

**HEIRS OF AMPARO DEL ROSARIO, PLAINTIFFS-APPELLEES, VS.  
AURORA O. SANTOS, JOVITA SANTOS GONZALES, ARNULFO O.  
SANTOS, ARCHIMEDES O. SANTOS, GERMELINA SANTOS RAVIDA,  
AND ANDRES O. ...**

*G.R. No. L-46892. September 30, 1981*

Ponente: GUERRERO, J.

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**GUERRERO, J.:**

The Court of Appeals,[1] in accordance with Section 31 of the Judiciary Act of 1948, as amended, certified to Us the appeal docketed as CA-G.R. No. 56674-R entitled "Amparo del Rosario, plaintiff-appellee, vs. Spouses Andres Santos and Aurora Santos, defendants-appellants," as only questions of law are involved.

On January 14, 1974, Amparo del Rosario filed a complaint against the spouses Andres F. Santos and Aurora O. Santos, for specific performance and damages allegedly for failure of the latter to execute the Deed of Confirmation of Sale of an undivided 20,000 square meters of land, part of Lot I, Psu-206650, located at Barrio Sampaloc, Tanay, Rizal, in malicious breach of a Deed of Sale (Exhibit A or 1) dated September 28, 1964.

Amparo del Rosario died on Sept. 21, 1980 so that she is now substituted by the heirs named in her will still undergoing probate proceedings. Andres F. Santos also died, on Sept. 5, 1980, and he is substituted by the following heirs: Jovita Santos Gonzales, Arnulfo O. Santos, Archimedes O. Santos, Germelina Santos Ravida, and Andres O. Santos, Jr.

The Deed of Sale (Exh. A or 1) is herein reproduced below:

"DEED OF SALE

KNOW ALL MEN BY THESE PRESENTS:

I, ANDRES F. SANTOS, of legal age, married to Aurora O. Santos, Filipino and resident of San Dionisio, Parañaque, Rizal, Philippines, for and in consideration of the sum of TWO THOUSAND (P2,000.00) PESOS, Philippine Currency, the receipt whereof is hereby acknowledged, do hereby SELLS, CON-VEYS, and TRANSFERS (sic) unto Amparo del Rosario, of legal age, married to Fidel del Rosario but with legal separation, Filipino and resident of San Dionisio, Paranaque, Rizal, Philippines that certain 20,000 square meters to be segregated from Lot 1 of plan Psu-206650 along the southeastern portion of said lot, which property is more particularly described as follows:

'A parcel of land (Lot 1 as shown on plan Psu-206650, situated in the Barrio of Sampaloc, Municipality of Tanay, Pro-vince of Rizal. Bounded on the SW., along lines 1-2-3, by Lot 80 of Tanay Public Land Subdivision, Pls-39; on the NW., along lines 3-4-5, by Lot 2; and along lines 5-6-7-8-9-10-11, by Lot 6; on the NE., along lines 11-12-13, by Lot 3; and along lines 13-14-15, by Lot 4, all of plan Psu-206650; and on the SE., along line 15-1, by Lot 5 of plan Psu-206650 x x x; containing an area of ONE HUNDRED EIGHTY ONE THOUSAND FOUR HUNDRED TWENTY (181,420) SQUARE METERS. All points referred to are indicated on the plan and are

marked on the ground as follows; x x x,'

of which above-described property, I own one-half (1/2) interest thereof being my attorney's fee, and the said 20,000 square meters will be transferred unto the VENDEE as soon as the title thereof has been released by the proper authority or authorities concerned;

That the parties hereto hereby agree that the VENDOR shall execute a Deed of Confirmation of Deed of Sale in favor of the herein VENDEE as soon as the title has been released and the subdivision plan of said Lot 1 has been approved by the Land Registration Commissioner.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of September, 1964, in the City of Manila, Philippines.

s/ ANDRES F. SANTOS

t/ ANDRES F. SANTOS

With My Marital Consent:

s/ Aurora O. Santos (Wife)

t/ Aurora O. Santos (Wife)

SIGNED IN THE PRESENCE OF:

s/ Felicitas C. Moro s/ Corona C. Venal

REPUBLIC OF THE PHILIPPINES)

) SS.

BEFORE ME, a Notary Public for and in Rizal, Philippines, personally appeared Andres F. Santos, with Res. Cert. No. 4500027 issued at Parañaque, Rizal, on Jan. 9, 1964, B-0935184 issued at Parañaque, Rizal on April 15, 1964, and Aurora O. Santos, with Res. Cert. No. A-4500028 issued at Parañaque, Rizal, on Jan. 9, 1964, giving her marital consent to this instrument, both of whom are known to me and to me known to be the same persons who executed the foregoing instruments and they acknowledged to me that the same is their free act and voluntary deed.

IN WITNESS WHEREOF, I have hereunto signed this instrument and affixed my notarial seal this 1st day of October, 1964, in Pasig, Rizal, Philippines.

Doc. No. 1792;

Page No. 85;

Book No. 19;

Series of 1964.

s/ FLORENCIO LANDRITO

t/ FLORENCIO LANDRITO

NOTARY PUBLIC

Until December 31, 1965"[2]

Plaintiff claimed fulfillment of the conditions for the execution of the Deed of Confirmation of Sale, namely: the release of the title of the lot and the approval of the subdivision plan of said lot by the Land Registration

Commission. She even enumerated the titles with their corresponding land areas derived by defendants from the aforesaid lot, to wit:

(a )TCT 203580 - 30,205 sq. meters

(b) TCT 203581 - 19,790 sq. meters

(c) TCT 167568 - 40,775 sq. meters

In a motion to dismiss, defendants pleaded, inter alia, the defenses of lack of jurisdiction of the court a quo over the subject of the action and lack of cause of action allegedly because there was no allegation as to the date of the approval of the subdivision plan, no specific statement that the titles therein mentioned were curved out of Lot I and no clear showing when the demands were made on the defendants. They likewise set up the defense of prescription allegedly because the deed of sale was dated September 28, 1964 and supposedly ratified October 1, 1964 but the complaint was filed only on January 14, 1974, a lapse of more than nine years when it should have been filed within five years from 1964 in accordance with Article 1149, New Civil Code.

Defendants also claimed that the demand set forth in the complaint has been waived, abandoned or otherwise extinguished. It is alleged that the deed of sale was "only an accommodation graciously extended, out of close friendship between the defendants and the plaintiff and her casual business partner in the buy and sell of real estate, one Erlinda Cortez;"[3] that in order to allay the fears of plaintiff over the non-collection of the debt of Erlinda Cortez to plaintiff in various sums exceeding P2,000.00, defendants, who were in turn indebted to Erlinda Cortez in the amount of P2,000.00, voluntarily offered to transfer to plaintiff their inexistent but expectant right over the lot in question, the same to be considered as part payment of Erlinda Cortez' indebtedness; that as Erlinda Cortez later on paid her creditor what was then due, the deed of sale had in effect been extinguished. Defendants thereby characterized the said deed of sale as a mere tentative agreement which was never intended nor meant to be ratified by and acknowledged before a notary public. In fact, they claimed that they never appeared before Notary Public Florencio Landrito.

Finally, defendants alleged that the claim on which the action or suit is founded is unenforceable under the statute of frauds and that the cause or object of the contract did not exist at the time of the transaction.

After an opposition and a reply were filed by the respective parties, the Court a quo resolved to deny the motion to dismiss of defendants. Defendants filed their answer with counterclaim interposing more or less the same defenses but expounding on them further. In addition, they claimed that the titles allegedly derived by them from Lot I of Annex A or I were cancelled and/or different from said Lot I and that the deed of sale was simulated and fictitious, plaintiff having paid no amount to defendants; and that the deed was entrusted to plaintiff's care and custody on the condition that the latter: (a) would secure the written consent of Erlinda Cortez to Annex A or I as part payment of what she owed to plaintiff; (b) would render to defendants true accounting of collections made from Erlinda showing in particular the consideration of P2,000.00 of Annex A or I duly credited to Erlinda's account.[4]

Plaintiff filed a reply and answer to counterclaim and thereafter a motion for summary judgment and/or judgment on the pleadings on the ground that the defenses of defendants "either fail to tender an issue or the same do not present issues that are serious enough to deserve a trial on the merits,"[5] submitting on a later date the affidavit of merits. Defendants filed their corresponding opposition to the motion for summary judgment and/or judgment on the pleadings. Not content with the pleadings already submitted to the Court, plaintiff filed a reply while defendants filed a supplemental opposition.

With all these pleadings filed by the parties in support of their respective positions, the Court a quo still held in

abeyance plaintiff's motion for summary judgment or judgment on the pleadings pending the pre-trial of the case. At the pre-trial, defendants offered by way of compromise to pay plaintiff the sum of P2,000.00, the consideration stated in the deed of sale. But the latter rejected the bid and insisted on the delivery of the land to her. Thus, the pre-trial pro-ceeded with the presentation by plaintiff of Exhibits A to Q which defendants practically admitted, adopted as their own and marked as Exhibits 1 to 17. In addition, the latter offered Exhibit 18, which was their reply to plaintiff's letter of demand dated December 21, 1973.

From the various pleadings filed in this case by plaintiff, together with the annexes and affidavits as well as the exhibits offered in evidence at the pre-trial, the Court a quo found the following facts as having been duly established since defendant failed to meet them with countervailing evidence:

"In February, 1964, Teofilo Custodio, owner of a parcel of unregistered land with an area of approximately 220,000 square meters in Barrio Sampaloc, Tanay, Rizal, hired Attorney Andres F. Santos "to cause the survey of the above-mentioned property, to file registration proceedings in court, to appear and represent him in all government office relative thereto, to advance all expenses for surveys, taxes to the government, court fees, registration fees x x x up to the issuance of title in the name" of Custodio. They agreed that after the registration of the title in Custodio's name, and "after deducting all expenses from the total area of the property," Custodio would assign and deliver to Santos "one-half (1/2) share of the whole property as appearing in the certificate of title so issued." (Exh. B or 2).

On March 22, 1964, Custodio's land was surveyed under plan Psu-226650 (Exh. D or 4). It was divided into six (6) lots, one of which was a road lot. The total area of the property as surveyed was 211,083 square meters. The respective areas of the lots were as follows:

Lot 1

-181,420 square meters

Lot 2

- 7,238 " "

Lot 3

- 7,305 " "

Lot 4

- 5,655 " "

Lot 5

- 5,235 " "

Road Lot 6

- 4,230 " "

TOTAL

-211,083 square meters

x x x

On December 27, 1965, a decree of registration No. N-108022 was issued in Land Registration Case No. N-5023, of the Court of First Instance of Rizal, LRC Record No. N-27513, in favor of Teofilo Custodio, mar-ried to Miguela Perrando, resident of Tanay, Rizal. On March 23, 1966, Original Certificate of Title No.

5134 (Exh. Q or 17) was issued to Custodio for Lots 1, 2, 3, 4 and 5, Psu-206650, with a total area of 206,853 square meters. The areas of the five (5) lots were as follows:

Lot 1

-181,420 square meters

Lot 2

- 7,238 " "

Lot 3

- 7,305 " "

Lot 4

- 5,655 " "

Lot 5

- 5,235 " "

April to May, 1966, a consolidation-subdivision survey (LRC) Pcs-5273 (Exh. E or 5) was made on the above lots converting them into six (6) new lots as follows:

Lot 1

-20,000 square meters

Lot 2

-40,775 " "

Lot 3

-50,000 " "

Lot 4

-40,775 " "

Lot 5

-50,000 " "

Road Lot 6

- 5,303 " "

TOTAL - 206,853 " "

On June 22, 1966, the consolidation-subdivision plan (LRC) Pcs-5273 (Exh. E or 5) was approved by the Land Registration Commission and by the Court of First Instance of Rizal in an order dated July 2, 1966 (Entry No. 61037 T-167561, Exh. Q). Upon its registration, Custodio's O.C.T. No. 5134 (Exh. Q) was cancelled and TCT Nos. 167561, 167562, 167563, 167564 (Exh. G), 167565 (Exh. H), and 167566 were issued for the six lots in the name of Custodio (Entry No. 61035, Exh. Q).

On June 23, 1966, Custodio conveyed to Santos Lots 4 and 5, Pcs-5273 with a total area of 90,775 square meters (Exh. B or 2) described in Custodio's TCT No. 167564 (Exh. G or 7) and TCT No. 167565 (Exh. H or

8), plus a one-half interest in the Road Lot No. 6, as payment of Santos' attorney's fees and advances for the registration of Custodio's land.

Upon registration of the deed of conveyance on July 6, 1966, Custodio's TCT Nos. 167564 and 167565 (Exhs. G and H) were cancelled. TCT No. 167568 (Exh. I or 9) for Lot 4 and TCT No. 167585 (Exh. J or 10) for Lot 5 were issued to Santos.

On September 2, 1967, Santos' Lot 5, with an area of 50,000 square meters was subdivided into two (2) lots, designated as Lots 5-A and 5-B in the plan Psd-78008 (Exh. F or 6), with the following areas:

Lot 5-A

- 30,205 square meters

Lot 5-B

- 19,795 square meters

TOTAL

- 50,000 square meters

Upon registration of Psd-78008 on October 3, 1967, Santos' TCT No. 167585 (Exh. J) was cancelled and TCT No. 203578 for Lot 5-A and TCT No. 203579 for Lot 5-B were supposed to have been issued to Santos (See Entry 6311 in Exh. J or 10). Actually, TCT No. 203580 was issued for Lot 5-A (Exh. K or 11), and TCT No. 203581 for Lot 5-B (Exh. L or 12), both in the name of Andres F. Santos.

Out of Custodio's original Lot 1, Psu-206650, with an area of 181,420 square meters, Santos was given a total of 90,775 square meters, registered in his name as of October 3, 1967 under three (3) titles, namely:

TCT No. 167585 for

Lot 4 Pcs-5273 . . . . .

40,775 sq.m.

(Exh. J or 10)

TCT No. 203580 for

Lot 5-A Psd-78008 . . . .

30,205 sq.m.

(Exh. K or 11)

TCT No. 203581 for

Lot 5-B Psd-78008 . . . .

19,795 sq.m.

(Exh. L or 12)

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90,775 sq.m.

plus one-half of the road lot, Lot 6, Pcs-5273, with an area of 5,303 square meters, which is registered jointly in the name of Santos and Custodio (Exh. B & E)"[6]

The court a quo thereupon concluded that there are no serious factual issues involved so the motion for summary judgment may be properly granted. There-after, it proceeded to dispose of the legal issues raised by defendants and rendered judgment in favor of plaintiff. The dispositive portion of the decision states as follows:

"WHEREFORE, defendants Andres F. Santos and Aurora O. Santos are ordered to execute and convey to plaintiff Amparo del Rosario, within ten (10) days from the finality of this decision, 20,000 square meters of land to be taken from the southeastern portion of either Lot 4, Pcs-5273, which has an area of 40,775 square meters, described in TCT No. 167568 (Exh. I or 9) or from their Lot 5-A, with an area of 30,205 square meters, described in TCT No. 203580 (Exh. K or 11). The expenses of segregating the 20,000 square meters portion shall be borne equally by the parties. The expenses for the execution and registration of the sale shall be borne by the defendants (Art. 1487, Civil Code). Since the de-fendants compelled the plaintiff to litigate and they failed to heed plaintiff's just demand, they are further ordered to pay the plaintiff the sum of P2,000.00 as attorney's fees and the costs of this action.

SO ORDERED."[7]

Aggrieved by the aforesaid decision, the defendants filed an appeal to the Court of Appeals submitting for resolution seven assignments of errors, to wit:

"I. The lower court erred in depriving the appellants of their right to the procedural due process.

II. The lower court erred in holding that the appellee's claim has not been extinguished.

III. The lower court erred in sustaining appellee's contention that there are no other unwritten conditions between the appellants and the appellee except those expressed in Exh. "1" or "A", and that Erlinda Cortez' conformity is not required to validate the appellants' obligation.

IV. The lower court erred in holding that Exh. "1" or "A" is not infirmed and expressed the true intent of the parties.

V. The lower court erred in declaring that the appellants are co-owners of the lone registered owner Teofilo Custodio.

VI. The lower court erred in ordering the appellants to execute and convey to the appellee 20,000 sq. m. of land to be taken from the southeastern portion of either their lot 4, Pcs-5273, which has an area of 40,775 sq. m., described in T.C.T. No. 167568 (Exh. 9 or I), or from their lot No. 5-A, with an area of 30,205 sq. m. described in T.C.T. No. 203580 (Exh. 11 or K), the expenses of segregation to be borne equally by the appellants and the appellee and the expenses of execution and registration to be borne by the appellants.

VII. The lower court erred in ordering the appellants to pay to the appellee the sum of P2,000.00 as attorney's fee and costs."[8]

The first four revolve on the issue of the propriety of the rendition of summary judgment by the court a quo, which concededly is a question of law. The last three assail the summary judgment itself. Accordingly, the Court of Appeals, with whom the appeal was filed, certified the records of the case to this Court for final determination.

For appellants herein, the rendition of summary judgment has deprived them of their right to procedural due process. They claim that a trial on the merits is indispensable in this case inasmuch as they have denied under oath all the material allegations in appellee's complaint which is based on a written instrument entitled "Deed of Sale", thereby putting in issue the due execution of said deed.

Appellants in their opposition to the motion for summary judgment and/or judgment on the pleadings, how-ever, do not deny the genuineness of their signatures on the deed of sale. (Par. 3 of said Motion, p. 101, Record on Appeal). They do not contest the words and figures in said deed except in the acknowledgment portion thereof

where certain words were allegedly cancelled and changed without their knowledge and consent and where, apparently, they appeared before Notary Public Florencio Landrito when, in fact, they claimed that they did not. In effect, there is an admission of the due execution and genuineness of the document because by the admission of the due execution of a document is meant that the party whose signature it bears admits that voluntarily he signed it or that it was signed by another for him and with his authority; and by the admission of the genuineness of the document is meant that the party whose signature it bears admits that at the time it was signed it was in the words and figures exactly as set out in the pleading of the party relying upon it; and that any formal requisites required by law, such as swearing and acknowledgment, or revenue stamps which it requires, are waived by him.[9]

As correctly pointed out by the court a quo, the alleged false notarization of the deed of sale is of no consequence. For a sale of real property or of an interest therein to be enforceable under the Statute of Frauds, it is enough that it be in writing.[10] It need not be notarized. But the vendee may avail of the right under Article 1357 of the New Civil Code to compel the vendor to observe the form required by law in order that the instrument may be registered in the Registry of Deeds.[11] Hence, the due execution and genuineness of the deed of sale are not really in issue in this case. Accordingly, assigned error I is without merit.

What appellants really intended to prove through the alleged false notarization of the deed of sale is the true import of the matter, which according to them, is a mere tentative agreement with appellee. As such, it was not intended to be notarized and was merely entrusted to appellee's care and custody in order that: first, the latter may secure the approval of one Erlinda Cortez to their (appellants') offer to pay a debt owing to her in the amount of P2,000.00 to appellee instead of paying directly to her as she was indebted to appellee in various amounts exceeding P2,000.00; and second, once the approval is secured, appellee would render an accounting of collections made from Erlinda showing in particular the consideration of P2,000.00 of the deed of sale duly credited to Erlinda's account.

According to appellants, they intended to prove at a full dress trial the material facts: (1) that the aforesaid conditions were not fulfilled; (2) that Erlinda Cortez paid her total indebtedness to appellee in the amount of P14,160.00, the P2,000.00 intended to be paid by appellant included; and (3) that said Erlinda decided to forego, renounce and refrain from collecting the P2,000.00 the appellants owed her as a counter-vailing reciprocity of the countless favors she also owes them.

Being conditions which alter and vary the terms of the deed of sale, such conditions cannot, however, be proved by parol evidence in view of the provision of Section 7, Rule 130 of the Rules of Court, which states as follows:

"Sec. 7. Evidence of written agreements. - When the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and, therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

- (a) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;
- (b) When there is an intrinsic ambiguity in the writing.

The term "agreement" includes wills."

The parol evidence rule forbids any addition to or contradiction of the terms of a written instrument by testimony purporting to show that, at or before the signing of the document, other or different terms were orally agreed upon by the parties.[12]

While it is true, as appellants argue, that Article 1306 of the New Civil Code provides that "the contracting parties

may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided that they are not contrary to law, morals, good customs, public order, or public policy" and that consequently, appellants and appellee could freely enter into an agreement imposing as conditions thereof the following: that appellee secure the written conformity of Erlinda Cortez and that she render an accounting of all collections from her, said conditions may not be proved as they are not embodied in the deed of sale.

The only conditions imposed for the execution of the Deed of Confirmation of Sale by appellants in favor of appellee are the release of the title and the approval of the subdivision plan. Thus, appellants may not now introduce other conditions allegedly agreed upon by them because when they reduced their agreement to writing, it is presumed that "they have made the writing the only repository and memorial of truth, and whatever is not found in the writing must be understood to have been waived and abandoned." [13]

Neither can appellants invoke any of the exceptions to the parol evidence rule, more particularly, the alleged failure of the writing to express the true intent and agreement of the parties. Such an exception obtains where the written contract is so ambiguous or obscure in terms that the contractual intention of the parties cannot be understood from a mere reading of the instrument. In such a case, extrinsic evidence of the subject matter of the contract, of the relations of the parties to each other, and of the facts and circumstances surrounding them when they entered into the contract may be received to enable the court to make a proper interpretation of the instrument. [14] In the case at bar, the Deed of Sale (Exh. A or 1) is clear, without any ambiguity, mistake or imperfection, much less obscurity or doubt in the terms thereof. We, therefore, hold and rule that assigned errors III and IV are untenable.

According to the court a quo, "(s)ince Santos, in his Opposition to the Motion for Summary Judgment failed to meet the plaintiff's evidence with counter-vailing evidence, a circumstance indicating that there are no serious factual issues involved, the motion for summary judgment may properly be granted." We affirm and sustain the action of the trial court.

Indeed, where a motion for summary judgment and/or judgment on the pleadings has been filed, as in this case, supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as may be admissible in evidence, and shall show affirmatively that the affiant is competent to testify as to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in the affidavit shall be attached thereto or served therewith. [15]

Examining the pleadings, affidavits and exhibits in the records, We find that appellants have not submitted any categorical proof that Erlinda Cortez had paid the P2,000.00 to appellee, hence, appellants failed to substantiate the claim that the cause of action of appellee has been extinguished. And while it is true that appellants submitted a receipt for P14,160.00 signed by appellee, appellants, however, have stated in their answer with counterclaim that the P2,000.00 value of the property covered by the Deed of Sale, instead of being credited to Erlinda Cortez, was conspicuously excluded from the accounting or receipt signed by appellee totalling P14,160.00. The aforesaid receipt is no proof that Erlinda Cortez subsequently paid her P2,000.00 debt to appellee. As correctly observed by the court a quo, it is improbable that Cortez would still pay her debt to appellee since Santos had already paid it.

Appellants' claim that their P2,000.00 debt to Erlinda Cortez had been waived or abandoned is not also supported by any affidavit, document or writing submitted to the court. As to their allegation that the appellee's claim is barred by prescription, the ruling of the trial court that only seven years and six months of the ten-year prescription period provided under Arts. 1144 and 1155 in cases of actions for specific performance of the written contract of sale had elapsed and that the action had not yet prescribed, is in accordance with law and, therefore, We affirm the same.

The action of the court a quo in rendering a summary judgment has been taken in faithful compliance and conformity with Rule 34, Section 3, Rules of Court, which provides that "the judgment sought shall be rendered forth-with if the pleadings, depositions, and admissions on file together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Resolving assignments of errors V, VI, and VII which directly assail the summary judgment, not the propriety of the rendition thereof which We have already resolved to be proper and correct, it is Our considered opinion that the judgment of the court a quo is but a logical consequence of the failure of appellants to present any bona fide defense to appellee's claim. Said judgment is simply the application of the law to the undisputed facts of the case, one of which is the finding of the court a quo, to which We agree, that appellants are owners of one-half (1/2) interest of Lot 1 and, therefore, the fifth assignment of error of appellants is without merit.

By the terms of the Deed of Sale itself, which We find genuine and not infirmed, appellants declared themselves to be owners of one-half (1/2) interest thereof. But in order to avoid appellee's claim, they now contend that Plan Psu-206650 where said Lot I appears is in the exclusive name of Teofilo Custodio as the sole and exclusive owner thereof and that the deed of assignment of one-half (1/2) interest thereof executed by said Teofilo Custodio in their favor is strictly personal between them. Notwithstanding the lack of any title to the said lot by appellants at the time of the execution of the deed of sale in favor of appellee, the said sale may be valid as there can be a sale of an expected thing, in accordance with Art. 1461, New Civil Code, which states:

"Art. 1461. Things having a potential existence may be the object of the contract of sale.

The efficacy of the sale of a mere hope or expectancy is deemed subject to the condition that the thing will come into existence.

The sale of a vain hope or expectancy is void."

In the case at bar, the expectant right came into existence or materialized for the appellants actually derived titles from Lot I.

We further reject the contention of the appellants that the lower court erred in ordering the appellants to execute and convey to the appellee 20,000 sq.m. of land to be taken from the southeastern portion of either their Lot 4, Pcs-5273, which has an area of 40,775 sq.m., described in T.C.T. No. 167568 (Exh. 9 or I), or from their Lot No. 5-A, with an area of 30,205 sq.m. described in T.C.T. No. 203580 (Exh. 11 or K), the expenses of segregation to be borne equally by the appellants and the appellee and the expenses of execution and registration to be borne by the appellants. Their argument that the southeastern portion of Lot 4 or Lot 5-A is no longer the southeastern portion of the bigger Lot I, the latter portion belonging to the lone registered owner, Teofilo Custodio, is not impressed with merit. The subdivision of Lot I between the appellants and Teofilo Custodio was made between themselves alone, without the intervention, knowledge and consent of the appellee, and therefore, not binding upon the latter. Appellants may not violate nor escape their obligation under the Deed of Sale they have agreed and signed with the appellee by simply subdividing Lot I, bisecting the same and segregating portions to change their sides in relation to the original Lot I.

Finally, considering the trial court's finding that the appellants compelled the appellee to litigate and they failed to heed appellee's just demand, the order of the court awarding the sum of P2,000.00 as attorney's fees is just and lawful, and We affirm the same.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the judgment appealed from is hereby **AFFIRMED** in toto, with costs against the appellants.

**SO ORDERED.**

Makasiar, (Acting Chairman), Fernandez, De Castro, and Melencio-Herrera, JJ., concur.

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[1] Seventh Division; Gancayco, J., ponente; Escolin and Agrava, JJ., concurring.

[2] Record on Appeal, pp. 13-16.

[3] Ibid., p. 21.

[4] Ibid., p. 43.

[5] Ibid., p. 75.

[6] Record on Appeal, pp. 153-163.

[7] Ibid., p. 168.

[8] Brief for the Appellants, pp. 1-3.

[9] Moran, Manuel V., Comments on the Rules of Court, Vol. I, p. 327 (1970)

[10] Civil Code, Article 1403.

[11] Ibid., Art. 1406.

[12] Francisco, Vicente J.; The Revised Rules of Court in the Philippines, Vol. VII, p. 152 (1973).

[13] Moran, op. cit., Vol. V, p. 104.

[14] Francisco, op. cit., Vol. VII, pp. 161-162 (1973).

[15] Rule 34, Sec. 5, Rules of Court.

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