

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SIMON R. PATERNO,

G.R. No. 213687

Petitioner,

Present:

- versus -

PERALTA, C.J., *Chairperson*,
CAGUIOA, *Working Chairperson*,
REYES, J. JR.,
LAZARO-JAVIER, and
LOPEZ, * JJ.

**DINA MARIE LOMONGO
PATERNO,**

Promulgated:

Respondent.

JAN 08 2020

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DECISION

REYES, J. JR., J.:

The Facts and The Case

Assailed in this Petition for Review on *Certiorari*¹ are the Decision² dated October 31, 2013 and Resolution³ dated July 31, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 124473, which affirmed the Orders dated November 29, 2011⁴ and February 27, 2012⁵ of the Regional Trial Court (RTC), Branch 136, Makati City (Branch 136) which ordered the partial delivery of respondent Dina Marie Lomongo Paterno's share in the conjugal

* On official leave.

¹ *Rollo*, pp. 10-42.

² Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla, concurring; id. at 49-56.

³ Id. at 57-58.

⁴ Id. at 165-168.

⁵ Id. at 169-171.

partnership and directed petitioner Simon R. Paterno to increase the monthly support to ₱250,000.00.

The petitioner and the respondent were married on December 27, 1987. After living together for about a decade, the petitioner left the family abode in June 1998. On June 9, 2000, petitioner filed a petition before the RTC seeking the declaration of nullity of his marriage to the respondent on the ground of the latter's psychological incapacity. This was granted by Branch 144 of RTC Makati (Branch 144) in a Decision dated March 11, 2005, where both parties were adjudged to be psychologically incapacitated to fulfill their marital obligations to each other. The March 11, 2005 Decision had attained finality. However, the proceedings for the liquidation, partition, distribution of the common properties and the delivery of their children's presumptive legitimes remain pending before Branch 144.⁶

On September 26, 2006, the respondent filed a motion for the issuance of a *subpoena duces tecum* and *ad testificandum* seeking to present the petitioner as a hostile witness for him to testify and present documents relative to the salaries he received and the properties he acquired from the time the parties separated in fact until the declaration of nullity of their marriage had become final.⁷ The same was granted by the trial court, prompting the petitioner to move for the quashal of the subpoena.⁸

In an Order dated November 22, 2006, Branch 144 ruled in favor of the petitioner and recalled the subpoena *duces tecum* and *ad testificandum*. It held that under Article 147 of the Family Code, salaries and wages earned by either party after the *de facto separation* of the parties in June 1998 are not considered part of the co-owned properties but belong solely to the earning spouse. Respondent moved for reconsideration but the trial court denied it.⁹

Aggrieved, the respondent filed a Petition for *Certiorari* before the CA assailing the Decision and Resolution of Branch 144 for allegedly being issued in excess of jurisdiction or with grave abuse of discretion. In a Decision dated August 28, 2007, the CA dismissed the petition. The respondent moved for reconsideration but the CA denied it in a Resolution dated October 22, 2007.¹⁰

Not accepting defeat, the respondent filed a Petition for Review on *Certiorari* before this Court, docketed as G.R. No. 180226.

⁶ Id. at 11-12, 254-255.

⁷ Id. at 12.

⁸ Id.

⁹ Id.

¹⁰ Id.



In the meantime, the proceedings for the liquidation, partition, distribution of the common properties of the parties was re-raffled to Branch 136.¹¹

On May 6, 2009, without prejudice to the outcome of her Petition for Review (G.R. No. 180226), respondent filed an Omnibus Motion before Branch 144 which sought the following affirmative reliefs: (a) appraisal of the purportedly admitted co-owned properties of the dissolved union of the parties; (b) partition of the purportedly admitted co-owned properties of the dissolved union and delivery of respondent's share therein; (c) require the petitioner to render full accounting of all fruits accruing from the purportedly admitted co-owned properties; and (d) in the alternative the delivery of respondent's share, and the appointment of an independent administrator/receiver of the purportedly admitted co-owned properties.¹² The following are the properties which the respondent alleged were admitted by both parties to be co-owned by them:

- (1) House and lot in Ayala Alabang Village, Muntinlupa City;
- (2) Condominium unit in Rockwell, Makati City;
- (3) Club membership at the Riviera Gold and Country Club;
- (4) Shares of stock in Little Gym;
- (5) Shares of stock in Mamita Realty;
- (6) Dodge Caravan;
- (7) Paintings by various known artists;
- (8) Pieces of accent furniture; and
- (9) Collection of books by various known authors.¹³

Petitioner opposed the Omnibus Motion in his Comment/Opposition dated June 1, 2009. He vehemently objected to the characterization of the above-listed properties as being admittedly co-owned properties. Petitioner contended that while the Ayala Alabang and Rockwell properties were purchased during the parties' union, the mortgage payments for these properties have been made after they separated in fact solely from his exclusive funds. As such, the trial court cannot as yet make a true and accurate appraisal of the said properties without ruling on the status of the payments made by the petitioner in servicing the loans taken for the said properties. Thus, the trial court should defer the proceedings before it pending the resolution of the case (G.R. No. 180226) before the Supreme Court (SC).¹⁴

On September 22, 2009, respondent filed a Manifestation and Urgent Motion to Resolve Respondent's Omnibus Motion dated 06 May 2009 and For Additional Support and/or Establishment of Trust Fund.¹⁵

¹¹ Id. at 13.

¹² Id. at 13, 95-102.

¹³ Id. at 13, 96.

¹⁴ Id. at 14, 104-107.

¹⁵ Id. at 132-143.

In an Order¹⁶ dated November 29, 2011, the RTC granted the motion of the respondent for partial distribution of her share in the conjugal partnership despite the pendency of the Petition for Review before the SC. It held that the resolution of the said motion will not preempt the decision of the SC in the petition before it inasmuch as the issue raised therein is whether the respondent has a share in the properties acquired by the petitioner during their separation in fact and prior to the final declaration of nullity of their marriage, while the matter before the trial court only pertained to the properties of the parties that they admitted were owned in common by them. In this case, even if the parties were married prior to the effectivity of the Family Code, the RTC still applied the same in resolving questions on their property relations. The RTC ruled that when their marriage was declared void, the conjugal partnership of gains was automatically dissolved and their property relations was converted into an ordinary co-ownership. As a co-owner, the respondent has the full ownership of the part, as well as the fruits and benefits pertaining to her share. She may alienate, assign, mortgage, or demand its partition insofar as her share is concerned. Since no evidence exists to show that the club membership at the Riviera Golf and Country Club, shares of stock of Little Gym and Mamita Realty, Dodge Caravan, paintings, pieces of accent furniture, and books are the exclusive property of the petitioner, they are presumed to be conjugal. While petitioner claims that he was the one paying for the monthly amortizations of the Ayala Alabang and Rockwell properties that were acquired during the marriage, he failed to present any proof that the properties belonged to him exclusively. Thus, just like the rest of the properties, they are also presumed to be conjugal. To protect the interest of the respondent and taking into account the needs of the children, the Court deemed it proper to advance her share in the conjugal partnership upon the posting of ₱50,000.00 bond. The RTC also increased the monthly support to ₱250,000.00 taking into consideration the health condition of Juliana Paterno and the standard of living the children have been accustomed to and the financial resources of the petitioner.

Petitioner moved for reconsideration but the trial court denied it in a Resolution¹⁷ dated February 27, 2012.

Not accepting defeat, petitioner elevated the matter to the CA *via* a Petition for *Certiorari* and *Prohibition*.

In a Decision¹⁸ dated October 31, 2013, the CA held that the RTC did not gravely abuse its discretion when it resolved respondent's motion despite the pendency of respondent's Petition for Review before the SC considering that the issue raised in the petition before the SC centers on the ownership of the properties acquired after the parties have separated *de facto* but prior to the judicial declaration of nullity of their marriage, while the properties

¹⁶ Id. at 165-168.

¹⁷ Id. at 169-171.

¹⁸ *Supra* note 2.

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involved in the assailed Orders of the RTC included those properties acquired at the time they were still living together as husband and wife. As such, the determination of the issue before the RTC will not affect the outcome of the case pending before the SC as would necessitate it to defer its proceedings until after the SC shall have resolved the case before it.¹⁹

The CA rejected petitioner's claim that he was deprived of due process and that the RTC acted with grave abuse of discretion when it resolved the motion for reconsideration without waiting for his Reply to respondent's comment (to the motion for reconsideration) since no ground had been shown to justify why the required Reply could not be filed on time.²⁰ The CA refused to rule on the other issues raised by the petitioner, namely: whether the trial court gravely abused its discretion in (a) ruling that the property relation of the spouses was converted to an ordinary co-ownership after the dissolution of the marriage; (b) ruling that petitioner claimed the subject properties as his exclusive properties; and (c) awarding an increase in the amount of support to ₱250,000.00 a month for being not proper in a petition for *certiorari* as they were merely errors of judgment, and not errors of jurisdiction.²¹

Not satisfied, petitioner is now before this Court via a Petition for Review on *Certiorari*.

The Issues

The Petitioner submits the following issues for this Court's consideration:

THE COURT OF APPEALS GRAVELY ERRED WHEN IT DID NOT SET ASIDE THE ORDERS DATED 29 NOVEMBER 2011 AND 27 FEBRUARY 2012 ISSUED BY THE TRIAL COURT DESPITE SAID ORDERS HAVING BEEN ISSUED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION ON THE FOLLOWING GROUNDS:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT ISSUED THE ASSAILED DECISION, AND AFFIRMED THE SAME IN THE ASSAILED RESOLUTION, DESPITE THE FACT THAT THE ASSAILED DECISION DID NOT EXPRESS THEREIN CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH THE SAME WAS BASED.

¹⁹ Id. at 54-55a

²⁰ Id. at 55a.

²¹ Id. at 54-55a.

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II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT RESPONDENT'S OWN PETITION PENDING BEFORE THE SUPREME COURT (*G.R. NO. 180226, ENTITLED "DINA MARIE LOMONGO PATERNO [V.] SIMON R. PATERNO"*) DID NOT NECESSITATE THE OBSERVANCE OF JUDICIAL COURTESY.

III

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT GRAVE ABUSE OF DISCRETION WAS NOT ATTENDANT IN THE TRIAL COURT'S ORDERS DATED 29 NOVEMBER 2011 AND 27 FEBRAURY 2012 THAT WERE PATENTLY CONTRARY TO LAW AND PREVAILING JURISPRUDENCE.

IV

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT GRAVE ABUSE OF DISCRETION WAS NOT ATTENDANT IN THE TRIAL COURT'S ORDERS DATED 29 NOVEMBER 2011 AND 27 FEBRUARY 2012 THAT WERE BASED ON A GROSS MISAPPREHENSION OF FACTS.

V

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT GRAVE ABUSE OF DISCRETION WAS NOT ATTENDANT WHEN THE TRIAL COURT ISSUED THE ORDER DATED 27 FEBRUARY 2012 WITHOUT GIVING HEREIN PETITIONER THE OPPORTUNITY TO FULLY ARGUE HIS POSITION.²²

The Arguments of the Parties

The petitioner contends that the Decision rendered by the CA did not comply with the Constitutional requirement that decisions must clearly and distinctly state the facts and the law on which it is based when the appellate court brushed aside its last three arguments and simply declared that they were not proper for a petition for *certiorari* as they were errors of judgment

²² Id. at 19-20.

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and not errors of jurisdiction. Such non-compliance with the Constitutional mandate violates petitioner's right to due process and constitutes a reversible error on the part of the CA.²³

Petitioner also claims that the CA seriously erred when it ruled that the trial court need not observe judicial courtesy and correctly proceeded to rule on the motion for the partial distribution of the subject properties despite the pendency of the case before the SC. He explains that the presumption of equal shares in the special co-ownership under Article 147 of the Family Code applies only to properties that were acquired during the parties' cohabitation. After their separation *de facto*, the presumption can no longer arise. Although the Ayala Alabang house and Rockwell condominium were acquired while the union was still subsisting, they were only paid long after the parties stopped living together with petitioner's sole efforts constituting the majority of the payments therefor. As such, there is a need for the trial court to await the ruling of the SC on whether the contributions made by the petitioner in the form of amortizations for the relevant properties still form part of the co-ownership despite having been paid after the parties had separated, and after the presumption of equal shares had ceased to become applicable.²⁴

Petitioner likewise attacks the assailed Decision for contravening established doctrines. He argues that it was reversible error on the part of the CA when it ruled that the trial court did not gravely abuse its discretion when the latter granted the motion for partial distribution of the properties despite non-compliance with the two-tiered procedure required for a valid partition. Petitioner explains that in asking for a partial distribution, respondent was essentially trying to effect the partition of co-owned properties. Before any action for partition may be had, it must first be determined if the parties are indeed co-owners of the properties subject of the partition and how such properties will be divided between the claimants. These two requisites are the very issues in G.R. No. 180266, in that for him, there is no more co-ownership with respect to the payments he made for the Ayala Alabang and Rockwell properties after the parties had separated; whereas for the respondent, the same still form part of the co-owned properties. The allowance by the trial court of the partition of the subject properties without the said issues having been first laid to rest by the SC is clearly grave abuse of discretion.²⁵

Petitioner went on to state that the CA erred when it found no grave abuse of discretion in the trial court's pronouncement that the parties' property relation was originally governed by conjugal partnership of gains, which was then converted to an ordinary co-ownership upon the declaration of nullity of their marriage. It is a basic legal precept that a marriage declared void *ab initio* produces no legal effect because the decree of nullity

²³ Id. at 21-23.

²⁴ Id. at 23-26.

²⁵ Id. at 26-28.

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retroacts to the time of the marriage. The property regime in such a situation is governed by special co-ownership right from the beginning and without need of conversion.²⁶

It was also error on the part of the CA to have ruled that the trial court did not abuse its discretion when it issued its Orders despite the fact that they were based on misapprehension of facts. The trial court grossly misunderstood petitioner's allegations of facts respecting the ownership of the Ayala Alabang and Rockwell properties. He never claimed said properties as his exclusively. He merely stated that since portions of the mortgage payments for both properties were made by him from his own exclusive funds after his separation in fact with the respondent, such payments should not be considered part of the co-owned properties, and must be adjudged to belong to him exclusively.²⁷

Furthermore, petitioner claims that the trial court committed the same gross misapprehension of facts in ordering the increase of the monthly support from ₱175,000.00 to ₱250,000.00. According to the petitioner, he had been giving the respondent and their three children support in the amount of ₱175,000.00 per month, the amount approved by the trial court in 2003. The amount was for the support *pendente lite*, at the time when his marriage with the respondent had not yet been declared void *ab initio* and the proceedings for nullity of marriage was still pending. When the trial court issued the November 29, 2011 Order, the circumstances of the parties had already drastically changed which did not justify any increase in support or even maintaining the same amount in that the obligation of mutual support between the petitioner and the respondent ceased after a final decree of nullity of marriage was issued by the trial court. All three of petitioner and respondent's children, Beatriz, Juliana and Margarita, were still minors and living under the custody and care of the respondent at the time the trial court ordered the petitioner to provide support in the amount of ₱175,000.00 monthly. Since then, Beatriz and Juliana had reached the age of majority and had ceased living with the respondent at the time the November 29, 2011 Order was issued. At such time, it was only Margarita who was under the custody of, and living with the respondent at the Rockwell Condominium. Petitioner emphasizes that it was he who exclusively shouldered and continued to shoulder one hundred percent of Beatriz' living, maintenance, and educational expenses all throughout her years in college, beginning 2007, the year she went to the United States of America (USA) to study until she graduated in May 2011. Now that Beatriz is studying law at Harvard Law School, petitioner continues to shoulder all of her expenses. As for Juliana, petitioner contends that she moved to his house in 2010, and then left for the USA in February 2011 for her schooling. He was also the one who shouldered 100% of her living, maintenance, medical and educational expenses. Such expenses, petitioner claims, were on top of the ₱175,000.00 monthly support provided by him which was originally

²⁶ Id. at 28-32.

²⁷ Id. at 32-33.

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intended for the three children, despite the fact that Beatriz and Juliana were no longer living with the respondent. The increase in support cannot also be justified by reason of Juliana's medical condition because he already paid for all the expenses incurred for Juliana's medical treatment and no proof had been presented to show that her medical condition recurred. Petitioner adds, ever since Beatriz and Juliana became of majority age and stopped living with the respondent, the latter ceased to have personality or authority to claim support from the petitioner in their behalf pursuant to Articles 234 and 236 of the Family Code as she ceased to be their legal guardian. Petitioner claims further that respondent is also obliged to provide support to their children, in proportion to her salary, given that respondent is gainfully employed, support being the joint obligation of the petitioner and the respondent. The respondent cannot ask to be reimbursed for every single expense she had spent. All these show that the necessities of Beatriz and Juliana have been significantly reduced. Thus, the ordered increase in support clearly lacked basis.²⁸

Lastly, petitioner avers that the CA erred when it found no grave abuse of discretion on part of the trial court when it issued its February 27, 2012 Order without waiting for his Reply to respondent's Comment and Opposition (to petitioner's Motion for Reconsideration). Since the respondent was given several extensions of time to file various pleadings, he must likewise be accorded the same treatment. However, instead of granting him equal treatment, the trial court, without acting on his motion for extension of time to file his reply, prematurely and hastily issued its February 27, 2012 Order denying his motion for reconsideration. By prematurely deciding his motion for reconsideration, the trial court prevented him from responding to respondent's misleading and inaccurate allegations in her Comment and Opposition. The fact that his counsel belonged to a law firm is not a waiver of his constitutional right to due process.²⁹

Respondent, on the other hand, claims that the CA correctly ruled that petitioner's last three arguments are not proper for a petition for *certiorari* since the alleged errors are merely errors of judgment and not errors of jurisdiction considering that the properties covered by the assailed Orders of the trial court pertained only to **those** properties that were admitted to be part of the common properties in petitioner's Petition for Declaration of Nullity of Marriage.³⁰

Respondent likewise insists that there was no reason for the trial court to defer its proceedings until after the SC shall have decided G.R. No. 180226 because whatever may be the findings of the trial court in such case will not render the petition pending before the SC moot because the issue before the trial court and concomitantly, its Orders, only referred to

²⁸ Id. at 34-39.

²⁹ Id. at 39-40.

³⁰ Id. at 357-358.

properties which the petitioner himself admitted (in his Petition for Declaration of Nullity of Marriage) as having been acquired by him and the respondent during their marriage. In other words, the properties involved are only those recognized as common properties. It has no bearing on the matter before the SC in G.R. No. 180226, which involves the issue of whether the properties acquired by the petitioner after he left the respondent and before the finality of the Decision nullifying his marriage with the respondent, would still form part of the common assets. Besides, no Temporary Restraining Order had been issued to forestall the proceedings before the trial court.³¹

Respondent labels as devoid of merit petitioner's claim that he is entitled to more share in the subject properties than her because he was the one who continued paying for their amortizations after their separation. The second paragraph of Article 147 of the Family Code created a presumption that the properties acquired by the parties while they live together were obtained by their joint effort, work or industry. Thus, they own such properties in equal shares. The said provision likewise laid down an equitable rule in favor of a party who did not actually participate in property acquisition but exerted efforts in the care and maintenance of the family and the household. Furthermore, respondent avers that the deliberations of the Civil Code and Family Code show that Article 147 was intended to prevent injustice in the property relation of spouses in a void marriage and to recognize that the wife helped in the acquisition of the property by providing inspiration, among other things, regardless of the period of acquisition. Thus, respondent posits that co-ownership of the parties did not end when one spouse stopped living with the other. The marital relationship, as well as the consequences and effects of a marital union, end upon the finality of the declaration of nullity of the marriage. Considering that the Ayala Alabang and Rockwell properties were acquired during their marriage and before petitioner left his family, respondent's efforts in the care and maintenance of the children and of the household were sufficient, if not more than enough contribution to the acquisition of said properties. Hence, the petitioner could not claim more right to any property than her on account of his contention that he was the one who paid for the amortizations of those properties. The fact that the petitioner took with him the salaries he already earned before their separation and that he continue to have full access to their joint bank account where she also deposited her earnings and savings could not also be overlooked. Petitioner's use of common funds in paying for the monthly amortizations for the Ayala Alabang and Rockwell properties would not make such properties or any portion thereof, belong exclusively to him and place them beyond the co-ownership.³²

Lastly, respondent avers that petitioner could not claim that he was denied of due process just because his Motion for Reconsideration was resolved without waiting for his Reply inasmuch as petitioner's Motion for

³¹ Id. at 358-360.

³² Id. at 360-364.

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Reconsideration should already contain all arguments and objections against the questioned Order, and that petitioner was also afforded an actual hearing on his motion. Given also that he had a number of lawyers at his disposal, petitioner may not claim a right to demand additional period of time to file his Reply.³³

The Ruling of the Court

Stripped of verbiage, the pivotal issues in this case are the ownership of the Ayala Alabang house and the Rockwell condominium and how these properties should be partitioned between the parties; and the propriety of the increase in the amount of support granted to the respondent.

There is no quarrel that the marriage of the petitioner and the respondent had long been declared an absolute nullity by reason of their psychological incapacity to perform their marital obligations to each other. The property relations of parties to a void marriage is governed either by Article 147 or 148 of the Family Code. Since the petitioner and the respondent suffer no legal impediment and exclusively lived with each other under a void marriage, their property relation is one of co-ownership under Article 147 of the Family Code. The said provision finds application in this case even if the parties were married before the Family Code took effect by express provision of the Family Code on its retroactive effect for as long as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.³⁴ Here, no vested rights will be impaired in the application of the said provision given that Article 147 of the Family Code is actually just a remake of Article 144 of the 1950 Civil Code.³⁵

Article 147 of the Family Code provides:

ART. 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.

³³ Id. at 364-365.

³⁴ ART. 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.

³⁵ See *Valdes v. RTC, Br. 102, Quezon City*, 328 Phil. 1289, 1295 (1996).

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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.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.”

The co-ownership envisioned under this article was explained by this Court in *Barrido v. Nonato*,³⁶ viz:

This particular kind of co-ownership applies when a man and a woman, suffering no illegal impediment to marry each other, exclusively live together as husband and wife under a void marriage or without the benefit of marriage. It is clear, therefore, that for Article 147 to operate, the man and the woman: (1) must be capacitated to marry each other; (2) live exclusively with each other as husband and wife; and (3) their union is without the benefit of marriage or their marriage is void. Here, all these elements are present. The term “capacitated” in the first paragraph of the provision pertains to the legal capacity of a party to contract marriage. Any impediment to marry has not been shown to have existed on the part of either Nonato or Barrido. They lived exclusively with each other as husband and wife. However, their marriage was found to be void under Article 36 of the Family Code on the ground of psychological incapacity.

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 be considered as having contributed to the same jointly if said party's efforts consisted in the care and maintenance of the family household. Efforts in the care and maintenance of the family and household are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry. (Citations omitted)

While the parties concede that their property regime is governed by co-ownership, they do not agree on the properties covered therein. For the respondent, all properties acquired by them, before the judicial decree of nullity of their marriage, including the time they were already separated, form part of the co-ownership. On the other hand, for the petitioner, only those properties acquired by them while they were living together are common assets. Thus, petitioner theorizes that since the amortizations for the Ayala Alabang and Rockwell properties were paid by him after the parties stopped living together, the payments made should not form part of the co-ownership but must belong solely to him. It is for this reason that he insists that the Supreme Court must first be allowed to rule on G.R. No.

³⁶ 745 Phil. 608, 615-616 (2014).

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180226 before the trial court should have ruled on the motion for the partial distribution of the above-listed properties because the decision of the High Court therein would have determined whether such contributions form part of the co-ownership.

At this juncture, it must be emphasized that the Court already resolved G.R. No. 180226 in a Resolution of the Third Division dated April 26, 2017, rendering the issue on whether the CA correctly ruled that the trial court need not await the ruling in G.R. No. 180226 before it rules on the propriety of respondent's motion for partial distribution, moot and academic.

The Court must further note that G.R. No. 180226 and the present petition involve, in the main, the partition and distribution of the properties of the union, the natural consequence of the grant of the petition for the declaration of nullity of their marriage that was earlier filed. Undeniably, these cases refer to the same set of facts and involve the same arguments, considering that the present petition is actually an offshoot of G.R. No. 180226 in that the present petition merely seeks the partial distribution of the parties' common assets. Such being the case, the Court must take into account the pronouncement in G.R. No. 180226, the Resolution therein being the law of the case, as it proceeds to resolve the issues pending herein.

In the case of *Spouses Sy v. Young*,³⁷ the Court rules, thus:

Law of the case has been defined as the opinion delivered on a former appeal. It means that whatever is once irrevocably established the controlling legal rule of decision between the same parties in the same case continues to be the law of the case whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

Law of the case applies only to the same case and relates entirely to questions of law. Furthermore, in law of the case, the rule made by an appellate court cannot be departed from in subsequent proceedings in the same case.³⁸

In the April 26, 2017 Resolution in G.R. No. 180226, the Court affirmed the holding of the CA that Article 147 of the Family Code only applies to properties acquired by the parties while they lived exclusively with each other as husband and wife. The relevant portion of the Resolution is quoted hereunder:

The [respondent] did not discharge her burden of showing in this appeal that the CA committed reversible error in applying Article 147 of the *Family Code* to the case. In disposing of the issues raised for its consideration and resolution, the CA correctly applied the law and its relevant jurisprudence, as the following exposition clearly indicates:

³⁷ *Spouses Sy v. Young*, 711 Phil. 444, 449-450 (2013).

³⁸ *Id.*

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The parties do not argue that co-ownership of properties acquired during the union governs them under Article 147 of the Family Code. x x x

x x x x

So what are the common properties included in the dissolution of the co-ownership?

[Respondent's] argument implies that despite already being separated *de facto*, as long as a couple remains married (in paper), pending a court declaration of nullity of their union, all the properties gained by each in the meantime before the judicial declaration will be included in the co-ownership regime.

[Respondent] however should be reminded of the legal effect of a confirmation of a void *ab initio* marriage: it is retroactive to the time when the marriage ceremony transpired. In short, after the trial court declared her marriage to [petitioner] void in 2005 because of both parties' psychological incapacity, the marriage ceremony on December 27, 1987 was invalidated as if no marriage took place. This means then that during their ten-year cohabitation, [respondent] and [petitioner] lived together merely as common-law spouses. This is where Article 147 comes in, dealing with those "properties acquired while they lived together...obtained by their joint efforts, work or industry..." and the joint effort includes "the care and maintenance of the family and of the household."

Her insistence of the common ownership of the moneys and properties accumulated subsequent to the *de facto* separation would have been correct if the properties had to be liquidated (such as in a spouse's death) and an official declaration of nullity of marriage was never secured. Her stand would have been supported by the case of *Cariño v. Cariño* wherein two women were fighting over the government death benefits of the man they married. The first wife was married to the deceased in 1969 but in 1992, without having his previous marriage nullified for lack of a marriage license, the husband still married another woman with whom he cohabited in 1982. The High Court refused to award the death benefits to the second wife and gave the monetary benefits to the first one. Although Article 147 applies to the first wife, the Court awarded the benefits to her in full because the presumption of a valid marriage stood in her favor by reason of a lack of a judicial declaration of nullity. To stress, in the case at bar, there was a judicial declaration of nullity, and *Cariño* cannot apply to her.

As adverted to earlier, after the judicial declaration, [petitioner] and [respondent's] relationship has relegated to a common-law marriage, and their cohabitation, *i.e.*, living together exclusively as husband and wife, was only for a period of ten years. Obviously, the 'cohabitation' of the parties will definitely not include the years since [petitioner] left [respondent] and the family home. The period of cohabitation of a couple without the benefit of marriage or under a void marriage has been sufficiently explained and has been applied by the Supreme Court in the case of *Aznar* x x x. Expounding on Article 144 of the Civil Code, the provision which Article 147 of the Family Code is based, the Court said:

It must be noted that such form of co-ownership requires that the man and the woman thus living together must not in any way be incapacitated to contract marriage and that the properties realized during their cohabitation be acquired through the work, industry,

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employment or occupation of both or either of them. And the same thing may be said of those whose marriages are by provision of law declared *void ab initio*. **While it is true that these requisites are fully met and satisfied in the case at bar, We must remember that the deceased and herein appellee were already estranged as of March, 1950. There being no provision of law governing the cessation of such informal civil partnership, if it ever existed, [the] same may be considered terminated upon their separation or desistance to continue said relations.**³⁹

This Court's earlier pronouncement in G.R. No. 180226 that Article 147 of the Family Code applies only to properties acquired by the parties during the period of their cohabitation is thus binding in this case. The question now that comes to the fore is the proper application of the said ruling with respect to the Ayala Alabang and Rockwell properties.

It is not disputed that the Ayala Alabang and Rockwell properties that were acquired during the period of the parties' cohabitation had not yet been fully paid at the time they separated. From the arguments advanced by the petitioner, it can be inferred that he made much of the term "acquired" in that he distinguished portions of the disputed property to that which had been paid for during the period of cohabitation, and to the portion which was yet unpaid when the parties separated. For him, only the paid portion should be encompassed in the term "acquired" and thus, be presumed to belong to the parties in equal shares.

The Court does not agree. In the construction of the term "acquired," this Court must be guided by the basic rule in statutory construction that when the law does not distinguish, neither should the court.⁴⁰ A reading of Article 147 of the Family Code would show that the provision did not make any distinction or make any qualification in terms of the manner the property must be acquired before the presumption of co-ownership shall apply. As such, the term "acquired" must be taken in its ordinary acceptance. For as long as the property had been purchased, whether on installment, financing or other mode of payment, during the period of cohabitation, the disputable presumption that they have been obtained by the parties' joint efforts, work or industry, and shall be owned by them in equal shares, shall arise. Applied in this case, since the Ayala Alabang and Rockwell properties were purchased while the petitioner and the respondent were living together, it is presumed that both parties contributed in their acquisition through their joint efforts (which includes one's efforts in the care and maintenance of the family and of the household), work or industry. Thus, the properties must be divided between them equally.

³⁹ Third Division Resolution, pp. 5-6; rollo, pp. 475-476.

⁴⁰ *Ty-Delgado v. House of Representatives Electoral Tribunal*, 79 Phil. 268, 282 (2016).

The fear of the petitioner that the respondent will get more than her just share in the properties is unfounded.⁴¹ 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. However, equal sharing of the entire properties is not possible in this scenario since the Ayala Alabang and Rockwell properties were still being amortized when the parties' separated. As such, respondent's equal share shall only pertain to the paid portion before their separation, for in this peculiar kind of co-ownership, and in keeping with the pronouncement in G.R. No. 180226, the partnership is considered terminated upon the parties' separation or desistance to continue said relations. Hence, from the moment of separation, there is no more family or household to speak of that the respondent could have cared for or maintained. If the allegation of the respondent that the payments for the amortizations of these properties were taken from their common funds, then the respondent would have an equal share in such portions because the payments made therefor were actually taken from the co-ownership.

Anent the issue on the propriety of the increase in the amount of support, Article 198 of the Family Code provides that the obligation of mutual support between the spouses ceases when a judgment declaring a marriage void becomes final and executory. As the parties' marriage was declared void on March 11, 2005, petitioner was only obliged to support, after such date, their three children, Beatriz, Juliana and Margarita.

According to the petition, at the time the assailed Order of the RTC dated November 29, 2011 was issued, two of their three daughters already attained the age of majority. If such is the case, respondent ceased to have the authority to claim support in their behalf. In increasing the amount of support due from petitioner based on the needs of all three children, the RTC gravely abused its discretion.

⁴¹ *Rollo*, p. 25.

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It is also to be noted that the instant petition was filed in 2014. Since then, the parties' youngest daughter had likewise reached the age of majority. In view of this change in circumstance, petitioner can no longer be obliged to pay ₱250,000.00 to respondent. This is without prejudice to petitioner's liability for support in arrears, if any, and for any subsisting obligation to provide support directly to his daughters.


Indeed, petitioner is not precluded from seeking the reduction of the amount of support he was obliged to provide in the event that he can sufficiently prove that its reduction is warranted. After all, judgment of support does not become final, and may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to support.⁴²

This Court, not being a trier of facts, must necessarily remand the case to the trial court for the accounting, reception of evidence and evaluation thereof for the proper determination of the ownership and share of the parties in the nine properties mentioned above, which include the Ayala Alabang house and Rockwell condominium, based on the guidelines set forth in this case, as well as the determination of arrears in support of the parties' daughters, if any.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed October 31, 2013 Decision and the July 31, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 124473 are **REVERSED AND SET ASIDE**.

This case is ordered remanded to Regional Trial Court, Branch 136, Makati City for accounting, reception of evidence, and evaluation thereof for the proper determination of the ownership and share of the parties in the nine (9) properties mentioned above, which includes the Ayala Alabang house and Rockwell condominium, based on the guidelines set forth in this case, as well as the determination of arrears in support of the parties' daughters, if any.

SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

⁴² *Lim-Lua v. Lua*, 710 Phil. 211, 233 (2013).

WE CONCUR:



DIOSDADO M. PERALTA

Chief Justice

Chairperson



ALFREDO BENJAMIN S. CAGUIOA

Associate Justice



AMY C. LAZARO-JAVIER

Associate Justice

(On Official Leave)

MARIO V. LOPEZ

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.



DIOSDADO M. PERALTA

Chief Justice