

**ENRIQUETA H. BERNARDO, EDILBERTO TAYAG, ANTONIO TAYAG,
ISMAEL TAYAG, TRIFENE TAYAG, MARIQUITA LUGTU, ROSALINDA
A. PETELL, FREDESWINDA A. VDA. DE HENSON, EFREN ARCILLA,
ZENAIDA A...**

G.R. No. 101680. December 07, 1992

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

The instant case concerns a petition under Rule 45 of the Rules of Court, seeking the review and setting aside of the decision* and resolution of respondent Court of Appeals in the proceedings docketed as CA-G.R. CV No. 18143, entitled "Atty. Ricardo P. Bermudo, Petitioner-Appellee, versus Enriqueta Bernardo, et. al., Oppositors-Appellants". Petitioners herein question the correctness of the decision promulgated by respondent Court on March 25, 1991, affirming the decision** of the Regional Trial Court of Pampanga, Branch 56, which granted the petition of Atty. Ricardo B. Bermudo, in SP Proc. No. 1495 entitled "IN THE MATTER OF THE PETITION TO APPROVE AND ALLOWANCE OF THE WILL OF ARTEMIO HILARIO, DECEASED, AND THE ISSUANCE OF LETTER OF ADMINISTRATION WITH THE WILL ANNEXED", thereby allowing and approving the alleged Last Will and Testament dated September 27, 1979 of the late Artemio Hilario. Petitioners also instituted this petition before this Court challenging the validity of the resolution on August 21, 1991 of the respondent Court which denied both the Motion for Reconsideration of the decision of March 25, 1991 and the Petition for New Trial filed with said respondent Court on May 8, 1991.

Petitioners are the oppositors in SP Proc. No. 1495 of the Regional Trial Court (RTC) of Pampanga, Branch 56, and the oppositors-appellants in CA-G.R. CV No. 18143 of the Court of Appeals.

Respondent Atty. Ricardo P. Bermudo (also referred to herein as "Private Respondent") is the petitioner in SP Proc. No. 1495 of RTC Pampanga, Branch 56 and the petitioner-appellee in CA-G.R. CV No. 18143 of respondent Court of Appeals.

From the records and evidence of the case, the trial court arrived at the following findings of facts:

"x x x, it appears that the deceased Artemio Hilario, died on October 7, 1979 at Angeles City, which is his residence at the time of death. Before his death, the late Artemio Hilario left his Last Will and Testament. x x x In the said will, he instituted, as his only heir, his niece Fermina Tayag, married and a resident of Villa Angela, Angeles City. He designated in his Will, Atty. Ricardo Bermudo as his executor. The testator left properties, the probable value of which is P200,000.00. No creditors appear to have filed claims against the estate of the deceased. At the time of his death, he was survived by the following: Enriqueta H. Bernardo and Esmeralda H. Tayag. The latter is the mother of Fermina Tayag. They are the deceased sisters. The nephews and nieces by his late sister Amanda Hilario are: Mariquita A. Lugtu, Ramon Arcilla, Fredeswinda Vda. de Henson, Efren Arcilla, Teresita Grageda and Rosalia A. Petter. From his late sister, Felicidad Hilario are other nephews and nieces: Edilberto Tayag, Antonio Tayag, Enriqueta Bernardo and the above-mentioned nephews and nieces of the deceased sisters, in representation of their deceased parents Amanda Hilario and Felicidad Hilario, have

filed their respective oppositions to the petition." [1]

The petitioners herein, who are the oppositors to the allowance of the questioned will, are thus the intestate heirs of the deceased and their common grounds for opposition may be summarized as follows:

- "a. The questioned Will is formally invalid and was not executed with the formal and legal requirements;
- b. The testator was not of sound and disposing mind and would not have executed the questioned Will because of extremely weak physical condition brought about by a terminal disease;
- c. The testator's disease and physical condition has affected his mental process to the extent that he could not have known what he was executing;
- d. The questioned Will was not strictly the personal act of the testator;
- e. The signature of the testator either is a forgery or was procured by fraud or trick, and that he did not intend to execute the questioned Will;
- f. The solemnities required by law were not observed and complied with." [2]

Notwithstanding the opposition and motion to appoint an administratrix, the trial court, on February 18, 1980, appointed the private respondent as special administrator of the estate of the deceased, with a bond of P5,000.00.

During the proceedings before the trial court, evidence of the private respondent consisted of documentary exhibits as well as the testimonies of himself and those whose names appear as instrumental witnesses to the questioned will, namely: Enrique Talavera, Levy Santos and Ener Bernardo.

The oppositors, on the other hand, presented the testimonies of Enriqueta Bernardo, Teresita Grageda, Rhoda Flores, Norberto Tongco and Edilberto Tayag.

Included as an exhibit presented by said oppositors is the unnotarized but signed statement of retraction dated December 10, 1979 [3] of Ener Bernardo, one of the three individuals who supposedly witnessed the execution of the Will. Ener Bernardo later disclaimed the statement of retraction although the genuineness of his signature therein was confirmed by NBI handwriting expert Rhoda Flores who testified for the oppositors.

Having stayed with and taken care of the deceased during his last three weeks, Enriqueta Bernardo, as a witness for the oppositors, testified that the alleged execution of the subject Will did not take place at all.

The testimonies of Enrique Talavera and Ener Bernardo were given due consideration by the trial court in rendering its decision. Also resolved by the trial court were the issues on the alteration of the date of execution of the Will and whether or not its execution was attended by undue pressure and influence exerted upon the testator by the sole designated heir. The trial court, in part, stated:

"On the other hand, oppositors are challenging the validity of the will on the alleged defects in the execution. In addition, they are relying heavily on the testimony of Enriqueta Hilario Bernardo, the alleged repudiation made by Ener Bernardo regarding his having witnessed the signing of the will, the altered date of execution and the attendance of undue pressure and influence exerted upon the testator by the sole designated heir.

As heretofore discussed, the Court already found that on basis of the facts obtaining in this case, the formalities prescribed by law were attendant in the execution of the will.

On the part of the petitioner, four (4) witnesses, petitioner himself and the three (3) subscribing witnesses, Enrique Talavera, Levy Santos and Ener Bernardo categorically testified that they saw the testator affix his signature on the will and on each page thereof. The Court notes the consistency of their testimonies in this regard. Oppositor Enriqueta H. Bernardo's claim, that she did not see these witnesses cannot refute the same. It

is rather inconceivable to subscribe to her testimony she did not leave him and particularly remained at his sickbed. The Court has sifted through the testimonies of said witnesses and is not inclined to give credence to the claim of Enriqueta H. Bernardo, whose prejudices, manifested in the course of her testimony. The Court has no room to doubt the testimonies of the attesting witnesses owing to the reputable position they held at that time. There is no showing that they were promised any reward or consideration for acting as witnesses to the said will."^[4]

From the decision rendered by the trial court, petitioners appealed to respondent Court of Appeals, only to discover that said appeal would be dismissed. The dispositive portion of the decision of the Court of Appeals, rendered on March 25, 1991, reads:

"IN THE LIGHT OF THE FOREGOING and finding no reversible error committed by the court a quo, the appealed decision is hereby AFFIRMED. The appeal is DISMISSED.

SO ORDERED."^[5]

A motion for reconsideration of the abovesited decision was filed on April 22, 1991.

During the pendency of the motion for reconsideration, petitioners filed before respondent Court of Appeals, also under CA-G.R. CV NO. 18143, a verified Petition for New Trial under Rule 53 of the Rules of Court, on the ground of newly discovered evidence. It was allegedly discovered that the deceased purportedly executed a holographic will dated February 3, 1979 which expressly distributed testator's real and personal properties to "all his loved ones", especially to Enriqueta Bernardo, Esmeralda Tayag, and Fredeswinda Arcilla Henson.

The purported will also allegedly carried a revocatory clause, which in part, provided:

"x x x do hereby acknowledge and declare the following as my true and willful last will and testament and for this reason hereby revoke and rescind any will or testament which I make, except this one."^[6] (Underlining supplied).

Attached to the Petition for New Trial is the affidavit of Apolinario Garcia, the longtime houseboy of the deceased, which contained a narration of the circumstances surrounding the belated discovery of the copy of the holographic will and the taking of its original by Fermina Tayag and her husband Pete Roxas.

On August 26, 1991, respondent Court of Appeals resolved to deny both motion and petition for lack of merit.

Thereafter, petitioners elevated the matter to this Court. Petitioners maintain that a review of the decision of the respondent Court and the setting aside of its resolution is necessitated:

- "1. When the conclusion is a finding grounded entirely on speculations, surmise or conjectures;
2. When the inference made is manifestly absurd, mistaken or impossible;
3. When the judgment is premised on a misapprehension of facts;
4. When there is grave abuse of discretion in the appreciation of facts;
5. When the findings of fact are conclusions without citation of specific evidence on which they are based;
6. When certain material facts and circumstance had been overlooked by the trial court which, if taken into account, would alter the result of the case."^[7]

Petitioners come to this Court with a view of obtaining a review and the consequent setting aside of the decision and resolution rendered by the appellate court. Petitioners believe that both the trial court and respondent court erred in appreciating the facts in light of the evidence, both testimonial and documentary, presented by the parties.

It is their claim that there was sufficient evidence adduced to belie the alleged execution of the questioned notarial will. To bolster this position, petitioners attack the credibility of private respondent and his witnesses. Furthermore, they argue that the circumstances established by evidence show falsity and nullity of the questioned will. All the foregoing, they posit, indicate that a review and reversal of the appellate court's decision is warranted.

It is petitioners' avowed view that a review may be undertaken by the Supreme Court, relying principally on the exception to the general rule that even when the petition raises questions of facts, the same is still reviewable when there was a misappreciation of facts.

Time and again, this Court has adhered to the principle that only questions of law, distinctly set forth, may be raised in a petition for review on certiorari of a decision of the Court of Appeals, presented to the Supreme Court.[8] The appellate jurisdiction of the Supreme Court is limited to reviewing errors of law, accepting as conclusive the factual findings of the lower court upon its own assessment of the evidence.

At this point, the distinction between a question of fact and a question of law must be clear. As distinguished from a question of law which exists "when the doubt or difference arises as to what the law is on certain state of facts" --- "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation".[9]

The resolution of this petition invites us to closely scrutinize the facts of the case, relating to the sufficiency of evidence and the credibility of witnesses presented. This Court so held that it is not the function of the Supreme Court to analyze or weigh such evidence all over again. The Supreme Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court.[10] The Supreme Court is not a trier of facts.[11] It leaves these matters to the lower court, which have more opportunity and facilities to examine these matters.[12] This same Court has declared that it is the policy of the Court to defer to the factual findings of the trial judge, who has the advantage of directly observing the witnesses on the stand and to determine their demeanor whether they are telling or distorting the truth.[13]

Petitioners, relying chiefly on Enriqueta H. Bernardo's testimony which was offered to negate the possibility that indeed there was a will that was executed, argued that the same was summarily disregarded. They submit that the perusal of the trial court's decision will show that the conclusion made by the trial court was grounded on mere speculation, unsupported by citation of specific evidence on record, as elucidated by the trial court in the following manner:

"It is rather inconceivable to subscribe to her testimony she did not leave him and particularly remained at his sickbed. The Court has sifted through the testimonies of said witnesses and is not inclined to give credence to the claim of Enriqueta Bernardo, whose prejudices manifested in the course of her testimony."[14]

To this contention, petitioners add that for its part, respondent Court of Appeals merely declared "in sweeping fashion" that findings of the trial court are entitled to weight and respect, and that its decision is similarly completely devoid of explanation.

Going through both decisions promulgated by the respective lower courts, it cannot be said that their decisions were unsupported by evidence. On the contrary, both courts adequately disposed of the matter with due regard, not only to Enriqueta H. Bernardo's testimony, but also to the entire gamut of testimonies offered.

Anent petitioners' contention that there was evidence presented to show lack of credibility of the private

respondent and his witnesses and the unreliability of their declarations, this argument can be disposed of with facility. Petitioners refer to the alleged recantation of statement by Ener Bernardo, one of the purported witnesses to the notarial will, as having been overlooked by the trial court which, if taken into account, would alter the result of the case. To this, the trial court has ruled that the circumstances surrounding this occurrence point to the fact that the same was not the product of said witness' own volition. Similarly, a review of this pronouncement would entail an examination of the facts of the case, something which, as discussed above, is not the function of this Court. This task has been adequately performed by the trial court.

Petitioners herein desire for this Court to depart from the general rule that only questions of law may be entertained by the same body. We are not inclined to agree with petitioners. This Court holds that a review and reversal of the questioned decision is not proper. Absent a showing that the findings complained of are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand, for the Supreme Court is not expected nor required to examine or contrast the oral or documentary evidence submitted by the parties.[15]

In disposing of the issue relating to the resolution of the appellate court denying the petitioners' Motion for Reconsideration and Motion for New Trial, this Court rules that the denial was correct.

The respondent Court did not give due course to petitioners' Motion for Reconsideration on the ground that it was filed out of time; it was filed on the sixteenth day from receipt of the decision. The period within which a Motion for Reconsideration may be filed is the same as that period for perfecting an appeal, which is fifteen (15) days from receipt of judgment. Beyond this period, it can no longer be entertained.[16]

Anent the Motion for New Trial on the ground of newly discovered evidence, this Court agrees with the appellate Court's denial of the same. A Motion for New Trial may be filed after judgment but within the period for perfecting an appeal.[17] Since petitioners first filed a Motion for Reconsideration, they are still entitled to another fifteen (15) days to perfect their appeal -- the same period within which a Motion for New Trial may be filed, as provided by Section 3, Rule 41 of the Rules of Court.[18] Moreover, Section 1 of Rule 45 of the Rules of Court gives a party 15 days from the denial of the Motion for Reconsideration by the appellate court to come to the Supreme Court. These fifteen days do not include the period that lapsed from the notice of judgment to the time when the Motion for Reconsideration was filed.[19] In effect, the appellant is entitled to another fifteen days. However, petitioners did not take advantage of this period. Instead, they filed their Motion for New Trial thirty three days after their receipt of the appellate court's decision.

It may well be worthy to note that the Motion for New Trial did not meet the requisites for granting the same, based on newly discovered evidence. In the case of *People v. Derpo*,[20] this Court held that the granting of said motion is predicated on compliance with the following: (a) that the evidence was discovered after trial; (b) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) that it is material, not merely cumulative, corroborative or impeaching; and (d) that the evidence is of such weight that it would probably change the judgment if admitted. After a deliberation of the facts and evidence submitted by oppositors-appellants, the Court of Appeals found that the first two conditions were not satisfied. To this finding, this Court agrees. At the risk of having to repeat itself, this Court adheres to the principle enunciated in a long line of cases that the findings of fact of the Court of Appeals are conclusive and binding even on this Court and are not therefore reviewable by it.[21]

IN VIEW OF THE FOREGOING, and finding no reversible error committed by the court a quo, the appealed decision is hereby **AFFIRMED**. The resolution denying the Motion for New Trial and the Motion for Reconsideration is **AFFIRMED**. The petition is **DISMISSED**.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, and Regalado, JJ., concur.

Nocon, J., no part.

* Penned by Justice Isaali S. Isnani and concurred in by Justices Rodolfo A. Nocon and Antonio M. Martinez.

** Penned by Judge Rosalio G. de la Rosa.

[1] Decision, pp. 14-15; Rollo, pp. 79-80.

[2] Petition, pp. 5-6; Rollo, pp. 14-15.

[3] Exhibit "1".

[4] Decision, pp. 21-22; Rollo, pp. 86-87.

[5] Rollo, p. 44.

[6] Petition for New Trial, p. 4; Rollo, p. 92.

[7] Petition, pp. 10-11, citing *Manero vs. Court of Appeals*, 102 SCRA 817 (1981), *Pit-og vs. People*, 190 SCRA 386 (1990), *Robleza vs. Court of Appeals*, 174 SCRA 354 (1989), *Sacay vs. Sandiganbayan*, 142 SCRA 593 (1986); Rollo, pp. 19-20.

[8] Rules of Court, Rule 45, Section 3; *Cheesman vs. Intermediate Appellate Court*, 193 SCRA 93 (1991); *Andres vs. Manufacturers Hanover & Trust Corporation*, 177 SCRA 618 (1989); *Villanueva vs. Intermediate Appellate Court*, 155 SCRA 237 (1987); *Korean Airlines Co., Ltd. vs. Court of Appeals*, 154 SCRA 211 (1987); *Evangelista & Company vs. Abad Santos*, 51 SCRA 416 (1973).

[9] *Cheesman vs. Intermediate Appellate Court*, *ibid.* at p. 100; *Mackay Radio & Telegraph Co., Inc. vs. Rich*, 28 SCRA 699, 705 (1969); *Ramos, et al. vs. Pepsi-Cola Bottling Co. of the P.I., et al.*, 19 SCRA 289 (1967); *Lim vs. Calaguas and Alcaraz*, 83 Phil. 796, 799 (1949); *Bouvier's Law Dictionary*, p. 2784.

[10] *Medina vs. Asistio, Jr.*, 191 SCRA 218 (1990).

[11] *S & A Gaisano, Inc. vs. Hidalgo*, 192 SCRA 224 (1990).

[12] *Pe, et al. vs. Intermediate Appellate Court*, 195 SCRA 137 (1991); *Korean Airlines, Co. Ltd. vs. Court of Appeals*, 154 SCRA 211 (1987); *Sese vs. Intermediate Appellate Court*, 152 SCRA 585 (1987).

[13] *People vs. Andaya*, 196 SCRA 660, 663 (1991).

[14] Decision, p. 22; Rollo, p. 87.

[15] *Bustamante, et al. vs. Court of Appeals, et al.*, 193 SCRA 603 (1991).

[16] *Paramount Vinyl Products vs. NLRC*, 190 SCRA 525 (1990).

[17] *Agulto vs. Court of Appeals*, 181 SCRA 80 (1990).

[18] *Ramirez vs. Butte*, G.R. Nos. L-6601-02, December 29, 1956, 53 O.G. 1407 (March, 1957).

[19] 2 REGALADO, REMEDIAL LAW COMPENDIUM 382 (6th Rev. Ed., 1989).

[20] 168 SCRA 447, 458 (1988).

[21] Radiowealth Finance Company vs. Palileo, 197 SCRA 245 (1991); Director of Lands vs. Court of Appeals, 196 SCRA 94 (1991); Barretto vs. Court of Appeals, 194 SCRA 645 (1991); Phil. Commercial & Industrial Bank vs. Court of Appeals, 193 SCRA 452 (1991); Agton vs. Court of Appeals, 113 SCRA 322 (1982); Sta. Ana, Jr. vs. Hernandez, 18 SCRA 973 (1966).

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