

THE GOVERNMENT SERVICE INSURANCE SYSTEM, PLAINTIFF, VS. SUSANA, ROMUALDO, JULIAN, MACARIO A., MOISES, MACARIO C., ADRIANO, CE-LESTINA AND LUISA, ALL SURNAMED CUSTODIO, DEFENDANTS.

G.R. No. L-26170. January 27, 1969

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Originally elevated to the Court of Appeals, this case was certified to this Supreme Court as one involving only questions of law.

Proceedings were initiated on 10 June 1958, in the Court of First Instance of Rizal, by the Government Service Insurance System (a non-stock corporation created by Commonwealth Act 186) by a complaint in interpleader (docketed as Civil Case No. 5037) for the determination of who, among the several defendants, is entitled to the retirement benefits, in the amount of P8,339.36, that fell due to a deceased member of the System, one Simeon Custodio. Defendant-cross--claimant-appellee Susana Custodio, a surviving sister of the decedent and the aunt of the other defendants, claims to be the sole beneficiary thereof; but her nephews and nieces contest her recognition as such and claim to be entitled to share in the proceeds by right of representation of their deceased fathers, who are three (3) brothers of the late Simeon. These nephews and nieces (defendants-cross-claimants-appellees in this case) are the following: Macario C., Macario A., Luisa, David, Romualdo, Julian, Moises, Adriano and Celestina, all surnamed "Custodio".

After responsive pleadings were filed, and the issues Joined, a pre-trial was held, but the parties failed to arrive at an amicable settlement. They, however, submitted a stipulation of facts, as follows:

"1. That the late SIMEON CUSTODIO, who during his lifetime was a member of the Retirement Insurance Fund administered by plaintiff GOVERN-MENT SERVICE INSURANCE SYSTEM, died intestate at Tanay, Rizal, on February 16, 1957;

"2. That said SIMEON CUSTODIO was survived by his only sister, SUSANA CUSTODIO and his nephews and nieces, namely, ROMUALDO, JULIAN, MACARIO A., MOISES, MACARIO C., ADRIANO, CELESTINA, LUISA and DAVID, all surnamed CUSTODIO;

"3. That shortly after the death of SIMEON CUSTODIO, there was found among his personal belongings an undated and unsigned application form for Retirement accomplished by said SIMEON CUSTODIO wherein his sister, SUSANA CUSTODIO was named the beneficiary, although said application form was never submitted to the Government Service Insurance System. Photostat copy of said application for retirement is hereto attached as Annex 'A' and made an integral part of this Stipulation of Facts;

"4. That on July 7, 1957, at the residence of Leon K. Tongohan, son-in-law of Susana Custodio, at Tanay, Rizal, SUSANA, ROMUALDO, JULIAN, MACARIO A. MOISES, ADRIANO, and CELESTINA, all, surnamed CUSTODIO and JULIA TONGOHAN executed a document entitled 'Extra judicial Settlement of

Estate Among Heirs' which provides, among other things that '(c) For any amount due the decedent SIMEON CUSTODIO, holder of GSIS policy No. Z3557, our Aunt Susana Custodio, as the decedent's only living sister, is hereby recognized by the aforementioned, heirs as the sole and only beneficiary of the decedent SIMEON CUSTODIO, and giving unto our Aunt Susana Custodio, the right to file, sign and receive whatever retirement pay under Republic Act 660 as amended by Rep. Acts Nos. 728 and 1123, and other amendments thereto'. Copy of said Extra Judicial Settlement of Estate Among Heirs, which consist of four (4) pages, without page 5, is hereto attached as Annex 'B' and made an integral part of this Stipulation of Facts;

"5. That on July 8, 1957 ROMUALDO, JULIAN, MOISES, MACARIO A., ADRIANO, CELESTINA, LUISA and MACARIO C., all surnamed CUSTODIO, wrote a letter to the Manager of the Government Service Insurance System stating, among other things, that they 'Inadvertently signed on July 7, 1957, without properly having understood, a document whereby it was made to appear therein that the aforementioned persons are waiving their claims on the benefits legally accruing to the aforementioned deceased'. A duplicate copy of said letter is hereto attached as Annex 'C' and made an integral part of this Stipulation."

It will thus be noted from the stipulation of facts and its annexes that the deceased retiree, Simeon Custodio, had one (1) sister, appellee Susana Custodio, and three (3) brothers, namely, Vicente, Crispin and Jacinto, who had predeceased him; that the appellants are the children of these brothers; that two (2) among these children are both named "Macario (Macario A. and Macario C.); that the children, Macario C., Luisa, and David Custodio, did not sign the deed of extrajudicial settlement; and that Macario C. is the only child of Crispin, while Luisa and David are two (2) of the six (6) children of Jacinto.

From her opposition to the motion for reconsideration dated 20 April 1960, appellee Susana Custodio made clear her non-opposition to the division of the estate where Macario C., Luisa and David would share per stirpes (Record on Appeal, pages 55-56).

In submitting their Stipulation of Facts for approval, the parties prayed the trial court "to resolve the questions of law raised in said stipulation of facts".

On 2 January 1960, the trial court approved the Stipulation of Facts and required the interpleading defendants to submit their memoranda "within fifteen (15) days on a question of law", with the understanding that the case "shall be considered submitted for decision on said issue after the filing of the memoranda or upon expiration of the period herein required".

Without submitting other evidence, the defendants-claimants filed their respective memoranda, and, on 10 March 1960, the trial court rendered its decision in favor of appellee Susana Custodio, holding that her designation as beneficiary in the unsigned application form for retirement benefits, which was not filed with the Government Service Insurance System prior to the death of the employee, as required by regulations, was invalid; but that, nonetheless, she is entitled to the retirement benefits to the exclusion of the appellants nephews and nieces because the latter had recognized her as sole beneficiary in the deed of extrajudicial settlement executed on 7 July 1957, which is to be presumed regular in the absence of evidence of fraud or mistake attending its execution.

Appellants nephews and nieces moved to reconsider; and on denial, they appealed to the Court of Appeals. Finding no question of fact involved in the case, but only questions of law, said appellate court certified the appeal to the Supreme Court.

Appellants' first assignment of error is well-taken; that the intestate heirs, Macario C., Luisa and David Custodio, who did not sign the deed of extrajudicial settlement, cannot be considered as having recognized Susana Custodio as the only beneficiary of Simeon's retirement money. There is no evidence the case having been submitted for decision below solely on a stipulation of facts, that these non-signatory heirs had agreed, or accepted other

benefits under the deed of partition, as appellee now claims. Susana Custodio did not oppose their separate motion for reconsideration and, actually, even prayed that said motion be granted (Record on Appeal, page 56), although the court denied it just the same. These three (3) heirs should inherit per stirpes, in accordance with Article 1005 of the Civil Code. As Macario C. Custodio (as distinguished from Macario A., who signed the agreement) is the only child of Crispin, said Macario C. inherits by representation the one-fourth (1/4) share pertaining to his father; while Luisa and David Custodio, being two (2) of six (6) children of Jacinto, are each entitled to a sixth of one-fourth ($1/6 \times 1/4$) equivalent to $1/24$ of the hereditary mass.

The other assigned errors are

“II. The trial court erred in not taking into consideration the circumstances surrounding the preparation and signing of the 'Extrajudicial Settlement of Estate Among Heirs Annex 'B' of the Stipulation of Facts, as circumstantial evidence of the fraud by means of which the signatures of appellants Romualdo, Julian, Macario A., Adriano and Celestina, all surnamed Custodio, were secured, and in not holding that, consequently, said Annex 'B' is null and void.

“III. The trial court erred in not holding that the appellants Romualdo, Julian, Macario A. Moises, Adriano and Celestina, all surnamed Custodio, are also entitled to share as intestate heirs in the proceeds due Simeon Custodio from the Government Service Insurance System.”

Under these alleged errors, appellants contend that fraud or mistake rendered null and void the deed of extrajudicial settlement, such vice of consent being shown by the pretended badges of fraud, as follows: the fact that David Custodio was not made a party to the extrajudicial settlement nor mentioned in its recitals; the failure to secure the signatures not only of David but also of Luisa and Macario C. a Custodio; the repudiation by the appellants of the extra-judicial settlement that they had signed just one day after its execution; the fact that Leon Tongohan, the son-in-law of Susana Custodio, apparently had some intervention in the execution of the deed; and the adjudication in favor of Susana Custodio of an allegedly unconscionable bulk of the estate.

The Court of Appeals, in its resolution certifying the case to this Court, did not consider these assigned errors as ones properly of fact within its appellate jurisdiction on the following grounds: the covenanting parties, in asking for the approval of the trial court of their stipulation of facts, had prayed that the questions of law arising from the facts stipulated be resolved by the court; the parties did not submit any evidence; and fraud was not specifically alleged in the pleadings.

We affirm the action taken by the Court of Appeals in certifying the appeal to us. Even if the five (5) circumstances stated by the appellant be held to be indicative of fraud or mistake, and infirming the deed of extra-judicial settlement, the stark fact is that the existence of fraud or mistake was not stipulated (*Miranda vs. Tiangco, et al.*, 96 Phil. 526). Appellants' raising the issue of fraud or mistake, without having specifically stipulated or pleaded the same, constitutes an unfair surprise upon their adversary, besides being in violation of the rule that fraud be specifically pleaded (Rule 9, Section 9, Rules of Court). Therefore, this plea of fraud or error is not allowable, being deemed waived by the lack of proper averment.

At any rate, the circumstances now stressed by the heirs who have actually signed the deed of partition, and who have been allocated properties therein, fall short of evidencing fraud or mistake. The failure to secure the signatures of Luisa, David, and Macario Custodio could not have escaped their co-heirs, now appellants, and it is unfair to lay blame therefor on Susana Custodio. The intervention of Leon Tongohan, her son-in-law, is without particular significance, since none of the signers was illiterate, nor was the deed notarized by him. As to the appellants' having repudiated their signatures, the same was a self-serving act, more indicative of a belated intention to squirm out of a disadvantageous transaction, after they entered it with open eyes, which is no ground for setting the same aside (*Noble vs. City of Manila*, 67 Phil. 1). Certainly, it should take much weightier proof to

invalidate a written instrument (cf. *Mendezona vs. Phil. Sugar Estates*, 41 Phil. 493; *Bank of the Phil. Is. vs. Fidelity Surety Co.*, 51 Phil. 57).

For the foregoing reasons, the appealed judgment is hereby affirmed, with the modification that Macario C. Custodio is declared entitled to a share of one-fourth (1/4) and Luisa Custodio and David Custodio to a share of one-twenty-fourth (1/24) each, of the retirement benefits. No costs.

Concepcion, C. J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

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