FERNANDO HERMOSA, JR., AS JUDICIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF THE DECEASED, FERNANDO HERMOSA, SR., PLAINTIFF AND APPELLANT, VS. ALFONSO ZOBEL Y ROXAS, DEFENDANT AN...

G. R. No. 11835. October 30, 1958

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-11835/

BAUTISTA ANGELO, J.:

Fernando Hermosa, Sr. was the owner of certain real estate situated in San Sebastian, Spain, which he inherited from his parents. When he died on December 19, 1944, intestate proceedings were instituted in the Court of First Instance of Samar for the settlement of his estate and his daughter Luz Hermosa was appointed administratrix. He left as heirs his daughter Luz and a grandson, Fernando Hermosa, Jr.

On January 14, 1947, the administratrix requested permission from the court to sell the property located in Spain with the conformity of her co-heir Fernando Jr. which was to be made through public auction. The court granted the permission in an order dated April 5, 1947. As the sale could not be carried out through public auction for lack of bidders, the administratrix requested permission to sell the property privately, which request was granted in an order of October 23, 1947. Still unable to find a buyer of the property, the administratrix approached Alfonso Zobel to interest him in buying the property but the latter, while willing to buy it, did not wish to have negotiations with the heirs or go through a cumbersome judicial process, and to overcome this objection the two heirs Luz and Fernando agreed to have the property ceded and adjudicated to one of them who may later carry on the negotiation with the prospective buyer. In line with their agreement, they executed on November 18, 1947 a deed of cession and adjudication of the property in favor of Luz Hermosa, and on November 20, 1947, the two filed a joint petition with the probate court explaining the circumstances surrounding the adjudication of the property to Luz Hermosa and requesting that the same be approved. Acceding to their joint petition, the court issued an order approving the deed of cession and adjudication on November 21, 1947.

After the property had been adjudicated to Luz Hermosa, the latter renewed the negotiation concerning the sale of the property to Alfonso Zobel and after discussing the terms and conditions thereof, both agreed that the sale price would be P20,000, Philippine currency. However, since under the laws of Spain the lessee of a property which is sold may repurchase the same by paying the sale price in Spanish pesetas at the official rate of exchange, in order to protect the investment of the buyer it was agreed to state in the deed of sale a sale price of P80,000.

Another problem that arose was in connection with the tax that the vendor may be made to pay if the price were fixed at P80,000 and to obviate the same it was likewise agreed to make it appear that the difference of P60,000 had been paid to the vendor during the Japanese occupation. After the negotiation had been completed, Luz Hermosa executed the necessary deed of sale on December 10, 1947, together with a memorandum wherein she stated that she had received the amount of P60,000 during the years 1942, 1943 and 1944 and that out of the balance of P20,000 she received P15,000 on account, the remaining P5,000 to be paid after the property had been

registered in the name of the vendee. And on April 27, 1948, this remainder was in effect paid by Zobel to Luz Hermosa thereby completing the transaction.

Meantime, Luz Hermosa died and Fernando Hermosa, Jr. was appointed in her place as administrator of the: estate of her late father, and when he came to know that under the deed of sale executed by Luz Hermosa in favor of Alfonso Zobel the sale price was P80,000 and Luz only reported to the probate court the sum of P20,000, he demanded from Zobel the payment of the balance of P60,000, or the specific performance of the contract, and when Zobel refused to accede to his demand, he began the present action on May 28, 1954 in the Court of First Instance of Samar asking for specific performance or the rescission of the sale, plus damages, in his capacity as judicial administrator. Defendant answered the complaint setting up certain special defenses and a counter-claim. After hearing, the court found the complaint unmeritorious and rendered judgment dismissing it but ordering plaintiff to pay defendant the sum of P1,000 as moral damages and P500 as attorney's fees and costs. The case is now before us on appeal in view of the amount involved.

It should be noted that this action was instituted by plaintiff in his capacity as administrator of the estate of Fernando Hermosa, Sr. and that its purpose is to demand either the specific performance or the rescission of the deed of sale executed by Luz Hermosa in her personal capacity in favor of defendant Alfonso Zobel on December 10, 1947. Note should also be taken of the fact that Luz Hermosa died on December 26, 1953 for which reason plaintiff was appointed administrator of the estate in her place. Such being the case, plaintiff has no capacity to bring this action for the property involved has ceased to belong to the estate of Fernando Hermosa, Sr., the only party in interest who could take this action being either the administrator of the estate of Luz or her heirs and none of them is a party to this case (Article 1311, new Civil Code).

But plaintiff contends that the deed of cession executed by him jointly with Luz Hermosa adjudicating to the latter the property in question in order to facilitate its sale to the defendant is null and void for the reason that at the time it was executed by him on November 18, 1947 he was still a minor and so the cession did not have any legal effect. We fail to see how this contention can be sustained it appearing that at the time he and his aunt Luz executed said deed of cession, he was almost of age, or was already 20 years 11 months and 3 days old. As this Court said in the case of Mercado vs. Espiritu, 37 Phil., 215: "The courts have laid down the rule that the sale of real estate, effected by minors who have already passed the ages of puberty and adolescence and are near the adult age when they pretend to have already reached their majority, while in fact they have not, is valid, and they cannot be permitted afterwards to excuse themselves from compliance with the obligation assumed by them or to seek their annulment."

Moreover, after he and his aunt Luz had executed the aforesaid deed of cession, they filed a joint petition with the probate court wherein they explained the reason why the cession had to be made in favor of Luz Hermosa and requested that said deed be approved. And after considering the reasons advanced by them, the court approved the cession in the following wise: "It having been shown that for the best interest of the estate the deed of cession executed by Luz Hermosa Nunez and Fernando Hermosa, Jr. in favor of Luz Hermosa Nunez on November 18, 1947 in the City of Manila and acknowledged before a Notary Public should be approved by the court, upon motion of the counsel for the heirs, the said cession is hereby approved" (Exhibit 10). Plaintiff is therefore now estopped from disputing the validity of said cession. As this Court aptly said: "The circumstance that, about one month after the date of the conveyance, the appellee informed the appellants of his minority, is of no moment, because appellee's previous misrepresentation had already estopped him from disavowing the contract." (Sia Suan vs. Alcantara, 47 Off. Gaz., p. 4561; 85 Phil., 669.)

It should be here mentioned parenthetically that plaintiff in his affidavit Exhibit 4 stated that he was already of legal age. This is an affidavit plaintiff executed on January 20, 1947 wherein he gave his consent to the sale of the

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

property in question by the administratrix Luz Hermosa the first time they decided to dispose of the property for the benefit of the heirs. Verily, plaintiff cannot now be allowed to repudiate such statement to the prejudice of defendant.

But even if it be granted that plaintiff has sufficient legal ground to ask for the rescission of the sale, the fact remains that his right of action has already prescribed, it appearing that he became of age on January 7, 1948, and he only brought the present action on May 28, 1954, or more than four years after he attained the age of majority. Under Article 1389 of the new Civil Code, an action for rescission prescribes in four years from removal of one's incapacity, and this happened more than four years ago.

Having reached the foregoing conclusion, we need not discuss the other questions raised by appellant in his brief.

The lower court ordered plaintiff to pay defendant the sum of P1,000 as moral damages and P500 as attorney's fees on the ground that in filing the present action he was actuated by a deliberate intent to harass and molest defendant knowing full well that he had no sufficient cause of action. We entertain a different opinion considering that plaintiff did not take part in the sale and so he was not aware of the circumstances under which it was carried out. Apparently he was of the belief that the real consideration was P80,000 as it was made to appear in the document and he brought this action in the belief that defendant has not paid the balance of P60,000. In the circumstances, we are of the opinion that the award of damages and attorney's fees is not justified.

Wherefore, the decision appealed from is affirmed with the only modification that the award of damages and attorney's fees should be eliminated. No pronouncement as to costs.

Montemayor, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

Paras, C. J. Bengzon and Concepcion, JJ., concur in the result.

CONCURRING AND DISSENTING

PADILLA, J.,

I concur in the result, upon the ground that the alternative prayer for rescission of the cession or assignment made by the plaintiff personally to his aunt Luz Hermosa, now deceased, is barred, the same having been instituted not within four (4) years after the plaintiff had become of age, and that the plaintiff as judicial administrator of the estate of the late Fernando Hermosa, Sr. is not entitled to bring this action but the administrator of the estate of the late Luz Hermosa or her heirs. I disagree, however, with the majority on the point of estoppel for the reasons stated in my dissent in the case of Sia Suan et al vs. Alcantara, 47 Off. Gaz., 4561, 4564.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.