

REV. CIPRIANO YTURRALDE (DECEASED), SUBSTITUTED BY NENITA YTURRALDE, PLAINTIFF-APPELLANT, VS. DR. RAYMUNDO AZURIN, MRS. CONSUELO G. AZURIN, R.F.C. NOW DEVELOPMENT BANK OF THE PH...*G.R. No. L-22158. May 30, 1969*

Ponente: SANCHEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3aeca15d0b7c/>**SANCHEZ, J.:**

This is a suit[2] to annul a notarial deed of donation inter vivos, covering ten (10) parcels of land in Sibalom, Antique, executed by plaintiff's sister, Carmen Yturralde, in favor of defendant Consuelo G. Azurin, which deed plaintiff himself, a minister of the Philippine Independent Church, signed as a witness and which his nephew Apolonio Yturralde also signed as a witness at plaintiff's instance. Plaintiff's claim is that the execution thereof is tainted with fraudulent misrepresentation - that the document is merely one for the administration of properties, not a donation. The lower court, in its decision of July 8, 1963 penned by His Honor, Judge Conrado O. Honrado, dismissed the complaint, declared the deed of donation legal and valid and Consuelo G. Azurin owner of the donated ten (10) parcels of land, with costs. Hence, this appeal direct to this Court.[3]

Following are the events leading to the donation:

Defendant Consuelo G. Azurin was close to Carmen Yturralde even when she was still a child. Because Baltazara Yturralde, elder sister of Carmen, was the wife of Consuelo's uncle, Pedro Gella, and was her godmother. Everytime she went to Sibalom to visit and stay with her uncle and aunt, she met Carmen who was then staying with Baltazara. She fondly called Carmen Yturralde Tia Carmen. By 1925, Carmen and Consuelo's relationship was closer. For in that year, the Azurins transferred their residence to Sibalom where defendant, Dr. Raymundo Azurin, Consuelo's husband, became the President of the Sanitary Division. Dr. Azurin in time became the family physician of the Pedro Gellas and also of Carmen Yturralde. During the last war, Dr. Azurin, who was a guerilla assigned in Kalibo, Aklan, on a number of occasions had to travel by foot from Kalibo just to be able to administer treatment to Baltazara who was then suffering from cancer of the tongue.

Sometime in 1952, Carmen Yturralde went with Consuelo G. Azurin to Manila to follow up Carmen's claim for backpay and pension with the US Veterans Administration in connection with the services of Carmen's son, Jeremias, a member of the USAFFE who died during the last war. Atty. Jose Azurin, son of the Azurins, then working with the US Veterans Administration, helped Carmen accomplish the required papers, for said claim and submitted the same to the USVA. In 1953, Atty. Azurin had to go to Mindanao, to contact one officer and one enlisted man who certified to Jeremias' record of service, thus completing the paper work in support of the claim. This resulted in USVA giving Carmen a lump sum payment for the backpay of her son, Jeremias, and a monthly pension of P65, later increased to P75.

It is not disputed that on February 13, 1955, Dr. Azurin went to Sibalom on an urgent call because Carmen Yturralde had suffered a stroke. She became partly paralyzed. From then on, Dr. Azurin attended to her.

In the first week of December 1955, plaintiff Cipriano Yturralde came over to the house of the Azurins at San Jose, told them of Carmen Yturralde's desire to see them. The couple went to Carmen's house. Carmen informed them that the reason for the call was that she wanted to donate her properties to Consuelo. Reason for the donation was the fear entertained by Carmen that her brother, Cipriano, a gambler, would only waste her properties if she predeceased him. Carmen then wanted an assurance that from the produce of the lands, the Azurins would support her and her brother, Cipriano, construct a house for them, and repair, put in good condition, and maintain Carmen's family mausoleum. The Azurins accepted. All of these were taken up in the presence of plaintiff.

In the afternoon of that same day, Dr. Azurin went to see Atty. Esdras F. Tayco, grandson of Pedro Gella, and the person agreed upon between Carmen and Dr. Azurin to prepare the deed of donation. The draft was prepared by Atty. Tayco with the use of data taken from the tax declarations and certificates of title obtained by Dr. Azurin from the Provincial Assessor and the Register of Deeds. Dr. Azurin went back to Carmen with the draft. He read the draft to her, explained the contents thereof in the Visayan dialect. Carmen's reaction was: "It is all right, make it clear to avoid trouble." Dr. Azurin returned the draft to Atty. Tayco for the latter to put the deed in final shape.

On December 10, 1955, Dr. Azurin went back to Carmen Yturralde at Sibalom with the deed of donation. Plaintiff and his nephew, Apolonio Yturralde, were there. Dr. Azurin read the document in the presence of plaintiff, translated and explained the contents thereof to Carmen in the Visayan dialect. Having expressed her conformity, Carmen was asked by Dr. Azurin to affix her thumbmark on the document. Plaintiff looked for something hard on which to place the papers. Dr. Azurin helped Carmen imprint her thumbmark. Dr. Azurin then gave the document to plaintiff for the latter to sign as witness. Plaintiff scanned the pages thereof, signed, and in turn asked his nephew, Apolonio, to do likewise. On December 15, 1955, Dr. Azurin brought Atty. Tayco to the house of Carmen to have the deed of donation ratified by the latter. Atty. Tayco read and translated the deed and explained the contents to her. Carmen told Atty. Tayco that she was agreeable to what was stated in the document.

On December 21, 1955, plaintiff went to Manila at Dr. Azurin's expense, stayed in the home of Mrs. Matilde Crespo, daughter of the Azurins. Shortly after plaintiff left, the Azurins had to take Carmen Yturralde to the Antique Provincial Hospital in San Jose so she could be well attended. Carmen stayed there for about a week. After which, at her suggestion, she was taken to the house of the Azurins. Returning from Manila in May 1956, plaintiff stayed with his sister and the Azurins in the latter's home. After one year, plaintiff transferred to Sibalom in the house constructed for him and his sister by the Azurins, who provided him with a servant, gave him rice, money for his food and pocket money. Mrs. Azurin attended to his needs. Carmen, however, continued to live with the Azurins until her death on January 23, 1960.

Back to the deed of donation. That deed stipulates:

"That for and in consideration of the love and affection of the Donor to the Donee which have steadily developed in my heart, which may be explained in the following way and manner:

a) That just after the liberation of the last World War II, the Donee invited me to go with her to Manila to recuperate my health and to forget the hardships of life during the guerilla days. She furnished me all means that I needed, and accompanied me to see what was Manila, and to renew old acquaintances;

b) That she, on seeing that I found difficulties in securing from the USA Government the recognition of military services of my only son, Jeremias, who died in line of duty in Mindanao during the guerilla days, Mrs. Consuelo G. Azurin offered me the professional services of her son, Atty. Jose G. Azurin to look for all necessary proofs and evidences of the military services of my son in Mindanao and then prepared for me a new application for my pension which was duly approved;

c) That due to those services, I was given an accumulated pension and granted further a monthly pension,

without which, my living condition would have been very precarious. That those services were all given me without any monetary consideration;

d) That before receiving any pension, and being bed ridden patient due to paralysis, the Donee extended me as a good daughter could do, sympathetic, moral and mental comfort, besides money aid for almost one year without demanding from me the necessary formal acknowledgment of those amount; and

e) That since the onset of my paralysis, her husband, Dr. Azurin has disinterestedly been attending to me promptly and up to date, sometime advancing money to buy medicines.

THEREFORE, and because of uncertainty of life and its inevitable end, and my desire to demonstrate my act of gratefulness to Mrs. Consuelo G. Azurin and her husband, Dr. Azurin, while able to do so, I, CARMEN YTURRALDE, the Donor herein referred above, in full possession of all my mental faculties, hereby give, transfer and convey, by way of DONATION unto the said Consuelo G. Azurin, her heirs, successors, and assigns, the above-described properties, with all the improvements thereon, and such other personal properties.

That the only condition(s) of this donation are as follows:

1.- That in the meantime that I am living, the donee from the proceeds of said properties shall use them for my care and sustenance and also of my brother, Cipriano Yturralde, if God, in HIS infinite wisdom, may decide I shall die ahead of my said brother, Cipriano Yturralde.

2.- That from the proceeds of my properties above-described, the donee shall take care in the maintenance of the family mausoleum which was constructed by me at the municipal cemetery of Sibalom, wherein the remains of my son, Jeremias, my sister Baltazara and my brother-in-law Pedro Gella are kept and wherein, in the future my remains and that of my brother Cipriano shall also be kept and rested perpetually.

3.- That from the proceeds of these properties, the donee shall also construct a house where I and my brother Cipriano shall live comfortably, instead of repairing from time to time the actual dilapidated and crumbling bamboo house, which is a constant hazard to my personal safety, taking into consideration the paralytical condition of my being.

That the donee, Consuelo C. Azurin, thus hereby receives and accepts this gift and donation made in her favor by the Donor and thus hereby expresses her appreciation and gratefulness for the kindness and generosity of the donor."

At the bottom of the foregoing four-page instrument and at the left hand margin of the first three pages are the signature of Consuelo G. Azurin, the thumbmark of Carmen Yturralde, as well as the signatures of plaintiff Cipriano Yturralde and Apolonio Yturralde as instrumental witnesses.

The Azurins took steps to have the deed registered. They learned that the Torrens titles were with the spouses Mariano Vagilidad and Luz Managuit upon loans from them obtained by plaintiff Cipriano Yturralde. The spouses Vagilidad refused to part with the titles upon the averment that the obligation really was Carmen's, not Cipriano's. This led the Azurins to take two court actions: First a petition in the cadastral proceedings to procure delivery of the titles to them; and Second, upon learning that there was an alleged document of mortgage executed by Carmen Yturralde in favor of the Vagilidades dated February 14, 1956, a civil suit in the Antique court of first instance, with the Azurins and Carmen Yturralde as plaintiffs against the Vagilidades to annul that mortgage which covers some of the donated properties.[4] The annulment of mortgage suit resulted in the lower court's judgment in favor of the Azurins. That case was brought before us on appeal.[5]

1. We first go into the theory advanced by plaintiff in his effort to procure a reversal of the judgment below, viz:

Plaintiff Cipriano Yturralde, brother of the deceased Carmen Yturralde, was the latter's nearest of kin. On

February 13, 1955, Carmen suffered from cerebral hemorrhage. She became a paralytic, and, according to plaintiff, she "could not speak nor stand". A certain Dr. Salumbides attended her. Sometime in November 1955, defendant spouses, the Azurins, visited Carmen. In the course of the conversation, the spouses told Carmen that because she was sick and her brother was already old, they (the spouses Azurin) could administer Carmen's properties. On December 10, 1955, Dr. Azurin again came to Carmen's house with papers in his hand, and without waste of time, "talked to the patient who was not answering", grabbed the thumb of the patient and had it marked on the papers.[6] According to plaintiff, Dr. Azurin then asked him to sign the document as witness, told him that the same was, "for the administration" of Carmen's properties. Plaintiff signed the document and, in his own words, "I [plaintiff] requested this Apolonio [referring to his nephew, Apolonio Yturralde] to sign and he signed also the document." [7] Apolonio in turn claimed that at the time he signed he did not know of the contents of the document, and that an inquiry from his uncle then elicited the following answer: "It was supposed to be the administration of the properties of Carmen." [8]

Plaintiff admits that upon his return in May 1956, he and, his sister Carmen lived in the house of the Azurins; that he transferred to Sibalom in the house constructed for him and his sister by the spouses Azurin; that Carmen continued to live with the Azurins until her death; that the Azurins supported Carmen and plaintiff until Carmen's death on January 23, 1960; and that the Azurins also defrayed the burial expenses of Carmen.

It was on January 26, 1960, after Carmen's burial, that plaintiff allegedly asked Dr. Azurin to settle the accounts of the deceased Carmen Yturralde and to turn over to him her properties so that he could settle Carmen's obligations. Dr. Azurin answered plaintiff by saying that it was not necessary because he, the plaintiff, "was the adopted son of the deceased", to which he remonstrated that "he was the real brother of the deceased." [9] Thereafter, plaintiff approached a certain Atty. Tan to find out what the contents of the document were which Dr. Azurin asked him and his sister to sign. It was only then that he discovered for the first time that the document was not a contract for the administration of Carmen's properties but a deed of donation.

Will this version resist an impartial appraisal?

2. On the question of whether or not at the time the document was executed the deceased Carmen Yturralde knew what she was doing and had the power of speech, evidence there is that clearly supports the affirmative. At that time, Carmen was suffering from hemiplegia, paralysis of the right half of her body. She was bedridden, it is true, but otherwise feeling all right. She could talk coherently, audibly, and properly, could answer questions sensibly, could express her ideas clearly. But if the foregoing from the testimony of the spouses Azurin were not sufficient, there is the evidence coming from Atty. Esdras F. Tayco, the scrivener of the deed of donation, who, unable to accompany Dr. Azurin on December 10, 1955, left blank spaces in the acknowledgment thereof. So Atty. Tayco testified. And then, we find the following from his testimony:

"Q When you saw Carmen on December 15 in her house what did you do in connection with this deed of donation?

A I asked her if she is agreeable with what I wrote in the deed and she is agreeable in signing the deed of donation and she told me that she is agreeable to the deed she executed on December 10, 1955.

Q Did you read, explain and translate to her in the local dialect the contents and the terms of the said deed?

A I explained to her the contents of the document in the local dialect.

Q In other words she was made to understand the contents of the document?

A Yes, sir, I see to it that she understood the contents of that deed of donation." [10]

Implicit in this testimony is that, really, Carmen Yturralde was possessed of the power of speech and her mental faculties. That the testimony of Atty. Tayco rings with sincerity may be gleaned from the following admission on page 17 of appellant's brief: "Se admite que no hubo inteligencia colusiva entre los apelados y el abogado Esdras F. Tayco."

Added weight to the foregoing is the following testimony of instrumental witness Apolonio Yturralde, plaintiff's witness and nephew of plaintiff, viz:

"Q And Dr. Azurin and Cipriano were conversing with each other, is it not?

A Yes, sir.

Q As a matter of fact Dr. Azurin was also talking to Carmen Yturralde, is it not?

A No, sir.

Q How about Cipriano Yturralde, did he also have occasion to talk to his sister while you were there?

A I do not know.

Q No, while you were there, was there any occasion where Cipriano talked to her sister Carmen?

A Yes, sir, they were telling stories.

Q They were talking to each other, Carmen and Cipriano, is it not? Just answer the question.

A Yes, sir, they were talking to each other." [11]

But plaintiff would want to impress upon this Court that the foregoing is not a faithful translation from the Visayan dialect used by Apolonio Yturralde while testifying. What flaws this argument is that the words in Visayan imputed to this witness and set forth on page 16 of his brief nowhere appear in the transcript of steno-graphic notes. They must be discarded. More than this, plaintiff is bound by the transcription of Apolonio Yturralde's testimony just reproduced. Plaintiff did not move to amend the same below. His failure to do so stops him from raising this question on appeal. Very recently, we held that where the integrity of the stenographic record is intact, and no one takes any step to correct the alleged error in the transcript before the records are elevated to the appellate court, "the presumption that the stenographer regularly performed her duty stands." [12]

3. Plaintiff's cry of fraud is that the document signed was one for administration, not a donation.

A rule of long standing which, through the years, has been adhered to is that a notarial document is evidence of the facts in clear, unequivocal manner therein expressed. It has in its favor the presumption of regularity. To contradict all these, as plaintiff now seeks to do, there must be evidence that is "clear, convincing and more than merely preponderant." [13] Our task now is to weigh the evidence with a view to ascertaining whether plaintiff has made out a case conformably to the foregoing standard. It is undisputed that plaintiff has been a priest of the Philippine Independent Church for a long time. He talks and writes Spanish very well. He knows how to read English. The judge below, who signed the decision and who had the opportunity to observe plaintiff on the witness chair, gave the opinion that although plaintiff was already old and a little bit deaf, he was "fairly intelligent to say the least, and definitely x x x not feeble-minded." This is the man who claims to have been misled by defendant Dr. Raymundo Azurin.

In addition to the foregoing, other circumstances there are which betray plaintiff's testimony as thoroughly unbelievable. If the intention of the Azurins were to palm off donation for mere administration, they would not have chosen such a time when not only plaintiff but the latter's nephew, a person also of mature age, were present.

They would not have then exhibited the document, allowed the execution thereof. The ways of fraud are such that it is unlikely that the Azurins would risk the success of their alleged nefarious scheme in the presence of those who, by the nature of things, are bound to protect the interests of a close relation.

Also, there is plaintiff's own testimony on rebuttal that he knew all along that "Dr. Azurin is interested in the wealth of Carmen." [14] The way plaintiff described the highly suspicious attitude of Dr. Azurin is quite interesting. Says plaintiff on direct examination:

"Q On December 10, 1955, what happened if any in that house of Carmen?

A Dr. Azurin and I, with papers in his hands, with-out waste of time, he talked to the patient who was not answering.

Q What else?

A What Dr. Azurin did was to grab the thumb of the patient and then had thumbmark on the paper." [15]

And then, on cross-examination, he testified:

"Q In your direct testimony you also said that when Dr. Azurin arrived in the house of the deceased on that day he talked to the patient, is that correct?

A Without waste of time Dr. Azurin talked.

Q To the patient?

A Yes, sir, he was talking to the patient and I was hearing also.

Q What did Dr. Azurin talk about?

A He grabbed the thumb of the patient and then imprint it in a piece of paper." [16]

If plaintiff really believed that Dr. Azurin acted in a manner which would evoke suspicion, coupled with his own alleged knowledge that said Dr. Azurin was interested in the wealth of his sister, then it stands to reason to say that he must have been on guard. His normal reaction would have been to stave off execution of the deed of donation. But according to him, he did not. Upon the other hand, defendants' evidence is that said document was handed over to plaintiff. Even if we concede that he knows no English, the very title of the document must have arrested his attention. The English word "DONATION" was there. That is the equivalent of the Spanish word "DONACION", which, of course, he understands.

The fact indeed that plaintiff's present suit was started at a time when the donor, Carmen Yturralde, was already dead strikes a note of implausibility on plaintiff's claim pressed upon the Court. Because, during the lifetime of Carmen, she joined defendants in the suit against the Vagilidades filed on December 29, 1956 for the purpose of annulling the mortgage in favor of the latter in order to give effect to the very donation now being questioned by plaintiff. If Carmen Yturralde, at the time that suit against the Vagilidades was started on December 29, 1956 to the date of her death on January 23, 1960, ever entertained the belief that she was duped into signing the deed of donation, certainly during that span of over three years, she could have complained and asked that her name be stricken out from that suit, and she herself could have commenced an action for the annulment of the donation. That she did not do so is a circum-stance clear enough that the very party interested really intended a donation to take place.

Plaintiff himself on rebuttal admitted that he knew of this litigation between the Azurins and the Vagilidades. And yet, he did nothing. He waited until Carmen could no longer be able to sustain the donation and give the lie to his

present complaint. While plaintiff's theory is that he learned of the donation only after the death of his sister in 1960, yet, as rightly observed by the trial court, "he committed the 'lapsus-linguae' of stating that he secured the document [of donation] from Atty. Tayco before he left for Manila" in 1955 - long before the death of Carmen. Surely, these circumstances are indicative of lack of merit of plaintiff's case.

We thus find that plaintiff has not discharged his heavy burden. The following from *El Hogar Filipino vs. Olviga*, 60 Phil. 17, 21, finds full application:

"A brief analysis of such evidence will show how insufficient it is to overcome or detract from the evidentiary force of the public instrument relating to the transfer made by Timoteo in favor of Genaro T. Tabien. It should be borne in mind that said public instrument was signed in the presence of two instrumental witnesses and appears to have been ratified by Timoteo before a notary public. If the biased and interested testimony of a grantor and the vague and uncertain testimony of his son are deemed sufficient to overcome a public instrument drawn up with all the formalities prescribed by the law then there will have been established a very dangerous doctrine which would throw wide open the doors to fraud." [17]

We find, as did the lower court, that the deed of donation was properly executed.

Since the donation was made in a public document specifying the immovables donated, and the conditions for the donation, and that acceptance thereof was made in the same deed of donation, [18] that donation should be given effect.

For the reasons given, the decision appealed from is hereby affirmed.

Costs against plaintiff-appellant.

SO ORDERED.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.
Concepcion, C.J., and Ruiz Castro, JJ., on official leave.
Zaldivar, J., no part.

[1] The DBP is joined as a mortgagee and the Register of Deeds as a nominal party.

[2] Civil Case 207, Court of First Instance of Antique (San Jose), entitled "Rev. Cipriano Yturralde, Plaintiff, versus Dr. Raymundo Azurin, Mrs. Consuelo G. Azurin, R.F.C. now Development Bank of the Philippines and Register of Deeds of Antique, Defendants."

[3] On December 19, 1963, pending appeal, Cipriano Yturralde died and was substituted in this action by his adopted daughter, Nenita Yturralde, formerly Nenita Grasparil, natural daughter of Vicente and Juana Grasparil with whom Cipriano Yturralde lived before his death. See Order of Adoption of the Court of First Instance of Antique dated December 13, 1960 in Special Proceedings 27, entitled "In the Matter of the Adoption of the Minor, Nenita M. Grasparil, Rev. Cipriano Yturralde, Petitioner." Rollo pp. 52-54.

[4] Civil Case 779, entitled "Carmen Yturralde and Consuelo G. Azurin, accompanied by her husband, Dr. Raymundo Azurin, Plaintiffs, versus Mariano Vagilidad and Luz Managuit, Defendants."

[5] G.R. L-20571, entitled "Carmen Yturralde and Consuelo G. Azurin, accompanied by her husband Dr. Raymundo Azurin, Plaintiffs-Appellees, versus Mariano Vagilidad and Luz Managuit, Defendants-Appellants."

[6] Tr., February 8, 1962, p. 10.

[7] Id., p. 11.

[8] Id., p. 45.

[9] Id., p. 15.

[10] Tr., November 27, 1962, p. 7.

[11] Tr., February 8, 1962, pp. 48-49; emphasis supplied.

[12] Sta. Ana vs. Maliwat (August 31, 1968), 24 SCRA 1018, 1024.

[13] Mendezona vs. Philippine Sugar Estates Development Co., 41 Phil. 475, 493, citing Camacho vs. Municipality of Baliuag, 28 Phil. 466 and Centenera vs. Garcia Palicio, 29 Phil. 470.

[14] Tr., November 27, 1962, p. 26.

[15] Tr., February 8, 1962, p. 10

[16] Id., p. 30.

[17] See also: Section 5(p), Rule 131, Rules of Court.

[18] Article 749, Civil Code. "The acceptance having been made in the deed of gift itself, notification thereof to the donor in a 'constancia autentica' was evidently not necessary." Kapunan vs. Casilan, L-8178, October 31, 1960.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.