

## SECOND DIVISION

**[ G.R. No. 188289, August 20, 2014 ]**

**DAVID A. NOVERAS, PETITIONER, VS. LETICIA T. NOVERAS,  
RESPONDENT.**

### D E C I S I O N

**PEREZ, J.:**

Before the Court is a petition for review assailing the 9 May 2008 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 88686, which affirmed in part the 8 December 2006 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Baler, Aurora, Branch 96.

The factual antecedents are as follow:

David A. Noveras (David) and Leticia T. Noveras (Leticia) were married on 3 December 1988 in Quezon City, Philippines. They resided in California, United States of America (USA) where they eventually acquired American citizenship. They then begot two children, namely: Jerome T. Noveras, who was born on 4 November 1990 and Jena T. Noveras, born on 2 May 1993. David was engaged in courier service business while Leticia worked as a nurse in San Francisco, California.

During the marriage, they acquired the following properties in the Philippines and in the USA:

<u>PHILIPPINES</u>	<u>FAIR MARKET VALUE</u>
<b>PROPERTY</b>	
House and Lot with an area of 150 sq. m. located at 1085 Norma Street, Sampaloc, Manila (Sampaloc property)	P1,693,125.00
Agricultural land with an area of 20,742 sq. m. located at Laboy, Dipaculao, Aurora	P400,000.00
A parcel of land with an area of 2.5 hectares located at Maria Aurora, Aurora	P490,000.00
A parcel of land with an area of 175 sq.m. located at Sabang Baler, Aurora	P175,000.00 <sup>[3]</sup>
3-has. coconut plantation in San Joaquin Maria Aurora, Aurora	P750,000.00

USA

<b>PROPERTY</b>	<b>FAIR MARKET VALUE</b>
House and Lot at 1155 Hanover Street, Daly City, California	\$550,000.00 (unpaid debt of \$285,000.00)
Furniture and furnishings	\$3,000
Jewelries (ring and watch)	\$9,000
2000 Nissan Frontier 4x4 pickup truck	\$13,770.00
Bank of America Checking Account	\$8,000
Bank of America Cash Deposit	\$10,000.00
Life Insurance (Cash Value)	\$100,000.00
Retirement, pension, profit-sharing, annuities	\$56,228.00 <sup>[4]</sup>

The Sampaloc property used to be owned by David's parents. The parties herein secured a loan from a bank and mortgaged the property. When said property was about to be foreclosed, the couple paid a total of P1.5 Million for the redemption of the same.

Due to business reverses, David left the USA and returned to the Philippines in 2001. In December 2002, Leticia executed a Special Power of Attorney (SPA) authorizing David to sell the Sampaloc property for P2.2 Million. According to Leticia, sometime in September 2003, David abandoned his family and lived with Estrellita Martinez in Aurora province. Leticia claimed that David agreed to and executed a Joint Affidavit with Leticia in the presence of David's father, Atty. Isaias Noveras, on 3 December 2003 stating that: 1) the P1.1Million proceeds from the sale of the Sampaloc property shall be paid to and collected by Leticia; 2) that David shall return and pay to Leticia P750,000.00, which is equivalent to half of the amount of the redemption price of the Sampaloc property; and 3) that David shall renounce and forfeit all his rights and interest in the conjugal and real properties situated in the Philippines.<sup>[5]</sup> David was able to collect P1,790,000.00 from the sale of the Sampaloc property, leaving an unpaid balance of P410,000.00.

Upon learning that David had an extra-marital affair, Leticia filed a petition for divorce with the Superior Court of California, County of San Mateo, USA. The California court granted the divorce on 24 June 2005 and judgment was duly entered on 29 June 2005.<sup>[6]</sup> The California court granted to Leticia the custody of her two children, as well as all the couple's properties in the USA.<sup>[7]</sup>

On 8 August 2005, Leticia filed a petition for Judicial Separation of Conjugal Property before the RTC of Baler, Aurora. She relied on the 3 December 2003 Joint Affidavit and David's failure to comply with his obligation under the same. She prayed for: 1) the power to administer all conjugal properties in the Philippines; 2) David and his partner to cease and desist from selling the subject conjugal properties; 3) the declaration that all conjugal properties be forfeited in favor of her children; 4) David to remit half of the purchase price as share of Leticia from the sale of the Sampaloc property; and 5) the payment of P50,000.00 and P100,000.00 litigation expenses.<sup>[8]</sup>

In his Answer, David stated that a judgment for the dissolution of their marriage was

entered on 29 June 2005 by the Superior Court of California, County of San Mateo. He demanded that the conjugal partnership properties, which also include the USA properties, be liquidated and that all expenses of liquidation, including attorney's fees of both parties be charged against the conjugal partnership.<sup>[9]</sup>

The RTC of Baler, Aurora simplified the issues as follow:

1. Whether or not respondent David A. Noveras committed acts of abandonment and marital infidelity which can result into the forfeiture of the parties' properties in favor of the petitioner and their two (2) children.
2. Whether or not the Court has jurisdiction over the properties in California, U.S.A. and the same can be included in the judicial separation prayed for.
3. Whether or not the "Joint Affidavit" x x x executed by petitioner Leticia T. Noveras and respondent David A. Noveras will amount to a waiver or forfeiture of the latter's property rights over their conjugal properties.
4. Whether or not Leticia T. Noveras is entitled to reimbursement of one-half of the P2.2 [M]illion sales proceeds of their property in Sampaloc, Manila and one-half of the P1.5 [M]illion used to redeem the property of Atty. Isaias Noveras, including interests and charges.
5. How the absolute community properties should be distributed.
6. Whether or not the attorney's fees and litigation expenses of the parties were chargeable against their conjugal properties.

Corollary to the above is the issue of:

Whether or not the two common children of the parties are entitled to support and presumptive legitimes.<sup>[10]</sup>

On 8 December 2006, the RTC rendered judgment as follows:

1. The absolute community of property of the parties is hereby declared DISSOLVED;
2. The net assets of the absolute community of property of the parties in the Philippines are hereby ordered to be awarded to respondent David A. Noveras only, with the properties in the United States of America remaining in the sole ownership of petitioner Leticia Noveras a.k.a. Leticia Tacbiana pursuant to the divorce decree issued by the Superior Court of California, County of San Mateo, United States of America, dissolving the marriage of the parties as of June 24, 2005. The titles presently covering said properties shall be cancelled and new titles be issued in the name of the party to whom said properties are awarded;
3. One-half of the properties awarded to respondent David A. Noveras in the preceding paragraph are hereby given to Jerome and Jena, his two minor children with petitioner Leticia Noveras a.k.a. Leticia Tacbiana as

- their presumptive legitimes and said legitimes must be annotated on the titles covering the said properties. Their share in the income from these properties shall be remitted to them annually by the respondent within the first half of January of each year, starting January 2008;
4. One-half of the properties in the United States of America awarded to petitioner Leticia Noveras a.k.a. Leticia Tacbiana in paragraph 2 are hereby given to Jerome and Jena, her two minor children with respondent David A. Noveras as their presumptive legitimes and said legitimes must be annotated on the titles/documents covering the said properties. Their share in the income from these properties, if any, shall be remitted to them annually by the petitioner within the first half of January of each year, starting January 2008;
  5. For the support of their two (2) minor children, Jerome and Jena, respondent David A. Noveras shall give them US\$100.00 as monthly allowance in addition to their income from their presumptive legitimes, while petitioner Leticia Tacbiana shall take care of their food, clothing, education and other needs while they are in her custody in the USA. The monthly allowance due from the respondent shall be increased in the future as the needs of the children require and his financial capacity can afford;
  6. Of the unpaid amount of P410,000.00 on the purchase price of the Sampaloc property, the Paringit Spouses are hereby ordered to pay P5,000.00 to respondent David A. Noveras and P405,000.00 to the two children. The share of the respondent may be paid to him directly but the share of the two children shall be deposited with a local bank in Baler, Aurora, in a joint account to be taken out in their names, withdrawal from which shall only be made by them or by their representative duly authorized with a Special Power of Attorney. Such payment/deposit shall be made within the period of thirty (30) days after receipt of a copy of this Decision, with the passbook of the joint account to be submitted to the custody of the Clerk of Court of this Court within the same period. Said passbook can be withdrawn from the Clerk of Court only by the children or their attorney-in-fact; and
  7. The litigation expenses and attorney's fees incurred by the parties shall be shouldered by them individually.<sup>[11]</sup>

The trial court recognized that since the parties are US citizens, the laws that cover their legal and personal status are those of the USA. With respect to their marriage, the parties are divorced by virtue of the decree of dissolution of their marriage issued by the Superior Court of California, County of San Mateo on 24 June 2005. Under their law, the parties' marriage had already been dissolved. Thus, the trial court considered the petition filed by Leticia as one for liquidation of the absolute community of property regime with the determination of the legitimes, support and custody of the children, instead of an action for judicial separation of conjugal property.

With respect to their property relations, the trial court first classified their property regime as absolute community of property because they did not execute any marriage settlement before the solemnization of their marriage pursuant to Article 75 of the

Family Code. Then, the trial court ruled that in accordance with the doctrine of processual presumption, Philippine law should apply because the court cannot take judicial notice of the US law since the parties did not submit any proof of their national law. The trial court held that as the instant petition does not fall under the provisions of the law for the grant of judicial separation of properties, the absolute community properties cannot be forfeited in favor of Leticia and her children. Moreover, the trial court observed that Leticia failed to prove abandonment and infidelity with preponderant evidence.

The trial court however ruled that Leticia is not entitled to the reimbursements she is praying for considering that she already acquired all of the properties in the USA. Relying still on the principle of equity, the Court also adjudicated the Philippine properties to David, subject to the payment of the children's presumptive legitimes. The trial court held that under Article 89 of the Family Code, the waiver or renunciation made by David of his property rights in the Joint Affidavit is void.

On appeal, the Court of Appeals modified the trial court's Decision by directing the equal division of the Philippine properties between the spouses. Moreover with respect to the common children's presumptive legitime, the appellate court ordered both spouses to each pay their children the amount of P520,000.00, thus:

WHEREFORE, the instant appeal is PARTLY GRANTED. Numbers 2, 4 and 6 of the assailed Decision dated December 8, 2006 of Branch 96, RTC of Baler, Aurora Province, in Civil Case No. 828 are hereby MODIFIED to read as follows:

2. The net assets of the absolute community of property of the parties in the Philippines are hereby divided equally between petitioner Leticia Noveras a.k.a. Leticia Tacbiana (sic) and respondent David A. Noveras;

x x x

4. One-half of the properties awarded to petitioner Leticia Tacbiana (sic) in paragraph 2 shall pertain to her minor children, Jerome and Jena, as their presumptive legitimes which shall be annotated on the titles/documents covering the said properties. Their share in the income therefrom, if any, shall be remitted to them by petitioner annually within the first half of January, starting 2008;

x x x

6. Respondent David A. Noveras and petitioner Leticia Tacbiana (sic) are each ordered to pay the amount of P520,000.00 to their two children, Jerome and Jena, as their presumptive legitimes from the sale of the Sampaloc property inclusive of the receivables therefrom, which shall be deposited to a local bank of Baler, Aurora, under a joint account in the latter's names. The payment/deposit shall be made within a period of thirty (30) days from receipt of a copy of this Decision and the corresponding

passbook entrusted to the custody of the Clerk of Court *a quo* within the same period, withdrawable only by the children or their attorney-in-fact.

A number 8 is hereby added, which shall read as follows:

8. Respondent David A. Noveras is hereby ordered to pay petitioner Leticia Tacbiana (sic) the amount of P1,040,000.00 representing her share in the proceeds from the sale of the Sampaloc property.

The last paragraph shall read as follows:

Send a copy of this Decision to the local civil registry of Baler, Aurora; the local civil registry of Quezon City; the Civil Registrar-General, National Statistics Office, Vibal Building, Times Street corner EDSA, Quezon City; the Office of the Registry of Deeds for the Province of Aurora; and to the children, Jerome Noveras and Jena Noveras.

The rest of the Decision is AFFIRMED.<sup>[12]</sup>

In the present petition, David insists that the Court of Appeals should have recognized the California Judgment which awarded the Philippine properties to him because said judgment was part of the pleading presented and offered in evidence before the trial court. David argues that allowing Leticia to share in the Philippine properties is tantamount to unjust enrichment in favor of Leticia considering that the latter was already granted all US properties by the California court.

In summary and review, the basic facts are: David and Leticia are US citizens who own properties in the USA and in the Philippines. Leticia obtained a decree of divorce from the Superior Court of California in June 2005 wherein the court awarded all the properties in the USA to Leticia. With respect to their properties in the Philippines, Leticia filed a petition for judicial separation of conjugal properties.

At the outset, the trial court erred in recognizing the divorce decree which severed the bond of marriage between the parties. In *Corpuz v. Sto. Tomas*,<sup>[13]</sup> we stated that:

The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country." This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself. The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.<sup>[14]</sup>

The requirements of presenting the foreign divorce decree and the national law of the foreigner must comply with our Rules of Evidence. Specifically, for Philippine courts to recognize a foreign judgment relating to the status of a marriage, a copy of the foreign judgment may be admitted in evidence and proven as a fact under Rule 132, Sections 24 and 25, in relation to Rule 39, Section 48(b) of the Rules of Court.<sup>[15]</sup>

Under Section 24 of Rule 132, the record of public documents of a sovereign authority or tribunal may be proved by: (1) an official publication thereof or (2) a copy attested by the officer having the legal custody thereof. Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.

Section 25 of the same Rule states that whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

Based on the records, only the divorce decree was presented in evidence. The required certificates to prove its authenticity, as well as the pertinent California law on divorce were not presented.

It may be noted that in *Bayot v. Court of Appeals*,<sup>[16]</sup> we relaxed the requirement on certification where we held that “[petitioner therein] was clearly an American citizen when she secured the divorce and that divorce is recognized and allowed in any of the States of the Union, the presentation of a copy of foreign divorce decree **duly authenticated** by the foreign court issuing said decree is, as here, sufficient.” In this case however, it appears that there is no seal from the office where the divorce decree was obtained.

Even if we apply the doctrine of processual presumption<sup>[17]</sup> as the lower courts did with respect to the property regime of the parties, the recognition of divorce is entirely a different matter because, to begin with, divorce is not recognized between Filipino citizens in the Philippines.

Absent a valid recognition of the divorce decree, it follows that the parties are still legally married in the Philippines. The trial court thus erred in proceeding directly to liquidation.

As a general rule, any modification in the marriage settlements must be made before the celebration of marriage. An exception to this rule is allowed provided that the modification is judicially approved and refers only to the instances provided in Articles

66, 67, 128, 135 and 136 of the Family Code.<sup>[18]</sup>

Leticia anchored the filing of the instant petition for judicial separation of property on paragraphs 4 and 6 of Article 135 of the Family Code, to wit:

Art. 135. Any of the following shall be considered sufficient cause for judicial separation of property:

- (1) That the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction;
- (2) That the spouse of the petitioner has been judicially declared an absentee;
- (3) That loss of parental authority of the spouse of petitioner has been decreed by the court;
- (4) That the spouse of the petitioner has abandoned the latter or failed to comply with his or her obligations to the family as provided for in Article 101;
- (5) That the spouse granted the power of administration in the marriage settlements has abused that power; and
- (6) That at the time of the petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable.

In the cases provided for in Numbers (1), (2), and (3), the presentation of the final judgment against the guilty or absent spouse shall be enough basis for the grant of the decree of judicial separation of property. (Emphasis supplied).

The trial court had categorically ruled that there was no abandonment in this case to necessitate judicial separation of properties under paragraph 4 of Article 135 of the Family Code. The trial court ratiocinated:

Moreover, abandonment, under Article 101 of the Family Code quoted above, must be for a valid cause and the spouse is deemed to have abandoned the other when he/she has left the conjugal dwelling without intention of returning. The intention of not returning is prima facie presumed if the allegedly [sic] abandoning spouse failed to give any information as to his or her whereabouts within the period of three months from such abandonment.

In the instant case, the petitioner knows that the respondent has returned to and stayed at his hometown in Maria Aurora, Philippines, as she even went several times to visit him there after the alleged abandonment. Also, the respondent has been going back to the USA to visit her and their children until the relations between them worsened. The last visit of said respondent was in October 2004 when he and the petitioner discussed the filing by the latter of a petition for dissolution of marriage with the California court. Such turn for the worse of their relationship and the filing of the said



petition can also be considered as valid causes for the respondent to stay in the Philippines.<sup>[19]</sup>

Separation in fact for one year as a ground to grant a judicial separation of property was not tackled in the trial court's decision because, the trial court erroneously treated the petition as liquidation of the absolute community of properties.

The records of this case are replete with evidence that Leticia and David had indeed separated for more than a year and that reconciliation is highly improbable. First, while actual abandonment had not been proven, it is undisputed that the spouses had been living separately since 2003 when David decided to go back to the Philippines to set up his own business. Second, Leticia heard from her friends that David has been cohabiting with Estrellita Martinez, who represented herself as Estrellita Noveras. Editha Apolonio, who worked in the hospital where David was once confined, testified that she saw the name of Estrellita listed as the wife of David in the Consent for Operation form.<sup>[20]</sup> Third and more significantly, they had filed for divorce and it was granted by the California court in June 2005.

Having established that Leticia and David had actually separated for at least one year, the petition for judicial separation of absolute community of property should be granted.

The grant of the judicial separation of the absolute community property automatically dissolves the absolute community regime, as stated in the 4<sup>th</sup> paragraph of Article 99 of the Family Code, thus:

Art. 99. The absolute community terminates:

- (1) Upon the death of either spouse;
- (2) When there is a decree of legal separation;
- (3) When the marriage is annulled or declared void; or
- (4) **In case of judicial separation of property during the marriage under Articles 134 to 138.** (Emphasis supplied).

Under Article 102 of the same Code, liquidation follows the dissolution of the absolute community regime and the following procedure should apply:

Art. 102. Upon dissolution of the absolute community regime, the following procedure shall apply:

- (1) An inventory shall be prepared, listing separately all the properties of the absolute community and the exclusive properties of each spouse.
- (2) The debts and obligations of the absolute community shall be paid out of its assets. In case of insufficiency of said assets, the

spouses shall be solidarily liable for the unpaid balance with their separate properties in accordance with the provisions of the second paragraph of Article 94.

- (3) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.
- (4) The net remainder of the properties of the absolute community shall constitute its net assets, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements, or unless there has been a voluntary waiver of such share provided in this Code. For purposes of computing the net profits subject to forfeiture in accordance with Articles 43, No. (2) and 63, No. (2), the said profits shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution.
- (5) The presumptive legitimes of the common children shall be delivered upon partition, in accordance with Article 51.
- (6) Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children.

At the risk of being repetitious, we will not remand the case to the trial court. Instead, we shall adopt the modifications made by the Court of Appeals on the trial court's Decision with respect to liquidation.

We agree with the appellate court that the Philippine courts did not acquire jurisdiction over the California properties of David and Leticia. Indeed, Article 16 of the Civil Code clearly states that real property as well as personal property is subject to the law of the country where it is situated. Thus, liquidation shall only be limited to the Philippine properties.

We affirm the modification made by the Court of Appeals with respect to the share of the spouses in the absolute community properties in the Philippines, as well as the payment of their children's presumptive legitimes, which the appellate court explained in this wise:

Leticia and David shall likewise have an equal share in the proceeds of the Sampaloc property. While both claimed to have contributed to the redemption of the Noveras property, absent a clear showing where their contributions came from, the same is presumed to have come from the community property. Thus, Leticia is not entitled to reimbursement of half of the redemption money.

David's allegation that he used part of the proceeds from the sale of the Sampaloc property for the benefit of the absolute community cannot be given full credence. Only the amount of P120,000.00 incurred in going to and from the U.S.A. may be charged thereto. Election expenses in the amount of P300,000.00 when he ran as municipal councilor cannot be allowed in the absence of receipts or at least the Statement of Contributions and Expenditures required under Section 14 of Republic Act No. 7166 duly received by the Commission on Elections. Likewise, expenses incurred to settle the criminal case of his personal driver is not deductible as the same had not benefited the family. In sum, Leticia and David shall share equally in the proceeds of the sale net of the amount of P120,000.00 or in the respective amounts of P1,040,000.00.

x x x x

Under the first paragraph of Article 888 of the Civil Code, "(t)he legitime of legitimate children and descendants consists of one-half of the hereditary estate of the father and of the mother." The children are therefore entitled to half of the share of each spouse in the net assets of the absolute community, which shall be annotated on the titles/documents covering the same, as well as to their respective shares in the net proceeds from the sale of the Sampaloc property including the receivables from Sps. Paringit in the amount of P410,000.00. Consequently, David and Leticia should each pay them the amount of P520,000.00 as their presumptive legitimes therefrom.

[21]

**WHEREFORE**, the petition is **DENIED**. The assailed Decision of the Court of Appeals in CA G.R. CV No. 88686 is **AFFIRMED**.

**SO ORDERED.**

*Sereno, \** C.J., *Carpio, J., (Chairperson), Velasco, Jr., \*\* Del Castillo, and Perez, JJ.,* concur.

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\* Per Raffle dated 28 July 2014.

\*\* Per Special Order No. 1757 dated 20 August 2014.

[1] Penned by Associate Justice Estela M. Perlas-Bernabe (now Supreme Court Associate Justice) with Associate Justices Portia Aliño-Hormachuelos and Rosmari D. Carandang, concurring. *Rollo*, pp. 26-37.

[2] Presided by Judge Corazon D. Soluren. Records, pp. 262-288.

[3] *Id.* at 2.

[4] Id. at 27-28.

[5] Id. at 16.

[6] Id. at 77.

[7] Id. at 79-81.

[8] Id. at 4-5.

[9] Id. at 23-26.

[10] Id. at 267.

[11] Id. at 287-288.

[12] *Rollo*, pp. 36-37.

[13] G.R. No. 186571, 11 August 2010, 628 SCRA 266.

[14] Id. at 281-282.

[15] *Fujiki v. Marinay*, G.R. No. 196049, 26 June 2013.

[16] 591 Phil. 452, 470 (2008).

[17] Processual presumption means that where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours. See *EDI-Staffbuilders Int'l. Inc. v. NLRC*, 563 Phil. 1, 22 (2007).

[18] Sta. Maria, *Persons and Family Relations Law*, Fourth Edition, 2004, p. 396.

[19] *Records*, p. 280.

[20] TSN, 9 March 2006, p. 13.

[21] *Rollo*, pp. 34-35.



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