EMILIO J. GONZALES, AMPARO CARAG AND ROSARIO CARAG VDA. DE BUÑAG, PLAINTIFFS-APPELLANTS, VS. EUSEBIO M. LOPEZ, SOLEDAD L. DOLOR, LEON DOLOR, EUSEBIO LOPEZ, JR., NICANOR CARAG, E...

G.R. No. L-48068. April 15, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Pursuant to the provisions of Section 17 in relation to Section 31 of the Judiciary Act as amended, and Section 3 of Rule 50 of the Rules of Court, the Court of Appeals certified the present case to this Court on the ground that the issues raised are pure questions of law.

The Court of Appeals summarized the facts of the case as follows:

> "The complaint in this case was filed before the Court of First Instance of Rizal for the annulment of a contract relative to the subdivision of a parcel of 100 hectares of land located in Tuguegarao, Cagayan. The principal relevant facts can be stated as follows:
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> "Antonio S. Carag (DECEDENT) was the owner of a parcel of more or less 6,991,921 square meters of land in Tuguegarao, roughly 700 hectares, covered by TCT No. 1278 of the Office of the Register of Deeds of Cagayan. After his death, the date of which is not determined, Sp. Proc. No. 1273 of the Court of First Instance of Cagayan was instituted for the settlement of his estate.
>
> "It would appear that the DECEDENT had six children, namely: AMPARO, ROSARIO, Consuelo, Nicanor, Domingo and Leonor. On May 3, 1963, Leonor had already passed away. She had married, and her husband's surname was Canillas. They had then four living children: Antonio, Angel, Edgar, and Dolores, and perhaps two other deceased children, one named Edna C. Santos and another whose widow is Helena T. Canillas. Domingo, one of DECEDENT'S sons, and Dolores, a daughter of Leonor, have also died since then.
>
> "On the mentioned date of May 3, 1962, a contract was executed under the terms of which 100 hectares of the land of DECEDENT would be converted into a residential subdivision. The contractees who were to take charge of establishing the said subdivision (hereinafter called the 'SUBDIVIDERS'), were Eusebio M. Lopez, Soledad L. Dolor, and Eusebio Lopez, Jr. The first of them, Eusebio M. Lopez, had also since died.
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> "On the part of the owners, who signed as heirs of DECEDENT, the signatories were AMPARO, ROSARIO, Consuelo, Nicanor, Domingo, and, in representation of the deceased Leonor, the contract was signed by Antonio Canillas, Dolores Canillas, and Helena T. Vda. de Canillas. It will be noted that other children, and possibly grandchildren, of the deceased Leonor did not sign the subdivision contract.
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> "On September 19, 1971, AMPARO and ROSARIO (hereinafter called 'Plaintiff Heirs') filed suit against the SUBDIVIDERS in Civil Case No. 151160 of the Court of First Instance of Rizal (the CASE BELOW), praying for the annulment of the subdivision contract on the grounds that said contract was not entered into by the administrator of the DECEDENT's estate; that it was not signed by all the heirs of the DECEDENT; and

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> that it was against public policy and public morals. On September 28, 1972, the complaint was amended to include, as parties defendant, all the heirs of DECEDENT other than Plaintiff Heirs. It can be presumed that all the heirs of DECEDENT then became parties in the CASE BELOW. The newly impleaded defendants can be collectively called Defendant Heirs'.
>
> "The Answer of some of the Defendant Heirs pleaded, inter alia, the affirmative defenses that (a) venue had been improperly laid; (b) that no honest efforts towards a compromise had been made although the suit was between members of the same family; and (c) that the cause of action is barred by prescription. Thereafter, Defendant Heirs moved to dismiss the case mainly on their mentioned affirmative defenses, at the same time asking the lower court to set those defenses for preliminary hearing in accordance with Section 5, Rule 16. On June 6, 1975, the lower court granted the motion to dismiss on the ground that earnest efforts towards a compromise had not been made although the suit was between members of the same family, and that venue had been improperly laid. No evidence, either testimonial or documentary, were submitted by the parties. From the Order of dismissal, Plaintiff Heirs took an appeal, by record on appeal, to this instance." (pp. 125-127, Rollo)

In their appeal, the plaintiffs-appellants assign the following errors:

I

> THE COURT A QUO ERRED IN FINDING THE OBJECTION THAT NO EARNEST EFFORTS FOR COMPROMISE HAVE BEEN MADE IS WELL-TAKEN.
>
> II
> THE COURT A QUO ERRED IN FINDING THAT VENUE WAS IMPROPERLY LAID. (p. 128, Rollo)

The first assigned error appears to have merit. The trial court ruled that members of the same family are quarreling over the estate left by their father and grandfather and, therefore, earnest efforts towards compromise agreement are mandatory before a complaint may be filed in court.

Included as party defendants were Eusebio Lopez, Soledad Dolor and Eusebio Lopez, Jr., designated as "Capitalists" in the contract of May 3, 1962 and whose part therein was "to exercise full discretion in the development, promotion, management and sale of lots in the subdivision subject to all conditions and stipulations contained in the subdivision contract as may be agreed upon by the CAPITALISTS and the OWNERS." Apparently, the said defendants are strangers to the Carag family, the principal parties in the case. Hence, section 1(j), Rule 16 of the Revised Rules of Court which provides that a suit between members of the same family may be dismissed when no earnest efforts under Article 222 of the Civil Code towards a compromise have been made, does not apply.

In the case of Magbaleta v. Gonong (76 SCRA 511), we ruled:

xxx xxx xxx

> "x x x While indeed, as pointed out by the Code Commission 'it is difficult to imagine a sadder and more tragic spectacle than a litigation between members of the same family' hence, 'it is necessary that every effort should be made toward a compromise before a litigation is allowed to breed hate and passion in the family' and 'it is known that a lawsuit between close relatives generates deeper bitterness than between strangers' (Report of the Code Commission, p. 18), these considerations do not, however, weigh enough to make it imperative that such efforts to compromise should be a jurisdictional pre-requisite for the maintenance of an action whenever a stranger to the family is a party thereto, whether as a necessary or indispensable one. It is not always that one who is alien to the family would be willing to suffer the inconvenience of, much less relish, the delay and the complications that wranglings between or among relatives more often than not entail. Besides, it is neither

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> practical nor fair that the determination of the rights of a stranger to the family who just happened to have innocently acquired some kind of interest in any right or property disputed among its members should be made to depend on the way the latter would settle their differences among themselves. We find no cause in the reason for being of the provisions relied upon by petitioners to give it broader scope than the literal import thereof warrants." (at p. 513)

This appeal may, however, be decided on the second assignment of error.

The issue as to whether or not venue was improperly laid with the Court of First Instance at Pasig, Rizal where the annulment of the contract case was filed by the plaintiffs-appellants against the defendants-appellees depends on whether or not the plaintiffs-appellants are bound by Section 20 of the Subdivision Contract which provides that:

> "All suits in connection with this subdivision contract shall be filed with the Court of First Instance of the Province of Cagayan."

The records show that the Subdivision Contract was executed before Consuelo Carag, defendant-appellee herein, became administrator of the estate. Moreover, the records show that the plaintiffs-appellants are signatories to the contract. In their Amended Complaint they alleged:

> "8. That sometime on May 3, 1962, and the period preceeding thereto, defendants and/or their predecessors in interest-mutually helping one another induced and convinced plaintiffs to enter to a subdivision contract wherein 100 hectares of the 700 hectares more or less property of the late Antonio S. Carag under Intestacy was to be segregated and subdivided into lots for sale to the public. A copy of said subdivision contract is hereto attached as Annex "A" and made an integral part of this complaint."

Inasmuch as the plaintiffs-appellants alleged in their complaint that there was fraud in the execution of the Subdivision Contract, the same is merely voidable not void (Article 1390 (2) New Civil Code; Miraflor v. Court of Appeals, 142 SCRA 18; Pangadil v. Court of First Instance of Cotabato, 116 SCRA 347; and Tumalad v. Vicencio, 41 SCRA 143).

Consequently, the subject Subdivision Contract is binding among the parties, until it is annulled by a proper action in court (Article 1390, par. (2) New Civil Code). In effect, the Subdivision Contract is valid between the plaintiffs-appellants on one hand and the defendants-appellants on the other hand, who were signatories thereto until annulled by the court in the very case being filed.

Since, Section 20 of the Subdivision Contract provides for the Court of First Instance of Cagayan to be the venue of all suits in connection with the said contract the annulment of the same filed by the appellants before the Court of First Instance of Pasig, Rizal was properly dismissed by the latter upon motion by the defendants-appellants based on improper venue (Section 1[c] Rule 16, Revised Rules of Court). Section 3, Rule 4 of the Revised Rules of Court provides that "by written agreement of the parties the venue of an action may be changed or transferred from one province to another." We have ruled that this agreement is valid, binding, and enforceable (Villanueva v. Mosqueda, 115 SCRA 904; Hoechst Philippines, Inc., v. Torres, 83 SCRA 297; and Bautista v. de Borja, 124 Phil. 1056).

In addition to the agreement on venue specified in the Subdivision Contract, it should be emphasized that the entirety of the disputed real estate is also in Cagayan. The Carags themselves are members of a prominent family of Cagayan.

WHEREFORE, the instant appeal is DISMISSED for lack of merit. The questioned order of the then Court of First Instance of Rizal which dismissed Civil Case No. 15160 is AFFIRMED. Costs against the plaintiffs-appellants.

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SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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