

**RAFAEL G. SUNTAY, SUBSTITUTED BY HIS HEIRS, NAMELY:
ROSARIO, RAFAEL, JR., APOLINARIO, RAYMUND, MARIA VICTORIA,
MARIA ROSARIO AND MARIA LOURDES, ALL SURNAMED SUNTAY,
PETITIONERS,...**

G.R. No. 114950. December 19, 1995

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Grave danger of destitution and ruin or irretrievable loss of property awaits those who practise or condone accommodation in order to circumvent the law or to hide from it. This case, involving Federico Suntay, a wealthy landowner from Bulacan, is in point. He is here pitted against his own lawyer, unfortunately his own nephew, Rafael Suntay, in whose favor he signed and executed a deed of sale of a parcel of valuable and productive real property for a measly P20,000.00. Federico claims that the sale was merely simulated and has been executed only for purposes of accommodation. Rafael Suntay, to the consternation of Federico, insists that the transaction was a veritable sale. Under what showing may the sale be deemed susceptible of nullification for being simulated? Do we thereby abandon every reverence we have hitherto reposed on instruments notarized before notaries public?

Before us is a Petition for Review on Certiorari of the Amended Decision[1] of respondent Court of Appeals[2] and of its Resolution[3] denying petitioner's motion for reconsideration.

These are the pertinent facts:

Respondent Federico Suntay was the registered[4] owner of a parcel of land with an area of 5,118 square meters, more or less, situated in Sto. Niño, Hagonoy, Bulacan. On the land may be found: a rice mill, a warehouse, and other improvements. A rice miller, Federico, in a letter, dated September 30, 1960, applied as a miller-contractor of the then National Rice and Corn Corporation (NARIC). He informed the NARIC that he had a daily rice mill output of 400 cavans of palay and warehouse storage capacity of 150,000 cavans of palay.[5] His application, although prepared by his nephew-lawyer, petitioner Rafael Suntay,[6] was disapproved,[7] obviously because at that time he was tied up with several unpaid loans. For purposes of circumvention, he had thought of allowing Rafael to make the application for him. Rafael prepared[8] an absolute deed of sale[9] whereby Federico, for and in consideration of P20,000.00 conveyed to Rafael said parcel of land with all its existing structures. Said deed was notarized as Document No. 57 and recorded on Page 13 of Book 1, Series of 1962, of the Notarial Register of Atty. Herminio V. Flores.[10] Less than three months after this conveyance, a counter sale[11] was prepared[12] and signed[13] by Rafael who also caused its delivery[14] to Federico. Through this counter conveyance, the same parcel of land with all its existing structures was sold by Rafael back to Federico for the same consideration of P20,000.00.[15] Although on its face, this second deed appears to have been notarized as Document No. 56 and recorded on Page 15 of Book 1, Series of 1962,[16] of the notarial register of Atty. Herminio V. Flores, an examination thereof will show that, recorded as Document No. 56 on Page 13, is not the said deed of sale but a certain "real estate mortgage on a parcel of land with TCT No. 16157 to secure a loan of P3,500.00 in favor of the

Hagonoy Rural Bank." Nowhere on page 13 of the same notarial register could be found any entry pertaining to Rafael's deed of sale.[17] Testifying on this irregularity, Atty. Flores admitted that he failed to submit to the Clerk of Court a copy of the second deed. Neither was he able to enter the same in his notarial register.[18] Even Federico himself alleged in his Complaint that, when Rafael delivered the second deed to him, it was neither dated nor notarized.[19]

Upon the execution and registration of the first deed, Certificate of Title No. 0-2015 in the name of Federico was cancelled and in lieu thereof, TCT No. T-36714 was issued in the name of Rafael. Even after the execution of the deed, Federico remained in possession of the property sold in concept of owner. Significantly, notwithstanding the fact that Rafael became the titled owner of said land and rice mill, he never made any attempt to take possession thereof at any time,[20] while Federico continued to exercise rights of absolute ownership over the property.[21]

In a letter,[22] dated August 14, 1969, Federico, through his new counsel, Agrava & Agrava, requested that Rafael deliver his copy of TCT No. T-36714 so that Federico could have the counter deed of sale in his favor registered in his name. The request having been obviously turned down, Agrava & Agrava filed a petition[23] with the Court of First Instance of Bulacan[24] asking Rafael to surrender his owner's duplicate certificate of TCT No. T-36714. In opposition thereto, Rafael chronicled the discrepancy in the notarization of the second deed of sale upon which said petition was premised and ultimately concluded that said deed was a counterfeit or "at least not a public document which is sufficient to transfer real rights according to law." [25] On September 8, 1969, Agrava & Agrava filed a motion[26] to withdraw said petition, and, on September 13, 1969, the Court granted the same.[27]

On July 8, 1970, Federico filed a complaint[28] for reconveyance and damages against Rafael. He alleged, among others, that:

"xxx xxx xxx xxx

2.2 Sometime around May, 1962, defendant approached plaintiff and asked plaintiff, purely as an accommodation and in order only to help defendant in an application that defendant had then filed or intended to file with the Rice and Corn Administration to be licensed as a rice dealer, to cause the title over the land and improvement described above to be placed in defendant's name, but with the clear and express understanding that ownership, possession, use, enjoyment and all other incidents of title would remain vested in plaintiff; and that, at any time that plaintiff needed or desired that the title be restored to plaintiff's name, defendant would execute whatever deed and take whatever steps would be necessary to do so; to which request, in view of their relationship as uncle and nephew, plaintiff acceded.

2.3 Accordingly, defendant prepared a deed entitled 'Deed of Absolute Sale' over the land and improvements x x x which purported to be a sale thereof by plaintiff to defendant in consideration of P20,000.00; which document plaintiff signed on or about May 19, 1962. xxx.

2.4 Defendant never paid or delivered, and plaintiff never demanded or received, the sum of P20,000.00 or any other valuable consideration for executing the aforesaid 'Deed of Absolute Sale', since the same was and is an absolutely simulated or fictitious transaction, intended solely to accommodate and assist defendant x x x.

2.5 Defendant registered the 'Deed of Absolute Sale' x x x with the Register of Deeds of Bulacan, and as a result, O.C.T. No. 0-2015 in plaintiff's name was cancelled and T.C.T. No. 36714 was issued in defendant's name.

2.6 After the Deed of Absolute Sale x x x had been registered, defendant prepared and delivered to plaintiff a counter-deed likewise entitled 'Deed of Absolute Sale', duly signed by him, in which he purported to sell back to plaintiff the same land and improvements x x x for the same consideration of P20,000.00 x x x.

2.7 At the time defendant delivered the counter-deed x x x to plaintiff, it was signed by defendant, but not dated or notarized, as defendant told plaintiff that he was delivering the signed counter-deed as a recognition of the fictitious character of the Deed x x x and authorized plaintiff to date the deed and cause it to be notarized at any time that plaintiff deemed it necessary or convenient to do so x x x.

2.8 From the time plaintiff acquired the land and improvements x x x from his parents, continuously until the present, plaintiff has been in open, public possession, use and enjoyment of the land, rice mill, warehouse and other improvements x x x for his sole and exclusive benefit, and has paid all taxes thereon; and, in fact, from May 19, 1962, the date of the simulated 'Deed of Absolute Sale' xxx until the present, defendant has not exercised a single act of ownership, possession, use or enjoyment of the said land and improvements.

2.9 During the months of June to August, 1969, desiring to expand his rice mill and warehouse business located on the land in question, because of government efforts to stimulate rice production, plaintiff requested defendant to deliver to him the owner's duplicate of the transfer certificate of title over the properties in question, in order that plaintiff might register the counter-deed x x x and use the property as collateral in securing a bank loan to finance the expansion of the rice mill and warehouse facilities; but defendant failed and refused, and continues to fail and refuse to do so, without just cause or legal reason."[29]

In his answer, Rafael scoffed at the attack against the validity and genuineness of the sale to him of Federico's land and rice mill. Rafael insisted that said property was "absolutely sold and conveyed x x x for a consideration of P20,000.00, Philippine currency, and for other valuable consideration".[30] Accordingly, he raised the following affirmative and/or special defenses:

"xxx xxx xxx xxx

2.2 Plaintiff is now estopped from questioning the validity, genuineness, valuable consideration and due execution of the Deed of Absolute Sale, Annex 'A' of the Complaint, since he admitted the same in his Petition in L.R. Case No. 1356 x x x pertinent portions of which are quoted hereunder:

`x x x On August 12, 1962, Rafael G. Suntay sold the property above-described to petitioner through a Deed of Absolute Sale x x x.'

and likewise, plaintiff admitted the validity, genuineness, valuable consideration and due execution of aforesaid Deed of Absolute Sale x x as evidenced by the letter of plaintiff's counsel, Attorneys Agrava and Agrava x x x.

3. x x x Sometime in 1962, plaintiff informed defendant that he would repurchase aforesaid property and requested the defendant to prepare the necessary document. Considering the trust and confidence that defendant had in plaintiff and pursuant to said request, defendant prepared the proposed Deed of Sale x x x signed the same and delivered it to the plaintiff with the clear and express understanding that the owner's duplicate Transfer Certificate of Title would be delivered to the plaintiff only upon full payment of the agreed repurchase price of P20,000.00 after which said proposed Deed of Sale would be duly notarized. The amount of P20,000.00 was stated in said proposed Deed of Sale upon request of plaintiff in view of the fact that that was the same amount appearing in the Deed of Absolute Sale, Annex 'A' of the Complaint. The plaintiff, not only failed to pay to defendant the agreed repurchase price of (sic) any portion thereof but even caused the falsification of the proposed Deed of Sale by making it appear, in connivance with Attorney Herminio Flores, that defendant acknowledged said document before said Attorney Flores, when in truth and in fact as plaintiff and Attorney Flores very well knew at the time that defendant never appeared, much less acknowledged, before Attorney Flores said document x x x."[31]

At the initial hearing on April 7, 1971, Federico took the stand and, when asked why title to the property was no longer in his name, Rafael's counsel objected thereto upon the ground that Federico, in the petition wherein he asked Rafael to surrender his owner's duplicate of TCT No. T-36714, had alleged that he sold the land to Rafael,

which allegation, Rafael contends, constitutes as a judicial admission which may not be subject to contradiction, unless previously shown to have been made through palpable mistake.[32] Rafael's counsel, in effect, was assailing the admissibility of Federico's anticipated answer which would most likely tend to establish the simulated nature of the sale executed by Federico in favor of Rafael. Judge Emmanuel Muñoz overruled the objection and reset the case for hearing on June 9, 1971.

On June 7, 1971, Rafael, obviously for the purpose of delay on account of its pettiness, instituted certiorari proceedings in the Court of Appeals in order to have the aforesaid ruling nullified and set aside. Rafael was naturally rebuffed by the Appellate Court. Considering that the petition for Rafael to surrender his owner's duplicate of TCT No. T-36714 had been withdrawn upon motion of Federico, the alleged admission of Federico as to the questioned deed's validity in effect disappeared from the record and had ceased to have any standing as a judicial admission.[33] Dissatisfied with the ruling, Rafael elevated the matter to the Supreme Court via a petition for review on certiorari. This was summarily denied by us for lack of merit.[34]

Whereupon, Rafael's counsel moved, as he often did previously, for continuation of trial of the main case.[35] After a thirteen-year trial — with no less than six different Presiding Judges;[36] numerous changes of lawyers; countless incidents; and a mountain-pile of pleadings -- a decision in the case was finally rendered on April 30, 1984. Resolving the sole issue of whether or not the deed of sale executed by Federico in favor of Rafael was simulated and without consideration, the trial court ruled:

"The following documents undisputedly show the admission of the plaintiff that the deed of absolute sale (Exh. A) is not a simulated or fictitious document but is a genuine deed of absolute sale he executed in favor of the defendant, to wit:

(a) xxx a demand letter of Attys. Agrava & Agrava, counsel of the plaintiff, the pertinent portion of which is quoted as follows:

'On May 19, 1972, our client, Federico C. Suntay sold to your goodself for P20,000.00 a parcel of land situated at Hagonoy, Bulacan x x x.'

(b) xxx a Petition for the Surrender of Owner's Duplicate Certificate of Title and/or Cancellation and Issuance of Substitute Owner's Copy of Transfer Certificate of Title filed in Court on August 19, 1969 by the plaintiff against the defendant docketed as LRC Case No. 1356 xxx hereby quoted as follows:

'2. Petitioner is the vendee of a parcel of land, together with the improvements existing thereon situated in the Barrio of Sto. Niño, Hagonoy, Bulacan x x x tide to which is still x x x issued in the name of the vendor Rafael G. Suntay x x x.

3. On August 12, 1962, Rafael G. Suntay sold the property x x x to petitioner x x x.'

(c) x x x a notice of adverse claim filed by the plaintiff in the Registry of Deeds of Bulacan on the land in question x x x admitting the ownership of the defendant of said land, which is quoted as follows:

'That the property has been sold to me by Rafael G. Suntay through an Absolute Deed of Sale x x x.'

These documents alone are more than sufficient evidence to conclude that Exhibit A is not a simulated Deed of Absolute Sale but a genuine Deed of Absolute Sale which transferred the ownership of the property in question from the plaintiff to the defendant. The mere allegation of the plaintiff that the Deed of Sale (Exh. A) is simulated and without consideration cannot prevail over his aforesaid admissions. x x x In addition thereto is the fact that this Deed of Absolute Sale (Exh. A) was duly recorded in the Notarial Registry of Notary Public Herminio V. Flores x x x thus showing the regularity and due execution of the aforesaid document. x x x.

The mere fact that plaintiff is in continuous possession of the property in question, pays realty taxes thereon and have introduced several improvements despite the execution of Deed of Absolute Sale (Exh. A) is not sufficient basis to conclude that Exh. A is just a simulated sale in the light of the admissions of the plaintiff in the aforementioned documentary evidences and furthermore it was explained by the defendant that plaintiff has been in possession of the property in question and paid taxes thereon because it was their express understanding that plaintiff would subsequently repurchase the property in question and all the fruits thus enjoyed by plaintiff and taxes thus paid by him would be accounted for x x x This is borne out by the receipts of payment of realty taxes which expressly show that plaintiff paid the taxes for and in the name of defendant Rafael Suntay."[37]

While the trial court upheld the validity and genuineness of the deed of sale executed by Federico in favor of Rafael, which deed is referred to above as Exhibit A, it ruled that the counter-deed, referred to as Exhibit B, executed by Rafael in favor of Federico, was simulated and without consideration, hence, null and void ab initio.

The trial court ratiocinated that:

"The Deed of Absolute Sale (Exh. B) which is a resale of the property in question executed by the defendant in favor of the plaintiff was signed by the defendant but at the time it was handed to the plaintiff it was not dated, not notarized and above all it has no consideration because plaintiff did not pay defendant the consideration of the sale in the sum of P20,000.00. x x x.

Although Exh. B was subsequently notarized, the fact remained that defendant did not appear and acknowledge the same before the Notary Public x x x and did not receive the consideration of the aforesaid Exh. B x x x. Consequently (sic), this Exh. B for want of consideration and not having been acknowledged by defendant before the Notary Public is therefore null and void and hence did not transfer ownership of the property in question to the defendant.

`A contract of purchase and sale is void and produces no effect whatsoever where the same is without cause or consideration in that the purchase price, which appears thereon as paid, has in fact never been paid by the purchaser to the vendor (Mapalo vs. Mapalo x x x 17 SCRA 114).'"[38]

While the trial court adjudged Rafael as the owner of the property in dispute, it did not go to the extent of ordering Federico to pay back rentals for the use of the property as the court made the evidential finding that Rafael simply allowed his uncle to have continuous possession of the property because of their understanding that Federico would subsequently repurchase the same. The decretal portion of the decision of the trial court reads:

"WHEREFORE, a decision is hereby rendered:

1. Dismissing this complaint filed by the plaintiff against herein defendant;
2. Declaring the Deed of Absolute Sale (Exh. A) executed by the plaintiff in favor of the defendant of a parcel of land covered by OCT No. 0-2015-Bulacan Registry as a genuine and valid document;
3. Ordering the defendant to pay the Government of the Republic of the Philippines thru the Office of the Register of Deeds of Bulacan the true and correct registration fees for the Deed of Absolute Sale (Exh. A) on the basis of the true consideration of the sale as admitted by the defendant which is P20,000.00 as stated in the document plus his unpaid attorney's fees in the sum of P114,000.00 within fifteen (15) days from the finality of this decision;
4. Declaring the Deed of Sale (Exh. B) executed by the defendant in favor of the plaintiff of a parcel of land covered by TCT No. T-36714-Bulacan Registry as null and void ab initio;
5. The prayer for P500.00/month rental from May, 1962 is hereby denied for lack of merit;

6. With costs against the plaintiff."[39]

From the aforecited decision of the trial court, both Federico and Rafael appealed. Before the Court of Appeals both pleaded invariably the same arguments which they had raised before the trial court. On January 27, 1993, the Court of Appeals rendered judgment in affirmance of the trial court's decision, with a modification. Federico was ordered to surrender the possession of the disputed property to Rafael.[40]

The Court of Appeals ruled:

"After a careful examination of the evidence on record, we are inclined to agree with the lower court that Exhibit 'A' is indeed a genuine deed of absolute sale which transferred to Rafael the full ownership of the litigated property, including the improvements found thereon.

For one, it immediately strikes us as rather unusual for Federico to wait until 1969, or after a period of more than seven (7) years from May 19, 1962 when he executed Exhibit 'A', to seek the restoration of his title over the same property. Were Federico to be believed, he executed Exhibit 'A' simply to accommodate his nephew in connection with the latter's alleged application as rice dealer of RCA. There is nothing in the record, however, that Rafael ever became a licensed rice dealer of RCA from 1962 to 1969. x x x.

x x x Prudence if not common sense should have cautioned Federico of the dangers attendant to his inaction to assert immediately his alleged unaffected ownership over the same property. It is simply unthinkable that Federico could not have considered the possibility that an innocent purchaser for value may acquire the property from Rafael. Such a thought alone is enough reason for Federico to be wary of the situation which he allowed to continue for seven (7) years.

Nor can Federico draw comfort from his continued physical possession of the property even after the same was sold to Rafael. As plausibly explained by Rafael, he allowed Federico to remain in the premises and enjoy the fruits thereof because of their express understanding that Federico may subsequently repurchase the property and all the fruits thus enjoyed by the plaintiff and the taxes paid by him would be accounted for at the time of the repurchase x x x. Indeed, the receipts of payment of realty taxes clearly show on their face that Federico paid the taxes for and in behalf of Rafael x x x.

Independent of the foregoing, documents are on record which are replete with Federico's admissions showing that Exhibit 'A' could not have been a simulated or fictitious deed of sale. x x x.

Finally, it is not disputed that Exhibit 'A' was duly recorded in the Notarial Register of Notary Public Herminio V. Flores x x x who testified on the due execution of the same x x x. Against this overwhelming evidence, Federico's self-serving declaration that Exhibit 'A' is a fictitious and simulated contract must certainly fall.

This brings us to the Deed of Absolute Sale (Exh. 'B') executed by Rafael in favor of Federico over the same property.

We cannot add more to what the court a quo has said in declaring that Exhibit 'B' is null and void, for which reason it could not have transferred the ownership of the same property to Federico. x x x x x."[41]

Counsel of Federico filed a motion for reconsideration of the aforecited decision. While the motion was pending resolution, Atty. Ricardo M. Fojas entered his appearance in behalf of the heirs of Rafael who had passed away on November 23, 1988. Atty. Fojas prayed that said heirs be substituted as defendants-appellants in the case. The prayer for substitution was duly noted by the court in a resolution dated April 6, 1993. Thereafter, Atty. Fojas filed in behalf of the heirs an opposition to the motion for reconsideration. The parties to the case were heard on oral argument on October 12, 1993.

On December 15, 1993, the Court of Appeals reversed itself and rendered an amended judgment, pertinent portions of which read:

"x x x this Court is convinced that the desired reconsideration is impressed with compelling merit. For truly, certain premises stand out in the chain of evidence, the interplay of which supports the conclusion that the parties meant Exhibit 'A' to be a mere accommodation arrangement executed without any consideration and therefore a simulated contract of sale. Consider the following:

1. Two (2) instruments were executed closely one after the other involving transfer and re-transfer of the same property at exactly the same price;
2. The existing close relationship between the parties; and
3. The value and location of the property purportedly sold, which project in bold relief the gross inadequacy of the stated contractual consideration therefor.

x x x x x x x x x x

There is more. Similarly looming large to attest to the simulated character of Exhibit 'A' which, in hindsight, was unjudiciously brushed aside is the undisputed fact that the physical possession, enjoyment and use of the property in question remained through the years and up to the present in the hands of Federico. Rafael, as records show, never assumed the benefits, let alone the burden, of ownership. He did not even include the property in his statement of assets and liabilities x x x nor paid the taxes therefor. This factor, juxtaposed with Rafael's execution of the counter deed of sale (Exh. 'B'), cannot but unmistakably indicate that the parties never meant to regard Exhibit 'A' as producing actual transfer of ownership and/or rights attached to ownership. Doubtless, Exhibit 'B' manifested, and is an affirmation of, such intention.

We are thus inclined to agree with Federico's main submission that Exhibit 'A' is merely a fragment of the intended transaction, that is, an accommodation loan of title to Rafael and its subsequent return to Federico. The counter deed of sale executed by Rafael (Exh. 'B'), completed it. Stated differently, the first instrument merely recited a portion of the entire accommodation transaction; the second, as a complementary part, and, in addition to the first, integrated and made clear the simulated character of the entire agreement.

It is true that in the Decision under consideration, this Court took stock, as Rafael urges, of Federico's admission in the letter dated August 14, 1969 of the Agrava and Agrava Law Office x x x in Federico's petition for registration x x x and in his affidavit/notice of adverse claim. Viewed in its proper perspective, however, we are now inclined to consider such admission as no more than a recognition on the part of Federico of the factual existence of Exhibit 'A', by virtue of which his OCT No. 0-2015 was cancelled and a new title (TCT No. T--36714) issued in the name of Rafael. x x x.

In fine, this Court rules and so holds that the Deed of Absolute Sale executed on May 19, 1962 by plaintiff-appellant Federico Suntay in favor of his nephew Rafael G. Suntay (Exh. 'A'), is absolutely simulated and fictitious. As such, it is void and is not susceptible of ratification (Art 1409, Civil Code), produces no legal effects (Cariño vs. Court of Appeals, 152 SCRA 529), and does not convey property rights nor in any way alter the juridical situation of the parties (Tongay vs. Court of Appeals, 100 SCRA 99). Along the same vein, the counter deed of sale (Exh. 'B'), executed by Rafael in favor of his uncle Federico, purportedly re-selling to the latter the very same property earlier fictitiously conveyed by Federico is likewise infected with the same infirmity that vitiates Exhibit 'A'. Like the latter document, Exhibit 'B' is also simulated and therefore it, too, is incapable of producing legal effects. In short, it was as if no contract of sale was ever executed by Federico in favor of Rafael, on the one hand, and by Rafael in favor of Federico, on the other hand, although the sad reality must be acknowledged that on account of Exhibit 'A', Federico's title to the property was cancelled and replaced by a new

one in the name of Rafael whose change of heart brought about Federico's travails." [42]

We cannot but uphold the foregoing findings and conclusions of the Court of Appeals. While the rule is that factual findings of the Court of Appeals are binding on us, we endeavored, however, to scrutinize the case records and read and examined the pleadings and transcripts submitted before the trial court [43] because the factual findings of the Court of Appeals and that of the trial court are contrary to each other. [44]

The sole issue in this case concerns the validity and integrity of the aforescribed deed of sale in favor of Rafael Suntay. We necessarily begin with two veritable legal presumptions: first, that there was sufficient consideration for the contract [45] and, second, that it was the result of a fair and regular private transaction. [46] These presumptions if shown to hold, infer prima facie the transaction's validity, except that it must yield to the evidence adduced. [47]

In the aggregate, the evidence on record demonstrate a combination of circumstances from which may be reasonably inferred certain badges of simulation that attach themselves to the deed of sale in question.

I

The late Rafael Suntay and private respondent Federico Suntay were relatives, undisputedly, whose blood relation was the foundation of their professional and business relationship. The late Rafael testified that he had completely trusted Federico and so he signed and delivered the counter-deed of sale even without prior payment of the alleged repurchase price of P20,000.00. Federico had such faith and confidence in the late Rafael, as nephew and counsel, that he blindly signed and executed the sale in question. He had recommended Rafael as legal counsel and corporate secretary of the Hagonoy Rural Bank of which he was founder and once President. He had entrusted to Rafael many of his business documents and personal papers, the return of which he did not demand even upon termination of their professional relationship. It was precisely because of this relationship that Federico consented to what he alleged as a loan of title over his land and rice mill in favor of the late Rafael. We are all too familiar with the practice in the typical Filipino family where the patriarch with the capital and business standing takes into his fold the young, upcoming, inexperienced but brilliant and brashly ambitious son, nephew or godchild who, in turn, becomes to his father, uncle, or godparent, the jack of all trades, trouble shooter and most trusted liaison officer cum adviser. He wittingly serves his patron without the security of a formal contract and without clarifying the matter of compensation.

The record is replete with circumstances that establish the closeness, mutual trust and business and professional interdependence between the late Rafael and private respondent. When their relationship turned sour, the late Rafael, in all probability knew where to hit Federico where it really hurt because he had been privy to most of Federico's business and personal dealings and transactions. The documentary evidence alone proffered by the late Rafael showed the extent of Rafael's knowledge and involvement in both the business and private affairs of Federico, his wife, his son, and even his wife's relatives. Rafael admitted in open court that he had come into the possession thereof in the course of rendering legal services to his uncle. These documents on record and the testimonies of the late Rafael and private respondent establish the existence of, not only the facts therein stated, but also the circumstance pertaining to the nature of the relationship between private respondent and the late Rafael. The Court of Appeals simply took a second look at the evidence on record as was its bounden duty upon the filing of a motion for reconsideration and could no longer ignore that the close relationship between the late Rafael and private respondent was indeed a badge of simulation.

"There are at least three distinguishable classes of so-called circumstances in evidence which, however, cannot safely be interpreted in the same way. One class of circumstances, often referred to in trials at law, includes all outside and related incidents, conditions and happenings which are described by witnesses and necessarily are

subject to all of the dangers and defects of oral and memory testimony. There are also circumstances which are admitted, or which arise from the nature of the case itself, which cannot be denied, and lastly there are tangible and visible facts before court x x x x which are the basis for a judgment x x x.

x x x The law, as well as logic, makes a distinction between surroundings, conditions, and 'circumstances' as compared with real and tangible facts. x x x A bungling, overwritten, traced signature, as well as a coat with a bullet-hole in the breast are both x x x 'silent circumstances' that do not commit perjury. Though silent they often are eloquent x x x.

All these quite distinct classes of evidence form the basis of legal verdicts and judgments. The great mass of legal evidence consists of testimony of oral witnesses which has force in proportion as it is believed, but in many important cases a verdict must be based mainly upon the second or the third class of evidence x x x Circumstances and facts must be interpreted and illustrated in order to show whether a definite conclusion can be based on them. In many cases a particular conclusion is irresistible."[48]

The history and relationship of trust, interdependence and intimacy between the late Rafael and Federico is an unmistakable token of simulation. It has been observed that fraud is generally accompanied by trust.[49] Hardly is it inconsistent with practical experience, especially in the context of the Filipino family's way of life, that Federico, the uncle, would almost naively lend his land title to his nephew and agree to its cancellation in his nephew's favor because Federico, in the first place, trusted his nephew; was well aware of his power over him as uncle, client, and patron; and was actually in possession of the land and rice mill. No one could even conceive of the possibility of ejecting Federico therefrom on the basis of the sham transaction. The late Rafael never attempted to physically dispossess his uncle or actually take over the rice mill during his lifetime.

II

The late Rafael insisted that the sale to him of his uncle's property was in fact a "dacion en pago" in satisfaction of Federico's unpaid attorney's fees.[50] What prominently stands out from the mass of records, however, is the fact that this claim of the late Rafael was only raised in 1976 when he testified on direct examination. The answer that he filed in 1970 in response to Federico's complaint never mentioned nor even alluded to any standing liability on the part of Federico as regards unpaid attorney's fees. Neither did the late Rafael deny or refute Federico's testimony that they did not have a clear-cut compensation scheme and that Federico gave him money at times, which compensation enabled the late Rafael to purchase his first car. The late Rafael even affirmed Federico's testimony respecting his appointment as the legal counsel and corporate secretary of the Hagonoy Rural Bank for which he received compensation as well.

Equally significant is the admission of the late Rafael that he did not inform Federico that he considered the transfer to be in consideration of his alleged unpaid attorney's fees.[51] Apparently, it is true, as Federico claimed, that no accounting was undertaken between uncle-client and nephew-lawyer in order to arrive at the definite amount of the alleged unpaid attorney's fees. Strange and irregular as this matter seems to be, the same may only become comprehensible when considered as a grave symptom of simulation.

III

Indeed the most protuberant index of simulation is the complete absence of an attempt in any manner on the part of the late Rafael to assert his rights of ownership over the land and rice mill in question. After the sale, he should have entered the land and occupied the premises thereof. He did not even attempt to. If he stood as owner, he would have collected rentals from Federico for the use and occupation of the land and its improvements. All that the late Rafael had was a title in his name.

"It is to be emphasized that the private respondents never parted with the ownership and possession of that portion of Lot No 785 x x x nor did the petitioners ever enter into possession thereof. As earlier stated, the issuance of TCT No. T-1346 did not operate to vest upon the latter ownership over the private respondents' property. That act has never been recognized as a mode of acquiring ownership. As a matter of fact, even the original registration of immovable property does not vest title thereto; it is merely evidence of such title over a particular property. The Torrens system of land registration should not be used as a means to perpetrate fraud against the rightful owner of real property." [52]

The failure of the late Rafael to take exclusive possession of the property allegedly sold to him is a clear badge of fraud. [53] The fact that, notwithstanding the title transfer, Federico remained in actual possession, cultivation and occupation of the disputed lot from the time the deed of sale was executed until the present, is a circumstance which is unmistakably added proof of the fictitiousness of the said transfer, [54] the same being contrary to the principle of ownership. [55]

Of course, according to the late Rafael, he allowed Federico to remain in the premises and enjoy the fruits thereof because of their understanding that Federico may subsequently repurchase the property. Contrary to what Rafael thought, this in fact is added reason for simulation. The idea of allowing a repurchase goes along the same lines posed by the theory of Federico.

If it were true that the first sale transaction was actually a "dacion en pago" in satisfaction of Federico's alleged unpaid attorney's fees, it does strain the logical mind that Rafael had agreed to allow the repurchase of the property three months thereafter. Federico was obviously financially liquid. Had he intended to pay attorney's fees, he would have paid Rafael in cash and not part with valuable income-producing real property.

IV

The late Rafael, at the very outset, made much of an uproar over the alleged admissions made by Federico in several documents executed by him or in his behalf. On the whole, it was the late Rafael's inflexible stand that Federico admitted in various documents that he had absolutely sold his land and rice mill to him and could not, thus, subsequently deny or attack that sale. Upon our examination of such documents, however, we find that neither the letter of Agrava & Agrava, nor the petition to compel delivery of the owner's duplicate of title and the notice of adverse claim, supports the late Rafael's posture. Nowhere is it stated in the aforesaid petition and notice of adverse claim that Federico sold the subject property to the late Rafael. What was alleged was that Rafael resold to Federico the said property, and not the other way around, precisely because both documents were assertions of remedies resorted to by Federico upon the refusal by the late Rafael to tender his owner's duplicate title.

V

Neither does the undisputed fact that the deed of sale executed by Federico in favor of the late Rafael, is a notarized document, justify the conclusion that said sale is undoubtedly a true conveyance to which the parties thereto are irrevocably and undeniably bound.

"Conduct, to be given jural effects, must be jural in its subject x x x i.e. must concern jural relations, not relations of friendship or other non-jural relations. The father who promises to bring home a box of tools for his boy is not bound in contract, though the same promise to his neighbor may be binding. The friend who invites one with an offer of a dinner is not legally liable, though he who agrees with a restaurant-keeper for a banquet to be spread there is under a contract of liability. x x x In all such cases, therefore, the conduct is jurally ineffective, or void. In the traditional phraseology of the parole evidence rule, then, it may always be shown that the transaction was

understood by the parties not to have jural effect

(1) Ordinarily, the bearing of this principle is plain enough on the circumstances. It has been judicially applied to household services rendered by a member of the family, and to a writing representing merely a family understanding. x x x.

When the document is to serve the purpose of a mere sham, this principle in strictness exonerates the makers. x x x."[56]

The cumulative effect of the evidence on record as chronicled aforesaid identified badges of simulation proving that the sale by Federico to his deceased nephew of his land and rice mill, was not intended to have any legal effect between them. Though the notarization of the deed of sale in question vests in its favor the presumption of regularity, it is not the intention nor the function of the notary public to validate and make binding an instrument never, in the first place, intended to have any binding legal effect upon the parties thereto. The intention of the parties still and always is the primary consideration in determining the true nature of a contract.

VI

While the late Rafael vehemently upholds the validity and effectiveness of the deed of sale in question, this posture is eroded by his admission, on cross-examination during trial that he never declared his ownership of the subject property in his annual Statement Of Assets And Liabilities. The fact that the late Rafael denied both intention and knowledge involving the sham sale and firmly maintained the validity and genuineness thereof has become incongruous because it is irreconcilable with the circumstance that he apparently never considered the disputed property as one of his assets over which he had rights of absolute ownership.

The allegation of Rafael that the lapse of seven (7) years before Federico sought the issuance of a new title in his name necessarily makes Federico's claim stale and unenforceable does not hold water. Federico's title was not in the hands of a stranger or mere acquaintance; it was in the possession of his nephew who, being his lawyer, had served him faithfully for many years. Federico had been all the while in possession of the land covered by his title and so there was no pressing reason for Federico to have a title in his name issued. Even when the relationship between the late Rafael and Federico deteriorated, and eventually ended, it is not at all strange for Federico to have been complacent and unconcerned about the status of his title over the disputed property since he has been possessing the same actually, openly, and adversely, to the exclusion of Rafael. It was only when Federico needed the title in order to obtain a collateralized loan[57] that Federico began to attend to the task of obtaining a title in his name over the subject land and rice mill.

We, therefore, hold that the deed of sale executed by Federico in favor of his now deceased nephew, Rafael, is absolutely simulated and fictitious and, hence, null and void, said parties having entered into a sale transaction to which they did not intend to be legally bound. As no property was validly conveyed under the deed, the second deed of sale executed by the late Rafael in favor of his uncle, should be considered ineffective and unavailing.

WHEREFORE, the Amended Decision promulgated by the Court of Appeals on December 15, 1993 in CA-G.R. CV No. 08179 is hereby AFFIRMED IN TOTO. Petitioners, the heirs of Rafael G. Suntay, are hereby ordered to reconvey to private respondent Federico C. Suntay the property described in paragraph 2.1 of the complaint, within ten (10) days from the finality of this Decision, and to surrender to him within the same period the owner's duplicate copy of Transfer Certificate of Title No. T-36714 of the Registry of Deeds of the Province of Bulacan. In the event that the petitioners fail or refuse to execute the necessary deed of reconveyance as herein directed, the Clerk of Court of the Regional Trial Court of Bulacan is hereby ordered to execute the same at the expense of the aforesaid heirs.

Costs against petitioners.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

[1] Promulgated on December 15, 1993 and penned by Associate Justice Cancio Garcia; Rollo, pp. 39-45.

[2] Former Second Division with Associate Justices Cancio Garcia, Santiago Kapunan, and Alfredo Marigomen as members.

[3] Promulgated on April 8, 1994; Rollo, p. 46.

[4] Under Original Certificate of Title No. 0-2015, Registry of Deeds of Bulacan; Exh. "K"; Original Records, Vol. III, p. 72.

[5] Exh. "7"; Original Records, Vol. III, p. 139.

[6] TSN, dated October 4, 1976, p. 51.

[7] TSN, dated December 21, 1976, p. 32.

[8] Answer, p. 2; Original Records, Vol. I, p. 132.

[9] Dated May 19, 1962; Exh. "A"; Original Records, Vol. III, pp. 1-2.

[10] Ibid.

[11] Deed of Absolute Sale dated August 12, 1962; Exh. "B"; Original Records, Vol. III, pp. 5-6.

[12] Answer, p. 6; Original Records, Vol. I, p. 136.

[13] TSN, dated Oct. 21, 1975, p. 18.

[14] Answer, p. 6, *supra*.

[15] Deed of Absolute Sale dated August 12, 1962, *supra*.

[16] Ibid.

[17] Certified copy of Book I, Series of 1962 of the Notarial Register of Atty. Herminio V. Flores; Original Records, Vol. III, pp. 144-156.

[18] TSN, dated Oct. 21, 1975, p. 23.

[19] Complaint, p. 3; Original Records, Vol. I, p. 127.

[20] TSN, dated November 10, 1976, pp. 46-49.

[21] TSN, dated April 7, 1971, pp. 46-57; Exhs. "C-1" to "C-15"; "D-1" to "D-10"; "E-1" to "E-16"; "F-1" to "F-2"; Original Records, Vol. III, pp. 9-58.

[22] Original Records, Vol. III, p. 140.

[23] Petition for the Surrender of Owner's Duplicate Certificate of Title and for Cancellation and Issuance of Substitute Owner's Duplicate Copy of the Transfer Certificate of Title, docketed as L.R. Case No. 1356, LRC Record No. N-18080; Original Records, Vol. III, pp. 59-61.

- [24] Branch II, Fifth Judicial District, presided by Judge Andres Sta. Maria.
- [25] Petition, *supra*, p. 3; Original Records, Vol. III, p. 64.
- [26] Original Records, Vol. III, pp. 67-68.
- [27] Order dated September 13, 1969; Original Records, Vol. III, p. 69.
- [28] Complaint; Original Records, Vol. I, pp. 125-130.
- [29] Complaint, pp. 2-4; Original Records, Vol. I, pp. 126-128.
- [30] Answer, p. 1; Original Records, Vol. I, p. 131.
- [31] Answer, pp. 5-7; Original Records, Vol. I, pp. 135-137.
- [32] Sec. 2, Rule 129, Rules of Court.
- [33] Resolution of the Court of Appeals in CA-G.R. No. SP-00201, promulgated on June 15, 1971; Original Records, Vol. I, pp. 145-149.
- [34] Resolution of the Supreme Court dated August 19, 1971; Original Records, Vol. I, p. 151.
- [35] Motion to Set Case for Continuation of Trial dated December 6, 1971; Original Records, Vol. I, pp. 153-154.
- [36] Judges Emmanuel M. Muñoz, Florelia Castro-Bartolome, Nelly L. Romero Valdellon, Fidel P. Purisima, Rustico de los Reyes, and Godofredo L. Legaspi.
- [37] Decision of the Regional Trial Court, pp. 6-8; Rollo, pp. 52-54.
- [38] Decision, *supra*, pp. 8-9; Rollo, pp. 54-55.
- [39] *Ibid*, pp. 10-11; Rollo, pp. 56-57.
- [40] Decision of the Court of Appeals in CA-G.R. CV No. 08179, penned by Justice Cancio Garcia; Rollo, pp. 58-73.
- [41] Decision, *supra*, pp. 11-13; Rollo, pp. 68-70.
- [42] Amended Decision of the Court of Appeals in CA-G.R. CV No. 08179 penned by Justice Cancio Garcia, pp. 3-6; Rollo, pp. 41-44.
- [43] *Asia Brewery vs. CA*, 224 SCRA 437; *Patalinghug vs. CA*, 229 SCRA 554.
- [44] *Patalinghug vs. CA*, *supra*.
- [45] Sec. 3(r), Rule 131, 1989 New Rules on Evidence.
- [46] Sec. 3(p), Rule 131, *supra*.
- [47] *Genato vs. de Lorenzo*, 23 SCRA 618; *Castro vs. Escutin*, 90 SCRA 349.
- [48] Osborn, Albert, *The Problem of Proof*, 1946 Edition, p. 218.
- [49] *Garcia vs. Bituin*, CA. G.R. No. 12297-R, 55 O.G. 1785 (1958), cited in *Castro vs. Escutin*, *supra*.
- [50] TSN dated November 10, 1976.
- [51] TSN dated December 9, 1976, pp. 6 and 9.

[52] Berico vs. CA, 225 SCRA 469.

[53] Oria vs. McMicking, 21 Phil. 243; Castro vs. Escutin, supra.

[54] Gardner vs. CA, 131 SCRA 583.

[55] Cariño vs. CA, 152 SCRA 529; Serrano vs. CA, 139 SCRA 189.

[56] Wigmore, John Henry, Evidence in Trials at Common Law, Vol. IX, 1940 Edition, p. 2406.

[57] TSN dated April 7, 1971, p. 60.

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