

**CONSTANCIA A. BERNARDINO-ARGANA, IN HER PERSONAL
CAPACITY AND AS ATTORNEY-IN-FACT OF ANISETA A.
BERNARDINO-UNIRA, ANGELICA A. BERNARDINO-SUGAY,
CELEDONIO A. BERNARDINO, AND FERM...**

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is an appeal interposed by plaintiffs-appellants from the order dated June 25, 2010[1] issued by the Regional Trial Court of Muntinlupa City Br. 276 (RTC) in Civil Case No. 08-170.

The factual antecedents are as follows:

On December 23, 2008, plaintiffs-appellants filed a complaint[2] for declaration of nullity of deed of donation inter vivos and deed of absolute sale, and cancellation of Transfer Certificates of Title No. 185367, 185368, 29586, 29587, 29588, 30950, and 185371 with prayer for reconveyance and damages against defendants-appellees. Plaintiffs-appellants allege that they, and defendant-appellee Victor A. Bernardino, are the children of Basilisa A. Bernardino; that during her lifetime, Basilisa A. Bernardino purchased a parcel of land located at Barangay Putatan, Muntinlupa City covered by Transfer Certificate of Title No. (43823) 114893; that Basilisa suffered a stroke that rendered her partially paralyzed in 1991; that taking due advantage of Basilisa's ill-health, defendant-appellee Victor Bernardino caused the execution of a "Pagkakaloob"[3] on December 19, 1991 covering TCT No. (43823) 114893; that TCT No. (43823) 114893 was subsequently cancelled and five (5) titles were issued in the name of Victor A. Bernardino, namely: TCT Nos. 185367, 185368, 185369, 185371, and 185372.; that defendant-appellee Victor A. Bernardino caused the subdivision of TCT No. 185368 into three (3) lots, namely: TCT No. 29586, 29587, and 29588; and that defendant-appellee Victor A. Bernardino sold the land covered by TCT No. 29587 to defendants-appellees Spouses Gregorio and Eufemia Banlasan. Plaintiffs-appellants claim that the deed of donation is void ab initio for want of consent on the part of donor Basilisa Bernardino.

In his answer with compulsory counterclaim[4], defendant-appellee Victor A. Bernardino claims that the complaint fails to state any cause of action; that plaintiffs-appellants failed to submit the case for barangay conciliation; that plaintiff-appellant Fermina Quinones is not duly represented in this case because her special power of attorney appointing plaintiff-appellee Constancia A. Bernardino-Argana has no force and effect under Philippine law as it was not properly authenticated by the Philippine Embassy[5]; that the complaint has prescribed as more than 17 years have passed since the deed of donation was registered on June 23, 1992; that the action is barred by laches; that the action is barred by res judicata; that plaintiff-appellants violated the rule against forum shopping; that the donation made by Basilisa in favor of defendant-appellee Victor A. Bernardino is valid; and that the complaint should be dismissed for failure to comply with Section 12, Rule II of the 2004 Rules of Notarial Practice.

Meanwhile, defendants-appellees Spouses Banlasan alleged in their answer with counterclaim⁶ that

plaintiffs-appellants have no cause of action against them and if there is one, the action has already prescribed; that they are buyers in good faith and for value; and that the deed of donation is valid and regular.

The RTC previously set the case for pre-trial but defendant-appellee Victor A. Bernardino filed a motion for preliminary hearing on affirmative defenses of failure to comply with a condition precedent, prescription, res judicata, violation of the rules against forum shopping, and the rules of notarial practice[7]. During the hearing on November 3, 2009, the RTC ordered that pre-trial will be held in abeyance pending resolution of the motion for preliminary hearing on affirmative defenses and ordered the parties to file their respective memoranda[8]. On January 13, 2010, the RTC granted the motion for preliminary hearing on affirmative defenses in accordance with Section 6, Rule 16 of the 1997 Revised Rules on Civil Procedure[9].

After hearing[10] on defendant-appellee Victor A. Bernardino's affirmative defenses, the RTC issued the order dated June 25, 2010[11] dismissing the case on the ground that a condition precedent has not been complied with. The RTC explained:

“It bears stressing that under Sec. 412(a) of Republic Act No. 7160, no complaint involving any matter within the authority of the Lupon shall be instituted or filed directly in Court for adjudication unless there has been a confrontation between the parties and no settlement was [reached].

Sec. 408, of the same law specifically provided that parties actually residing in the same city or municipality are the subject matter within the authority of the Lupon.

Clearly, under this law, resort to the barangay lupon is a condition precedent to the filing of a complaint between parties who are actually residing in the same city or municipality.

In this connection, under Sec. 1(j) of Rule 16 of the 1997 Revised Rules of Procedure, non-compliance of a condition precedent prescribed by law could affect the sufficiency of the plaintiff's cause of action and his complaint vulnerable to dismiss on ground of lack of cause of action or pre-maturity.

There is no dispute that except for plaintiff Fermina B. Quinones, all the parties are residents of Muntinlupa City. It was also not denied that plaintiffs did not first resort to barangay conciliation. This being so, this was filed in violation of the afore-cited law and thus, failed to comply with a condition precedent pursuant to Sec. 1(j) of Rule 16 of the 1997 Revised Rules of Civil Procedure, which is effect makes the complaint prematurely instituted and should therefore be dismissed.

The Special Power of Attorney (Annex “B” of the Complaint) executed by Fermina Quinones in favor of co-plaintiff Constancia A. Bernardino-Argana, not having been duly certified and authenticated in accordance with Sec. 24 Rule 135 of the Rules of Court cannot be admitted in evidence before the Philippine Courts.

Thus, in a case, the Hon. Supreme Court ruled that non-compliance of the provision of Section 25 (now Section 25) of Rule 132 of the Rules of Court renders the Special Power of Attorney executed in a foreign country not admissible in evidence and the Court did not acquire jurisdiction over the person of the real party-in-interest. It further ruled that the failure to have the special power of attorney authenticated is not merely a technicality, it is a question of jurisdiction.

The submission on May 25, 2010 of a duly authenticated Special Power of Attorney issued by Fermina Quinones in favor of co-plaintiff Constancia B. Argana did not cure the defect of the complaint. It appears that the Special Power of Attorney was executed only on May 13, 2010 and authenticated by the Consul of the Philippine Embassy in New York, U.S.A. On the same day, thus, Constancia Argana was only duly authorized to represent Fermina Quinones on said date, May 13, 2010. Hence, when the complaint was filed on December 23, 2008, Constancia Argana was not yet authorized to file the same for and in behalf of Fermina Quinones. Fermina Quinones cannot therefore be considered as party-plaintiff when the case was filed on December 23, 2008. Ergo, considering that all the parties are residents of Muntinlupa City, the requirement of conciliation

before the Lupon prior to the filing of the instant case as mandated under Sec. 412(a) of R.A. 7160 is indispensable. For failure to comply with a condition precedent in accordance with Sec. 1(j) of Rule 16 of the 1997 Revised Rules of Civil Procedure, this case should be dismissed.” [Citations omitted.]

Plaintiffs-Appellants moved to reconsider[12] the order dated June 25, 2010, but the RTC denied the same in the order dated September 15, 2010[13] for lack of merit.

In this appeal, plaintiffs-appellants claim that the RTC erred: 1) in not considering the special power of attorney noted in the United States of America as valid; 2) in finding that the special power of attorney, not having been duly authenticated in accordance with Section 24, Rule 132 of the Rules of Court cannot be admitted in evidence before Philippines courts; and 3) in dismissing the instant case based on Section 1(j), Rule 16 of the 1997 Revised Rules of Procedure on the ground that a condition precedent for the filing of the claims has not been complied with.

In *Heirs of Arcilla vs. Teodoro*[14], the Supreme Court ruled as follows:

“The ruling of the Court in *Lopez v. Court of Appeals*, cited by petitioners, is inapplicable to the present case because the Rules of Evidence which were in effect at that time were the old Rules prior to their amendment in 1989. The rule applied in *Lopez*, which was decided prior to the effectivity of the amended Rules of Evidence, was Section 25, Rule 132, to wit:

Sec. 25. Proof of public or official record – An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (Emphasis supplied)

When the Rules of Evidence were amended in 1989, Section 25, Rule 132 became Section 24, Rule 132; and the amendment consisted in the deletion of the introductory phrase “An official record or an entry therein,” which was substituted by the phrase “The record of public documents referred to in paragraph (a) of Section 19.”

Thus, Section 24, Rule 132 of the Rules of Court now reads as follows:

Sec. 24. Proof of official record. - The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (Emphasis supplied)

Section 19(a) of the same Rule provides:

Sec. 19. Classes of documents. - For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) The written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines or of a foreign country;
- (b) Documents acknowledged before a notary public except last wills and testaments; and
- (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

It cannot be overemphasized that the required certification of an officer in the foreign service under Section 24 refers only to the documents enumerated in Section 19(a), to wit: written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines or of a foreign country. The Court agrees with the CA that had the Court intended to include notarial documents as one of the public documents contemplated by the provisions of Section 24, it should not have specified only the documents referred to under paragraph (a) of Section 19.

In Lopez, the requirements of then Section 25, Rule 132 were made applicable to all public or official records without any distinction because the old rule did not distinguish. However, in the present rule, it is clear under Section 24, Rule 132 that its provisions shall be made applicable only to the documents referred to under paragraph (a), Section 19, Rule 132.” [Citations omitted.]

Considering that the complaint was initiated in 2008, the applicable rule is now Section 24, Rule 132 of the Revised Rules on Evidence. Applying Section 19, Rule 132 of the Revised Rules on Evidence and the ruling in the Arcilla case, this Court finds that the Special Power of Attorney dated June 12, 2008 and notarized by Ali Hassanein, a notary public of New Jersey with ID # 2219675 is admissible. Hence, plaintiff-appellant Fermina B. Quinones being a party-litigant was duly represented by plaintiff-appellant Constancia A. Bernardino-Argana in this case. However, since Fermina B. Quinones is not an actual resident of the barangay or city where the rest of the parties reside, prior referral of the case to conciliation is not a pre-condition to its filing in court[15]. Hence, the RTC erred in dismissing the complaint for failure to comply with a condition precedent.

In his brief, defendant-appellee Victor A. Bernardino claims that the RTC erred in not ruling that the cause of action has already prescribed[16]. While this Court is mindful that the issue of prescription was not raised by plaintiffs-appellants in this appeal, the Supreme Court has held that an appellate court is accorded broad discretionary power to consider even errors not assigned in the following instances: (1) grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (3) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (4) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) matters not assigned as errors on appeal but closely related to an error assigned; and (6) matters not assigned as errors on appeal but upon which the determination of a question properly assigned is dependent.[17] Considering that prescription is one of the affirmative defenses raised by defendants-appellees in this case, this Court deems it necessary to resolve whether the case should be dismissed on the ground of prescription.

The complaint filed by plaintiffs-appellants reads:

“13. In 1991, Basilisa A. Bernardino, who was then eighty (81) years old suffered a stroke that rendered her partially paralyzed. She underwent several months of physical therapy and was not able to fully recover from the illness;

14. Due to the affliction and advanced age, she remained at home and could not move around without help and assistance. She became senile and vulnerable. She could not walk around. Soon thereafter, Basilisa A. Bernardino was most of the time, confined to bed and unable to eat or take a bath on her own;

15. Taking undue advantage of her mother's ill-health, on December 19, 1991, Victor caused the execution of a “Pagkakaloob” in his favor. Consequently, Basilisa A. Bernardino purportedly donated to him five thousand

four hundred (5,404) square meters portion of the parcel of land covered by Transfer Certificate of Title No. (43823) 114893;

xxx xxx xxx xxx

17. On December 19, 1991, Basilisa A. Bernardino was already eighty one (81) years old. She had just suffered a stroke and due to her advanced age, had become senile. She was no longer aware of the consequences of her action;

18. Basilisa A. Bernardino did not give her consent to the execution of the “Pagkakaloob”;

19. As earlier stated, Basilisa A. Bernardino finished only the third grade in elementary school. When the alleged document was executed, Basilisa A. Bernardino could barely read. She had eye cataracts that rendered her vision blurry that she could hardly see anything at all. Moreover, Basilisa A. Bernardino could not even read English, thus she could have not possibly known that the supposed document she was signing was a “Pagkakaloob” or a donation inter vivos in favor of Victor;

20. Furthermore, at the time the alleged “Pagkakaloob”, Basilisa A. Bernardino could hardly walk and was confined to bed, most of the time. She could not have possibly gone to the City of Manila and personally acknowledged the document before Notary Public Henry Adasa;

21. The execution of the “Pagkakaloob” lacked consent of the donor making the deed of donation inter vivos void ab initio as one of the essential requisites of the contract was wanting;

22. Necessarily, Transfer Certificates of Title nos. 185367, 185368, 185369, 185371, 185372, the subsequent titles issued particularly, Transfer Certificates of Title nos. 29586, 29687 and 29588 and the corresponding tax declarations should likewise be cancelled for being null and void;

23. At most, the “Pagkakaloob” was an absolutely simulated contract and therefore, void. Victor illicitly executed the alleged document in order to unduly deprive plaintiffs their hereditary rights over property and subsequently, their respective share in the inheritance; xxx”

This Court finds that the action has prescribed. In *Catalan vs. Basa*[18], the Supreme Court stated that “[a] donation is an act of liberality whereby a person disposes gratuitously a thing or right in favor of another, who accepts it. Like any other contract, an agreement of the parties is essential. Consent in contracts presupposes the following requisites: (1) it should be intelligent or with an exact notion of the matter to which it refers; (2) it should be free; and (3) it should be spontaneous. The parties' intention must be clear and the attendance of a vice of consent, like any contract, renders the donation voidable.” Anent the issue on lack of capacity the Court stated in the same case that “the burden of proving such incapacity rests upon the person who alleges it; if no sufficient proof to this effect is presented, capacity will be presumed.”

Under Article 1390 of the New Civil Code of the Philippines, a contract where one of the parties is incapable of giving consent is valid or whose consent is vitiated by mistake, violence, intimidation, undue influence, or fraud, is valid but voidable or annulable by a proper action in court. Under Article 1391 of the Civil Code, the action for annulment be brought within four (4) years from the time the defect of the consent disappears or from the time the mistake or fraud is discovered. Based on the records, it is clear that the period to assail the validity of the deed of donation has prescribed when the when the complaint was filed in 2008 because the deed of donation was annotated on TCT No. (43823) 114893 on June 23, 1992[19]. TCT No. 185368, which is one of the five (5) titles that were derived from TCT No. (43823) 114893 and from where the land sold to defendants-appellees Spouses Banlasan was derived, was issued in the name of defendant-appellee Victor A. Bernardino on May 27, 1993[20]. Even if the unlawful registration of the deed of donation in 1992 created an implied trust in favor of plaintiff's-appellants, the action to enforce the trust has also prescribed because such action prescribes in ten (10)

years[21].

Clearly, plaintiff's-appellants' action is barred by the lapse of ten years from the time their cause of action accrued whether the action is one to annul the deed of donation or one to annul the registration thereof with a view to asking for the reconveyance of the property to them, as the ultimate relief prayed for.[22]

WHEREFORE, the appeal is DENIED. The order dated June 25, 2010 issued by the Regional Trial Court of Muntinlupa City Br. 276 in Civil Case No. 08-170 is Affirmed with Modification. The complaint in Civil Case No. 08-170 is dismissed for having been filed beyond the statute of limitations under Rule 16 Section 1 of the 1997 Rules of Court, as amended.

SO ORDERED.

Tijam, N.G., Chairperson and Lopez, M.V., JJ., concur.

[1] Rollo, pp. 62-69.

[2] Records, pp. 1-17.

[3] Records, pp. 26-27.

[4] Records, pp. 154-163.

[5] Records, pp. 20-21.

[6] Records, pp. 216-223.

[7] Records, pp. 267-276.

[8] Records, pp. 475-476.

[9] Records, pp. 488-489.

[10] Records, p. 495. See Records, pp. 502-546, 558-565, 582-585, 588-589.

[11] Supra note 1.

[12] Records, pp. 611-622.

[13] Rollo, pp. 70-71.

[14] Heirs of Arcilla vs. Teodoro, G.R. No. 162886, August 11, 2008.

[15] Pascual vs. Pascual, G.R. No. 157830, November 17, 2005.

[16] Rollo, pp. 105-110.

[17] Sumipat, et al. vs. Banga, et al., G.R. No. 155810, August 13, 2004. Citing Catholic Bishop of Balanga vs. Court of Appeals, G.R. No. 112519, November 14, 1996, Santos vs. Court of Appeals, G.R. No. 100963, April 6, 1993.

[18] Catalan vs. Basa, G.R. No. 159567, July 31, 2007.

[19] Records, pp. 25, 26-27; See back of p. 27 for date of annotation to TCT No. (43823) 114893 on the deed of donation.

[20] Records, p. 32.

[21] Dumanon vs. Butuan City Rural Bank, G.R. No. L-27675, December 15, 1982.

[22] Ibid.

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