

JULITA S. ZAMBO, PETITIONER, VS. THE HON. COURT OF APPEALS, CARIDAD SANCHEZ VDA. DE BABAO AND EUTQUIANO V. SANCHEZ, RESPONDENTS.

G.R. No. 104166. July 30, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for review of the Court of Appeals' decision dated August 2, 1991, and its resolution of January 30, 1992, in CA-G.R. CV No. 16634 entitled, "Caridad Sanchez Vda. de Babao and Eutiquiano V. Sanchez vs. Julita S. Zambo" dismissing petitioner's appeal.

The petitioner, Julita S. Zambo, and the private respondents, Caridad Sanchez Vda. de Babao and Eutiquiano V. Sanchez, are full blood brother and sisters. They are the pro-indiviso owners of a house and lot (Psu-07-01-002736-Amd) situated at the corner of A. del Rosario and Suson Streets, Barrio Poblacion, Mandaue City which had been bequeathed to them by their parents. On May 9, 1985, they entered into an Agreement disposing of the property as follows:

"1. x x x.

"2. That in our desire to have the above-described parcel of land partitioned among the three of us in equal shares, we have agreed and decided to first demolish the residential building which is constructed thereon together with the appurtenances thereto immediately after which the said parcel of land shall be subdivided into three equal portions in the most practicable and ideal manner;

"3. That we have likewise agreed and decided that a raffle shall be drawn among the three of us to determine which portion shall belong to each of us; that in this connection, I, Caridad S. Vda. de Babao, hereby appoint, name and constitute Judge Temistocles M. Boholst, Jr. of the Mandaue Municipal Trial Court to act for and on my behalf insofar as the raffle is concerned;

"4. That the demolition of the above-mentioned house shall be undertaken by Mrs. Julita S. Zambo;

"5. That the expenses for the subdivision shall be borne equally by the three of us." (p. 40, Rollo.)

When the respondents, Caridad and Eutiquiano, requested their sister petitioner Julita S. Zambo, to implement the terms of the above agreement, the latter refused to do so, compelling the respondents to file Civil Case No. MAN-79 in the Regional Trial Court of Mandaue entitled, "Caridad Sanchez Vda. de Babao, et al. vs. Julita S. Zambo" for specific performance.

After the issues were joined, the case was called for pre-trial on June 2, 1986. Eutiquiano Sanchez appeared for himself and as attorney-in-fact of his sister Caridad Sanchez Vda. de Babao. Petitioner was represented by her lawyer and attorney-in-fact, Omar Redulla, who submitted a duly-notarized Special Power of Attorney dated June 2, 1986, which reads:

"I, JULITA S. ZAMBO, of legal age, married and a resident of Alang-Alang, Mandaue City, do hereby NAME, CONSTITUTE and APPOINT OMAR B. REDULLA, of legal age, married and a resident of Looc, Mandaue City to be my true and lawful attorney-in-fact at the pre-trial hearing of Civil Case No. MAN-79 entitled "CARIDAD SANCHEZ VDA. DE BABAO, et al., vs. JULITA S. ZAMBO," before the Region-al Trial Court of Mandaue City, on such date as may be agreed upon by the parties or directed by the Court, with full power to do and perform in my behalf any and all acts which I could legally do and perform including the power to consider and agree upon the following:

"1. The possibility of an amicable settlement under such terms and conditions as said attorney-in-fact may deem proper and beneficial;

"2. The simplification of the issues;

"3. The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

"4. The limitation of the number of witnesses;

"5. Such other matters as may aid in the prompt disposition of this action." (p. 84, Rollo.)

When the case was called for pre-trial, the parties and their attorneys-in-fact discussed possible terms of settlement. Petitioner was willing to comply with the May 5, 1985 agreement provided that their other brothers, Mariano and Bonifacio Sanchez, and their sister Marcelina Sanchez-Cabrera (who had neither claim nor interest in the property in question), would manifest that they had no objection to the demolition of the house in Poblacion, Mandaue City. The three willingly executed a joint affidavit stating that indeed they had no objection to the implementation of the agreement among Eutiquiano, Caridad and Julita, and to the demolition of the building on the lot. The contending parties then manifested to the court on the same date that they had come to an agreement of amicable settlement, as follows:

"1. The parties, duly assisted by counsels or their duly authorized representatives, hereby agree to affirm, confirm and abide by all the terms and conditions of the May 5, 1985 agreement entered into among themselves subject matter of the case.

"2. Defendant agree(s) to demolish the existing building situated at A. del Rosario Street and Suson St., Poblacion, Mandaue City, constructed on a parcel of land 'Psu-07-01-002736-Amd' on or before July 3, 1986.

"3. All expenses for demolition shall be for the account of Julita Zambo pursuant to paragraph 4 of aforesaid agreement.

"4. All materials derived from the demolished building shall be apportioned, in three (3) equal parts but with defendant Julita Zambo having priority right to choose her 1/3 portion after which all remaining materials shall be left on the premises to be removed by plaintiffs after the lottery of the subdivided lot pursuant to paragraphs 2 & 3 of aforesaid agreement.

"5. Parties agree to commission Atty. Michael Mayol to prepare a subdivision plan of aforesaid lot using as frontage the portion facing Suson St. and dividing said lot in accordance with applicable provisions of law.

"6. The raffle referred to in par.[s] 2 & 3 of the agreement shall be ten (10) days from actual completion of demolition of the aforementioned building.

"7. Other co-heirs of the parties have manifested their conformity to the implementation of the foregoing agreement." (pp. 34--35, Rollo.)

Assisted by their respective counsel, they affirmed and signed the above agreement before the trial judge.

On June 5, 1986, the trial court, "finding the agreement not contrary to law, morals, and public policy," (p. 52, Rollo) approved it and rendered judgment ordering the parties thereto to obey, abide by and comply with all the conditions therein set forth.

However, Julita Zambo had another change of heart. She filed a petition for relief from the court's June 5, 1986 order. The respondents opposed it. Petitioner filed her Comments and Reply to the Opposition. The respondents filed a Memorandum of Authorities in support of their opposition to the petition for relief from judgment.

On August 14, 1987, the new presiding Judge of the trial court issued an Order denying the petition for relief. Julita Zambo appealed to the Court of Appeals (CA-G.R. CV No. 16634) alleging "mistake" and "excusable negligence" of her attorney-in-fact, even as she conceded that there may have been no fraud.

The Court of Appeals rendered a decision on August 2, 1991 dismissing the appeal.

When appellant's motion for reconsideration of the adverse decision was denied for lack of merit, she came to the Supreme Court by a petition for review, alleging that there is neither factual nor legal basis for the appellate court's "interpretation" or finding that the special power of attorney which she delivered to Attorney Redulla authorized him to enter into a compromise agreement and that there was no mistake or negligence on his part in performing his commission.

The petition has no merit.

It has long been settled that a public document executed and attested through the intervention of a notary public is evidence of the facts in clear, unequivocal manner therein expressed. It has the presumption of regularity and to contradict all these, evidence must be clear, convincing and more than merely preponderant (*Gevero vs. IAC*, 189 SCRA 201, citing *Rebuldeda vs. IAC*, 155 SCRA 520). Such evidence does not exist in this case.

After reading the questioned Special Power of Attorney in its entirety, we find not the slightest ambiguity in its terms. Moreover, this case does not come under any of the exceptions which would justify a review by us of the factual findings of the trial court, as affirmed by the appellate court. There exists no reason to further delay the execution of the judgment by compromise in this case.

WHEREFORE, the petition for review is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Quason, JJ., concur.

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