

GENARO GOÑI, RUFINA P. VDA. DE VILLANUEVA, VIOLA P. VILLANUEVA, OSCAR P. VILLANUEVA, MARINA P. VILLANUEVA, VERNA P. VILLANUEVA, PRAXEDES P. VILLANUEVA, JR., JOSE P. VILLANUEVA, ...

G.R. No. L-27434. September 23, 1986

Ponente: FERNAN, J.

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FERNAN, J.:

This is an appeal by certiorari from the decision of the then Court of Appeals in CA-G.R. No.27800-R entitled, "Gaspar Vicente, Plaintiff-Appellant, vs. Genaro Goni, et. al., Defendants-Appellants" as well as from the resolution denying petitioners' motion for reconsideration.

The factual backdrop is as follows:

The three (3) haciendas known as San Sebastian, Sarria and Dulce Nombre de Maria situated in the Municipality of Bais, Negros Oriental, were originally owned by the Compañía General de Tabacos de Filipinas [TABACALERA]. Sometime in 1949, the late Praxedes T. Villanueva, predecessor-in-interest of petitioners, negotiated with TABACALERA for the purchase of said haciendas. However, as he did not have sufficient funds to pay the price, Villanueva, with the consent of TABACALERA, offered to sell Hacienda Sarria to one Santiago Villegas, who was later substituted by Joaquin Villegas. Allegedly because TABACALERA did not agree to the transaction between Villanueva and Villegas, without a guaranty private respondent Gaspar Vicente stood as guarantor for Villegas in favor of TABACALERA. The guarantee was embodied in a document denominated as "Escritura de Traspaso de Cuenta".[1]

Either because the amount realized from the transaction between Villanueva and Villegas still fell short of the purchase price of the three haciendas, or in consideration of the guaranty undertaken by private respondent Vicente, Villanueva contracted or promised to sell to the latter fields nos. 3, 4 and 13 of Hacienda Dulce Nombre de Maria for the sum of P13,807.00. This agreement was reduced to writing and signed by petitioner Genaro Goñi as attorney-in-fact of Villanueva, thus:

"En consideracion a la garantia que Don Gaspar Vicente asume con la Cia. Gral. de Tabacos de Filipinas por el saldo de Don Santiago Villegas de P43,539.75 asumido por Don Joaquin Villegas el que Suscribe Praxedes T. Villanueva se compromete ceder es venta a Don Gaspar Vicente los campos nos. 3, 4 y 13 del plano de parcelario de la Hacienda Dulce Nombre de Maria, en compra proyectada de la Cia. Gral. de Tabacos de Filipinas. Estas campos representan 6-90-35 hectares por valor de P13,807.00 que Don Gaspar Vicente pagara directamente a Praxedes T. Villanueva.

"Bais, Central, Octubre 24, 1949.

"Fdo. Praxedes T. Villanueva

Por: "Fdo. Genaro Goñi Apoderado" [2]

Private respondent Vicente thereafter advised TABACALERA to debit from his account the amount of P13,807.00 as payment for the balance of the purchase price. However, as only the amount of P12,460.24 was actually needed to complete the purchase price, only the latter amount was debited from private respondent's account. The difference was supposedly paid by private respondent to Villanueva, but as no receipt evidencing such payment was presented in court, this fact was disputed by petitioners.

It is alleged by petitioners that subsequent to the execution of the contract/promise to sell, Villanueva was able to raise funds by selling a property in Ayungon, Negros Oriental. He thus went to private respondent Vicente for the purpose of rescinding the contract/promise to sell. However, as the amount of P12,460.24 had already been debited from private respondent's account, it was agreed that lots 4 and 13 of the Hacienda Dulce Nombre de Maria would merely be leased to private respondent Vicente for a period of five (5) years starting with crop-year 1950-51 at an annual rental of 15% of the gross income, said rent to be deducted from the money advanced by private respondent and any balance owing to Villanueva would be delivered by Vicente together with the lots at the end of the stipulated period of lease.

On December 10, 1949, TABACALERA executed a formal deed of sale covering the three haciendas in favor of Villanueva. Fields Nos. 3, 4 and 13 of the Hacienda Dulce Nombre de Maria were thereafter registered in the name of Villanueva under TCT No. T-4780 of the Register of Deeds of Negros Oriental. The fields were likewise mortgaged by Villanueva to the Rehabilitation Finance Corporation (RFC), later transferred to the Philippine National Bank on December 16, 1955, for a total indebtedness of P334,400.00.[3]

Meanwhile, Fields nos. 4 and 13 were delivered to private respondent Vicente after the 1949--1950 milling season in January and February, 1950.

On June 17, 1950, Villanueva executed a "Documento de la Venta Definitiva" in favor of Joaquin Villegas, covering Lot No. 314 of the Cadastral Survey of Bais with an area of 468,627 square meters, more or less. (Hacienda Sarria). A supplemental instrument was later executed by Villanueva in favor of Villegas to include in the sale of June 17, 1950 the sugar quota of the land.

On November 12, 1951, Villanueva died. Intestate proceedings were instituted on November 24, 1951 before the then Court of First Instance of Negros Oriental, docketed as Special Case No. 777. Among the properties included in the inventory submitted to the court were fields nos. 3, 4 and 13 of Hacienda Dulce Nombre de Maria. Field no. 13 with an area of 1 hectare, 44 ares and 95 centares was listed as Lot no. 723 of the inventory, while fields nos. 3 and 4, with areas of 3 hectares, 75 ares and 60 centares, and 1 hectare, 69 ares and 80 centares, respectively, were included in Lot no. 257 of the inventory.

On October 7, 1954, the day before the intestate proceedings were ordered closed and the estate of the late Praxedes Villanueva delivered to his heirs, private respondent Vicente instituted an action for recovery of property and damages before the then Court of First Instance of Negros Oriental against petitioner Goñi in his capacity as administrator of the intestate estate of Praxedes Villanueva. In his complaint docketed as Civil Case No. 2990, private respondent Vicente sought to recover field no. 3 of the Hacienda Dulce Nombre de Maria, basing his entitlement thereto on the contract/promise to sell executed by the late Praxedes Villanueva in his favor on October 24, 1949. He likewise prayed by way of attorney's fees and other costs the sum of P2,000.00 and for such other further relief which the court may deem just and equitable in the premises.[4]

On October 25, 1954, petitioner Goni, as defendant in Civil Case No. 2990, filed an answer with counterclaim for accounting of the produce of fields nos. 4 and 13, as well as the surrender thereof on June 20, 1955, the end of the fifth crop-year, plus moral damages in the sum of P30,000.00 and P3,000.00 as attorney's fees. After an answer to the counterclaim had been filed, private respondent Vicente amended his complaint on September 1, 1955, to

include a prayer for damages representing the produce of field no. 3 from 1949-50 until delivery thereof to him. An answer with counterclaim to the amended complaint was duly filed, and on April 25, 1956, private respondent Vicente amended his complaint anew to include as parties-defendants the heirs of the late Praxedes Villanueva.

On July 13, 1957, the parties entered into a stipulation of facts, agreeing, among others, on the costs of production and produce of the three fields in question. The case thereafter proceeded to trial. Plaintiff presented two (2) witnesses: then party-plaintiff Gaspar Vicente, himself, who over the objection of therein defendants testified on facts occurring before the death of Praxedes Villanueva, and Epifanio Equio, a clerk of TABACALERA Agency in the Bais Sugar Central. Defendants presented Genaro Goñi, who testified on the alleged verbal lease agreement.

On December 18, 1959, the trial court rendered a decision ordering therein defendants-heirs to deliver to Gaspar Vicente field no. 3, to execute a formal deed of sale covering fields nos. 3, 4 and 13 in favor of Vicente, to pay the latter actual or compensatory damages in the amount of P81,204.48, representing 15% of the total gross income of field no. 3 for crop-years 1950-51 to 1958-59, and such other amounts as may be due from said field for the crop years subsequent to crop-year 1958-59, until the field is delivered to Vicente, and to pay the sum of P2,000.00 as attorney's fees plus costs. Therein defendant Goñi was relieved of any civil liability for damages, either personally or as administrator of the estate.[5]

Both parties appealed the decision to the then Court of Appeals; the plaintiff from the portion awarding damages on a claim that he was entitled to more, and defendants, from the entire decision.

On December 15, 1966, the Court of Appeals promulgated its decision, affirming that of the lower court, with the modification that the amount of damages to be paid by defendant-heirs to the plaintiff should be the total net income from field no. 3 from the crop year 1950-51 until said field is finally delivered to the plaintiff plus interest thereon at the legal rate per annum.[6]

Petitioners filed a motion for reconsideration, but were denied the relief sought in a resolution dated February 9, 1967. Hence, the present appeal by certiorari whereby petitioners raise the following questions of law:

"MAY RESPONDENT GASPAR VICENTE TESTIFY ON MATTERS OF FACT OCCURRING BEFORE THE DEATH OF PRAXEDES T. VILLANUEVA, WHICH CONSTITUTES A CLAIM OR DEMAND UPON HIS ESTATE, IN VIOLATION OF RULE 123, SEC. 26, PAR. (C), NOW RULE 130, SEC. 20 PAR. (A)?

"MAY NOT A WRITTEN PROMISE TO SELL DATED OCTOBER 24, 1949 BE NOVATED INTO A VERBAL AGREEMENT OF LEASE DURING THE LIFETIME OF THE PROMISSOR, WHOSE DEATH OCCURRED ON NOVEMBER 12, 1951, BY FACTS AND CIRCUMSTANCES SUBSTANTIATED BY COMPETENT ORAL EVIDENCE IN THIS CASE?

"SHOULD THE PROMISEE IN A PROMISE TO SELL, WHO PAID P12,460.24 WHICH WAS TO BE ACCOUNTED AND TO BE CREDITED AS RENTALS AFTER FIVE (5) YEARS OF LEASE, WHO IN HIS ORIGINAL COMPLAINT DID NOT ALLEGE NOR PROVE DAMAGES, EXCEPT THE SUM OF P2,000.00 AS ATTORNEY'S FEES, RECEIVE A JUDGMENT FOR DAMAGES IN THE AMOUNT OF P74,056.35 WHICH CONSISTS OF P37,121.26 PLUS LEGAL INTEREST FOR THE CROP YEARS 1950-51 TO 1958-59 AND FOR P3,624.18 TO P4,374.78 FOR EVERY CROP YEAR SUBSEQUENT TO 1958-59 PLUS INTEREST?"[7]

We find that neither the trial nor appellate court erred in ruling for the admissibility in evidence of private respondent Vicente's testimony. Under ordinary circumstances, private respondent Vicente[8] would be disqualified by reason of interest from testifying as to any matter of fact occurring before the death of Praxedes T.

Villanueva, such disqualification being anchored on Section 20(a) of Rule 130, commonly known as the Survivorship Disqualification Rule or Dead Man Statute, which provides as follows:

"Section 20. Disqualification by reason of interest or relationship. - The following persons cannot testify as to matters in which they are interested, directly or indirectly, as herein enumerated:

"(a) Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind."

The object and purpose of the rule is to guard against the temptation to give false testimony in regard to the transaction in question on the part of the surviving party and further to put the two parties to a suit upon terms of equality in regard to the opportunity of giving testimony.[9] It is designed to close the lips of the party plaintiff when death has closed the lips of the party defendant, in order to remove from the surviving party the temptation to falsehood and the possibility of fictitious claims against the deceased.[10]

The case at bar, although instituted against the heirs of Praxedes Villanueva after the estate of the latter had been distributed to them, remains within the ambit of the protection. The reason is that the defendants-heirs are properly the "representatives" of the deceased, not only because they succeeded to the decedent's right by descent or operation of law, but more importantly because they are so placed in litigation that they are called on to defend which they have obtained from the deceased and make the defense which the deceased might have made if living, or to establish a claim which deceased might have been interested to establish, if living.[11]

Such protection, however, was effectively waived when counsel for petitioners cross-examined private respondent Vicente. "A waiver occurs when plaintiff's deposition is taken by the representative of the estate or when counsel for the representative cross-examined the plaintiff as to matters occurring during deceased's lifetime." [12] It must further be observed that petitioners presented a counterclaim against private respondent Vicente. When Vicente thus took the witness stand, it was in a dual capacity as plaintiff in the action for recovery of property and as defendant in the counterclaim for accounting and surrender of fields nos. 4 and 13. Evidently, as defendant in the counterclaim, he was not disqualified from testifying as to matters of fact occurring before the death of Praxedes Villanueva, said action not having been brought against, but by the estate or representatives of the estate/deceased person.

Likewise, under a great majority of statutes, the adverse party is competent to testify to transactions or communications with the deceased or incompetent person which were made with an agent of such person in cases in which the agent is still alive and competent to testify. But the testimony of the adverse party must be confined to those transactions or communications which were had with the agent.[13] The contract/promise to sell under consideration was signed by petitioner Goñi as attorney-in-fact (apoderado) of Praxedes Villanueva. He was privy to the circumstances surrounding the execution of such contract and therefore could either confirm or deny any allegations made by private respondent Vicente with respect to said contract. The inequality or injustice sought to be avoided by Section 20(a) of Rule 130, where one of the parties no longer has the opportunity to either confirm or rebut the testimony of the other because death has permanently sealed the former's lips, does not actually exist in the case at bar, for the reason that petitioner Goñi could and did not negate the binding effect of the contract/promise to sell. Thus, while admitting the existence of the said contract/ promise to sell, petitioner Goñi testified that the same was subsequently novated into a verbal contract of lease over fields nos. 4 and 13 of the Hacienda Dulce Nombre de Maria.

Novation takes place when the object or principal condition of an obligation is changed or altered.[14] In order, however, that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.[15] "Novation is never presumed. It must be established that the old and the new contracts are incompatible in all points, or that the will to novate appear by express agreement of the parties or in acts of equivalent import." [16]

The novation of the written contract/promise to sell into a verbal agreement of lease was clearly and convincingly proven not only by the testimony of petitioner Goñi, but likewise by the acts and conduct of the parties subsequent to the execution of the contract/promise to sell. Thus, after the milling season of crop year 1949-50, only fields nos. 4 and 13 were delivered to private respondent Vicente. Fields nos. 3, 4 and 13 were subsequently registered in Villanueva's name and mortgaged with the RFC. Villanueva likewise executed a deed of sale covering Hacienda Sarria in favor of Joaquin Villegas. All these were known to private respondent Vicente, yet he did not take any steps toward asserting and/or protecting his claim over fields nos. 3, 4 and 13 either by demanding during the lifetime of Villanueva that the latter execute a similar document in his favor, or causing notice of his adverse claim to be annotated on the certificate of title of said lots. If it were true that he made demands on Villanueva for the surrender of field no. 3 as well as the execution of the corresponding deed of sale, he should have, upon refusal of the latter to do so, immediately or within a reasonable time thereafter, instituted an action for recovery, or as previously observed, caused his adverse claim to be annotated on the certificate of title. Considering that field no. 3, containing an area of three (3) hectares, 75 acres and 60 centares, is the biggest among the three lots, an ordinary prudent man would have taken these steps if he honestly believed he had any right thereto. Yet, private respondent Vicente did neither. In fact such inaction persisted even during the pendency of the intestate proceedings wherein he could have readily intervened to seek exclusion of fields nos. 3, 4 and 13 from the inventory of properties of the late Praxedes Villanueva.

The reason given by private respondent Vicente that field no. 3 was not delivered to him together with fields nos. 4 and 13 because there were small sugar cane growing on said field at that time belonging to TABACALERA, might be taken as a plausible explanation why he could not take immediate possession of lot no. 3, but it certainly could not explain why it took him four years before instituting an action in court, and very conveniently, as petitioners noted, after Villanueva had died and at the time when the verbal contract of lease was about to expire.

Both the trial and appellate courts chose to believe in the contract/promise to sell rather than the lease agreement, simply because the former had been reduced to writing, while the latter was merely verbal. It must be observed, though, that the contract/promise to sell was signed by petitioner Goñi as attorney-in-fact of the late Praxedes Villanueva, an indication, to our mind, that final arrangements were made by petitioner Goñi in the absence of Villanueva. It was therefore natural for private respondent Vicente to have demanded that the agreement be in writing to erase any doubt of its binding effect upon Villanueva. On the other hand, the verbal lease agreement was negotiated by and between Villanueva and private respondent Vicente themselves. Being close friends and relatives[17] it can be safely assumed that they did not find it necessary to reduce the same into writing.

In rejecting petitioners' contention respecting the verbal lease agreement, the appellate court put much weight on the failure of petitioners to demand an accounting of the produce of fields nos. 4 and 13 from 1950 to 1954, when the action for recovery of property was filed. Such failure was satisfactorily explained by petitioners in their motion for reconsideration filed before the then Court of Appeals, in this manner:

"x x x Mr. Genaro Goñi is also a farmer by profession and that there was no need for him to demand a yearly accounting of the total production because the verbal lease agreement was for a term of 5 years. The defendant Mr. Genaro Goñi as a sugar planter has already full knowledge as to the annual income of said lots nos. 4 and

13, and since there was the amount of P12,460.25 to be liquidated, said defendant never deemed it wise to demand such a yearly accounting. It was only after or before the expiration of the 5 year lease that said defendant demanded the accounting from the herein plaintiff regarding the production of the 2 lots that were then leased to him.

"It is the custom among the sugar planters in this locality that the Lessee usually demands an advance amount to cover the rental for the period of the lease, and the demand of an accounting will be only made after the expiration of the lease period. It was adduced during the trial that the amount of P12,460.75 was considered as an advance rental of the 2 lots which was leased to the Plaintiff, lots nos. 4 and 13; so we humbly believe that there was no necessity on the part of defendant Mr. Genaro Goñi to make a yearly demand for an accounting for the total production of 2 parcels leased to the plaintiff." [18]

Petitioners, having clearly and sufficiently shown that the contract/promise to sell was subsequently novated into a verbal lease agreement, it follows that they are entitled to a favorable decision on their counterclaim. Discussion of the third issue raised therefore becomes unnecessary.

WHEREFORE, the decision appealed from is hereby reversed. The judicial administrator of the estate of private respondent Gaspar Vicente and/or his successors-in-interest are hereby ordered to: a) surrender possession of fields nos. 4 and 13 of the Hacienda Dulce Nombre de Maria to petitioners; b) render an accounting of the produce of said fields for the period beginning crop-year 1950-51 until complete possession thereof shall have been delivered to petitioners; and c) to pay the corresponding annual rent for the said fields in an amount equivalent to 15% of the gross produce of said fields, for the periods beginning crop-year 1950-51 until said fields shall have been surrendered to petitioners, deducting from the amount due petitioners the sum of P12,460.24 advanced by private respondent Gaspar Vicente.

SO ORDERED.

Feria, (Chairman), Alampay, Gutierrez, Jr., and Paras, JJ., concur.

[1] par. 22, Stipulation of Facts, Record on Appeal, p. 74, Rollo.

[2] Annex "A", Petition, p. 20, Rollo.

[3] par. 17, Stipulation of Facts, Record on Appeal, p. 73, Rollo.

[4] Record on Appeal, pp. 47-49, Rollo.

[5] Record on Appeal, pp. 75-88, Rollo

[6] Annex "A", Petition, pp. 41-42, Rollo.

[7] Petition, pp. 1-2, Rollo.

[8] Private respondent Gaspar Vicente died during the pendency of this appeal. He is substituted by the judicial administrator of his estate, Ignacio Vicente.

[9] Jones Commentaries on Evidence, Vol. 5, p. 4249.

[10] *Icard v. Masigan, et. al.*, 71 Phil. 419.

[11] 97 C.J.S. 648.

[12] Francisco, Commentaries on the Revised Rules of Court, Vol. VII, pp. 237-238.

[13] Jones Commentaries on Evidence, *supra*, p. 4397.

[14] Art. 1291, Civil Code of the Philippines.

[15] Art. 1292, *Ibid*.

[16] *Martinez v. Cavives*, 25 Phil. 581; *Tiu Suico v. Habana*, 45 Phil. 707; *Asia Banking Corp. v. Lacson Company, Inc.*, 48 Phil. 482.

[17] p. 12, Rollo.

[18] p. 96, Rollo.

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