

**FRANCISCA ALSUA-BETTS, JOSEPH O. BETTS, JOSE MADARETA,
ESTEBAN P. RAMIREZ, AND THE REGISTER OF DEEDS FOR ALBAY
PROVINCE, PETITIONERS, VS. COURT OF APPEALS, AMPARO
ALSUA-BUENVIAJ...**

G.R. Nos. L-46430-31. July 30, 1979

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal by certiorari from the decision of the Court of Appeals in CA-G.R. Nos. 54492-R and 54493-R which reversed the decision of the Court of First Instance of Albay allowing the probate of the will of Don Jesus Alsua in Special Proceedings No. 699 and dismissing the complaint in Civil Case 3068 after declaring the two deeds of sale executed by Don Jesus Alsua legal and valid. The respondent court[1] denied the probate of the will, declared null and void the two sales subject of the complaint and ordered the defendants, petitioners herein, to pay damages to the plaintiffs, now the private respondents, the sum of Five Thousand Pesos (P5,000.00), to render an accounting of the properties in their possession and to reimburse the latter the net gain in the proportion that appertains to them in the properties from the date of the filing of the complaint up to complete restoration plus Fifty Thousand Pesos (P50,000.00) as attorney's fees and costs.

The antecedent events leading to the filing of these two consolidated actions are the following:

On November 25, 1949, Don Jesus Alsua and his wife, Doña Florentina Ralla, both of Ligao, Albay, together with all their living children, Francisca Alsua-Betts, Pablo Alsua, Fernando Alsua thru his judicial guardian Clotilde Samson, and Amparo Alsua de Buenviaje, entered into a duly notarized agreement, Escritura de Particion Extrajudicial (Exhibit 8), over the then present and existing properties of the spouses Don Jesus and Doña Florentina enumerated in a prepared inventory, Exhibit 8-A, the essential features of which are stated in private respondents' Brief, pp. 26-29, to wit:

"(1) Basis of the partition: Inventory (Annex A) of all the properties of the Alsua spouses, which inventory consists of 97 pages, all of them signed by the spouses and all the abovenamed heirs in the left margin of every page (parafo primero).

(2) An acknowledgment of the spouses that all the properties described in the inventory (Annex A) are conjugal properties with the exception of five parcels of land identified with the figures of 1 to 5 and 30 shares of San Miguel Brewery stock which are paraphernal properties of the late Doña Tinay (segundo parafo).

(3) An acknowledgment that during their marriage, they had nine children but five of them died minors, unmarried (parafo tercero y cuatro).

(4) An acknowledgment that on the basis of Article 1056 of the Civil Code (old) to avoid possible misunderstanding among their children concerning the inheritance they are entitled to in the event of death of one of them they have decided to effectuate an extrajudicial partition of all the properties described in Annex "A" thereto under the following terms and conditions: (Parafo quinto):

To Francisca Alsua, married to Joseph O. Betts were allotted or assigned all the real properties with the improvements thereon specifically described from pages 1-12 of said inventory or, 34 parcels of land with a total land area of 5,720,364 sq. meters, with a book or appraised value of P69,740.00.

To Pablo Alsua, married to Teresa Locsin were allotted or assigned all the real properties with the improvements thereon specifically described from pages 12-20 of said inventory or, 26 parcels of land with a total land area of 5,679,262 sq. meters, with a book or appraised value of P55,940.00.

To Fernando Alsua, married to Clotilde Samson were allotted or assigned all the real properties with the improvements thereon specifically described from pages 20-33 of said inventory or, 47 parcels of land with a total land area of 6,639,810 sq. meters, with a book or appraised value of P89,300.00.

To Amparo Alsua, married to Fernando Buenviaje were allotted or assigned all the real properties with the improvements thereon specifically described from pages 33-47 of said inventory or, 47 parcels of land with a total land area of 5,630,715 sq. meters, with a book or appraised value of P58,830.00.

(a) Each and every one of the heirs named above acknowledge and admit that the totality of the properties allotted and adjudicated to the heirs as described in the preceding paragraph, constitute one-half of the properties described in Annex "A", including any amount of cash deposited.

(b) That all the heirs acknowledge and admit that all the properties assigned to them as their hereditary portion represent one-half not only of the conjugal properties but includes the paraphernal properties - waiving now and forever any complaint or claim they have or they may have concerning the amount, value, extension and location of the properties that are allotted to each and everyone. They also waive any claim they have or they may have over the remaining portion of the properties, which spouses reserved for themselves.

(c) That in case of death of one of the spouses, each and everyone of the heirs acknowledge that the properties which are left in the possession of the surviving spouse, including any amount in cash, are even less than the one-half that should correspond in absolute ownership as his legitimate participation in the conjugal properties. In consequence they waive any claim that they have or may have over said portion of said properties or any amount in cash during the lifetime of the surviving spouse, including any right or claim they have or they may have over the paraphernal properties of Doña Tinay in the event the surviving spouse is Don Jesus.

(d) The spouses on their part in case of death of any one of them, the surviving spouse waives any claim he or she may have over the properties assigned or adjudicated to the heirs under and by virtue of this deed. The properties which were reserved for them (the spouses) should be considered as his or her legitimate participation in the conjugal properties and the fair compensation of his or her usufruct on the properties that the surviving spouse reserved for himself or herself which shall be distributed in equal shares among the heirs upon his or her death unless said properties or some of them have been disposed of during the lifetime of the surviving spouse.

(e) Any heir who may dare question the validity and legitimacy of the provision contained herein shall be under obligation to pay to the other heirs, in the concept of damages and prejudice, the sum of P5,000.00 plus attorney's fees.

(f) The provisions of this deed shall bind the successors of the herein heirs.

(g) In the event of death of one of the spouses, the properties assigned or adjudicated to each and everyone of the heirs shall be considered as his share or participation in the estate or as his inheritance left by the deceased and each heir shall become the absolute owner of the properties adjudicated to him under this deed.

On January 5, 1955, Don Jesus and Doña Florentina, also known as Doña Tinay separately executed their respective holographic wills (Exhs. 6-B and 7-B), the provisions of which were in conformity and in implementation of the extrajudicial partition of November 25, 1949. Their holographic wills similarly provided

for the institution of the other to his or her share in the conjugal properties, the other half of the conjugal assets having been partitioned to constitute their legitime among their four living children in the Extrajudicial Partition of 1949. The wills also declared that in the event of future acquisitions of other properties by either of them, one-half thereof would belong to the other spouse, and the other half shall be divided equally among the four children. The holographic will of Doña Tinay written in Spanish reads, as translated:

"TESTAMENT

I, FLORENTINA R. DE ALSUA, 67 years old, Filipina, married to Don Jesus Alsua, resident of and with postal address in the Municipality of Ligao, Province of Albay, Philippines, being in the full possession of my mental and physical faculties freely and spontaneously execute this my last will and testament in my handwriting and signed by me and expressed in the Spanish language which I speak, write and understand, this 5th day of January, 1955 in the Municipality of Ligao, Province of Albay, and in which I ordain and provide:

"First: That in or about the year 1906 I was married to my husband Don Jesus Alsua and begot nine (9) children with him, four (4) of whom are still living and they are Francisca Alsua, Pablo Alsua, Fernando Alsua and Amparo Alsua. The other five (5) died during their minority, single and without children.

"Second: That after my marriage to my husband Don Jesus Alsua and during our conjugal union, and as a result of our efforts and industry, we were able to acquire conjugal properties consisting of abaca (abales) and cacao lands and urban lands registered in the office of the Registry of Property of the Province of Albay and in the City of Manila.

"Third: That I institute as my heirs with right to inherit the following: my spouse Don Jesus Alsua, one-half (1/2) of my properties, real and personal, and the other half, to my children Francisca Alsua, married to Joseph O. Betts, Pablo Alsua, Fernando Alsua, married to Clotilde Samson, and Amparo Alsua, married to Fernando Buenviaje, in equal parts. It is to be understood, however, that the other half that corresponds as legitime to my above named children have already been given to them, pursuant to a document dated November 25, 1949 and ratified on the same day, month and year before Notary Public Segundo G. Flores (Reg. No. 525; Pag. 15; Lib. II; Series of 1949) enjoining each and everyone of them to respect and faithfully comply with each and every clause contained in the said document.

"Fourth: That should I acquire new properties after the execution of this testament, the same shall be partitioned among my spouse and above named children or the children mentioned in above par. 3 in the same proportion, that is, one-half (1/2) to my spouse; and the other half to my children in equal parts.

"Fifth: That I name as my executor my husband Don Jesus Alsua without having to post any bond.

IN VIRTUE WHEREOF, I hereby sign in my own handwriting this testament on this 5th day of January, 1955 in the Municipality of Ligao, Province of Albay, Philippines.

(SGD.) FLORENTINA R. DE ALSUA"

(Joint Record on Appeal, pp. 420-423, CA-G.R. No. 54492-R)

As previously stated, Don Jesus Alsua executed a separate but similar holographic will on the same day, Jan. 5, 1955 in exactly the same terms and conditions as the above will of his wife.

On May 21, 1956, the spouses Don Jesus and Doña Tinay filed before the Court of First Instance of Albay their respective petitions for the probate of their respective holographic wills which were docketed as Special Proceedings No. 484 (Jesus Alsua, Petitioner) and Special Proceedings No. 485 (Doña Florentina Ralla de Alsua, Petitioner).

On August 14, 1956, the spouses Don Jesus and Doña Tinay executed their mutual and reciprocal codicils

amending and supplementing their respective holographic wills. Again, the codicils similarly acknowledged and provided that one-half of all the properties of the spouses, conjugal and paraphernal, had been disposed of, conveyed to and partitioned among their legitimate heirs in the "Escritura de Particion" of November 25, 1949, but that they reserved for themselves (the spouses Don Jesus and Doña Tinay) the other half or those not disposed of to the said legitimate heirs under the above agreement of partition, and that they mutually and reciprocally bequeathed unto each other their participation therein as well as in all properties which might be acquired subsequently. Each spouse also declared that should she or he be the surviving spouse, whatever belongs to him or her or would pertain to him or her, would be divided equally among the four children. It was also declared in both codicils that upon the death of either of the spouses, the surviving spouse was designated mutually and reciprocally as the executor or administrator of all the properties reserved for themselves.

The codicil executed by Doña Tinay written in Spanish reads, as translated:

"CODICIL

This codicil supplements and amends the preceding testament. That my spouse and I have agreed to divide the properties which we have acquired into 2 parts. The 1/2 that would correspond to me covers all the properties that I have partitioned among my children in the Document of Partition dated November 25, 1949 before Notary Public Segundo G. Flores, Jr. (Doc. No. 525; Pag. No. 15; Lib. No. II; Series of 1949) (and) even as the properties which by reason of this testament I leave to my husband as his share and the other half that corresponds to my husband constitutes all the properties that up to now have not been disposed of, particularly the urban lands situated in Legaspi, Albay, Ligao of the Province of Albay and in the City of Manila, with the exception of that portion that I bequeath to my husband as his inheritance and as his legitime.

That I institute as my heirs with the right to inherit my husband Don Jesus Alsua and my children Francisca Alsua, Pablo Alsua, Fernando Alsua and Amparo Alsua. I leave to my aforesaid children all the properties described in the above mentioned Document of Partition dated November 25, 1949 which correspond to each one of them and in the profits (fruits) expressed in the same, and in the event that the properties granted to one or any of my children should exceed in quantity or value those corresponding to another or others, I hereby declare that it is my will that the same be divided among my children as their inheritance from the free portion of my property.

I leave to my spouse Don Jesus Alsua as his legitime and as his inheritance the part of the free portion of my property which have not been allocated in favor of my children in the Document of Partition aforesaid and that which should exceed 1/2 of the conjugal property of gains that pertains to him as above stated, including all those properties which we shall acquire after the execution of this document.

In case it should be God's will that I survive my spouse, I hereby declare that it is my will that any and all kinds of property that pertain to me or would pertain to me, which have not been disposed of pursuant to the partition, should be divided equally among my above-mentioned heirs after my death.

Ligao, Albay, Philippines, August 14, 1956.

(SGD.) FLORENTINA RALLA DE ALSUA"

(Joint Record on Appeal, pp. 423-425, CA-G.R. No. 54492-R)

And as stated previously, on the same day, August 14, 1956, Don Jesus executed also a separate but similar codicil in exactly the same terms and conditions as the above codicil of his wife. Also on the same day of August 14, 1956, the spouses Don Jesus and Doña Tinay both filed their respective supplemental petitions for the probate of their respective codicils in the probate proceedings earlier filed. On February 19, 1957, their respective holographic wills and the codicils thereto were duly admitted to probate.

Upon the death of Doña Tinay on October 2, 1959, Don Jesus was named executor to serve without bond in an order issued by the probate court on October 13, 1959. Letters testamentary having been issued in favor of Don Jesus, he took his oath of office and performed his duties as such until July 1, 1960.

Thereafter in the early part of November, 1959, Don Jesus cancelled his holographic will in the presence of his bookkeeper and secretary, Esteban P. Ramirez, whom he instructed to make a list of all his remaining properties with their corresponding descriptions. His lawyer, Atty. Gregorio Imperial, Sr. was then instructed to draft a new will which was duly signed by Don Jesus and his attesting witnesses on November 14, 1959 at his home in Ligao, Albay. This notarial will and testament (Exh. A) of Don Jesus executed on November 14, 1959 had three essential features: (a) it expressly cancelled, revoked and annulled all the provisions of Don Jesus' holographic will of January 5, 1955 and his codicil of August 14, 1956; (b) it provided for the collation of all his properties donated to his four living children by virtue of the "Escritura de Particion Extrajudicial" of 1949, and that such properties be taken into account in the partition of his estate among the children; and (c) it instituted his children as legatees/devisees of certain specific properties, and as to the rest of the properties and whatever may be subsequently acquired in the future, before his death, were to be given to Francisca and Pablo, naming Francisca as executrix to serve without a bond.

After all debts, funeral charges and other expenses of the estate of Doña Tinay had been paid, all her heirs including Don Jesus, submitted to the probate court for approval a deed of partition executed on December 19, 1959 (Exh. 7-Q) and which essentially confirmed the provisions of the partition of 1949, the holographic will and codicil of Doña Tinay. On July 6, 1960, the court approved the partition of 1959 and on January 6, 1961 declared the termination of the proceedings on the estate of Doña Tinay.

On May 6, 1964, Don Jesus Alsua died.

On May 20, 1964, petitioner herein Francisca Alsua Betts, as the executrix named in the will of November 14, 1959, filed a petition for the probate of said new will of Don Jesus Alsua before the Court of First Instance of Albay and was docketed as Special Proceedings No. 699. Oppositions thereto were filed by Pablo, Amparo and Fernando, thru his judicial guardian Clotilde Samson, on the following grounds: (a) that Don Jesus was not of sound and disposing mind at the time of the execution of the alleged will; (b) that the will was executed under duress or influence of fear or threats; or it was procured by undue and improper pressure and influence on the part of the main beneficiaries and of person or persons in collusion with them, or the signature of the testator was secured by or thru fraud; (c) that the will was not executed according to the formal requirements of the law; and (d) that the alleged will subject of probate contravened the Extrajudicial Partition of 1949 agreed upon by him, his deceased spouse, Doña Tinay, and all his children, Francisca, Pablo, Amparo and Fernando thru his judicial guardian Clotilde Samson, and also contravened Don Jesus' own probated holographic will and codicil of 1955 and 1956, respectively, essentially confirming and implementing the said partition of 1949 which had already been partially executed by all the signatories thereto in the partition of the estate of Doña Tinay in December, 1959.

On the basis of Francisca's designation as executrix in the new will dated November 14, 1959, the Probate Court appointed her Administratrix of the estate of her late father, Don Jesus Alsua. She then filed with the Probate Court an inventory of the properties of the estate which, according to the oppositors therein (the private respondents now) did not include some properties appearing in the agreement of November 25, 1949 or in the inventory attached thereto as Annex "A" and in the "Escritura de Particion" of December 19, 1959 as belonging to or should pertain to Don Jesus. According to the oppositors, these properties consist of thirty-three (33) premium agricultural lots with a total land area of 1,187,970 square meters, or approximately 119 hectares and with a total assessed value of P48,410.00 or a probable total market value of P238,000.00 at only P2,000.00 per hectare, and

four (4) commercial urban lots ideally located in the business section of Legazpi City including the lot and the building presently occupied by the well-known "Mayon Hotel" with an assessed value of approximately P117,260.00 or a probable market value at the time of P469,040.00. It appearing from the new will that these properties were bequeathed to Pablo Alsua and Francisca Alsua-Betts, specifically, 3 parcels of the 33 agricultural lands to Pablo and the rest to Francisca, the oppositors also raised in issue the non-inclusion of said properties in the inventory of the estate of their late father. In answer, Francisca claimed ownership over the same, alleging that she bought the properties from their father and presenting the two Deeds of Sale now being assailed, one dated August 26, 1961 purporting to show the sale of the 33 parcels of agricultural land to Francisca by their father for the price of P70,000.00 and the other dated November 26, 1962 evidencing the sale of the four urban lots for the sum of P80,000.00. Claiming fraud in the sales, the oppositors filed Civil Case No. 3068, seeking the annulment of the aforesaid two deeds of sale, with damages, which upon agreement of the parties was then jointly heard and tried with Special Proceedings No. 699 for probate of the last Will and Testament of Don Jesus executed on November 14, 1959.

After a joint hearing of the merits of these two cases, the Court of First Instance of Albay promulgated a decision on January 15, 1973, the dispositive portion of which states:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered, to wit:

1. In Special Proceedings 699, the Court hereby APPROVES and ALLOWS the Will executed by Don Jesus Alsua at Ligao, Albay, on November 14, 1959, which had been marked as Exhibit A, consisting of nine (9) pages, and orders that the same be made the basis for division and distribution of the estate of said testator;
2. In Civil Case 3068, the Court hereby dismisses the complaint and holds that the sale on August 26, 1961 (Exh. U) and the sale on November 26, 1962 (Exh. W), are lawful and valid sales and accordingly conveyed title to the VENDEE thereof. The Plaintiffs in Civil Case 3068, are ordered jointly and severally to pay to the defendant, Francisca Alsua Betts Fifty Thousand Pesos (P50,000.00) as damages and Fifty Thousand (P50,000.00) Pesos for attorney's fees or a total of One Hundred Thousand Pesos (P100,000.00) and to pay the costs."

On appeal by herein respondents to the Court of Appeals, the court reversed the appealed decision in a judgment rendered on April 4, 1977, the dispositive portion of which states, as translated, thus -

"IN VIEW OF THE FOREGOING, this Tribunal finds itself constrained to set aside as it hereby sets aside the decision appealed from in the following manner: (1) in Special Proceedings 699, the probate of the will, Exh. A, is hereby denied; (2) in Civil Case No. 3068, Exhs. U and W and the titles issued on the basis thereof are hereby declared null and void, ordering the appellees Francisca Alsua and Joseph Betts to pay to the plaintiffs in the concept of fixed damages, the sum of P5,000.00 and to render an accounting of properties in their possession and to reimburse the plaintiffs the net gain, in the proportion that appertains to them in the properties subject of litigation in Civil Case No. 3068 from the date of the filing of this complaint, up to the complete restoration of the properties pertaining to (plaintiffs) pursuant to Article 2208 of the New Civil Code, paragraph, ordering them in addition to pay to the plaintiffs and oppositors the sum of P50,000.00 as attorney's fees, and the costs."

Hence, the petition at bar assailing the respondent court's decision on four assigned errors, to wit:

I. The respondent Court of Appeals erred in not affirming the findings of the probate court (Special Proceedings No. 699) that private respondents, oppo-sitors to the probate of the will, are in estoppel to question the competence of testator Don Jesus Alsua.

II. The respondent Court of Appeals grossly erred in holding that testator Don Jesus Alsua cannot revoke his

previous will.

III. The respondent court's finding is grounded entirely on speculation, surmises or conjectures resulting in a gross misapprehension of facts.

IV. The respondent court grossly erred in annulling the sales of August 26, 1961 (Exh. U), and of November 26, 1962 (Exh. W).

On the first issue of estoppel raised in the assignment of errors, We hold that the same is of no moment. The controversy as to the competency or incompetency of Don Jesus Alsua to execute his will cannot be determined by acts of the herein private respondents as oppositors to the will in formally agreeing in writing jointly with the petitioner Francisca Alsua de Betts that their father, Don Jesus Alsua, be appointed by the court executor of the will of their mother in Special Proceedings No. 485, Testate Estate of Doña Florentina Ralla de Alsua and in subsequently petitioning the court not to require Don Jesus Alsua to file any accounting as executor in the proceedings, which petitioners claim and was upheld by the trial court as constituting estoppel on the part of the private respondents from questioning the competence of Don Jesus Alsua.

The principle of estoppel is not applicable in probate proceedings, a ruling laid down in the case of Testate Estate of the Late Procopia Apostol. Benedicta Obispo, et al vs. Remedios Obispo, 50 O.G. 614, penned by Justice J.B.L. Reyes, an eminent and recognized authority on Civil Law when he was still in the Court of Appeals, and We quote:

"Finally, probate proceedings involve public interest, and the application therein of the rule of estoppel, when it will block the ascertainment of the truth as to the circumstances surrounding the execution of a testament, would seem inimical to public policy. Over and above the interest of private parties is that of the state to see that testamentary dispositions be carried out if, and only if, executed conformably to law.

The Supreme Court of New York aptly said in *Re Canfield's Will*, 300 N.Y.S., 502:

"The primary purpose of the proceeding is not to establish the existence of the right of any living person, but to determine whether or not the decedent has performed the acts specified by the pertinent statutes, which are the essential pre-requisites to personal direction of the mode of devolution of his property on death. There is no legal but merely a moral duty resting upon a proponent to attempt to validate the wishes of the departed, and he may and frequently does receive no personal benefit from the performance of the act.

One of the most fundamental conceptions of probate law, is that it is the duty of the court to effectuate, in so far as may be compatible with the public interest, the devolutionary wishes of a deceased person (*Matter of Watson's Will*, 262 N.Y., 284, 186, N.E., 787; *Matter of Marriman's Estate*, 124 Misc. 320, 325, 208, N.Y.S., 672; *Foley, S.*, affirmed 217 App. Div., 733, 216 N.Y.S., 126, *Henderson, S.*, *Matter of Draske's Estate*, 160 Misc. 587, 593, 290, N.Y.S., 581). To that end, the court is, in effect, an additional party to every litigation affecting the disposal of the assets of the deceased. *Matter of Van Valkenburgh's Estate*, 164 Misc. 295, 298, 298, N.Y.S., 219."

The next issue that commands Our attention is whether the respondent court erred in not allowing the probate of the last will and testament of Don Jesus Alsua. Petitioners claim that the disallowance was based on speculations, surmises or conjectures, disregarding the facts as found by the trial court. The Civil Code is very clear and explicit in providing the cases where a will may be disallowed under Article 839 which provides as follows:

"Art. 839. The will shall be disallowed in any of the following cases:

- (1) If the formalities required by law have not been complied with;
- (2) If the testator was insane, or otherwise mentally incapable of making a will, at the time of its execution;

- (3) If it was executed through force or under duress, or the influence of fear, or threats;
- (4) If it was procured by undue and improper pressure and influence, on the part of the beneficiary or of some other person;
- (5) If the signature of the testator was procured by fraud;
- (6) If the testator acted by mistake or did not intend that the instrument he signed should be his will at the time of affixing his signature thereto."

The issue under consideration appears to Us to have been answered by the respondent court itself when it accepted the findings of the trial court on the due execution of the questioned will and testament of Don Jesus, declaring:

"x x x and going back to the previous question, whether the questioned will and testament of November 14, 1959, Exh. A, was executed in accordance with Arts. 805-809 of the New Civil Code, - this Tribunal from the very beginning accepts the findings of the inferior court concerning the question, ?

On October 2, 1959, Doña Florentina died at Ligao, Albay. About 2 weeks after said death of his wife, Don Jesus Alsua decided to make a new will, thereby revoking and cancelling his previous holographic will which he made on January 5, 1955 and also its codicil dated August 14, 1956. In the presence of his bookkeeper and secretary, Esteban P. Ramirez, he crossed out in ink each and every page of said page he wrote on each page the word "cancelado", and affixed his signature thereon (Exh. V-5, V-6, consecutively up to and including Exh. V-14). He then instructed Ramirez to make a list of all his properties with their corresponding descriptions.

Meanwhile, Don Jesus Alsua sent for his lawyer, Don Gregorio Imperial, Sr. and the latter came accompanied by his son, Atty. Jorge S. Imperial, who, incidentally, is now a judge of the Court of First Instance of Naga City, Camarines Sur. Don Jesus informed his lawyers that he wanted to make a new will, and accordingly gave more de-tailed instructions as to how he wanted to divide his properties among his four children. He handed to them a list and on the left he indicated the name of the child to whom the listed properties shall pertain. Atty. Jorge Imperial took notes of the instructions of Don Jesus Alsua. To Don Jesus, Spanish is his major language, as in fact his conversations with Don Gregorio are always in Spanish. A few days before November 14, 1959, Atty. Jorge S. Imperial showed to Don Jesus the semi-final draft of the will and after reading it Don Jesus said that it was as directed by him, and after making a few minor corrections, he instructed Atty. Jorge S. Imperial to put the will in final form. He further told Atty. Jorge Imperial that the signing of the will should be at his home in Ligao, in the morning of November 14, 1959, and that the witnesses should be Mr. Ramon Balana, the then Register of Deeds of Albay; Mr. Jose Madarieta who is a friend of the family; and Mr. Jose Gaya who is a sort of employee of Don Jesus.

Thus in the morning of November 14, 1959, Don Gregorio and Atty. Jorge S. Imperial, riding in a sedan, stopped at the Legaspi residence of Mr. Ramon Balana, and informed the latter that Don Jesus was requesting him to be one of the attesting witnesses to his will. Mr. Balana, having a very high regard for Don Jesus, considered it an honor to be so asked, and gladly went with the Imperials. They arrived at the residence of Don Jesus at Ligao, Albay, almost ten o'clock of that morning, and they were ushered in by Mr. Jose Gaya, and the latter requested them to be seated at the usual receiving room on the ground floor while he announced their arrival to Don Jesus who was on the second floor. Soon Don Jesus came down, carrying with him the will to be signed placed inside a cartolina folder. He greeted Don Gregorio, Mr. Balana, and Atty. Imperial and immediately joined them in conversation. Mr. Gaya called for Mr. Jose Madarieta, whose residence is just across the road from the house of Don Jesus. Mr. Madarieta was already informed by Don Jesus himself about the fact of signing the will that morning, and so, on being advised by Mr. Gaya that the Imperials had already arrived, Madarieta proceeded to the

residence of Don Jesus, without much delay. With the coming of Madarieta and the coming back of Gaya, there were now six people gathered in the living room, namely: Don Jesus Alsua, Don Gregorio Imperial, Atty. Jorge S. Imperial, Mr. Ramon Balana, Mr. Jose Madarieta, and Mr. Jose Gaya. All the witnesses who testified for the petitioner declared that Don Jesus was in bright and lively conversation which ran from problems of farming and the merits of French-made wines. At 11:00 o'clock, Don Gregorio made a remark that it is about time to do what they were there for, and this was followed by a more or less statement from Jesus, who said:

'Precisamente es por lo que he llamado a ustedes que esten presentes para ser testigos de mi ultimo voluntad y testamento que ha sido preparado por el abogado Sr. Gregorio Imperial segun mis instrucciones cuyo documento tengo aqui conmigo y encuentro que, despues de lo he leido, esta satisfactoriamente hecho segun mis instrucciones, Como saben ustedes tengo cuatro (4) hijos todos ellos.' (pp. 43-44, t.s.n., hearing of December 7, 1967, Sarte).

On request of Don Jesus, all of them moved to the big round table on another part of the same sala for convenience in signing because there were chairs all around this table. The will which consisted of nine pages, with a duplicate, and triplicate was laid on the round table and the signing began, with Atty. Jorge S. Imperial assisting each person signing by indicating the proper place where the signature shall be written. Don Jesus, as testator, signed first. After signing the original and the two other sets, the three sets were then passed to Mr. Ramon Balana who signed as attesting witness. After Mr. Balana, Mr. Jose Madarieta signed next as another attesting witness, and when Mr. Madarieta finished signing all the three sets, the same were passed to Mr. Jose Gaya who also signed as the third attesting witness. On each of the three sets, Don Jesus signed ten times, - one on the margin of each of the nine pages, and at the end of the instrument proper. Each of the three attesting witnesses (Balana, Madarieta and Gaya) signed eleven times on each set, - one on the margin of each of the nine pages, one at the end of the instrument proper, and one below the attestation clause. The original will was marked as Exh. A (or set A); the duplicate as Exh. K (or set K) and the triplicate as Exh. L (or set L). During the hearing, each signature of Don Jesus, Mr. Balana, Mr. Madarieta, and Mr. Gaya were identified by Mr. Balana, Mr. Madarieta and Atty. (now Judge) Imperial. It was also clearly established that when Don Jesus signed the will, Mr. Balana, Mr. Madarieta, and Mr. Gaya were present and witnessed said signing, and that when each of these three witnesses was signing, Don Jesus and the two other attesting witnesses were present and witnessing said signing. The signing by the testator and the attesting witnesses having been completed, Atty. Jorge S. Imperial, as Notary Public with commission for the entire province of Albay, notarized the will, and sealed it with his notarial seal, which seal he brought along that morning. After all the three sets were notarized, they were all given back to Don Jesus who placed them inside the same folder. At that moment, it was already about 12:30 P.M. and Don Jesus invited all of them to lunch, which invitation was gladly accepted by all of them. (pp. 474-480, Joint Record on Appeal in CA-G.R. No. 54492-R)

which findings are supported by the evidence, - it is quite difficult to conclude that the same had not complied with the requirements of Arts. 804-806 of the New Civil Code. x x x" (CA Decision, pp. 13-16, as translated).

This cited portion of the appealed decision accepts as a fact that the findings of the lower court declaring the contested will as having been executed with all the formal requirements of a valid will, are supported by the evidence. This finding is conclusive upon this Tribunal and We cannot alter, review or revise the same. Hence, there is no further need for Us to dwell on the matter as both the lower court and the respondent appel-late court have declared that these are the facts and such facts are fully borne and supported by the records. We find no error in the conclusion arrived at that the contested will was duly executed in accordance with law. We rule that the questioned last will and testament of Don Jesus Alsua fully complied with the formal requirements of the law.

Respondent court, however, denied probate of the will after "noting certain details which were a little bit difficult

to reconcile with the ordinary course of things and of life." First was the fact that the spouses Don Jesus and Doña Tinay together with their four children Francisca, Pablo, Amparo and Fernando had executed the Extrajudicial Partition of November 25, 1949 (Exh. A) which divided the conjugal properties of the spouses between the spouses themselves and the children under the terms and conditions and dispositions herein-before stated and to implement its provisions, Don Jesus and Doña Tinay subsequently executed separately their respective holographic wills both dated January 5, 1955 and codicils dated August 14, 1956 with the same terms and conditions as reproduced herein earlier. Both holographic wills and codicils having been probated thereafter and upon the death of Doña Tinay, Don Jesus was appointed executor of the will and in due time the partition of the properties or estate of Doña Tinay was approved by the probate court on July 6, 1960.

The respondent court ruled that the Extrajudicial Partition of November 25, 1949 was an enforceable contract which was binding on Don Jesus Alsua as the surviving spouse, barring him from violating said partition agreement, barring him from revoking his holographic will of January 5, 1955 and his codicil of August 14, 1956, and further barring him from executing his new will and testament of November 14, 1959, now the subject of the probate proceedings elevated to this Court.

We do not agree with this ruling of the Court of Appeals. We hold that the Extrajudicial Partition of November 25, 1949 is null and void under Article 1056 in relation to Article 1271 of the old Civil Code which are applicable hereto. These Articles provide as follows:

"Art. 1056. If the testator should make a partition of his property by an act inter vivos, or by will, such partition shall stand in so far as it does not prejudice the legitime of the forced heirs. x x x"

"Art. 1271. All things, even future ones, which are not excluded from the commerce of man, may be the subject-matter of contracts.

Nevertheless, no contract may be entered into with respect to future inheritances, except those the object of which is to make a division inter vivos of an estate, in accordance with Article 1056.

All services not contrary to law or to good morals may also be the subject-matter of contract."

Article 1056 specifically uses the word "testator" from which the clear intent of the law may be deduced that the privilege of partitioning one's estate by acts inter vivos is restricted only to one who has made a prior will or testament. In other words, Article 1056 being an exception cannot be given a wider scope as to include in the exception any person whether he has made a will or not.

Respondent court citing the same Article concluded that under both the old and new Civil Code, a person who executes a will is permitted at the same time or a little thereafter or even before as long as he mentions this fact in the will, to partition his properties pursuant to the provisions of Article 1056 of the old Civil Code. The court further added that jurisprudence is to the effect that the partition presupposes the execution of the will that it ratifies or effectuates, citing the case of *Legasto vs. Verzosa*, 54 Phil. 776. Finally, respondent court held the opinion that the extrajudicial partition of November 14, 1949 was ratified in the holographic will executed by Don Jesus on Jan. 5, 1955 and in the codicil of August 14, 1956.

Again, We do not agree with this ruling of the respondent court. In *Legasto vs. Verzosa*, *supra*, the Supreme Court categorically declared the necessity of a prior will before the testator can partition his properties among his heirs, and We quote the pertinent portions of the decision:

"The first question to decide in the instant appeal is whether the partition made by Sabina Almadin of her property among her nieces, the defendants and appellants herein, was valid and enforceable.

Article 1056 of the Civil Code provides:

'Art. 1056. If the testator should make a partition of his property by an act inter vivos, or by will, such partition shall stand in so far as it does not prejudice the legi-time of the forced heirs.'

The Supreme Court of Spain, in a deci-sion rendered on June 13, 1903, laid down the following doctrine:

'Considering that the language of article 1056 cannot be interpreted to mean that a person may, by acts inter vivos, partition his property referred to in the section wherein said article is found, without the authority of a testament containing an expression of his last will, or the authority of law, for, otherwise, a partition thus made would be tantamount to making a will in a manner not provided for, authorized, nor included in the chapter referring to testaments, and especially, to the forms thereof, which is entirely different from the legal consequences of a free disposition made by parents during their lifetime, whereby they give to their children the whole or a part of their property;

'Considering that, inasmuch as the second paragraph of article 1271 makes reference to the aforesaid article, in providing that no contracts may be entered into with respect to future inheritances except those the object of which is to make a division inter vivos of the estate in accordance with article 1056, it is evident that said difference likewise leads to the conclusion that a partition thus made should be on the basis of a testamentary or legal succession and should be made in conformity with the fundamental rules thereof and the order of the heirs entitled to the estate, because neither of the two provisions could be given a wider meaning or scope than that they simply provide for the division of the estate during the lifetime of the owner, which, otherwise, would have to be done upon the death of the testator in order to carry into effect the partition of the estate among the persons interested.'

Manresa comments on the same article as follows:

'A distinction must be made between the disposition of property and its division; and the provision of article 1056 authorizing the testator to dispose of his property by acts inter vivos or by last will, must be understood in accordance with this distinction. The idea is to divide the estate among the heirs designated by the testator. This designation constitutes the disposition of the properties to take effect after his death, and said act must necessarily appear in the testament because it is the expression of the testator's last will and must be surrounded by appropriate formalities. Then comes the second part, to wit, the division in conformity with that disposition, and the testator may make this division in the same will or in another will, or by an act inter vivos. With these words, the law, in article 1056 as well as in article 1057, which we shall hereafter examine, makes allusion to the forms or manner of making the partition and not to the effects thereof, which means that, for purposes of partition the formal solemnities which must accompany every testament or last will are not necessary. Neither is it necessary to observe the special formalities required in case of donations, because it is not a matter of disposing gratuitously of properties, but of dividing those which already have been legally disposed of.'

It is thus seen that both the Spanish Supreme Court and the learned and authoritative commentator, Manresa, are of opinion that a testator may, by an act inter vivos, partition his property, but he must first make a will with all the formalities provided for by law. And it could not be otherwise, for without a will there can be no testator; when the law, therefore, speaks of the partition inter vivos made by a testator of his property, it necessarily refers to that property which he has devised to his heirs. A person who disposes of his property gratis inter vivos is not called a testator, but a donor. In employing the word "testator," the law evidently desired to distinguish between one who freely donates his property in life and one who disposes of it by will to take effect after his death."

We are not in conformity with the holding of the respondent court that the extrajudicial partition of November 25, 1949 which under the old Civil Code was expressly prohibited as against public policy had been validly ratified by the holographic will of Don Jesus executed on January 5, 1955 and his codicil of August 14, 1956. Such a holding of the appellate court that a person who executes a will is permitted to partition his properties pursuant to

the provisions of Article 1056 of the old Civil Code even before executing his will as long as he mentions this fact in the will, is not warranted under the ruling of *Legasto vs. Verzosa*, supra and the commentary of Manresa as quoted above. We rule, therefore, that the respondent court erred in denying probate to the will of Don Jesus dated November 14, 1959; it erred in holding that Don Jesus being a party to the extrajudicial partition of 1949 was contractually bound by the provisions thereof and hence could not revoke his participation therein by the simple expedience of making a new will with contrary provisions or dispositions. It is an error because the so-called extrajudicial partition of 1949 is void and inoperative as a partition; neither is it a valid or enforceable contract because it involved future inheritance; it may only be given effect as a donation inter vivos of specific properties to the heirs made by the parents.

Considering that the document, the extrajudicial partition of November 25, 1949, contained specific designation of properties allotted to each child, We rule that there was substantial compliance with the rules on donations inter vivos under the old Civil Code (Article 633). On the other hand, there could have been no valid donation to the children of the other half reserved as the free portion of Don Jesus and Doña Tinay which, as stated in the deed, was to be divided equally among the children for the simple reason that the property or properties were not specifically described in the public instrument, an essential requirement under Article 633 which provides as follows:

"Art. 633. In order that a donation of real property be valid it must be made by public instrument in which the property donated must be specifically described and in the amount of the encumbrances to be assumed by the donee expressed.

The acceptance must be made in the deed of gift or in a separate public writing; but it shall produce no effect if not made during the lifetime of the donor.

If the acceptance is made by separate public instrument, authentic notice thereof shall be given the donor, and this proceeding shall be noted in both instruments."

This other half, therefore, remained as the disposable free portion of the spouses which may be disposed of in such manner that either of the spouses would like in regards to his or her share in such portion, unencumbered by the provision enjoining the last surviving spouse to give equally to the children what belongs or would pertain to him or her. The end result, therefore, is that Don Jesus and Doña Tinay, in the Deed of 1949, made to their children valid donations of only one-half of their combined properties which must be charged against their legitime and cannot anymore be revoked unless inofficious; the other half remained entirely at the free disposal of the spouses with regards to their respective shares.

Upon the death of Doña Tinay on October 2, 1959, her share in the free portion was distributed in accordance with her holographic will dated January 25, 1955 and her codicil dated August 14, 1956. It must be stressed here that the distribution of her properties was subject to her holographic will and codicil, independently of the holographic will and codicil of Don Jesus executed by him on the same date. This is fundamental because otherwise, to consider both wills and codicils jointly would be to circumvent the prohibition of the Civil Code on joint wills (Art. 818) and secondly because upon the death of Doña Tinay, only her estate was being settled, and not that of Don Jesus.

We have carefully examined the provisions of the holographic will and codicil of Doña Tinay and We find no indication whatsoever that Doña Tinay expressly or impliedly instituted both the husband and her children as heirs to her free portion of her share in the conjugal assets. In her holographic will, mention of her children as heirs was made in the fourth clause but it only provided that, to wit:

"Cuatro. Que si yo adquiriese nuevase propiedades despues de otorgado este mi testamento seran las mismas

repartados entre mi esposo o hijos arriba mencionada en el parrafo tercero su la misma proporcion o sea: la mitad (1/2) para mis esposa; y la otra mitad (1/2) para mis hijos en partes iguales."

For purposes of clarity and convenience, this fourth clause provided that "Should I acquire new properties after the execution of this testament, the same shall be partitioned among my spouse and above named children or the children mentioned in above par. 3 in the same proportion, that is, one-half (1/2) to my spouse; and the other half to my children in equal parts." From the above-quoted provision, the children would only inherit together with Don Jesus whatever new properties Doña Tinay would acquire after the execution of her will.

Likewise, the codicil of Doña Tinay instituted her husband as sole heir to her share in the free portion of the conjugal assets, and We quote that part of the codicil:

"Dejo a mi esposo Jesus Alsua como su legitima y como herencia que se sacara de mi cuenta de libre disposicion todos aquellos bienes de los que ño he dispuesto aun en favor de mis hijos en la escritura de reparticion precitada y que excedieran de la mitad de gananciales que le corresponde tal como arriba declaro, incluyendo todos aquellos bienes que se adquiriesen por nosotros despues de otorgado por mi este testamento.

"Para el caso de que Dios dispusiera que yo sobreviviera a mi esposo declaro que es mi voluntad que todas las propiedades de todo genero que me pertenecen y me pudieran pertenecer, no dispuestas aun en la reparticion, se dividan por igual entre mis herederos mencionados despues de mi muerte."

Again for purposes of clarity and convenience, the above portion states:

"I leave to my spouse Don Jesus Alsua as his legitime and as his inheritance the part of the free portion of my property which have not been allocated in favor of my children in the Document of Partition aforecited and that which should exceed 1/2 of the conjugal property of gains that pertains to him as above stated, including all those properties which we shall acquire after the execution of this document.

In case it should be God's will that I survive my spouse, I hereby declare that it is my will that any and all kinds of property that pertains to me or would pertain to me, which have not been disposed of pursuant to the partition, should be divided equally among my above-mentioned heirs after my death."

The children, therefore, would only receive equal shares in the remaining estate of Doña Tinay in the event that she should be the surviving spouse. To stress the point, Doña Tinay did not oblige her husband to give equally to the children, upon his death, all such properties she was bequeathing him.

Considering now the efficacy of Don Jesus' last will and testament executed on November 14, 1959 in view of Our holding that Doña Tinay's will and codicil did not stipulate that Don Jesus will bestow the properties equally to the children, it follows that all the properties of Doña Tinay bequeathed to Don Jesus under her holographic will and codicil became part of Don Jesus' estate unburdened by any condition, obligation or proviso.

Respondents insist that Don Jesus was bound by the extrajudicial partition of November 25, 1949 and had in fact conformed to said partition by making a holographic will and codicil with exactly the same provisions as those of Doña Tinay, which respondent court sustained. We rule, however, that Don Jesus was not forever bound thereby for his previous holographic will and codicil as such, would remain revokable at his discretion. Art. 828 of the new Civil Code is clear: "A will may be revoked by the testator at any time before his death. Any waiver or restriction of this right is void." There can be no restriction that may be made on his absolute freedom to revoke his holographic will and codicil previously made. This would still hold true even if such previous will had as in the case at bar already been probated. (*Palacios v. Palacios*, 106 Phil. 739). For in the first place, probate only authenticates the will and does not pass upon the efficacy of the dispositions therein. And secondly, the rights to the succession are transmitted only from the moment of the death of the decedent (Article 777, New Civil Code). In fine, Don Jesus retained the liberty of disposing of his property before his death to whomsoever he chose,

provided the legitime of the forced heirs are not prejudiced, which is not herein claimed for it is undisputed that only the free portion of the whole Alsua estate is being contested.

After clearly establishing that only Don Jesus was named as sole heir instituted to the remaining estate of Doña Tinay in her holographic will and codicil resulting in all such properties becoming the properties of Don Jesus alone, and after clearly pointing out that Don Jesus can, in law, revoke his previous holographic will and codicil, by making another will expressly cancelling and revoking the former, the next issue for the Court's resolution is the validity of the provisions of the contested will. Though the law and jurisprudence are clear that only questions about the extrinsic validity of the will may be entertained by the probate court, the Court had, on more than one occasion, passed upon the intrinsic validity of a will even before it had been authenticated. Thus We declared in *Nuguid v. Nuguid*, 17 SCRA 449:

"The parties shunted aside the question of whether or not the will should be allowed to probate. For them, the meat of the case is the intrinsic validity of the will. Normally this comes only after the court has declared that the will has been duly authenticated. x x x

"x x x If the case were to be remanded for probate of the will, nothing will be gained. On the contrary, this litigation will be protracted. And for ought that appears in the record, in the event of probate or if the court rejects the will, probability exist that the case will come up once again before us on the same issue of the intrinsic validity or nullity of the will. Result: waste of time, effort, expense, plus added anxiety. These are the practical considerations that induce us to a belief that we might as well meet head-on the issue of the validity of the provisions of the will in question. x x x"

The last Will and Testament of Don Jesus executed on November 14, 1959 contained an express revocation of his holographic will of January 5, 1955 and the codicil of August 14, 1956; a statement requiring that all of his properties donated to his children in the Deed of 1949 be collated and taken into account in the partition of his estate; the institution of all his children as devisees and legatees to certain specific properties; a statement bequeathing the rest of his properties and all that may be acquired in the future, before his death, to Pablo and Francisca; and a statement naming Francisca as executrix without bond.

Considering these testamentary provisions, a close scrutiny of the properties distributed to the children under the Deed of 1949 and those distributed under the contested will of Don Jesus does not show that the former had in fact been included in the latter. This being so, it must be presumed that the intention of Don Jesus in his last will was not to revoke the donations already made in the Deed of 1949 but only to redistribute his remaining estate, or that portion of the conjugal assets totally left to his free disposal and that which he received as his inheritance from Doña Tinay. The legitimes of the forced heirs were left unimpaired, as in fact, not one of said forced heirs claimed or intimated other-wise. The properties that were disposed of in the contested will belonged wholly to Don Jesus Alsua's free portion and may be disposed of by him to whomsoever he may choose.

If he now favored Francisca more, as claimed by private respondents, or Pablo as in fact he was, We cannot and may not sit in judgment upon the motives and senti-ments of Don Jesus in doing so. We have clearly laid down this rule in *Bustamante v. Arevalo*, 73 Phil. 635, to wit:

"x x x nevertheless it would be venturesome for the court to advance its own idea of a just distribution of the property in the face of a different mode of disposition so clearly expressed by the testatrix in the latter will. x x x It would be a dangerous precedent to strain the interpretation of a will in order to effect what the court believes to be an equitable division of the estate of a deceased person. The only functions of the courts in these cases is to carry out the intention of the deceased as manifested in the will. Once that intention has been determined through a careful reading of the will or wills, and provided the law on legitimes has not been violated, it is beyond the place of judicial cognizance to inquire into the fairness or unfairness of any devise or

bequest. The court should not sit in judgment upon the motives and sentiments of the testatrix, first, because as already stated, nothing in the law restrained her from disposing of her property in any manner she desired, and secondly, because there are no adequate means of ascertaining the inward process of her conscience. She was the sole judge of her own attitude toward those who expected her bounty. x x x"

Respondent court, in trying to rationalize the will of Don Jesus which allegedly benefited and favored the petitioner to the prejudice of the other heirs who would have been entitled to an equal share under the extrajudicial partition of 1949, faced two alternatives- one, to consider Don Jesus as a man of culture and honor and would not allow himself to violate the previous agreement, and the other as one whose mental faculties or his possession of the same had been diminished considering that when the will was executed, he was already 84 years of age and in view of his weakness and advanced age, the actual administration of his properties had been left to his assistant Madarieta who, for his part received instructions from Francisca and her husband, Joseph Betts. According to the court, the better explanation is the latter, which is not legally tenable. Under Article 799 of the New Civil Code which provides as follows:

"Art. 799. To be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or unshattered by disease, injury or other cause.

It shall be sufficient if the testator was able at the time of making the will to know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act,"

the test of testamentary capacity is at the time of the making of the will. Mere weakness of mind or partial imbecility from disease of body or from age does not render a person incapable of making a will.

"Between the highest degree of soundness of mind and memory which unquestionably carries with it full testamentary capacity, and that degrees of mental aberration generally known as insanity or idiocy, there are numberless degrees of mental capacity or incapacity and while on one hand it has been held that mere weakness of mind, or partial imbecility from disease of body, or from age, will not render a person incapable of making a will; a weak or feeble-minded person may make a valid will, provided he has understanding and memory sufficient to enable him to know what he is about to do and how or to whom he is disposing of his property. To constitute a sound and disposing mind, it is not necessary that the mind be unbroken or unimpaired or unshattered by disease or otherwise. It has been held that testamentary incapacity does not necessarily require that a person shall actually be insane or of unsound mind." (Bugnao vs. Ubag, 14 Phil. 163).

The Civil Code itself provides under Article 798 that in order to make a will, it is essential that the testator be of sound mind at the time of its execution, and under Article 800, the law presumes that every person is of sound mind in the absence of proof to the contrary. In the case at bar, the acceptance by the respondent court of the findings of fact of the trial court on the due execution of the last will and testament of Don Jesus has foreclosed any and all claim to the contrary that the will was not executed in accordance with the requirements of the law. But more than that, gleaned from the quoted portions of the appealed decision, the described behavior of Don Jesus is not that of a mentally incapacitated person nor one suffering from "senile dementia" as claimed by private respondents. From these accepted facts, We find that: (a) it was Don Jesus himself who gave detailed instructions to his lawyer as to how he wanted to divide his properties among his children by means of a list of his properties with indications of what child to whom each property should pertain; (b) the semi-final draft of the contested will prepared by his lawyer was even corrected by Don Jesus; (c) on the day of the signing of the will at his house in Ligao, "Don Jesus was in bright and lively spirits x x x, leading in the conversation which ran from problems of farming and the merits of French-made wines"; (d) the signing of the will by Don Jesus and his attesting witnesses was made after a statement from Don Jesus of the purpose of their meeting or gathering, to wit:

"Precisamente es por lo que he llamado a ustedes que esten presentes para ser testigos de mi ultimo, voluntad y testamento que ha sido preparado por el abogado Sr. Gregorio Imperial segun mis instrucciones cuyo documento tengo aqui con migo y encuentro que, despues de lo he leido, esta satisfactoriamente hecho segun mis instrucciones, Como saben ustedes tengo cuatro (4) hijos todos ellos."

Clearly then, Don Jesus knew exactly what his actions were and the full implications thereof.

In rejecting probate of the will, respondent court further pointed out other details which, in the words of the decision "are a little bit difficult to reconcile with the ordinary course of things and of life" such as the fact that Don Jesus had sought the probate of his will of January 5, 1955 and his codicil of August 14, 1956 during his lifetime but insofar as the will of November 14, 1959 is concerned, he had no intention of seeking the probate thereof during his lifetime, the alleged redundant and unnecessary proceedings undertaken by Don Jesus in selling the properties under question to petitioner Francisca Alsua-Betts when the same properties had already been bequeathed to her in the will of November 14, 1959 and that "nothing, absolutely nothing, could be made the basis for finding that Don Jesus Alsua had regarded his other children with less favor, and that he was more sympathetic to Francisca so as to disregard or forget the former depriving them of benefits already given to them and rewarding the latter with disproportionate advantages or benefits, to such an extreme as to violate his previous disposition consecrated in the previous extrajudicial partition, Exh. 8."

We agree with the petitioner that these details which respondent court found difficult to reconcile with the ordinary course of things and of life are mere conjectures, surmises or speculations which, however, do not warrant or justify disallowance of the probate of the will of Don Jesus. The fact that Don Jesus did not cause his will to be probated during his lifetime while his previous holographic will and codicil were duly probated when he was still alive is a mere speculation which depends entirely on the discretion of Don Jesus as the testator. The law does not require that a will be probated during the lifetime of the testator and for not doing so there cannot arise any favorable or unfavorable consequence therefrom. The parties cannot correctly guess or surmise the motives of the testator and neither can the courts. Such surmise, speculation or conjecture is no valid and legal ground to reject allowance or disallowance of the will. The same thing can be said as to whatever reason Don Jesus had for selling the properties to his daughter Francisca when he had already assigned the same properties to her in his will. While We can speculate that Don Jesus desired to have possession of the properties transferred to Francisca after the sale instead of waiting for his death may be a reasonable explanation or speculation for the act of the testator and yet there is no certainty that such was actually the reason. This is as good a conjecture as the respondents may offer or as difficult to accept which respondent court believes. A conjecture is always a conjecture; it can never be admitted as evidence.

Now, the annulment case. The only issue raised anent the civil case for annulment of the two Deeds of Sale executed by and between Don Jesus and petitioner Francisca is their validity or nullity. Private respondents mainly contend that the sales were fictitious or simulated, there having been no actual consideration paid. They further insist that the issue raised is a question of fact and, therefore, not reviewable in a certiorari proceeding before the Supreme Court. On the other hand, petitioners herein maintain that it was error for the respondent court to set aside on appeal the factual findings of the trial court that the two sales were valid.

It is true that the jurisprudence of this Court in cases brought to Us from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive; and this same principle applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact. But what should not be ignored by lawyers and litigants alike is the more basic principle that the "findings of fact" described as "final" or "conclusive" are those borne out by the record or those which are based upon substantial evidence. The general rule laid down by the

Supreme Court does not declare the absolute correctness of all the findings of fact made by the Court of Appeals. These are exceptions to the general rule, where We have reviewed and revised the findings of fact of the Court of Appeals. Among the exceptions to the rule that findings of fact by the Court of Appeals cannot be reviewed on appeals by certiorari are:

1. When the conclusion is a finding grounded entirely on speculation, surmises or conjectures (*Joaquin vs. Navarro*, 93 Phil. 257);
2. When the inference made is manifestly mistaken, absurd or impossible (*Luna vs. Linatok*, 74 Phil. 15);
3. Where there is a grave abuse of discretion (*Buyco vs. People*, 51 OG 2927);
4. When the judgment is based on a misapprehension of facts (*Cruz vs. Sosing*, L-4875, Nov. 27, 1953);
5. When the findings of fact are conflicting (*Casica vs. Villaseca*, L-9590, April 30, 1957); and
6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee (*Evangelista vs. Alto Surety & Ins. Co.*, L-11139, April 23, 1958; *Ramos vs. Pepsi Cola*, L-22533, Feb. 9, 1967, 19 SCRA 289).

In the case at bar, We find and so declare that the respondent court's conclusion as to the nullity of the contested sales was not supported by the evidence on record and adduced during the trial.

Evident from the records are the following documentary evidence: (1) Exhibit U, a deed of sale over agricultural lands executed on August 26, 1961 by Don Jesus in favor of Francisca for the consideration of Seventy Thousand Pesos (P70,000.00), which document bears the signature of Don Jesus, not assailed as a forgery, and the signature of Pablo Alsua as an instrumental witness, again not assailed as a forgery nor alleged as done thru fraud, force or threat. (2) Exhibit "W", a deed of sale over urban lots executed on November 26, 1962 for the consideration of Eighty Thousand Pesos (P80,000.00), which document also bears the signature of Don Jesus, also admittedly not a forgery. (3) Exhibit "F", a document dated August 26, 1961 and signed by Don Jesus and Pablo Alsua as witness, acknowledging receipt of a Bank of Philippine Islands Check No. 0252 in the amount of Seventy Thousand Pesos (P70,000.00) for the sale of 33 parcels of agricultural land to Francisca under the same date; again, Pablo did not deny the genuineness of his signature. (4) Exhibit "X", a Bank of the Philippine Islands Check No. D-6979, dated November 26, 1962, in the amount of P32,644.71, drawn and signed by Francisca, payable to Don Jesus. (5) Exhibit "X-1", a second Bank of Philippine Islands Check (No. D-6980) also dated November 26, 1962 in the amount of P47,355.29, drawn by Francisca and payable to Don Jesus. (6) Exhibit "X-3" and "X-5", endorsements on the back of the last two checks by Don Jesus, again, his signatures thereon were not assailed. (7) Exhibit "A" (in the annulment case), a Bureau of Internal Revenue Receipt (No. 2347260) dated November 29, 1962 with a notation acknowledging the receipt of BPI Check No. D-6980 in the amount of P47,355.29 from Don Jesus Alsua in payment of Balance of Transfer of Tax Ass. No. EA-35415-19 plus interest. We are convinced and satisfied from this array of documentary evidence that in fact, Don Jesus sold the subject properties to his daughter, Francisca for the total consideration of P150,000.00.

The claim of the private respondents that the sales were fictitious and void for being without cause or consideration is as weak and flimsy as the ground upon which the respondent court upheld said claim on the basis that there was no need for funds in Don Jesus' old age aside from the speculation that there was nothing in the evidence that showed what motivated Don Jesus to change his mind as to favor Francisca and discriminate against the other children. The two contracts of sale executed by Don Jesus in favor of Francisca are evidenced by Exhibits "U" and "W", the genuineness of which were not at all assailed at any time during this long drawn-out litigation of 15 years standing. That the consideration stated in the contracts were paid is also sufficiently proved

as the receipts thereof by Don Jesus were even signed by one of the private respondents, Pablo Alsua, as a witness. The latter cannot now deny the payment of the consideration. And even if he now allege that in fact no transfer of money was involved, We find his allegation belied by Exhibits "X-3" and "X-5", which show that the checks of Francisca made payable to Don Jesus were in fact given to Don Jesus as he endorsed them on the back thereof, and most specifically Exhibit "A" in the annulment case, which proved that Don Jesus actually used Exhibit "X-1" to complete payment on the estate and inheritance tax on the estate of his wife to the Bureau of Internal Revenue.

Private respondents further insist that the sales were fraudulent because of the inadequacy of the given price. Inadequacy of consideration does not vitiate a contract unless it is proven, which in the case at bar was not, that there was fraud, mistake or undue influence. (Article 1355, New Civil Code). We do not find the stipulated price as so inadequate to shock the court's conscience, considering that the price paid was much higher than the assessed value of the subject properties and considering that the sales were effected by a father to her daughter in which case filial love must be taken into account.

WHEREFORE, IN VIEW OF THE FOREGOING, the decision appealed from is hereby set aside. The decision of the Court of First Instance of Albay in Special Proceedings No. 699 and Civil Case No. 3068 is hereby reinstated, with costs against respondents.

SO ORDERED.

Teehankee, (Chairman), Makasiar, and Fernandez, JJ., concur.

Melencio-Herrera, J., in the result.

De Castro, J., took no part.

[1] First Division, Court of Appeals, Gatmaitan, J., ponente with de Castro, P. and Reyes, S. JJ., concurring.

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