratuitous, inalienable and free from attachment.³⁷ The great controlling purpose and policy of the Constitution is the protection or the preservation of the homestead - the dwelling place. A houseless, homeless population is a burden upon the energy, industry, and morals of the community to which it belongs. No greater calamity, not tainted with crime, can befall a family than to be expelled from the roof under which it has been gathered and sheltered.³⁸

For this reason, the family home cannot be seized by creditors except in special cases.³⁹ A family home is generally exempt from execution,⁴⁰ provided it was duly constituted as such.⁴¹ Moreover, the nature and character of the property that debtors may claim to be exempt are determined by the exemption statute. The exemption is limited to the particular kind of property of the specific articles prescribed by the statute; the exemption cannot exceed the statutory limit.⁴²

Thus, whether or not a house and lot is a family home that is exempt from execution must be set up and proved before a debtor may claim said exemption. In *Honrado v. Court of Appeals*,⁴³ this Court ruled, thus:

While it is true that the family home is constituted on a house and lot from the time it is occupied as a family residence and is exempt from

³³ A. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. 1 (1990 ed.), p. 508, citing the Code Commission of 1947, pp. 18-19, 20.

³⁴ FAMILY CODE, Article 152.

³⁵ *Patricio v. Dario III*, 537 Phil. 595, 602 (2006), citing CIVIL CODE, Article 152.

³⁶ *Josef v. Santos*, 592 Phil. 438, 447-448 (2008).

³⁷ *Eulogio v. Bell*, 763 Phil. 266, 283 (2015), citing *Taneo, Jr. v. Court of Appeals*, 363 Phil. 652, 663 (1999).

³⁸ *Eulogio v. Bell*, *id.*, citing *Gomez v. Gealone*, 280 Phil. 516, 526 (1991); *Young v. Olivarez*, 41 Phil. 391, 395 (1921).

³⁹ *Eulogio v. Bell*, *id.*

⁴⁰ FAMILY CODE, Articles 153, 155; RULES OF COURT, Rule 39, Section 13(a).

⁴¹ *Cabang v. Basay*, 601 Phil. 167, 179 (2009).

⁴² *Eulogio v. Bell*, *supra* note 37, citing 35 C.J.S. Exemption 26, at 44 (1943).

⁴³ 512 Phil. 657 (2005).

execution or forced sale under Article 153 of the Family Code, **such claim for exemption should be set up and proved** to the Sheriff before the sale of the property at public auction. Failure to do so would estop the party from later claiming the exemption. x x x⁴⁴ (Emphasis supplied)

In *FEB Mitsui Marine Insurance Co., Inc. v. Manalastas*,⁴⁵ this Court enumerated what must be proved to establish the existence of a family home that is exempt from execution, to wit:

In order for the property to be considered as a family home, the requisites must be established: (a) it must be the house where he and his family actually reside and the lot on which it is situated; (b) the family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family; and (c) the actual value of the family home shall not exceed, at the time of its constitution, the amount of P300,000.00 in urban areas and P200,000.00 in rural areas.⁴⁶

In this case, petitioners adamantly contend that both the duplex house and the land on which it stands are co-owned by them. Records show that the subject property is co-owned by Cecilia, married to Raymundo, with Maria and Marianita, married to Eduardo.⁴⁷

Article 156 of the Family Code clearly provides:

Article 156. The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent. It may also be constituted by an unmarried head of a family on his or her own property.

Nonetheless, property that is the subject of a conditional sale on installments where ownership is reserved by the vendor only to guarantee payment of the purchase price may be constituted as a family home.

Dr. Arturo M. Tolentino explains that the sources of our law on the family home are the codes of Mexico, Switzerland, and California.⁴⁸ Specifically, the above provision was taken from the California code prior to 1929, which prohibits a family home from being created upon property held in co-ownership by the husband and a third person.⁴⁹

⁴⁴ Id. at 666.

⁴⁵ G.R. No. 236001, March 18, 2019, citing *Spouses Kelley, Jr. v. Planters Products, Inc.*, 579 Phil. 763, 766 (2008).

⁴⁶ Id.

⁴⁷ *Rollo*, p. 67.

⁴⁸ A. Tolentino, *supra* note 33 at 507.

⁴⁹ Id. at 513, citing *Rosenthal v. Merces Bank*, 110 Cal. 198, 42 Pac. 640; *Johnson v. Johnson*, 46 Cal. App. 433, 189 Pac. 296.

Consistent with this, We explained in *Cabang v. Basay*⁵⁰ that a family home must be established on property owned by the persons constituting it, and cannot be created on property held in co-ownership with third persons, viz.:

It is likewise a given that the family home must be constituted on property owned by the persons constituting it. Indeed as pointed out in *Kelley, Jr. v. Planters Products, Inc.*, “[T]he family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter’s consent, or on the property of the unmarried head of the family.” In other words:

The family home must be established on the properties of (a) the absolute community, or (b) the conjugal partnership, or (c) the exclusive property of either spouse with the consent of the other. **It cannot be established on property held in co-ownership with third persons.** However, it can be established partly on community property, or conjugal property and partly on the exclusive property of either spouse with the consent of the latter.⁵¹ (Emphasis supplied)

Clearly, the CA is correct in ruling that the subject property is not a family home for the reason that it is co-owned by the petitioners. Having thus ruled, there is no more need to discuss petitioners’ contentions as to the value of the subject property, the nature of the debt, or whether both Cecilia and Marianita can constitute their respective family homes on the subject property.

However, We deem it proper to resolve petitioners’ argument that the subject property cannot be sold without the consent of the co-owners. In its assailed Order, the RTC categorically stated that only Cecilia’s undivided one-third share in the rights, interest or participation on the subject property will be sold in the auction sale, to wit:

WHEREFORE, premised on the foregoing considerations, the Urgent Motion to Suspend Auction Sale and to Exclude Family Home from Levy and Execution is **DENIED** for lack of merit. Consequently, the suspension of the auction sale is hereby lifted. Sheriff Monique A. Castillo is directed to proceed and schedule anew the auction sale of the property covered by TCT No. 311120 (T-158737) **but limited only to the undivided one-third share therein corresponding to the rights, interest and participation of accused Sia.**

SO ORDERED.⁵² (Emphasis supplied)

It is well-settled that a co-owner has an absolute ownership of his or her undivided and pro indiviso share in the co-owned property. He or she has the right to alienate, assign and mortgage it, even to the extent of substituting

⁵⁰ Supra note 41, citing Pineda, E.L., *The Family Code of the Philippines, Annotated* (1999 ed.), p. 288.

⁵¹ *Cabang v. Basay*, supra note 41 at 179.

⁵² *Rollo*, p. 69.

a third person in its enjoyment provided that no personal rights will be affected.⁵³ Article 493 of the Civil Code states:

Art. 493. 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. But 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.

Moreover, in *Torres, Jr. v. Lapinid*,⁵⁴ this Court declared that co-owners have no right to enjoin a co-owner who intends to alienate his abstract portion of the co-owned property, thus:

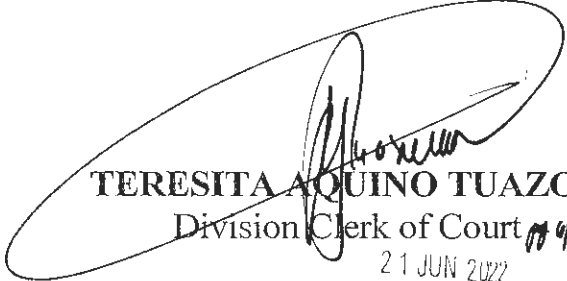
A co-owner is an owner of the whole and over the whole he exercises the right of dominion, but he is at the same time the owner of a portion which is truly abstract. Hence, his co-owners have no right to enjoin a co-owner who intends to alienate or substitute his abstract portion or substitute a third person in its enjoyment.⁵⁵ (Citations omitted)

Undeniably, petitioners' contention that the undivided subject property cannot be sold without the co-owners' consent is utterly without merit.

WHEREFORE, premises considered, the Decision dated October 3, 2014 and Resolution dated September 30, 2015 of the Court of Appeals in CA-G.R. SP No. 123648 are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court *pp 4/20*
 21 JUN 2022

⁵³ *Torres, Jr. v. Lapinid*, 748 Phil. 587 (2014).

⁵⁴ *Id.*

⁵⁵ *Id.* at 594.

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