

100 Phil. 913

[G. R. No. L-7041. February 21, 1957]

JESUS MA. CUI, ET AU, PLAINTIFFS AND APPELLANTS, VS. ANTONIO MA. CUI, ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

BAUTISTA ANGELO, J.:

On May 25, 1948, Jesus Ma. Cui and Jorge Ma. Cui brought an action in the Court of First Instance of Cebu against Antonio Ma. Cui and Mercedes Cui de Ramas seeking the annulment of the sale of three parcels of land against Antonio Ma. Gui .and mercedes Cui de Ramas of the latter and the partition of the same among the heirs who should inherit them including the plaintiffs. The Rehabilitation Finance Corporation was included as party defendant because the lands above-mentioned were mortgaged to it to secure a loan of P130,000, the object being to have the mortgage declared null and void.

On March 19, 1949, Rosario Cui, daughter of Don Mariano Cui, filed in the same court a petition for the appointment of a guardian of the person and properties of her father on the ground of incompetency and, accordingly, he was declared incompetent on March 31, 1949 and one Victorino Reynes was appointed as his guardian.

On July 13, 1949, the complaint was amended by including as party plaintiffs the guardian Victorino Reynes and the other children and relatives of Don Mariano, namely, Jose Ma. Cui, Serafin Ma. Cui, Rosario Cui, her husband Irtneo Encarnacion, Lourdes C. Velez, Priscilla Velez and Federico Tamayo.

Defendants in their answer set up the defense that the sale mentioned in the complaint is valid because it was executed when Don Mariano Cui was still in possession of his mental faculties and that, while the sale was at first executed in favor of the defendants and their sister Rosario Cui, the latter however resold her share to Don Mariano for reason stated in the deed of resale executed to that effect. They prayed that the complaint be dismissed.

On May 22, 1951, after due hearing and the presentation of voluminous evidence on the part of both parties, the court rendered its decision dismissing the complaint and sentencing the plaintiffs to pay the costs of action, from which plaintiffs appealed in due time, and because the value of the property involved exceeds the amount of P50,000, the case was certified to us for decision by the Court of Appeals under section 1 of Republic Act No. 296.

Plaintiffs and defendants, with the exception of the Rehabilitation Finance Corporation, are the legitimate children of Don Mariano Cui and Dona Antonia Perales who died intestate in the City of Cebu on March 20, 1939. Plaintiffs in their complaint allege that during the marriage of Don Mariano Cui and Dona Antonia Perales, the spouses acquired certain properties in the City of Cebu, namely, Lots Nos. 2312, 2313 and 2319, with an approximate area of 2,658 square meters, having an assessed value of P159,480, and a market value of 120 per square meter; that upon the death of Dona Antonia Perales, the conjugal partnership did not leave any indebtedness and the conjugal properties were placed under the administration of Don Mariano Cui; that while the latter was 84 years of age and under the influence of defendants, the latter, by means of deceit, secured the transfer to themselves of the aforementioned lots without any pecuniary consideration; that in the deed of sale executed on March 8, 1946, Rosario Cui appeared as one of the vendees, but on learning of this fact she subsequently renounced her rights under the sale and returned her portion to Don Mariano Cui by executing a deed of resale in his favor on October 11, 1946; that defendants, fraudulently and with the desire of enriching themselves unjustly at the expense of their father, Don Mariano Cui, and of their brothers and co-heirs, secured a loan of P130,000 from the Rehabilitation Finance Corporation by encumbering the aforementioned properties, and with the loan thus obtained, defendants constructed thereon an apartment building of strong materials consisting of 14 doors, valued at approximately P30,000, and another building on the same parcels of land, which buildings were leased to some Chinese commercial firms a monthly rental of P7,600, which defendants have collected and will continue to collect to the prejudice of the plaintiffs; and because of this fraudulent and illegal transaction, plaintiffs prayed that the sale and mortgage executed on the properties in question, in so far as the shares of the plaintiffs are concerned, be declared null and void and the defendants be ordered to pay the plaintiffs their shares in the rentals of the properties at the rate of P7.600 a month from November 1, 1947 up to the time of their full payment, together with whatever interest may be due thereon and the expenses of litigation.

Defendants, on the other hand, aver that while the properties in question were acquired during the marriage of Don Mariano Cui and Dona Antonia Perales, however, they were

entirely the exclusive property of Don Mariano Cui up to the time of their transfer to defendants under the deed of Sale Exhibit A, having been acquired by him as a donation from his uncle Don Pedro Cui and his aunt Dona Benigna Cui; that this fact was known to the plaintiffs and to the guardian of Don Mariano, Victorino Eeynes, because in the extrajudicial partition executed between plaintiffs and defendants on December 6, 1946 of the properties of the deceased Antonia Perales, the three lots in question did not form part of the conjugal properties of the spouses Don Mariano Cui and Dona Antonia Perales; that Don Mariano Cui, for a consideration, voluntarily and without deceit, pressure or influence on the part of defendants, executed and signed the deed of sale Exhibit A; and that Don Mariano Cui was at that time in full enjoyment of his mental faculties and only suffered loss of memory several years later when he was declared by the court incompetent to manage his properties.

Defendants denied that the building constructed on the three lots in question consisted of 14 doors and alleged that it consisted of only 12 doors. They also denied that they received the sum of P7,600 as monthly rental of said building because what they have been receiving was only a monthly rental of P4,800. As a special defense, they aver that they are the owners of the naked ownership of 2/3 of the three lots in question subject to the usufruct over the rents or products thereof in favor of Don Mariano Cui during his lifetime, with the exception of the rents from the building constructed on the 2/3 portion belonging to them; that the 2/3 of the lots in question did not produce any rent at the time of their acquisition by the defendants, for they produced rentals only after the defendants had constructed the 12-door apartment now standing thereon; that subsequently and by verbal agreement between Don Mariano Cui and the defendants, the usufruct of the former over said 2/3 portion was fixed at P400 monthly, and this sum Don Mariano has been receiving since then up to the present time. Defendants also aver that they are the exclusive owner of the 12-door apartment constructed on the 2/3 portion of the lots in question, having been constructed at their expense and by virtue of the authorization given to them in the deed of sale Exhibit A; that the loan of P130,000 obtained from the Rehabilitation Finance Corporation was solicited personally by defendants Antonio Ma. Cui and Mercedes Cui de Ramas for their exclusive benefit and for the purpose of investing it in the construction of said building; that since the property is undivided, Don Mariano Cui, as one of the co-owners, consented to the execution of a mortgage thereon in favor of said corporation to guarantee the payment of the loan jointly with his co-owners, the aforesaid defendants, for the sole purpose of accommodating the latter and to enable them to obtain the loan; that the plaintiffs are in estoppel to claim that the lots in question belong to the conjugal partnership of their

parents Don Mariano Cui and Dona Antonia Perales, and that plaintiffs instituted the present action because they do not like the manner in which their father had disposed of said lots, especially Jesus Ma. Cui who was unsuccessful in his request that the 1/3 of said lots be sold to him. They prayed that the action be dismissed.

In this appeal, appellants now contended that the lower court erred: (1) "in not declaring the deed of sale, Exhibit A void or inexistent for lack of valid consent and consideration"; (2) "in not declaring illegal the sale, evidenced by Exhibit A, on the ground that it was a transaction between principal and agent, which is prohibited by paragraph (2), Article 1459 of the old Civil Code"; (3) "in not finding that the three lots conveyed by means of the deed of sale, Exhibit A, "belong to the unliquidated conjugal partnership of Don Mariano Cui and his deceased wife Dona Antonia Perales, and that consequently Don Mariano Cui could not validly sell the entire property"; and (4) "in not finding that the plaintiffs are entitled to seven-eighths (7/8) of the property in question and of the rentals thereof beginning November 1, 1947." We will discuss these issues separately.

In support of their contention that Don Mariano Cui did not and could not have validly consented to the deed of sale in question, appellants submitted the following propositions: (a) Don Mariano was incapacitated to give his consent by reason of his age and ailment; (b) Don Mariano acted under a mistake, and, his signature was secured by means of deceit; and (c) the sale Exhibit A is vitiated by undue influence.

In support of the first proposition, it is argued that Don Mariano, at the time he signed the deed of sale Exhibit A on March 8, 1946, was already 83 years old, was sickly and infirm, and frequently complained of ill health. It is also contended that six days before the sale, or on March 2, 1946, he had executed a general power of attorney in favor of defendant Antonio Cui, which act could only signify that Don Mariano himself realized that he was no longer capacitated to administer his properties and found it necessary to relieve himself of the task of dealing with other persons in connection therewith. It is also pointed out that his children, Jorge, Jesus and Rosario Cui testified that he was ill, he was forgetful, he could not read nor remember well what he read, and his letters show that he was no longer familiar with the rules of orthography. In his letters he also complained about his illness and he realized that his afflictions were due to his old age. It is also emphasized that as early as August, 1944, Jesus Cui noted that his father was "muy debil * * * en cuestiones de negocios" and that "en cuanto a su capacidad para administrar sus bienes en que tenia que producir o estudiar, el {Don Mariano) no se acordaba." Although he was not insane when he signed the deed of sale Exhibit A, yet he was admittedly "incompetente para manejar su

dinero.” (pp. 85-86, Brief for Plaintiffs and Appellants.)

As regards the second proposition, it is insinuated that if Don Mariano, by reason of his advanced age, his weak mind and body and feeble will and reason, was not capacitated to give his consent, it would follow as a corollary that he could not fully understand the contents of the deed of sale. He must have therefore labored under a mistake as to the true nature of the transaction especially when it was written in a language which he did not understand. Other insinuations leading to the same result are: Don Mariano must have erroneously thought that the only way to pay his debt of P3,000 to Ramon Aboitiz was by executing the sale, just as he gave his consent to the sale of his conjugal property on San Jose St., Cebu City, because he thought it was/the only available way to pay his indebtedness to the Insular Life Assurance Co. Or he must have thought that the document he was made to sign by Antonio Cui was not a sale but a mere authority to administer the property for purposes of revenue, or he must have been induced to signing it after he was promised a life annuity in the form of usufruct over the rents of the properties in question. In other words, the insinuation is made that Antonio Cui employed deceit in securing the signature of Don Mariano to the sale in question in order merely to satisfy his selfish ends. There being, therefore, error and deceit, there is no valid consent which can give validity to the sale on the part of Don Mariano.

And with regard to the third proposition, the following circumstances are pointed out: At the time of the sale, Don Mariano was already 83 years old, was infirm and was living with the vendees, herein appellees. Antonio Cui was his lawyer and attorney in fact and there was between them confidential family and spiritual relations. Don Mariano was then in financial distress as shown by the fact that he was worried about his debt to Ramon Aboitiz, and way back in 1946 he had to borrow money from his daughter Rosario Cui which remained unpaid even after the sale in question. The presence of undue influence is further shown, appellants contend, in the execution by Don Mariano of the mortgage in favor of the Rehabilitation Finance Corporation, the extrajudicial partition Exhibit 1-a, the partition of the property in question, the alleged oral waiver of usufructuary rights, and the alleged explanatory statement Exhibit 34. These acts, which were allegedly masterminded by Antonio Cui, show, appellants contend, that Antonio Cui could get from his father whatever he wanted.

We do not believe the arguments advanced by appellants in an effort to nullify the deed of sale Exhibit A sufficient in law to invalidate the same on the ground of lack of valid consent on the part of Don Mariano for the simple reason that they are merely based on surmises or conjectures or circumstances which, though they may show inferentially that he was sickly

or forgetful because of his advanced age, do not however point unremittingly to the conclusion that at the time he signed said deed of sale he was not in full enjoyment of his mental faculties as to' disqualify him to do so or that he was not aware of the nature of the transaction he was then undertaking. Although at the time of the sale he was already 83 years old, he was sickly and forgetful, as contended, yet, according to the authorities, weakness of mind alone, not caused by insanity, is not a ground for avoiding a contract, for it is still necessary to show that the person at the time of doing the act "is not capable of understanding with reasonable clearness the nature and effect of the transaction in which he is engaging" (Page on Contracts, Vol. Ill, p. 2810). Or, as well stated in the very case cited by counsel for appellants only when there is "great weakness of mind in a person executing a conveyance of land, arising from age, sickness, or any other cause", can a person ask a court of equity to interfere in order to set aside the conveyance (*Allore vs. Jewell*, 24 Law Ed., 263-264). And here the evidence shows that such is not the case, for the several letters and documents signed and executed by Don Mariano many months after the execution of the deed of sale Exhibit A clearly indicate that, while he was of an advanced age, he was however still physically fit and his mind was keen and clear. This we will see in the following discussion of the evidence.

One of such evidence is the testimony of Rosario Cui, one of the appellants herein. It should be remembered that it was she who initiated the proceedings for the declaration of incompetency of Don Mariano Cui in order that he may be placed under guardianship and at the hearing held for that purpose, she was the main witness. When called upon to testify as to the state of health and mental condition of Don Mariano, she stated that during the period she had been living with her father in Calapan, Mindoro, which dates as far back as the Japanese occupation, she had observed that the state of his mind was very good, he was not yet so forgetful as he is now, and that she discovered his mental weakness which makes him incompetent to manage his own affairs only sometime in the month of January, 1949 (pp. 5 and 6, Exhibit 9; p. 136, t.s.n.). And on the strength of her testimony, Don Mariano was declared incompetent on March 31, 1949. This is an indication that, when the deed of sale was executed on March 8, 1946, three years before his declaration of incompetency, Don Mariano was still in the full enjoyment of his mental-faculties. It should be stated that this testimony of Rosario Cui stands undisputed.

A circumstance which strongly corroborates this testimony of Rosario Cui is the letter Exhibit 26 which Don Mariano wrote to Don Ramon Aboitiz on May 31, 1946, two months after the execution of the deed of sale Exhibit A, in relation to the indebtedness he owed him by reason of his having acted as the surety of his son Jesus Cui which the latter has not

been able to settle. This letter, which shows how lucid, keen, clear and analytical his mind was, is herein reproduced for ready reference:

“Cebu, Mayo 31, 1946

SR. DON RAMON ABOITIZ
CEBU

ESTIMADO AMIGO —

La portadora de la presente es mi hija Mercedes, esposa del Dr. Ramas, a quien he dado el encargo de presentarse a Vd. con eata, carta y pagarle en mi nombre como fiador de mi hijo Jesus Cui el saldo resultante de la liquidacion hecha por Vd. el 5 de Diciembre de 1941 de la deuda que este contrajo, de Vd. por cierto prestamo en metalieo que le dio bajo mi garantia consistente en hipoteca. Como Vd. trata de cobrar intereses sobre el mencionado saldo hasta la fecha en que se pague el mismo a partir desde el 1.º de Enero de 1944, permitame que le suplique encarecidamente apelando a su buen corazon y reconocida generosidad, deje Vd. de cobrarme esos intereses. En apoyo de esta suplica someto a su buen criterio lo siguiente: 1.º, mi buena voluntad, diligencia y prontitud en nniquitar al citado saldo; 2.º el motivo, como Vd. lo sabe, se tuvo que contraer la citada deuda sin. ningun provecho para mi, antes bien me ha causada molestias y apuros para pagarla completamente, y 3.º durante la ocupacion japonesa en Cebu y estando yo ya refugiado en Manila le escribia de vez en cuando a mi dicho hijo Jesus y siempre le recordaba que procurara hacerlo por todos los raedios, sabiendo yo que el disponia de bastante dinero; lo cual demuestra a Vd. que la prealudida deuda me ha tenido en constante preocupacion, realizandose por ultimo mis temores de que al fin habria yo que pagar casi a la deuda entera.

Como Vd. muy pronto se va a marchar de este nuestro pais, concedarae Vd. lo que le pido en la precedente suplica como un reeuero, imperecedero para mi, de nuestra buena amistad. Le deseo un feliz viaje, asi como una feliz estancia en el pais donde establecerse, con buen exito ademas en sus negocios. Disponga como gusto de aalfmo. amigo y servidor. (Fdo.)”

Scarcely four months before the execution of the deed of sale, Don Mariano was residing in Calapan, Mindoro, in the house of Rosario Cui, and while there he received several letters

from his daughter-in-law, Carmen Gomez, wherein in a very expressive and persuasive manner she asked her father-in-law, Don Mariano, to extend a helping hand to his son Jesus Cui, who was then confined in the stockade of the military authorities in Leyte for collaboration, so that he may get his provisional release by putting up a bail bond for him. Because Jesus Cui, his son, had embarked him into some commercial venture even before the war which resulted in a disastrous failure and made him suffer a loss of nearly P25,000, aside from the undertaking he assumed as a surety for the payment of a loan of P3,000 which Jesus had contracted from Don Ramon Aboitiz on January 27, 1941 which Jesus failed to pay, all of which made him bitter and resentful against his own son, Don Mariano turned a deaf ear to the plea of Carmen stating in a language as forceful as it is clear the reasons for his attitude. These reasons were expressed by Don Mariano in two letters dated November 11, 1945 and November 22, 1945 which are also herein reproduced for ready reference, omitting the letters- of Carmen, which are referred to therein, for being unnecessary for our purpose. Note that the person named Chong appearing in the letters is the nickname given to Jesus, son of Don Mariano:

“Calapan, Mindoro Nbre. 11, 1945

MI ESTIMADA MAKING —

Recibi el 9 del actual tu carta, fechada el 21 de Obre. ppdo y me entere de su contenido.

Empiezo dandote las expressivas gracias por su interea y buen deseo por mi salud, que ya no es tan buena como antes; tengo ya mis achaques a causa de mi vejez que va avanzando cada dia mas; no puedo esperar ya buena salud.

Me haces una apologia en favor de tu marido Chong, mi bijo, alabandole como un buen hi jo; oomprendo que lo hagas, porque la pasion te ciega: pero no me lo digas a mi que conozco muy a-fondo a Chong. Nunca le he conocido a Chong como buen hijo mio, pues me ha dado el los mayores disgustos que he tenido en mi vida. Mis mejores amigos que estaban al^ tanto de la vida de Chong y de sus fracasos en los negocios y con quiones a veces me desahogaba, me echaban a mi la culpa porque era yo demasiado apasionado por el. Ahora que llegado a ser pobre,

10 comprendo y lo lamento, y me recuerda de lo que me dijo a mi tia Benigna, ya difunta (q.e.p.d) un dia, muy formalmente y en serio, que presentia

que yo a la vez me quedaria pobre y me aconsejo que tuviera mucho cuidado en administrar mis bienes con prudencia.

Siento mucho tener que decirte que no me encuentro en condiciones para prestar la fianza que me pides en favor de Chong; primero, porque no dispongo de bienes inmuebles para constituir la fianza y segundo, porque si bien es verdad que me quedan solares en la calle Manalili de esa Ciudad, pero el gravamen de hipoteca sobre estos solares esta sin cancelarse aun en el registro de propiedad, lo cual tendra aun bastante tiempo, y por otra parte, me reservo los mismos, siempre libres, para poder disponer de ellos cuando fuere necesario, para atender mis gastos. Dispensame, pues, que no pueda complacerte en lo que me pides. Ahora le escribo a nene para que te envíe esta carta como me lo pides.

En retorno Yre y Nenita te envian sus recuerdos.

Termino deseando a ti y Nene siempre buena salud y enviando a este un carinoso beso y a ti.

En sincero afecto de tu suegro

MARIANO CUI"

Calapan, Mindoro

Nbre. 22, 1945

ME APRECIABLE MAMIKG —

Recibe el 20 del actual por correo tu carta escrita ya allí en Manila y me apresuro a contestartela.

Ya habras recibido y te habras enterado ya de mi carta, fecha 11 del actual. Contestando la tuya anterior portador de aquella mi nieto Liling, que se marchó de aquí para allí el sábado pasado.

Siento mucho tener que decirte que insisto en mi negativa de set fiador de Chong en la forma indirecta que se me propone por los que negocian en prestar fianzas; yo que he sido juez conozco el alcance de esa fianza indirecta. Me he olvidado de decirte los solares míos en la Calle Manalili, Cebu, están aun ravadas por la

fianza que yo otorgue a favor de Don Bamon Aboitiz para garantir el prestamo, que este hizo a Chong, de TRES mil PESOS, que creo que estan sin pagar aun y que yo como burro de carga tendre que pagarlos. Debes, pues dejarme ya en paz porque tengo mala pata en ser fiador de Chong. Estoy pidiendo a Dios que me de medios para poder ayudarle. Temo, ademas, que Dios me castigue haciendo mal uso de los pocos bienes que me ha dejado, para mantenerme durante los pocos anos de vida que me va considiendo aun y para no vivir pidiendo limosna, ya que de mis hijos poco puedo esperar.

Agradezco mucho tu oferta de que cuando os establecias alii en Manila para residir permanentemente me destinares una habita-cion para mi, y me reservo tal oferta para cuando sea eonveniente aceptarla.

Sin otra cosa mas, afectuoso recuerdos a Chong y a ti mi aprecio sincero.

Tu suegro,"

Rosario Cui not only testified that Don Mariano was still good, and of sound mind when he lived with her for eighteen months from September, 1944 up to February, 1946, and for another four months from July, 1946 to October, 1946 in Calapan, Mindoro, but she also sustained correspondence with Don Mariano even as late as the year 1947. Hereunder we transcribe Don Mariano's letter to Rosario on July 14, 1947:

"Cebu, Julio 14, 1947

Sra. ROSARIO C. DE ENCARNACION
CALAPAN, MINDORO
MI QUERIDISIMA HIJA —

Siento mucho que el no haber tu recibido carta mia desde que he llegado aqui os haya preocupado tanto artibuyendolo a mi falta de buena salud. Gracias a Dios no fue asi.

A la semana despues de haber llegado he recibido una carta tuya, disculpandote de no haber tu podido despedirnos abordo del barco en que ibamos con motivo de las fuertes lluvias que cntoncea cayeron. Te conteste que habias hecho muy bien, teniendo tu una salud muy delicada para cogerte unas mojaduras de f unestas con-secuencias para ti.

A mediados de mayo ultimo calcule que estarias aun en Manila a consecuencia aun de la operacion de tu matriz; pero no sabiendo que direction poner en mi carta a ti desisti de escribirte.

Guanta bondad y generosidad en el arreglo de mi cuarto o habitacion. Aunque no lo veo aun, os lo agradezco ya de todo corazon. Debe de estar ya muy confortable, y sin las goteras que tanto me molestaban. Espero poder volver aun alii en cuanto se termine estos asuntos.

Te deseo que se te desaparezca pronto la debilidad de tu corazon para que no tengas mas inyecciones de alcampor.

Envio mis mas afectuosos recuerdos a Yre y chiquillos.

Te da un fuerte abrato tu padre que entranablemente te quiere.”

Another interesting circumstance is the discussion which Jesus Ma. Cui had with his father Don Mariano on April 20, 1946 relative to the sale of the lots in question. It should be noted that when Jesus came to know of that sale he could not refrain his anger feeling that he had been ignored or the subject of discrimination on the part of his father and to give vent to his feeling he wrote to him on March 20, 1947 a letter, copy of which was marked Exhibit M-2, wherein he appealed to him (his father) to give him and his other children an opportunity to buy the properties in question, to which letter Don Mariano answered with another dated April 22, 1947 wherein he apparently gave in to the demand of Jesus subject to certain condition. As the evidence shows, Don Mariano came to answer the letter of Jesus in this manner: Don Mariano discussed the matter with his son Antonio showing to him the letter of Jesus on which occasion Antonio said: “Bueno, papa, si tu crees que en eso el esta empenado y si quieres darle a el y el ha dicho a ti que el va a hacer todos los medios para conseguir dicho terreno, puedes hacer todo lo que quiera con tal de que me devuelvas mi dinero que yo habia pagado porque era dinero de mi esposa.” To this Don Mariano answered: “Vamos a ver primero, que es lo que van a contestar a la carta que voy a mandar.”

The letter thus referred to is the one sent by Don Mariano to Jesus, Exhibit I, wherein the former made known to Jesus that he was willing to give to all his children equal opportunity to buy the lots in question subject to the condition that his son or daughter who is not able to pay his debt or obligations or has no money with which to pay them would be

automatically excluded from the sale. The evidence also shows that neither Jesus nor the other children who wanted to participate in the sale took the trouble of answering the letter nor made known their desire as to the proposition of their father, and such silence is undoubtedly due to the fact that they were not in a financial condition to comply with the condition imposed in the letter. In fact, according to Antonio Cui, such is the predicament in which his brothers were situated as shown by the fact that Jorge at that time was indebted to his father in the amount of P6,000, Jesus in the amount of P18,000, Jose in the amount of P14,000, while his other brothers did not have the necessary means to take part in the sale. The facts unfolded in connection with, this incident constitute a clear indication of the state of mind then enjoyed by Don Mariano for he took the precaution before Answering the letter of Jesus of discussing the matter first with his son Antonio who was the one mostly affected by the decision he was about to make considering the menacing attitude and the incessant demand of Jesus regarding the transaction. Only a person of sound mind could have adopted such precaution and circumspections. The deed of sale Exhibit A was executed by Don Mariano Cui, Antonio Cui and Mercedes Cui de Ramas on March 8, 1946 in the city of Cebu, and by Rosario Cui and her husband Dr. Ireneo Encarnacion in the City of Manila on March 20, 1946. The consideration of the sale was P64,000 plus the reservation of the right in favor of Don Mariano "to enjoy the fruits and rents of the same" as long as he lives. It appears however that, while in said deed of sale it is stated that Don Mariano has acknowledged receipt of said consideration of P64,000, the same is not true with regard to the share of Rosario Cui. So Don Mariano went to Calapan, Mindoro in July, 1946 to collect from Rosario her share of the purchase price amounting to P20,000. Rosario then excused herself from going ahead with the sale alleging as reason that she needed what money she had to rehabilitate her electric plant in Calapan and also because Cebu was very far from Mindoro where they had already their permanent residence. Not being able to pay her share in the consideration of the sale, Don Mariano demanded from her the resale of her interest. This was done when she went to Manila on October 11, 1946 to execute the deed of resale in favor of Don Mariano. This attitude of Don Mariano is very significant in so far as his state of mind is concerned. It shows that he was fully conscious of what was transpiring and of the transaction he was executing so much so that he went to the extent of demanding from Rosario the resale of her interest when she failed to pay her share in the consideration of the sale.

There are other letters and documents which Don Mariano had prepared and executed in the neighborhood of the time the deed of sale in question was executed which also depict the mental condition that he possessed at the time, and to show this we can do no better

than to quote what the lower court said on this point:

“Ademas de lo que ya dejamos expuesto, Don Mariano Cui ejecuto varios actos que tambien impugnaban la contension de que el ya estuvo mentalmente incapacitado al otorgar el Exh. A. Poco antes y tambien despues de otorgar dicha escritura, el escribio varias cartas a sus hijos y otorgo varios documentos. Entre las cartas figuran el Exh. 4, <|ue esta dirigida a Jorge, lleva la fecha 24 d

Una lectura de las cartas arriba mencionadas nos lleva a la necesaria conviccion de que durante el periodo en que se escribieron las mismas, o sea hasta el mes de Julio de 1947, Don Mariano Cui aun tenia el pleno goce de sus facultades mentales, pues de otro modo, el no podia expresarse con tanta claridad y precision en los asuntos que trataba en dichas cartas. Con respecto a los documentos arriba referidos, los mismos, son de tal naturaleza e importancia, que no se podian haber otorgado por Don Mariano si el no estaba en su cabal juicio. El Exh. S fue presentado por los mismos demandantes, y esta circunstancia, naturalmente, pre-supone que ellos admiten que Don Mariano Cui estuvo mentalmente sano al anotar los asientos en dicho memorandum, muchos de los cuales tuvieron lugar ya despues de otorgarse el documento- en cuestion Exh. A.”

It is obvious from the foregoing discussion that Don Mariano signed and executed the deed of sale Exhibit A not only at a time when he was still in the full enjoyment of his mental faculties, but also under conditions which indicate that he knew what he was doing and, as a consequence, it cannot be said that he has entered into the transaction without his consent or under a misapprehension that the document he was signing was not the sale of the properties in question but one merely pertaining to their administration.

In connection with the contention that the deed of sale Exhibit A was executed by Don Mariano under circumstances which point out that he has done so because of undue influence on the part of the defendants, counsel for appellants mentions the following circumstances: (1) Don Mariano was already 83 years old, he was the father of the vendees, and at the time of the sale or long before it was consummated, he was living with the vendees; (2) one of the vendees, Antonio Cui, was his attorney in fact and lawyer; (3) the vendor and the vendees had had ,obviously confidential' family and spiritual relations; (4) the vendor was suffering from mental weakness; and (5) the vendor was in financial

distress. The presence of undue influence, according to appellants, is further shown by the execution of the mortgage in favor of the Rehabilitation Finance Corporation, the extra-judicial partition Exh. 1-a, the partition of the properties in question, the alleged oral waiver of usufructuary rights, and the explanatory statement Exhibit 34, which acts, it is claimed, in which Don Mariano was supposed to have taken part and which were all masterminded by Antonio Cui, show that Antonio Cui could get from his father whatever he wanted.

There is however no concrete proof that may substantiate this claim of undue influence. , The only direct evidence on the matter is the testimony of Jesus Cui which in the main is based on mere conjecture and not on actual facts. The circumstance that Don Mariano Cui was then living in the house of Mercedes Cui when the deed of sale was signed does not necessarily imply that he was made to sign it under the insidious machinations practiced on him by his daughter. On the contrary, the evidence shows that Don Mariano lived most of the time before the execution of the sale with his other children and not necessarily with herein defendants. Thus, according to the testimony of Jesus Cui himself, during the Japanese occupation, or from 1942 to 1943, his father lived in the City of Cebu. During the month of September, 1943, he went to Manila and lived in the house of his daughter Lourdes Cui de Velez, where he stayed up to September, 1944. Then he went to Calapan, Mindoro to live in the house of his daughter Rosario where he stayed up to February, 1946 when he returned to Cebu. It was only then that he began living in the house of Mercedes Cui. In other words, he was barely one month in the house of Mercedes Cui when the deed of sale was executed on March 8, 1946. There is therefore no basis for concluding that said deed of sale was executed simply under the undue influence of Antonio Cui and Mercedes Cui. The fact that about six days before the sale Antonio Cui was made by Don Mariano Cui his attorney in fact could not mean anything unusual for he was then getting old and he needed one who could help him administer the properties of his deceased spouse, and the choice fell on Antonio because he was the only lawyer in the family. And if to all this ^re add that Don Mariano was then in full enjoyment of his mental faculties, as we have already pointed out elsewhere, it would be presumptuous, if not unfair, on our part to affirm, as appellants want us to do, that he allowed himself to do an act which is not fully in accord/with his free and voluntary will.

We will not take up the claim that the deed of sale Exhibit A was executed without mediating any consideration on the part of the vendees. If this were true ihen said deed would be void or inexistent for it would then be a fictitious or simulated contract. This claim is merely predicated on the documents Exhibits G and H and the declarations of Rosario Cui and Jesus Ma. Cui. We will briefly discuss this evidence.

Exhibit G is an alleged written statement made by Don Mariano Cui on *January 24, 1949* which reads as follows:

“A quien corresponde:Habiendome enterado que hoy existe un lio entre mis hijos en el Juzgado sobre mis propiedades y los de mi difunta esposa, y sobre todo porque el transpaso de las misma a mi hijo Antonio Ma. Cui y a hija Mercedes Cui de Ramas no se halla aun p&gad&por los mismos, es mi deseo que el pleito entre mis hijos sea inmediatamente zanjado y todas participen por igual dichos bienes.

Y para que asi consta firmo esta declaration en la Ciudad de Cebu, hoy a 24 de enero de 1949.

(Fdo.) Mariano Cui”

Rosario Cui, testifying on the circumstances surrounding the preparation of said Exhibit G, said as follows: Sr. Pimentel:

P. Ayer declaro usted sobre este Exhibit G que, segun usted, esta firmado por su Padres?

R. Si, senor.

P. Como llego a su poder este documento?

R. Esto me dio mi papa; sabe usted cuando estaba tratando con mi hermano, este me insulto y estaba y Uorando, y despues se fueron al cine; y entonces dijo el; Deja Vd. y mande preparar una orden mia de que yo quiero que se termine ese asunto y que se arregle entre ustedes y no me gusta que haya pleito y yo voy a firmar y se preparo eso.

P. Usted mando preparar el exhibit G en la localidad?

R. Si, senor, con el Sr. Jayme.

P. Donde lo firmo este exhibit G?

R. En la casa de mi hermana Mercedes. Cuando lo firmo estabamos los dos, mi marido y yo.

P. Su hermano de usted estaba presente?

- R. Estaba en casa mi' hermana Mercedes, pero no estaba delante. Mi hermano- estaba ausente. Cuando se hizo este, debia haberse firmado el 24, pero era por suplica de mi papa, y habia mucha gente, y ademas en aquel dia no queria dar disgustos, y cuando nos marchamos, le dije: "Papa, esta aqui el papel que me ha entregado, que voy a hacer", y dijo: "voy a firmarlo."
- P. Eso fue cuando? s
- R. El enero 25.
- P. Sabiendo usted que su padre vivia en la casa de Mercedes por que no llamo usted a Mercedes para ssr mas legal?
- R. No me acuerdo de eso.
- P. Ni siquiera el esposo de su hermana, el Doctor, Hamo usted para que presenciara la firma de este Exhibit G?
- R. No me acorde de eso. (pags. 162-B, 163 yl64, transcripcion.)

If we would give credit to what document Exhibit G literally says, we would indeed come to the conclusion that Antonio Ma. Cui and his sister Mercedes, vendees of the property, have not as yet paid the consideration of the sale to their father Don Mariano, but the testimony of Rosario Cui itself belies that such was the real intention of Don Mariano when the statement'was allegedly made. According to Rosario Cui, when Don Mariano was informed that a case was brought to court to seek the / annulment of the sale of the Manalili property and she informed him of the attitude of the other children, Don Mariano said: "Deje Vd. y mande preparar una orden mia de que yo quiero que se termine el asunto y se arregle entre ustedes y no me gusta que haya pleito, y yo voy a firmar y se preparo eso." Then she caused that statement to be prepared by Atty. Jayme which was signed by Don Mariano in the house of Mercedes. If we were to believe the testimony of Rosario Cui, we would find that the only wish of Don Mariano was to have the litigation terminated and amicably settled and that nothing was said about the alleged non-payment of the consideration. . And it is strange that the statement was signed in the house of Mercedes Cui and the latter never came to know about it before it was presented in court. It is apparent that the whole thing was a concoction of some of those interested in winning the case which was already pending in court by inserting something that might serve as basis for the nullification of _the sale; and our suspicion is strengthened when we consider that that statement was allegedly signed at a time when, according to Rosario Cui herself, her father was already mentally infirm, so much so that about one month thereafter he was declared incompetent and mentally incapacitated.

The document Exhibit H is an alleged letter of Don Mariano to his son-in-law, Dr. Irineo Encarnacion, husband of Rosario, dated January 30, 1959, wherein Don Mariano apparently

added at the foot the following statement: "PD. Quizas te podre pagar cuando me paguen ellos Nene Jos solares de Manalili." If we will give credit to the above statement, we would also conclude that the vendees have not paid the consideration of the sale of the Manalili property. Again we can say that such cannot represent the clear will of Don Mariano if we want to be consistent with our finding that at that time he was no longer in possession of his mental faculties. Apparently, this is another scheme employed by Rosario Cui and her husband to bolster up their case seeking the annulment of the sale.

But the most serious attempt to show that the defendants did not pay any consideration for the sale of the lots in question is the story that is now being brought to bear on the sale of the San Jose property by Don Mariano to his daughter-in-law, Elisa Quintos, wife of Antonio Cui, on August 31, 1944 which, it is alleged, does not show on its face the true consideration paid by Elisa to Don Mariano regarding said property. In relating the story relative to this transaction, the picture which counsel for appellants wants to portray is that the true consideration paid by Elisa to Don Mariano is the sum of P125,000, and not simply P50,000 as it was made to appear therein, and, therefore; when the deed of sale was executed on March 8, 1946 no actual consideration passed from Antonio Cui to Don Mariano because the latter was not then owing any amount either to said Antonio or to his wife Elisa Quintos.

Before discussing the details concerning the sale of the San Jose property as narrated by counsel for appellants, let us first take note of the version of Antonio Cui as to how he came to pay the consideration of P21,333 assigned to him in the transaction. Antonio Cui testified that of the said sum of P21,333 representing his share in the consideration of the sale, P1,333 was advanced in his favor by his sister Mercedes as shown by the receipt Exhibit 24 issued by Don Mariano in favor of the latter. The balance, of P20,000 represents settlement of the debt his father then owed to his wife Elisa. This indebtedness, according to Antonio, arose in the following manner: On June 10, 1935, the conjugal partnership of the spouses Don Mariano Cui and Dona Antonia Perales contracted an obligation of P80,000 with the Filipinas Life Assurance Co., Ltd. secured by a mortgage on real estate belonging both to the conjugal partnership and to the estate of Don Mariano. On March 23, 1942, the company made a demand on Don Mariano for the payment of the obligation which was then increasing in view of the accumulation of the interests. In order that he may settle this obligation, Don Mariano asked his son Jesus Cui to look for a buyer of the San Jose property in Cebu City.

Apparently, Jesus made efforts to look for a buyer as shown by several letters and telegrams he sent to his father regarding the matter so much so that Don Mariano, acknowledging said

efforts, sent to him on October 5, 1943 a letter thanking him for the interest he was displaying and stating that he could keep for himself whatever amount he might secure in excess of the sum of P90,000 which at that time was the totality of the obligation (Exh. 49). But since two years had passed and nothing concrete came from the efforts exerted by Jesus, Don Mariano had to turn for help to his son Antonio. Antonio agree to help and said that he would talk to his wife about it. The best way he and his wife found to raise the money was to sell the property his wife had in Malate, City of Manila, for the sum of P300,000. Of this amount, they gave to his father the sum of P125,000 to cover his needs and obligations. With this money, Don Mariano paid his debt to the insurance company of P94,736.93, including interests, deducted the sum of P5,000 representing the amount spent by him for the wedding of Antonio and Elisa, and applied P50,000 as consideration for the sale to Elisa Quintos of the house and lot at San Jose street in Cebu City. And in recognition of the help extended to him by Antonio and Elisa, Don Mariano acknowledged in their favor the sum of P70,000 as a loan. The deed of sale of the San Jose property to Elisa Quintos was executed by Don Mariano Cui on August 31, 1944 with two of his children, Lourdes Cui de Velez and Jorge Gui as witnesses. And when the sale of the lots in question came, it was agreed that the loan of P70,000 be reduced to P20,000, Philippine currency, in deference to the request of Don Mariano, which amount, in addition to the sum of P1,333 advanced by Mercedes, became the consideration paid by Antonio Cui for his share in the transaction. This is the explanation given by Antonio of how he came to pay the consideration of the sale, and apparently this is supported by the same deed of sale wherein Don Mariano acknowledged having received the total consideration (Exhibit A).

Appellants, however, do not seem to agree to this narration for they do not give faith and credit to the explanation given by Antonio Cui as to how he came to pay his share in the consideration of the sale, and to show that Antonio cannot be truthful and that the sale of the San Jose property, as well as that of the lots in question, are but the product of his insidious scheme and manipulations to serve his own selfish interests, they brought forth in this case certain documents and telegrams tending to show that Don Mariano could not have intended to sell the San Jose property for less than the amount of his obligation to the insurance company more so when he had received offers for the purchase of said property in the amount of not less than P150,000. Thus, an attempt was made to show that on August 25, 1944, or five days before the sale to Elisa Quintos was consummated, Paulino Gullas offered to buy the property for P150,000. There was also an attempt to show that at about the time the sale was being made to Elisa Quintos of that property, Sergio Osmena, Jr. also made an offer in the same amount of P150,000.

While these facts are true because they are supported by unrefuted evidence, it is however also true that those offers came when the negotiation between Don Mariano Cui and: Elisa Quintos had already been completed. It should be borne in mind that the authority given by Don Mariano Cui to Jesus Cui to sell the property was given even as early as 1942 and despite the lapse of two years nothing concrete came out in spite of the efforts made by Jesus to look for a buyer, and so Elisa Quintos had to sell her property in Manila just to please and accommodate her father-in-law, Don Mariano. The offer, therefore, of Paulino Gullas or of Sergio Osmefia, Jr., even if for the sum of P150,000, came late, and under the circumstances, Don Mariano had no other alternative, as any other decent man would have done, than to reject the offers and maintain the sale, he made to Elisa even at the sacrifice of some material advantage in his favor. He wrote to Jesus on August 7, 1944 (Exhibit 52) and told him that he had already sold the San Jose property to Elisa assuring him at the same time that although the price paid for it was not high, still he considered the sale to his advantage as Elisa and Antonio spontaneously reserved in his favor the right to occupy for life any. room he may choose in the same house included in the transaction when he should return to Cebu to live there, a privilege which, Don Mariano knew no other buyer would be in a position to offer. This explains somewhat this apparent incongruity in the transaction. This consideration may really appear low especially when done in Japanese currency, but at the same time we cannot overlook the fact that some moral factor has played an important part in the transaction. At any rate, that is the consideration that appears in the document (Exhibit R), and its genuineness and due execution is not now disputed. We are, therefore, constrained to consider it on its face value. The consideration paid by Mercedes Cui of her share in the sale in question is also disputed by appellants who claim that she has not paid any amount and that the explanation she has given as to how she came to pay said consideration is not worthy of credence. Mercedes Cui, on this matter, testified that before her father Don Mariano left for Manila in the month of July, 1943, he had been taking from her on several occasions sums of money which reached a total of P14,000; that in February, 1946, her father returned to Cebu and she again gave him the sum of P2,000, making a total of P16,000, the money taken by her father; that after receiving the sum of P2,000, her father offered to sell her 1/3 of the interest in the three lots in question, which she accepted; that days before she signed the deed of sale Exhibit A, she gave her father the sum of P6,666, of which P1,333 were given for the account of her brother Antonio Cui, and the sum of P5,333 was applied to cover the balance of her share in the consideration to complete the amount of P16,000 previously taken by her father; that in acknowledgment of the receipt from her of said amounts, her father executed the receipt Exhibit 24 in his own handwriting, and days after, she was made to sign said deed of sale;

and that her father did not include in the sale her other brothers and sisters because he knew their precarious financial situation.

The weakness which appellants find in this explanation given by Mercedes Cui lies in that she has not been able to produce any receipt showing the deliveries of money she claimed to have made to her father. This may be true, but this was explained by her saying that it has never been her habit to ask for receipt from her father for any money she may have given him, unlike her sister Rosario who has the habit of asking for receipts. On the other hand, she claims that her payment of the consideration cannot now be disputed for Don Mariano has expressly acknowledged having received it in a document written in his own handwriting, as evidenced by Exhibit 24, the genuineness of which is not disputed. And there is one circumstance that bolsters up this claim, which also holds true with regard to Antonio Cui, and that is the attitude shown by Don Mariano when Rosario Cui has not paid her consideration in the sale. It should be recalled that when Don Mariano came to know this fact, he went to Calapan, Mindoro, where Rosario was residing, to demand payment from her, and when she failed, he asked her to execute a deed of resale in his favor. If Antonio or Mercedes, as appellants now claim, has not paid his or her share in the consideration, Don Mariano would have also demanded from any one of them the resale of the property, in the same way that Rosario was required. The fact that Don Mariano did not do so shows that both paid their shares to his full satisfaction.

But appellants are not yet satisfied with this reasoning. They insist that Mercedes has not paid any consideration because, they contend, if it were true that she has given her father the different sums of money she claims she has given, which amount to P16,000, the receipt of said amounts would have been noted by Don Mariano in the diary Exhibit KK which was kept by him during the years 1942 to 1945 wherein several entries appear of different sums of money received and disbursed by him for sundry expenses. When these alleged sums were not noted down in said diary, they contend, it is because they are not true.

If we were to believe the testimony of Jesus Ma. Cui that his father had the habit of writing down in said diary all the receipts and expenses he makes daily up to the last centavo, the contention may be correct, considering that the sums of money delivered by Mercedes do not appear in said diary. But that statement of Jesus Cui is an exaggeration for, as affirmed by Antonio Cui, not all the entries appearing therein are in the handwriting of Don Mariano, nor is it true that all the receipts and expenses he makes everyday are noted down therein, for the truth is that there are many money transactions and expenses made by Don Mariano during the period of 1942 to 1945 that have not been recorded therein. Thus, the expenses

and receipts had by Don Mariano while he was in Manila, do not appear therein, nor those incurred by him in his travels from Manila to Calapan, and vice-versa. Nor do they appear therein the expenses incurred by Don Mariano for his son Jorge and his family when they went to Calapan; neither does it appear the loan of P3,000 made to Miguel Ortigas. It does not also appear the sum of P18,000 borrowed from him by Jorge while they were in Manila as testified to by the latter.

In connection with this diary, we may also point out the suspicious circumstances surrounding its presentation in court as evidence. It appears that this document was presented by Rosario Cui who testified that she received it from her father after Mercedes had already testified in this case, which was on September 30, 1949. According to her, Don Mariano on that occasion gave her instructions as to where to get said document and what to do with it. She said that when she talked with her father about the claim of Antonio that the consideration he paid was P70,000 which were reduced to P20,000 upon his request, her father said: “despues me dijo mi papa que bus-cara en sus libros, porque el tenia un libro diario donde apuntaba sus gastos y tenia varios cuadernos todavia alii pero yo no quise sacar todo; entonces el me dijo que yo lo llevara y lo utilizara para comprobar los gastos y las en-tradas durante esos afios.” (p. 112, Memorandum for Appellees). What Rosario has attributed to her father as regards the use of the diary Exhibit KK is hard to believe considering that by that time, September 30, 1949, Don Mariano could no longer hold such a coherent conversation and much less give instructions as to the best way they could make use of the diary, considering that Don Mariano at that time has already been declared mentally incapacitated. The presentation of said diary can have no other meaning than that it is an eleventh hour attempt to bolster up the claim of appellants that the deed of sale Exhibit A lacks consideration.

As an additional argument to nullify the deed of sale Exhibit A, even partially, in the supposition that all their previous arguments would prove of no avail, appellants raise the question that said sale should be invalidated at least in so far as the portion of the property sold to Antonio Cui is concerned, for the reason that when that sale was effected, he was then acting as the agent or administrator of the properties of Don Mariano Cui. In advancing this argument, appellants lay stress on the power of attorney Exhibit L which was executed by Don Mariano in favor of Antonio Cui on March 2, 1946, wherein the former has constituted the latter as his “true and lawful attorney” to perform in his name and that of the intestate heirs of Dona Antonia Perales the following acts:

" **** to administer, sell, mortgage, lease, demand, claim, represent me and the intestate heirs, in all meetings of corporations, associations, of which my or their presence is required, sue for, collect, cash, indorse checks drawn in my favor or of the intestate heirs against any person or entity or bank, and1 sign all documents, that I and or the intestate heirs to which X am the administrator are entitled to; giving and granting unto my said attorney full power to perform and to make everything necessary to be done or which he believes to be necessary or beneficial for me and the said heirs as fully and to all intents and purposes as I might or could do if personally present, with full power of substitution, and revocation, hereby granting ratifying all that he or his substitutes shall lawfully do or cause to be done by virtue of these presents."

While under article 1459 of the old Civil Code an agent or administrator is disqualified from purchasing property in his hands for sale or management, and, in this case, the property in question was sold to Antonio Cui while he was already the agent or administrator of the properties of Don Mariano Cui, we however believe that this question can not now be raised or invoked for the following reasons.

(1) This contention is being raised in this appeal for the first time. It was never raised in the trial court. An examination of the complaints, both original as well as amended, will show that nowhere therein do they raise the invalidity of the sale on that ground nor ask as an alternative relief the partial revocation of the sale in so far as Antonio's share is concerned because of the alleged relation of principal and agent between vendor and vendee. It is undoubtedly for this reason that the trial court has not passed upon this, question in its decision. And considering that under Section 19, Rule 48, of our Rules of Court, an appellant may only include "In his assignment of error any question of law or of fact that has been raised in the court below and which is within the issues made by the parties in their pleadings", it follows that appellants are now prevented from raising this question for the first time in this instance.

(2) The power of attorney in question is couched in so general a language that one cannot tell whether it refers to the properties of Don Mariano or only to the conjugal properties of the spouses. However, considering that the appointment was extended to Antonio Gui by Don Mariano so that he may act as agent "for me and for the intestate heirs of the deceased Antonia Per ales", one is led to believe that the power refers to the conjugal properties wherein he had one-half interest and the heirs of Dona Antonia, the remaining half.

Moreover, the power of attorney was executed on March 2, 1946 while the deed of sale was executed on March 8, 1946. They were therefore executed practically at the same time, which makes it doubtful as to whether such sale can be deemed to be within the prohibition of the law.

(3) The prohibition of the law is contained in article 1459 of the old Civil Code, but this, prohibition has already been removed. Under the provisions of article 1491, section 2, of the new Civil Code, an agent may now buy property placed in his hands for sale or administration, provided that the principal gives his consent thereto. While the new Code came into effect only on August 30, 1950, however, since this is a right that is declared for the first time, the same may be given retroactive effect if no vested or acquired right is impaired (Article 2253, new Civil Code). During the lifetime of Don Mariano, and particularly on March 8, 1946, the herein appellants could not claim any vested or acquired right in these properties, for, as heirs, the most they had was a mere expectancy. We may, therefore, invoke now this practical and liberal provision of our new Civil Code even if the sale had taken place before its effectivity.

The remaining question to be determined refers to the nature of the properties in question which appellants claim belong to the conjugal partnership of Don Mariano Cui and Dona Antonia Perales while, on the other hand, appellees contend belong exclusively to Don Mariano.

In support of their contention, appellants rely on the legal presumption that said properties are conjugal because they were acquired by Don Mariano and his wife during their marriage, and on the testimony of Jesus, Jorge and Rosario Cui, three of the children of Don Mariano, who testified that said properties are conjugal because they have always been of the belief or impression that they belong to the conjugal partnership of their parents. They have not presented any documentary evidence in support of their contention.

It is true that the properties in question were acquired during the marriage of Don Mariano Cui and Dona Antonia Perales and that the same were registered in the name of Don Mariano "casado con Dona Antonia Perales", and as such they are presumed to be conjugal properties (Article 1407, old Civil Code), but this presumption appears here rebutted by conclusive and strong evidence to the contrary. It should be stated that these properties originally belonged to Don Pedro Cui and Dona Benigna Cui, uncle and aunt, respectively, of Don Mariano, which were donated by them to Don Mariano on April 12, 1912 on condition that the latter renounce any further inheritance he might have in the intestate estate of the

donors. And while appellees have not been able to introduce any copy of the deed of donation because the same has already disappeared, the fact however remains that it has been clearly established that such donation has been actually made exclusively to Don Mariano by clear and satisfactory evidence. The following is a brief discussion of such evidence which consists in the testimony of Marta Cui and Generosa Vda. de Jakosalem, both nieces of the donors, and in numerous documents the genuineness of which is not disputed.

Marta Cui, a woman 81 years old, testified that since she was 10 years of age, she lived in the company of her uncle Pedro Cui and aunt Benigna Cui; that during their lifetime these two made donations of their lands to their nephews and nieces subject to the condition that they should renounce whatever share they might have in their inheritance and among the donees was Don Mariano Cui; that the donations were made exclusively to their nephews and nieces, or without including their respective spouses; that the donation made in her favor is contained in the document Exhibit 21; and that the lots in question were donated to Don Mariano Cui to the exclusion of his spouse Antonia Ferales. Examining said donation Exhibit 21 one would find that it was really made exclusive in favor of Marta Cui subject to the condition that she should renounce whatever inheritance she might have from the donors.

Generosa Vda. de Jakosalem, another woman of advanced age who because of unexpected illness was not able to continue testifying, also affirmed that the lots in question were donated to Don Mariano by her uncle Pedro Cui and aunt Benigna Cui exclusively, and this she knows personally because on the same date such donation was made, she also received a donation from the same donors.

Antonio Ma. Cui, testifying on this matter, said: that while he was acting as private secretary of his father Don Mariano before the war, he had an opportunity to see a copy of the deed of donation of the lots in question in his favor (his father), which copy was furnished by the clerk of court, and at the foot thereof there appears a note to the effect that the original of said deed was on file in the record of the cadastral case covering the property; that said document appears signed by the donors Pedro Cui and Benigna Cui, by the donee Mariano Cui and the instrumental witnesses Victor Cui and Dionisib Jakosalem; that said copy having been lost, he went to see the clerk of court to inquire about the original that was on file in the record of the cadastral case but the clerk of court told him that the record was destroyed during the last war; that he then went to the office of the Bureau of Archives to see if he could get a copy of the document but in said office he only

found the notarial register of the notary public Raymundo Enriquez wherein the deed of donation appears recorded; that at his request the chief of said office issued photostatic copies of the pages of the notarial register which contained the annotation relative not only to the deed of donation in question but also to that which pertains to the other deeds of donation executed by the donors Pedro Cui and Benigna Cui (Exhibits 31-a and 31-b); that the entry No. 310 that appears in the copy marked Exhibit 31-b refers to the deed of donation of the lots in question in favor of his father because said entry refers to a property situated in Plaza Washington, Cebu, where his father did not have any other property except that donated to him by his relatives, which was later divided into three lots, and that it is of common knowledge among members of the Cui family that all the nephews of Pedro Cui and Benigna Cui received from them by way of donation several pieces of lands subject to the condition that they should renounce their right to inherit from the donors.

Entry No. 310 which appears in photostatic copy Exhibit 31-b contains under the heading "Nature of Instrument" the following annotation: "Donacion condicional que Jiacen Pedro Cui y Benigna Cui a favpr de su sobrino Mariano Cui de un solar con todas sus mejoras y edificio en la plaza de Washington, Cebu; y la aceptacion del donatario quien agradece a los donantes." In the same entry there also appears that the document was executed on April 12, 1912 by Pedro Cui, Benigna Gui and Mariano Cui, and attested by Victor Cui and Dionisio Jakosalem.

In the photostatie copy Exhibit 31-a, there appear entries Nos. 301, 303, 304 and 305 which refer to the deeds of donation executed by Pedro Cui and Benigna Cui in favor of their nephews and nieces Mauricio Cui, Marta Cui, Victor Cui, Angel Cui and Felicidad Cui. Note that these donations were made exclusively in favor of the nephews and nieces without including their respective spouses and were all executed on April 11, 1912, or one day before the execution of the donation in favor of Don Mariano Cui. The two photostatie copies Exhibits 31-a jand 31-b corroborate the testimony of Marta Cui and Generosa Vda. de Jakosalem to the effect that all the donations made by Don Pedro Cui and Benigna Cui in favor of their nephews and nieces were made to them exclusively or without including their respective spouses, and subject to the condition that they should renounce their right to inherit from the donors.

In addition to the foregoing evidence, there are other documents which strengthen the contention that the lots in question were donated exclusively to Don Mariano Cui. One of them is the inventory prepared by Don Mariano of the properties which belonged to him exclusively and those which belonged to the conjugal partnership, as a result of the death

of his wife Antonia Perales in 1939, N copies of which were furnished to all the children of Don Mariano. In this inventory marked Exhibit 8, under the heading "Bienes propios del esposo superviviente Don Mariano Cui," the following appears: "1.-Un solar compuesto de los lotes 2312, 2313 y 2319, del Catastro de Cebu, con sus mejoras consistentes en una casa de piedra y madera con techo de teja y con una azotea tambien depiedra y madera." In the same inventory under the heading "Bienes gananciales habidos durante el matrimonio de Don Mariano Cui y Dona Antonia Perales," there also appears the following statement: "1. Un edificio mixto de concrete y madera con techo de hierro galvanizado * * * construido un una porcion de terreno, de mil dosientos cincuenta (1,250) metros cuadrados de superficie, mas o menos, la cual forma parte de un solar de mayor extension, situado entre las Calles Manalili y Calderon de la ciudad de Cebu, Cebu * * * y pertenece en propiedad exclusiva al esposa superviviente Don Mariano Cui." This property is the one known as lots Nos. 2312, 2313, and 2319. This inventory was never objected to by the heirs and shows clearly that while the land belongs exclusively to Don Mariano Cui the building constructed thereon was considered as conjugal property.

Another important document is the extra-judicial partition of the properties pertaining to the conjugal partnership of Don Mariano Cui and the deceased wife Antonia Perales, marked Exhibit 1-a, which was signed by Don Mariano and all his children, with the exception of Jorge Cui, who was then in Manila when the document was signed on December 6, 1946. In said document mention is made of the inventory which was prepared by Don Mariano of the conjugal properties belonging to him and his wife, as well as the powers of attorney executed in favor of Don Mariano by his children authorizing him to administer the properties belonging to the conjugal partnership. It is interesting to note that in this deed of partition a relation is made of the conjugal properties as well as of the debts and obligations which were then existing against the partnership and the disposition made of the properties to pay said debts and obligations. It is also interesting to note that the three lots in question are not included in this deed of partition. The fact that all the heirs, with the exception of Jorge, signed this deed of partition without any protest, is a clear proof that they knew right along that said lots were the exclusive property of their father and did not belong to the conjugal partnership. It is true that appellants Jesus Ma. Cui and Rosario Cui, while admitting the authenticity and due execution of the above deed of partition, now contend that they signed the same without being aware of its contents, but this contention can hardly be given credit, for we can not suppose that, referring as it does to an important document which concerns precisely a partition of inheritance, they should sign the same without first ascertaining or satisfying themselves of the nature of the transaction.

Other important documents that may have a bearing on this matter are the inheritance tax return Exhibit 32 and the relation Exhibit 33 of the real properties of Don Mariano Cui for the purposes required by-law relative to the issuance of the Residence Certificate B. The inheritance tax return was filed by Don Mariano Cui in 1939 in connection with the hereditary property left by his wife Antonia Perales and in said return the lots in question were not included, while the relation Exhibit 33 includes said lots because they were deemed by Don Mariano as his exclusive property and as such should be included in the assessment to be made in connection with the issuance of the Residence Certificate B. These two documents, which were prepared by Don Mariano Cui, clearly indicate that the lots in question were always considered by him as his exclusive property.

There can therefore be no doubt, in the light of the overwhelming evidence, testimonial as well as documentary, we have discussed in the preceding paragraphs, that these three lots in question have always been considered not only by Don Mariano Cui, but by his children and other relatives, as his exclusive property, the same having been donated to him by his uncle Pedro Cui and aunt Benigna Cui to the exclusion of his wife Antonia Perales. Consequently, the contention that, in disposing of said property, Don Mariano Cui has appropriated what belongs to his co-heirs, has completely no foundation in the evidence.

Having reached the conclusion that the lots in question were the exclusive property of Don Mariano Cui and that the deed of sale Exhibit A was executed by him freely, intelligently, and with sufficient pecuniary consideration, we deem it unnecessary to dwell on the other points discussed by both parties in their briefs and in their respective memoranda. While these points, vehemently advocated by appellants' counsel, may throw cloud on the due execution of the sale, or may cast doubt on the sufficiency of its consideration, we are however constrained to uphold its validity if we are to be consistent with our conclusion that Don Mariano has executed it while still in the full enjoyment of his mental faculties, considering that he never lifted a finger to dispute it, in the same manner he did with regard to Rosario Cui. No other conclusion is plausible and proper, considering all the circumstances of the case.

Wherefore, we hereby affirm the decision appealed from, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayort Reyes, A., Labrador, Reyes, J. B. L., Endenda, and Felix, JJ., concur.

Date created: March 05, 2015