Legal issues and family matters

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Property rights of foreigners married to Filipino citizens; Can foreigners own land and other real property in the Philippines?

The Supreme Court in the August 2006 case of Elena Buenaventura Muller vs. Helmut Muller, G.R. No. 149615, clarified the issue of ownership of houses and lands by foreigners married to Filipino citizens. Before discussing this case, however, let's have a brief overview:

What is the Constitutional provision on foreign ownership of land in the Philippines?

Section 7, Article XII of the 1987 Constitution states:

> *Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.*

The rule clearly therefore is that aliens, whether individuals or corporations, are disqualified from acquiring lands of the public domain. Hence, they are also disqualified from acquiring private lands.

What is the purpose for this Constitutional prohibition?

The primary purpose of the Constitutional provision is the conservation of the national patrimony. In the old case of Krivenko v. Register of Deeds, the Supreme Court held:

> *Under section 1 of Article XIII of the Constitution, "natural resources, with the exception of public agricultural land, shall not be alienated," and with respect to public agricultural lands, their alienation is limited to Filipino citizens. But this constitutional purpose conserving agricultural resources in the hands of Filipino citizens may easily be defeated by the Filipino citizens themselves who may alienate their agricultural lands in favor of aliens. It is partly to prevent this result that section 5 is included in Article XIII, and it reads as follows:*
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> *"Sec. 5. Save in cases of hereditary succession, no private agricultural land will be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."*
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> *This constitutional provision closes the only remaining avenue through which agricultural resources may leak into aliens' hands. It would certainly be futile to prohibit the alienation of public agricultural lands to aliens if, after all, they may be freely so alienated upon their becoming private agricultural lands in the hands of Filipino citizens.*

Does the term "private agricultural lands" exclude residential lots from the prohibition?

If the term "private agricultural lands" is to be construed as not including residential lots or lands not strictly agricultural, the result would be that "aliens may freely acquire and possess not only residential lots and houses for themselves but entire subdivisions, and whole towns and cities," and that "they may validly buy and hold in their names lands of any area for building homes, factories, industrial plants, fisheries, hatcheries, schools, health and vacation

resorts, markets, golf courses, playgrounds, airfields, and a host of other uses and purposes that are not, in appellant's words, strictly agricultural." **That this is obnoxious to the conservative spirit of the Constitution is beyond question.**

What are the exceptions to the restriction on foreigners' acquisition of land in the Philippines?

[1] Purchase by a former natural-born Filipino citizen subject to the limitations prescribed by Batas Pambansa 185 and R.A. 8179
[2] Acquisition before the 1935 Constitution
[3] Purchase of not more than 40% interest in a condominium project
[4] Acquisition through hereditary succession if the foreigner is a legal or natural heir

What are the limitations on land ownership by former Filipino citizens?

Before the enactment of Republic Act 9225 (Citizenship Retention and Re-acquisition Act of 2003), Filipinos who were naturalized as U.S. citizens were deemed to have lost their Filipino citizenship. Under RA 9255, former Filipinos who became naturalized citizens of foreign countries are deemed not to have lost their Philippine citizenship. Thus they can enjoy all the rights and privileges of Filipinos on land ownership in the Philippines.

If a former Filipino who is now a naturalized citizen of a foreign country does not want however to avail of the Dual Citizenship Law in the Philippines, he or she can still acquire land based on BP (Batas Pambansa) 185 and RA (Republic Act) 8179 but subject to the following limitations:

For residential use (BP 185 enacted in March 1982): Up to 1,000 square meters of residential land, and up to one (1) hectare of agricultural of farm land

For business / commercial use (RA 8179 which amended the Foreign Investment Act of 1991): Up to 5,000 square meters of urban land, and up to three (3) hectares of rural land

Can foreign citizens own condominium units or corporations?

The Condominium Act of the Philippines, R.A. 4726, expressly allows foreigners to acquire condominium units and shares in condominium corporations provided that the total controlling interest of foreigners in the condominium project does not exceed 40 percent. (Condominium owners have exclusive rights over the space "encompassed by the walls, ceilings, and floors" of their units but are only co-owners of the common areas, such as hallways, lobbies, entrances and exits, and parking bays.)

What is meant by ownership on the basis of hereditary succession?

When the foreigner is married to a Filipino citizen, and the spouse dies, the non-Filipino as the natural heir will become the legal owner of the property. Children, as legal heirs, may also own real property. Every natural child, legitimate or illegitimate can inherit real property even if he or she does not hold Filipino citizenship.

Filipinos who are naturalized as U.S. citizens lose their Filipino citizenship. Despite the loss of citizenship, they remain eligible to acquire real property in the Philippines by hereditary succession. Children born to them in the U.S. are also eligible to inherit real property even if they are U.S. citizens. (Please take note of the effects of RA 9225 as discussed earlier.)

Please take note however that 'hereditary succession" refers to intestate succession wherein the person dies without leaving a last will and testament. Transfer of ownership of land cannot be done through a last will and testament.

What are the property rights of a foreigner married to a Filipino citizen?

1. The foreigner can legally own a house or building in the Philippines as long as he or she does not own the land on which the structure is built. For this purpose, the documents like Deed of Sale can contain the name of the foreigner-spouse, except for the title. **(Please take note of the Muller case which we will discuss below.)**

2. **When the foreigner is married to a Filipino citizen, and the spouse dies, the non-Filipino as the natural heir will become the legal owner of the property.**

One website states that *"in the event of death of the Filipino spouse, the foreign spouse is allowed a reasonable amount of time to dispose of the property and collect the proceeds or the property will pass to any Filipino heirs and or relatives."* I cannot however find any RA or PD or Department of Justice opinion which backs up this assertion. The Constitutional provision is clear that the

foreigner-spouse, in the event of death of the Filipino spouse, has the legal right to own the property.

The Supreme Court decision in the Muller case

1. Petitioner Elena Buenaventura Muller ("Elena") and respondent Helmut Muller ("Helmut") were married in Hamburg, Germany on September 22, 1989. The couple resided in Germany at a house owned by respondent's parents but decided to move and reside permanently in the Philippines in 1992. By this time, Helmut had inherited the house in Germany from his parents which he sold and used the proceeds for the purchase of a parcel of land in Antipolo, Rizal at the cost of P528,000.00 and the construction of a house amounting to P2,300,000.00. The Antipolo property was registered in the name of Elena with the Register of Deeds of Marikina, Metro Manila.

2. Due to incompatibilities and Helmut's alleged womanizing, drinking, and maltreatment, the spouses eventually separated. On September 26, 1994, Helmut filed a petition for separation of properties before the Regional Trial Court of Quezon City ("RTC" for brevity).

3. On August 12, 1996, the RTC rendered a decision terminating the regime of absolute community of property between the couple. It also decreed the separation of properties between them and ordered the equal partition of personal properties located within the country, excluding those acquired by gratuitous title during the marriage.

With regards the Antipolo property, the RTC held that it was acquired using Helmut's personal funds. However, it ruled that Helmut cannot recover his funds because the property was purchased in violation of Section 7, Article XII of the Constitution. The RTC explained: *Pursuant to Article 92 of the Family Code, properties acquired by gratuitous title by either spouse during the marriage shall be excluded from the community property. The real property, therefore, inherited by Helmut in Germany is excluded from the absolute community of property of the spouses. Necessarily, the proceeds of the sale of said real property as well as the personal properties purchased thereby, belong exclusively to Helmut. However, the part of that inheritance used by Helmut for acquiring the house and lot in this country cannot be recovered by him, its acquisition being a violation of Section 7, Article XII of the Constitution. The law will leave the parties in the situation where they are in without prejudice to a voluntary partition by the parties of the said real property.*

4. Helmut appealed to the Court of Appeals ("CA"). The CA overturned the RTC decision stating that Helmut merely asked for reimbursement for the purchase of the Antipolo property, and not acquisition or transfer of ownership to him (and that therefore there was no violation of the Constitution). The CA said that Elena's ownership of the property was in trust for her husband Helmut. As regards the house, the CA ruled that there is nothing in the Constitution which prohibits Helmut from acquiring it.

5. Elena then appealed to the Supreme Court ("SC" for brevity). The SC overturned the CA and thereby reinstated the decision of the RTC which was favorable to Elena.

The SC ruled that Helmut was aware of the Constitutional prohibition and expressly admitted his knowledge. He declared that he had the Antipolo property titled in Elena's name because of the said prohibition. His attempt at subsequently asserting or claiming a right on the said property cannot be sustained.

The SC also said that "the Court of Appeals erred in holding that an implied trust was created and resulted by operation of law in view of the marriage. Except for the exception provided in cases of hereditary succession, Helmut's disqualification from owning lands in the Philippines is absolute. Not even an ownership in trust is allowed. Besides, where the purchase is made in violation of an existing statute and in evasion of its express provision, no trust can result in favor of the party who is guilty of the fraud. To hold otherwise would allow circumvention of the constitutional prohibition." **In sum, the Supreme Court ruled that Elena cannot be ordered to reimburse Helmut his money used for the purchase of the lot and the construction of the house in Antipolo.**

How to be saved and go to heaven

Accept that you are a sinner and that your good works, ethical conduct or religion cannot save you. Romans 3:10, Romans 3:23
Believe on the Lord Jesus Christ that He alone can save you. Romans 6:23, Romans 10:13, Acts 16:31
Confess and repent of your sins. Luke 13:3, Isaiah 1:18
Delay not in receiving Jesus Christ into your heart. 2 Corinthians 6:2, Proverbs 27:1
Pray and ask the Lord to save you now: "Dear Lord, I believe that Christ died and shed His precious blood to save my soul. Be merciful to me a sinner, forgive my sins and save me in Jesus' name. Lord Jesus, I now accept you as my Savior. Amen."

For more information, please contact Ptr. Yanie V. Genonangan of Great Lamb Baptist Church, San Jose, Sta.Ana, 2022 Pampanga; Tel. no. (045) 631-0233; website: greatlambbaptist.com; email: ptryanie@gmail.com