Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SOLEDAD L. LAVADIA,
Petitioner,

- *versus* -

HEIRS OF JUAN LUCES LUNA, represented by GREGORIO Z. LUNA and EUGENIA ZABALLERO-LUNA,
Respondents.

G.R. No. 171914

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

JUL 23 2014

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DECISION

BERSAMIN, *J.*:

Divorce between Filipinos is void and ineffectual under the nationality rule adopted by Philippine law. Hence, any settlement of property between the parties of the first marriage involving Filipinos submitted as an incident of a divorce obtained in a foreign country lacks competent judicial approval, and cannot be enforceable against the assets of the husband who contracts a subsequent marriage.

The Case

The petitioner, the second wife of the late Atty. Juan Luces Luna, appeals the adverse decision promulgated on November 11, 2005,[1] whereby the Court of Appeals (CA) affirmed with modification the decision rendered on August 27, 2001 by the Regional Trial Court (RTC), Branch 138, in Makati City.[2] The CA thereby denied her right in the 25/100 *pro indiviso* share of the husband in a condominium unit, and in the law books of the husband acquired during the second marriage.

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[1] *Rollo*, pp. 34-51; penned by Associate Justice Vicente Q. Roxas, with Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice) and Associate Justice Juan Q. Enriquez, Jr. concurring.

[2] Id. at 198-210.

Antecedents

The antecedent facts were summarized by the CA as follows:

> ATTY. LUNA, a practicing lawyer, was at first a name partner in the prestigious law firm Sycip, Salazar, Luna, Manalo, Hernandez & Feliciano Law Offices at that time when he was living with his first wife, herein intervenor-appellant Eugenia Zaballero-Luna (EUGENIA), whom he initially married in a civil ceremony conducted by the Justice of the Peace of Parañaque, Rizal on September 10, 1947 and later solemnized in a church ceremony at the Pro-Cathedral in San Miguel, Bulacan on September 12, 1948. In ATTY. LUNA's marriage to EUGENIA, they begot seven (7) children, namely: Regina Maria L. Nadal, Juan Luis Luna, Araceli Victoria L. Arellano, Ana Maria L. Tabunda, Gregorio Macario Luna, Carolina Linda L. Tapia, and Cesar Antonio Luna. After almost two (2) decades of marriage, ATTY. LUNA and EUGENIA eventually agreed to live apart from each other in February 1966 and agreed to separation of property, to which end, they entered into a written agreement entitled "AGREEMENT FOR SEPARATION AND PROPERTY SETTLEMENT" dated November 12, 1975, whereby they agreed to live separately and to dissolve and liquidate their conjugal partnership of property.
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> On January 12, 1976, ATTY. LUNA obtained a divorce decree of his marriage with EUGENIA from the Civil and Commercial Chamber of the First Circumscription of the Court of First Instance of Sto. Domingo, Dominican Republic. Also in Sto. Domingo, Dominican Republic, on the same date, ATTY. LUNA contracted another marriage, this time with SOLEDAD. Thereafter, ATTY. LUNA and SOLEDAD returned to the Philippines and lived together as husband and wife until 1987.
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> Sometime in 1977, ATTY. LUNA organized a new law firm named: Luna, Puruganan, Sison and Ongkiko (LUPSICON) where ATTY. LUNA was the managing partner.
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> On February 14, 1978, LUPSICON through ATTY. LUNA purchased from Tandang Sora Development Corporation the 6th Floor of Kalaw-Ledesma Condominium Project (condominium unit) at Gamboa St., Makati City, consisting of 517.52 square meters, for P1,449,056.00, to be paid on installment basis for 36 months starting on April 15, 1978. Said condominium unit was to be used as law office of LUPSICON. After full payment, the Deed of Absolute Sale over the condominium unit was executed on July 15, 1983, and CCT No. 4779 was issued on August 10, 1983, which was registered bearing the following names:
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> > "JUAN LUCES LUNA, married to Soledad L. Luna (46/100); MARIO E. ONGKIKO, married to Sonia P.G. Ongkiko (25/100); GREGORIO R. PURUGANAN, married to Paz A. Puruganan (17/100); and TERESITA CRUZ SISON, married to Antonio J.M. Sison (12/100) x x x"
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> Subsequently, 8/100 share of ATTY. LUNA and 17/100 share of Atty. Gregorio R. Puruganan in the condominium unit was sold to Atty.

Mario E. Ongkiko, for which a new CCT No. 21761 was issued on February 7, 1992 in the following names:

> "JUAN LUCES LUNA, married to Soledad L. Luna (38/100); MARIO E. ONGKIKO, married to Sonia P.G. Ongkiko (50/100); TERESITA CRUZ SISON, married to Antonio J.M. Sison (12/100) x x x"

Sometime in 1992, LUPSICON was dissolved and the condominium unit was partitioned by the partners but the same was still registered in common under CCT No. 21716. The parties stipulated that the interest of ATTY. LUNA over the condominium unit would be 25/100 share.

ATTY. LUNA thereafter established and headed another law firm with Atty. Renato G. De la Cruz and used a portion of the office condominium unit as their office. The said law firm lasted until the death of ATTY. JUAN on July 12, 1997.

After the death of ATTY. JUAN, his share in the condominium unit including the lawbooks, office furniture and equipment found therein were taken over by Gregorio Z. Luna, ATTY. LUNA's son of the first marriage. Gregorio Z. Luna then leased out the 25/100 portion of the condominium unit belonging to his father to Atty. Renato G. De la Cruz who established his own law firm named Renato G. De la Cruz & Associates.

The 25/100 *pro-indiviso* share of ATTY. Luna in the condominium unit as well as the law books, office furniture and equipment became the subject of the complaint filed by SOLEDAD against the heirs of ATTY. JUAN with the RTC of Makati City, Branch 138, on September 10, 1999, docketed as Civil Case No. 99-1644. The complaint alleged that the subject properties were acquired during the existence of the marriage between ATTY. LUNA and SOLEDAD through their joint efforts that since they had no children, SOLEDAD became co-owner of the said properties upon the death of ATTY. LUNA to the extent of ¾ pro-indiviso share consisting of her ½ share in the said properties plus her ½ share in the net estate of ATTY. LUNA which was bequeathed to her in the latter's last will and testament; and that the heirs of ATTY. LUNA through Gregorio Z. Luna excluded SOLEDAD from her share in the subject properties. The complaint prayed that SOLEDAD be declared the owner of the ¾ portion of the subject properties; that the same be partitioned; that an accounting of the rentals on the condominium unit pertaining to the share of SOLEDAD be conducted; that a receiver be appointed to preserve ad administer the subject properties; and that the heirs of ATTY. LUNA be ordered to pay attorney's fees and costs of the suit to SOLEDAD.[3]

Ruling of the RTC

On August 27, 2001, the RTC rendered its decision after trial upon the aforementioned facts,[4] disposing thusly:

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3 Id. at 37-39.

4 Id. at 198-210.

WHEREFORE, judgment is rendered as follows:

(a) The 24/100 pro-indiviso share in the condominium unit located at the SIXTH FLOOR of the KALAW LEDESMA CONDOMINIUM PROJECT covered by Condominium Certificate of Title No. 21761 consisting of FIVE HUNDRED SEVENTEEN (517/100) SQUARE METERS is adjudged to have been acquired by Juan Lucas Luna through his sole industry;

(b) Plaintiff has no right as owner or under any other concept over the condominium unit, hence the entry in Condominium Certificate of Title No. 21761 of the Registry of Deeds of Makati with respect to the civil status of Juan Luces Luna should be changed from "JUAN LUCES LUNA married to Soledad L. Luna" to "JUAN LUCES LUNA married to Eugenia Zaballero Luna";

(c) Plaintiff is declared to be the owner of the books Corpus Juris, Fletcher on Corporation, American Jurisprudence and Federal Supreme Court Reports found in the condominium unit and defendants are ordered to deliver them to the plaintiff as soon as appropriate arrangements have been made for transport and storage.

No pronouncement as to costs.

SO ORDERED.[5]

Decision of the CA

Both parties appealed to the CA.[6]

On her part, the petitioner assigned the following errors to the RTC, namely:

I. THE LOWER COURT ERRED IN RULING THAT THE CONDOMINIUM UNIT WAS ACQUIRED THRU THE SOLE INDUSTRY OF ATTY. JUAN LUCES LUNA;

II. THE LOWER COURT ERRED IN RULING THAT PLAINTIFF-APPELLANT DID NOT CONTRIBUTE MONEY FOR THE ACQUISITION OF THE CONDOMINIUM UNIT;

III. THE LOWER COURT ERRED IN GIVING CREDENCE TO PORTIONS OF THE TESTIMONY OF GREGORIO LUNA, WHO HAS NO ACTUAL KNOWLEDGE OF THE ACQUISITION OF THE UNIT, BUT IGNORED OTHER PORTIONS OF HIS TESTIMONY FAVORABLE TO THE PLAINTIFF-APPELLANT;

IV. THE LOWER COURT ERRED IN NOT GIVING SIGNIFICANCE TO THE FACT THAT THE CONJUGAL PARTNERSHIP BETWEEN LUNA AND INTERVENOR-APPELLANT WAS

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5 Id. at 210.
6 Id. at 211-214.

ALREADY DISSOLVED AND LIQUIDATED PRIOR TO THE UNION OF PLAINTIFF-APPELLANT AND LUNA;

V. THE LOWER COURT ERRED IN GIVING UNDUE SIGNIFICANCE TO THE ABSENCE OF THE DISPOSITION OF THE CONDOMINIUM UNIT IN THE HOLOGRAPHIC WILL OF THE PLAINTIFF-APPELLANT;

VI. THE LOWER COURT ERRED IN GIVING UNDUE SIGNIFICANCE TO THE FACT THAT THE NAME OF PLAINTIFF-APPELLANT DID NOT APPEAR IN THE DEED OF ABSOLUTE SALE EXECUTED BY TANDANG SORA DEVELOPMENT CORPORATION OVER THE CONDOMINIUM UNIT;

VII. THE LOWER COURT ERRED IN RULING THAT NEITHER ARTICLE 148 OF THE FAMILY CODE NOR ARTICLE 144 OF THE CIVIL CODE OF THE PHILIPPINES ARE APPLICABLE;

VIII. THE LOWER COURT ERRED IN NOT RULING THAT THE CAUSE OF ACTION OF THE INTERVENOR-APPELLANT HAS BEEN BARRED BY PESCRIPTION AND LACHES; and

IX. THE LOWER COURT ERRED IN NOT EXPUNGING/DISMISSING THE INTERVENTION FOR FAILURE OF INTERVENOR-APPELLANT TO PAY FILING FEE.[7]

In contrast, the respondents attributed the following errors to the trial court, to wit:

I. THE LOWER COURT ERRED IN HOLDING THAT CERTAIN FOREIGN LAW BOOKS IN THE LAW OFFICE OF ATTY. LUNA WERE BOUGHT WITH THE USE OF PLAINTIFF'S MONEY;

II. THE LOWER COURT ERRED IN HOLDING THAT PLAINTIFF PROVED BY PREPONDERANCE OF EVIDENCE (HER CLAIM OVER) THE SPECIFIED FOREIGN LAW BOOKS FOUND IN ATTY. LUNA'S LAW OFFICE; and

III. THE LOWER COURT ERRED IN NOT HOLDING THAT, ASSUMING PLAINTIFF PAID FOR THE SAID FOREIGN LAW BOOKS, THE RIGHT TO RECOVER THEM HAD PRESCRIBED AND BARRED BY LACHES AND ESTOPPEL.[8]

On November 11, 2005, the CA promulgated its assailed modified decision,[9] holding and ruling:

EUGENIA, the first wife, was the legitimate wife of ATTY. LUNA until the latter's death on July 12, 1997. The absolute divorce decree obtained by ATTY. LUNA in the Dominican Republic did not

7 Id. at 217-219.
8 Id. at 283.
9 Supra note 1.

terminate his prior marriage with EUGENIA because foreign divorce between Filipino citizens is not recognized in our jurisdiction. x x x[10]

x x x x

WHEREFORE, premises considered, the assailed August 27, 2001 Decision of the RTC of Makati City, Branch 138, is hereby **MODIFIED** as follows:

(a) The 25/100 pro-indiviso share in the condominium unit at the SIXTH FLOOR of the KALAW LEDESMA CONDOMINIUM PROJECT covered by Condominium Certificate of Title No. 21761 consisting of FIVE HUNDRED SEVENTEEN (517/100) (sic) SQUARE METERS is hereby adjudged to defendants-appellants, the heirs of Juan Luces Luna and Eugenia Zaballero-Luna (first marriage), having been acquired from the sole funds and sole industry of Juan Luces Luna while marriage of Juan Luces Luna and Eugenia Zaballero-Luna (first marriage) was still subsisting and valid;

(b) Plaintiff-appellant Soledad Lavadia has no right as owner or under any other concept over the condominium unit, hence the entry in Condominium Certificate of Title No. 21761 of the Registry of Deeds of Makati with respect to the civil status of Juan Luces Luna should be changed from "JUAN LUCES LUNA married to Soledad L. Luna" to "JUAN LUCES LUNA married to Eugenia Zaballero Luna";

(c) Defendants-appellants, the heirs of Juan Luces Luna and Eugenia Zaballero-Luna (first marriage) are hereby declared to be the owner of the books Corpus Juris, Fletcher on Corporation, American Jurisprudence and Federal Supreme Court Reports found in the condominium unit.

No pronouncement as to costs.

SO ORDERED.[11]

On March 13, 2006,[12] the CA denied the petitioner's motion for reconsideration.[13]

Issues

In this appeal, the petitioner avers in her petition for review on *certiorari* that:

A. The Honorable Court of Appeals erred in ruling that the *Agreement for Separation and Property Settlement* executed by Luna and Respondent Eugenia was unenforceable; hence, their conjugal partnership was not dissolved and liquidated;

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10 *Rollo*, p. 44.
11 Id. at 50-51.
12 Id. at 52-53.
13 Id. at 54-65.

B. The Honorable Court of Appeals erred in not recognizing the Dominican Republic court's approval of the *Agreement;*

C. The Honorable Court of Appeals erred in ruling that Petitioner failed to adduce sufficient proof of actual contribution to the acquisition of purchase of the subject condominium unit; and

D. The Honorable Court of Appeals erred in ruling that Petitioner was not entitled to the subject law books.[14]

The decisive question to be resolved is who among the contending parties should be entitled to the 25/100 *pro indiviso* share in the condominium unit; and to the law books (*i.e.*, Corpus Juris, Fletcher on Corporation, American Jurisprudence and Federal Supreme Court Reports).

The resolution of the decisive question requires the Court to ascertain the law that should determine, firstly, whether the divorce between Atty. Luna and Eugenia Zaballero-Luna (Eugenia) had validly dissolved the first marriage; and, secondly, whether the second marriage entered into by the late Atty. Luna and the petitioner entitled the latter to any rights in property.

Ruling of the Court

We affirm the modified decision of the CA.

1.
Atty. Luna's first marriage with Eugenia subsisted up to the time of his death

The first marriage between Atty. Luna and Eugenia, both Filipinos, was solemnized in the Philippines on September 10, 1947. The law in force at the time of the solemnization was the *Spanish Civil Code*, which adopted the nationality rule. The *Civil Code* continued to follow the nationality rule, to the effect that Philippine laws relating to family rights and duties, or to the status, condition and legal capacity of persons were binding upon citizens of the Philippines, although living abroad.[15] Pursuant to the nationality rule, Philippine laws governed this case by virtue of both Atty. Luna and Eugenio having remained Filipinos until the death of Atty. Luna on July 12, 1997 terminated their marriage.

From the time of the celebration of the first marriage on September 10, 1947 until the present, absolute divorce between Filipino spouses has not

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[14] Id. at 17.

[15] Article 15, *Civil Code*, which is a revision of Article 9.1, *Spanish Civil Code*, states:

Article 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad. (9a)

been recognized in the Philippines. The non-recognition of absolute divorce between Filipinos has remained even under the *Family Code*,[16] even if either or both of the spouses are residing abroad.[17] Indeed, the only two types of defective marital unions under our laws have been the void and the voidable marriages. As such, the remedies against such defective marriages have been limited to the declaration of nullity of the marriage and the annulment of the marriage.

It is true that on January 12, 1976, the Court of First Instance (CFI) of Sto. Domingo in the Dominican Republic issued the Divorce Decree dissolving the first marriage of Atty. Luna and Eugenia.[18] Conformably with the nationality rule, however, the divorce, even if voluntarily obtained abroad, did not dissolve the marriage between Atty. Luna and Eugenia, which subsisted up to the time of his death on July 12, 1997. This finding conforms to the Constitution, which characterizes marriage as an inviolable social institution,[19] and regards it as a special contract of permanent union between a man and a woman for the establishment of a conjugal and family life.[20] The non-recognition of absolute divorce in the Philippines is a manifestation of the respect for the sanctity of the marital union especially among Filipino citizens. It affirms that the extinguishment of a valid marriage must be grounded only upon the death of either spouse, or upon a ground expressly provided by law. For as long as this public policy on marriage between Filipinos exists, no divorce decree dissolving the marriage between them can ever be given legal or judicial recognition and enforcement in this jurisdiction.

2.
The *Agreement for Separation and Property Settlement* was void for lack of court approval

The petitioner insists that the *Agreement for Separation and Property Settlement* (Agreement) that the late Atty. Luna and Eugenia had entered into and executed in connection with the divorce proceedings before the CFI of Sto. Domingo in the Dominican Republic to dissolve and liquidate their conjugal partnership was enforceable against Eugenia. Hence, the CA committed reversible error in decreeing otherwise.

The insistence of the petitioner was unwarranted.

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16 In *Corpuz v. Sto. Tomas* (G.R. No. 186571, August 11, 2010, 628 SCRA 266, 277), the Court declares:
> The Family Code recognizes only two types of defective marriages – void and voidable marriages. In both cases, the basis for the judicial declaration of absolute nullity or annulment of the marriage exists before or at the time of the marriage. Divorce, on the other hand, contemplates the dissolution of the lawful union for cause arising after the marriage. Our family laws do not recognize absolute divorce between Filipino citizens.

17 *Garcia v. Recio*, G.R. No. 138322, October 2, 2001, 366 SCRA 437, 446.

18 *Rollo*, p. 37.

19 Article XV, Section 2, 1987 Constitution.

20 Article 1, *Family Code*.

Considering that Atty. Luna and Eugenia had not entered into any marriage settlement prior to their marriage on September 10, 1947, the system of relative community or conjugal partnership of gains governed their property relations. This is because the *Spanish Civil Code*, the law then in force at the time of their marriage, did not specify the property regime of the spouses in the event that they had not entered into any marriage settlement before or at the time of the marriage. Article 119 of the *Civil Code* clearly so provides, to wit:

> Article 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. **In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code, shall govern the property relations between husband and wife**.

Article 142 of the *Civil Code* has defined a conjugal partnership of gains thusly:

> Article 142. By means of the conjugal partnership of gains the husband and wife place in a common fund the fruits of their separate property and the income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage.

The conjugal partnership of gains subsists until terminated for any of various causes of termination enumerated in Article 175 of the *Civil Code*, *viz*:

> Article 175. The conjugal partnership of gains terminates:
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> (1) Upon the death of either spouse;
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> (2) When there is a decree of legal separation;
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> (3) When the marriage is annulled;
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> (4) **In case of judicial separation of property under Article 191.**

The mere execution of the Agreement by Atty. Luna and Eugenia did not *per se* dissolve and liquidate their conjugal partnership of gains. The approval of the Agreement by a competent court was still required under Article 190 and Article 191 of the *Civil Code*, as follows:

> Article 190. In the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place **save in virtue of a judicial order**. (1432a)

> Article 191. The husband or the wife may ask for the separation of property, and it shall be decreed when the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction, or has been declared absent, or when legal separation has been granted.
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> x x x x
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> The husband and the wife may agree upon the dissolution of the conjugal partnership during the marriage, **subject to judicial approval**. All the creditors of the husband and of the wife, as well as of the conjugal partnership shall be notified of any petition for judicial approval or the voluntary dissolution of the conjugal partnership, so that any such creditors may appear at the hearing to safeguard his interests. Upon approval of the petition for dissolution of the conjugal partnership, the court shall take such measures as may protect the creditors and other third persons.
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> After dissolution of the conjugal partnership, the provisions of articles 214 and 215 shall apply. The provisions of this Code concerning the effect of partition stated in articles 498 to 501 shall be applicable. (1433a)

But was not the approval of the Agreement by the CFI of Sto. Domingo in the Dominican Republic sufficient in dissolving and liquidating the conjugal partnership of gains between the late Atty. Luna and Eugenia?

The query is answered in the negative. There is no question that the approval took place only as an incident of the action for divorce instituted by Atty. Luna and Eugenia, for, indeed, the justifications for their execution of the Agreement were identical to the grounds raised in the action for divorce.[21] With the divorce not being itself valid and enforceable under Philippine law for being contrary to Philippine public policy and public law, the approval of the Agreement was not also legally valid and enforceable under Philippine law. Consequently, the conjugal partnership of gains of Atty. Luna and Eugenia subsisted in the lifetime of their marriage.

3.
Atty. Luna's marriage with Soledad, being bigamous, was void; properties acquired during their marriage were governed by the rules on co-ownership

What law governed the property relations of the second marriage between Atty. Luna and Soledad?

The CA expressly declared that Atty. Luna's subsequent marriage to Soledad on January 12, 1976 was void for being bigamous,[22] on the ground that the marriage between Atty. Luna and Eugenia had not been dissolved by

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21 Id. at 74, 81-82.
22 Id. at 48.

the Divorce Decree rendered by the CFI of Sto. Domingo in the Dominican Republic but had subsisted until the death of Atty. Luna on July 12, 1997.

The Court concurs with the CA.

In the Philippines, marriages that are bigamous, polygamous, or incestuous are void. Article 71 of the *Civil Code* clearly states:

> Article 71. All marriages performed outside the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country, **except bigamous, polygamous, or incestuous marriages as determined by Philippine law**.

Bigamy is an illegal marriage committed by contracting a second or subsequent marriage before the first marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.[23] A bigamous marriage is considered void *ab initio.*[24]

Due to the second marriage between Atty. Luna and the petitioner being void *ab initio* by virtue of its being bigamous, the properties acquired during the bigamous marriage were governed by the rules on co-ownership, conformably with Article 144 of the *Civil Code*, *viz*:

> Article 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)

In such a situation, whoever alleges co-ownership carried the burden of proof to confirm such fact. To establish co-ownership, therefore, it became imperative for the petitioner to offer proof of her actual contributions in the acquisition of property. Her mere allegation of co-ownership, without sufficient and competent evidence, would warrant no relief in her favor. As the Court explained in *Saguid v. Court of Appeals*:[25]

> In the cases of *Agapay v. Palang*, and *Tumlos v. Fernandez*, which involved the issue of co-ownership of properties acquired by the parties to

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[23] Article 83, *Civil Code*; *Sermonia v. Court of Appeals*, G.R. No.109454, June 14, 1994, 233 SCRA 155, 158.

[24] The *Civil Code* relevantly states:
> Article 80. The following marriages shall be void from the beginning:
> x x x x
> (4) Bigamous or polygamous marriages not falling under Article 83, number 2;
> x x x x

[25] G.R. No. 150611, June 10, 2003, 403 SCRA 678.

> a bigamous marriage and an adulterous relationship, respectively, we ruled that proof of actual contribution in the acquisition of the property is essential. The claim of co-ownership of the petitioners therein who were parties to the bigamous and adulterous union is without basis because they failed to substantiate their allegation that they contributed money in the purchase of the disputed properties. Also in *Adriano v. Court of Appeals*, we ruled that the fact that the controverted property was titled in the name of the parties to an adulterous relationship is not sufficient proof of co-ownership absent evidence of actual contribution in the acquisition of the property.
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> As in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. This applies with more vigor where, as in the instant case, the plaintiff was allowed to present evidence *ex parte*. The plaintiff is not automatically entitled to the relief prayed for. The law gives the defendant some measure of protection as the plaintiff must still prove the allegations in the complaint. Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief. Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.[26]

The petitioner asserts herein that she sufficiently proved her actual contributions in the purchase of the condominium unit in the aggregate amount of at least ₱306,572.00, consisting in direct contributions of ₱159,072.00, and in repaying the loans Atty. Luna had obtained from Premex Financing and Banco Filipino totaling ₱146,825.30;[27] and that such aggregate contributions of ₱306,572.00 corresponded to almost the entire share of Atty. Luna in the purchase of the condominium unit amounting to ₱362,264.00 of the unit's purchase price of ₱1,449,056.00.[28]

The petitioner further asserts that the lawbooks were paid for solely out of her personal funds, proof of which Atty. Luna had even sent her a "thank you" note;[29] that she had the financial capacity to make the contributions and purchases; and that Atty. Luna could not acquire the properties on his own due to the meagerness of the income derived from his law practice.

Did the petitioner discharge her burden of proof on the co-ownership?

In resolving the question, the CA entirely debunked the petitioner's assertions on her actual contributions through the following findings and conclusions, namely:

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26 Id. at 686-687.
27 *Rollo*, pp. 23-24.
28 Id. at 25.
29 Id. at 27.

SOLEDAD was not able to prove by preponderance of evidence that her own independent funds were used to buy the law office condominium and the law books subject matter in contention in this case – proof that was required for Article 144 of the New Civil Code and Article 148 of the Family Code to apply – as to cases where properties were acquired by a man and a woman living together as husband and wife but not married, or under a marriage which was void *ab initio*. Under Article 144 of the New Civil Code, the rules on co-ownership would govern. But this was not readily applicable to many situations and thus it created a void at first because it applied only if the parties were not in any way incapacitated or were without impediment to marry each other (for it would be absurd to create a co-ownership where there still exists a prior conjugal partnership or absolute community between the man and his lawful wife). This void was filled upon adoption of the Family Code. Article 148 provided that: only the property acquired by both of the parties through their actual joint contribution of money, property or industry shall be owned in common and in proportion to their respective contributions. Such contributions and corresponding shares were *prima facie* presumed to be equal. ***However, for this presumption to arise, proof of actual contribution was required.*** The same rule and presumption was to apply to joint deposits of money and evidence of credit. If one of the parties was validly married to another, his or her share in the co-ownership accrued to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith was not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the Article 147. The rules on forfeiture applied even if both parties were in bad faith.

Co-ownership was the exception while conjugal partnership of gains was the strict rule whereby marriage was an inviolable social institution and divorce decrees are not recognized in the Philippines, as was held by the Supreme Court in the case of *Tenchavez vs. Escaño, G.R. No. L-19671, November 29, 1965, 15 SCRA 355, thus:*

x x x x

As to the 25/100 *pro-indiviso* share of ATTY. LUNA in the condominium unit, SOLEDAD failed to prove that she made an actual contribution to purchase the said property. She failed to establish that the four (4) checks that she presented were indeed used for the acquisition of the share of ATTY. LUNA in the condominium unit. This was aptly explained in the Decision of the trial court, *viz.*:

> "x x x The first check, Exhibit "M" for ₱55,000.00 payable to Atty. Teresita Cruz Sison was issued on January 27, 1977, which was thirteen (13) months before the Memorandum of Agreement, Exhibit "7" was signed. Another check issued on April 29, 1978 in the amount of ₱97,588.89, Exhibit "P" was payable to Banco Filipino. According to the plaintiff, this was in payment of the loan of Atty. Luna. The third check which was for ₱49,236.00 payable to PREMEX was dated May 19, 1979, also for payment of the loan of Atty. Luna. The fourth check, Exhibit "M", for ₱4,072.00 was dated December 17, 1980. None of the foregoing prove that the amounts delivered by plaintiff to the payees were for the acquisition of the

> subject condominium unit. The connection was simply not established. x x x"
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> SOLEDAD's claim that she made a cash contribution of ₱100,000.00 is unsubstantiated. Clearly, there is no basis for SOLEDAD's claim of co-ownership over the 25/100 portion of the condominium unit and the trial court correctly found that the same was acquired through the sole industry of ATTY. LUNA, thus:
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> > "The Deed of Absolute Sale, Exhibit "9", covering the condominium unit was in the name of Atty. Luna, together with his partners in the law firm. The name of the plaintiff does not appear as vendee or as the spouse of Atty. Luna. The same was acquired for the use of the Law firm of Atty. Luna. The loans from Allied Banking Corporation and Far East Bank and Trust Company were loans of Atty. Luna and his partners and plaintiff does not have evidence to show that she paid for them fully or partially. x x x"
>
> The fact that CCT No. 4779 and subsequently, CCT No. 21761 were in the name of "*JUAN LUCES LUNA, married to Soledad L. Luna"* was no proof that SOLEDAD was a co-owner of the condominium unit. Acquisition of title and registration thereof are two different acts. It is well settled that registration does not confer title but merely confirms one already existing. The phrase "*married to*" preceding "*Soledad L. Luna*" is merely descriptive of the civil status of ATTY. LUNA.
>
> SOLEDAD, the second wife, was not even a lawyer. So it is but logical that SOLEDAD had no participation in the law firm or in the purchase of books for the law firm. SOLEDAD failed to prove that she had anything to contribute and that she actually purchased or paid for the law office amortization and for the law books. It is more logical to presume that it was ATTY. LUNA who bought the law office space and the law books from his earnings from his practice of law rather than embarrassingly beg or ask from SOLEDAD money for use of the law firm that he headed.[30]

The Court upholds the foregoing findings and conclusions by the CA both because they were substantiated by the records and because we have not been shown any reason to revisit and undo them. Indeed, the petitioner, as the party claiming the co-ownership, did not discharge her burden of proof. Her mere allegations on her contributions, not being evidence,[31] did not serve the purpose. In contrast, given the subsistence of the first marriage between Atty. Luna and Eugenia, the presumption that Atty. Luna acquired the properties out of his own personal funds and effort remained. It should then be justly concluded that the properties *in litis* legally pertained to their conjugal partnership of gains as of the time of his death. Consequently, the sole ownership of the 25/100 *pro indiviso* share of Atty. Luna in the condominium unit, and of the lawbooks pertained to the respondents as the lawful heirs of Atty. Luna.

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30 Id. at 45-50.

31 *Atienza v. De Castro*, G.R. No. 169698, November 29, 2006, 508 SCRA 593, 602.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on November 11, 2005; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
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.

MARIA LOURDES P. A. SERENO
Chief Justice