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Family Code of the Philippines: Property relations between live-in partners

Articles 147 and 148 of the Family Code of the Philippines are the governing laws on property relations between a man and a woman in a live-in relationship. It might interest you to know that 40% of couples in CALABARZON are merely living in according to a DSWD report.

Article 147 states, to wit,

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.

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.

When does Article 147 apply?

Article 147 applies to unions of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless void. This simply means that the man and woman can get legally married but for one reason or another, they have not done so. Article 147 creates a co-ownership with respect to the properties they acquire during their cohabitation. Please take note that under Article 147, **even if one of the parties did not work or contribute in the acquisition of property, he/she is considered to have contributed to such by his/her care and maintenance of the family household.**

The Supreme Court held in Valdes vs. Regional Trial Court, Br. 102, Quezon City, to wit:

This peculiar kind of co-ownership applies when a man and a woman, suffering no legal impediment to marry each other, so exclusively live together as husband and wife under a void marriage or without the benefit of marriage. The term “capacitated” in the provision (in the first paragraph of the law) refers to the legal capacity of a party to contract marriage, i.e., any “male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Article 37 and 38” of the Code.

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

Requisites for Article 147 to apply

Thus, 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.

Article 148 of the Family Code applies to situations where the parties are not legally capacitated to marry each other

Article 148 applies to bigamous marriages, adulterous relationships, relationships in a state of concubinage, relationships where both man and woman are married to other persons, and multiple alliances of the same married man. Under this regime, “only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions ...” Proof of actual contribution is required, unlike in situations covered by Article 147. In the absence of proof of extent of the parties’ respective contribution, their share shall be presumed to be equal.

Under Article 148, the properties acquired by the parties through their actual joint contribution shall belong to the co-ownership. Wages and salaries earned by each party belong to him or her exclusively. Then too, contributions in the form of care of the home, children and household, or spiritual or moral inspiration, are excluded in this regime.

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 a bigamous marriage and an adulterous relationship, respectively, the Supreme Court 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*, the Court 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**.

The case of Saguid vs. Court of Appeals, G.R. No. 150611, June 10, 2003 illustrates how the Supreme Court applied Article 148:

Seventeen-year old Gina S. Rey was married, but separated de facto from her husband, when she met petitioner Jacinto Saguid in Marinduque, sometime in July 1987. After a brief courtship, the two decided to cohabit as husband and wife in a house built on a lot owned by Jacinto's father. Their cohabitation was not blessed with any children. Jacinto made a living as the patron of their fishing vessel "Saguid Brothers." Gina, on the other hand, worked as a fish dealer, but decided to work as an entertainer in Japan from 1992 to 1994 when her relationship with Jacinto's relatives turned sour. Her periodic absence, however, did not ebb away the conflict with petitioner's relatives. In 1996, the couple decided to separate and end their 9-year cohabitation.

On January 9, 1997, private respondent filed a complaint for Partition and Recovery of Personal Property with Receivership against the petitioner with the Regional Trial Court of Boac, Marinduque. She alleged that from her salary of \$1,500.00 a month as entertainer in Japan, she was able to contribute P70,000.00 in the completion of their unfinished house. Also, from her own earnings as an entertainer and fish dealer, she was able to acquire and accumulate appliances, pieces of furniture and household effects, with a total value of P111,375.00. She prayed that she be declared the sole owner of these personal properties and that the amount of P70,000.00, representing her contribution to the construction of their house, be reimbursed to her.

Private respondent testified that she deposited part of her earnings in her savings account with First Allied Development Bank. Her Pass Book shows that as of May 23, 1995, she had a balance of P21,046.08. She further stated that she had a total of P35,465.00 share in the joint account deposit which she and the petitioner maintained with the same bank. Gina declared that said deposits were spent for the purchase of construction materials, appliances and other personal properties.

In his answer to the complaint, petitioner claimed that the expenses for the construction of their house were defrayed solely from his income as a captain of their fishing vessel. He averred that private respondent's meager income as fish dealer rendered her unable to contribute in the construction of said house. Besides, selling fish was a mere pastime to her; as such, she was contented with the small quantity of fish allotted to her from his fishing trips. Petitioner further contended that Gina did not work continuously in Japan from 1992 to 1994, but only for a 6-month duration each year. When their house was repaired and improved sometime in 1995-1996, private respondent did not share in the expenses because her earnings as entertainer were spent on the daily needs and business of her parents. From his income in the fishing business, he claimed to have saved a total of P130,000.00, P75,000.00 of which was placed in a joint account deposit with private respondent. This savings, according to petitioner was spent in purchasing the disputed personal properties.

It is not disputed that Gina and Jacinto were not capacitated to marry each other because the former was validly married to another man at the time of her cohabitation with the latter. Their property regime therefore is governed by Article 148 of the Family Code, which applies to bigamous marriages, adulterous relationships, relationships in a state of concubinage, relationships where both man and woman are married to other persons, and multiple alliances of the same married man. Under this regime, "only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions ... Proof of actual contribution is required.

In the case at bar, although the adulterous cohabitation of the parties commenced in 1987, which is before the date of the effectivity of the Family Code on August 3, 1998, Article 148 thereof applies because this provision was intended precisely to fill up the hiatus in Article 144 of the Civil Code. Before Article 148 of the Family Code was enacted, there was no provision governing property relations of couples living in a state of adultery or concubinage. Hence, even if the cohabitation or the acquisition of the property occurred before the Family Code took effect, Article 148 governs.

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.

In the case at bar, the controversy centers on the house and personal properties of the parties. Private respondent alleged in her complaint that she contributed P70,000.00 for the completion of their house. However, nowhere in her testimony did she specify the extent of her contribution. What appears in the record are receipts in her name for the purchase of construction materials on November 17, 1995 and December 23, 1995, in the total amount of P11,413.00.

On the other hand, both parties claim that the money used to purchase the disputed personal properties came partly from their joint account with First Allied Development Bank. While there is no question that both parties contributed in their joint account deposit, there is, however, no sufficient proof of the exact amount of their respective shares therein. Pursuant to Article 148 of the Family Code, in the absence of proof of extent of the parties' respective contribution, their share shall be presumed to be equal. Here, the disputed personal properties were valued at P111,375.00, the existence and value of which were not questioned by the petitioner. Hence, their share therein is equivalent to one-half, i.e., P55,687.50 each.