

**FELIX UY CHUA, ROBERT IPING CHUA, RICHARD UY CHUA AND
ATTY. FEDERICO C. CABILAO, JR., PETITIONERS, VS., COURT OF
APPEALS, SOFIA O. SANCHEZ, ASSISTED BY HUSBAND FORTUNATO
SANCHEZ...**

G.R. No. 121438. October 23, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for certiorari under Rule 45 of the Rules of Court seeks the reversal of the Decision dated December 15, 1994 and the Resolution dated July 21, 1995 of the Court of Appeals in CA-G.R. SP No. 28171 which reversed the decision of the Regional Trial Court of Cebu, Branch 12, in Sp. Proc. No. 417-CEB.

In its decision, the appellate court decreed as follows:

"WHEREFORE, the petition for certiorari is GRANTED. The orders dated November 15, 1991, January 13, 1992 and February 25, 1992 are declared null and void. The Deed of Absolute Sale in favor of private respondents Felix Uy Chua, Robert Iping Chua and Richard Uy Chua are declared null and void. The Deed of Absolute Sale dated April 15, 1991 executed by the Administratrix in favor of petitioner Sofia O. Sanchez is declared valid and binding upon the parties. The order dated May 3, 1991 approving the Deed of Absolute Sale dated April 15, 1991 is AFFIRMED AND REINSTATED.

SO ORDERED."[1]

The facts of the case, based on the records, are as follows: Fernando B. Morada owned Lot 832-B-1-C-2 located in Cebu City. His only heirs were his wife, Aida N. Morada, and two minor children. After his death, the probate court presided by Judge Leoncio P. Abarquez appointed Aida as administratrix of her husband's estate. On July 20, 1984, the probate court allowed the sale of the lot for P200,000.00 to the spouses Precioso and Consolacion Enriquez. Later, the spouses and Aida agreed to rescind the said sale. On January 20, 1988, the probate court again issued an order allowing the re-sale of said lot, the proceeds of which shall be used to pay the P200,000.00 already paid by the Enriquez spouses. On April 15, 1991, a Deed of Absolute Sale thereof was executed in favor of Sofia Sanchez, herein private respondent, for one million pesos (P1,000,000.00) payable with a down payment of P500,000.00 and the balance to be paid after the lot was cleared of squatters.[2] On May 7, 1991, the court, after approving the sale to Sanchez,[3] directed Aida to submit an accounting within thirty days, deposit the proceeds of the sale in a reputable bank in Cebu, and then inform the court of the name of the bank where the money was deposited.

On July 16, 1991, after more than two months from the date of approval of the sale, Intervenor Sagrario Morelos, filed a motion for reconsideration opposing the sale alleging that the sale was prejudicial to the minor heirs of Fernando. He claimed that the lot could be sold for P1.5 million pesos. Judge Abarquez held a conference in chambers attended by Aida and her counsel Atty. Recto de Dios, Atty. Rodolfo M. Morelos, counsel of Sagrario Morelos, and Atty. Federico Cabilao, another intervenor who represented undisclosed clients interested to

purchase the land. During the conference, Atty. Cabilao revealed that he offered P2 million pesos for the lot with the seller undertaking the eviction of the present occupants, or P1.5 million with the buyer shouldering the expenses to clear the lot of its present occupants. Aida objected to Atty. Cabilao's statement. She explained that the latter's offer was made only after the sale to Sanchez was already approved by the court.

On August 6, 1991 Atty. Cabilao, on instructions of Judge Abarquez, filed his Proposal to Purchase the Property. In her comment and opposition to the proposal of Atty. Cabilao, Aida Morada said that the court's order approving the sale to Sofia Sanchez had already become final and executory, and that she had bought the land from the administratrix in good faith and for value. She added that she should not suffer whatever missteps were committed by the administratrix. On November 15, 1991, Judge Abarquez issued an order revoking his approval of the sale and declared void and without effect the deed of absolute sale he had earlier approved. In his Order, he stated:

"From the aforementioned facts, the Court finds that the Administratrix and Sanchez are both guilty of misrepresentation. On her part, the Administratrix deliberately concealed from the Court the fact that Sanchez had extended to her a loan of P300,000.00 before the execution of the Deed of Sale and that the said amount was already deducted by Sanchez from the down payment of P500,000.00. Likewise, she deliberately withheld from the Court the fact that she previously committed the lot in question as a guaranty for the payment of such loan of P300,000.00. As admitted by Sanchez in Court, she understood and was aware that in accordance with the terms of the Deed of Sale, she was supposed to deliver the P500,000.00 to the Estate thru the Administratrix on the date of the execution of the Deed of Sale. Under such knowledge of her corresponding obligation as vendee, she should have told the Court that she was to deliver only P200,000.00 for down payment and not P500,000.00, or she would have caused the insertion of a proviso to this effect in the Deed of Sale in order that the Court could have been properly apprised of the true circumstances of the sale. But she instead kept her silence obviously to eliminate any hindrance to the Court's approval of the Deed of Sale. Hence, Sanchez could not claim that she is a buyer in good faith.

From the foregoing circumstances, the conclusion is incapable that the Administratrix and Sanchez had a community of interest in misleading the Court, as a result of which, they were able to achieve the true purposes of sale which were, a) to surrender the lot as an indirect payment of previous loan; and b) so that the Administratrix could receive an additional amount of P150,000.00 which she planned to keep for herself. Ostensibly their consortium amounted to fraud.

Fraud has been defined, among others, as an inducement through insidious machination. Insidious machination refers to a deceitful scheme or plot with an evil or devious purpose. Deceit exists where the party, who obtains consent, does so by concealing or omitting to state MATERIAL FACTS which, with intent to deceive, by reason of such omission or concealment, the other party was induced to give his consent which he would otherwise have not given. (*Strong v. Gutierrez Repido*, 213 U.S. 419; 41 Phil 947).

True it is that Sanchez had a valid credit in her favor. That such loan was legitimate would even be considered. But such loan, as a valid credit, should first be presented to the Court as an obligation of the Estate, either as an administration expense or as an expense for the preservation of the property. Only thereafter would it be paid by the Estate, according to any of the modes provided for by Rule 88 of the Rules of Court. The sale in question is apparently a contrivance availed of by the Administratrix and Sanchez as a surreptitious liquidation of the loan of the Administratrix, in the guise of an account of the Estate, taking a shortcut of the legal requirements provided for by the Rules of Court. It is a general rule that notwithstanding the presence of a valid consideration, a contract is considered to be stained with fraud if there is no bona fide intent. Both valid consideration and bona fide intent must exist. If lacking in any of these particulars the contract is voidable.

Moreover, the procedure jointly resorted to by the Administratrix and by Sanchez was tantamount to a foreclosure of their loose mortgage agreement, a procedure that is not allowed to take place in a probate court.

While it may be correct that the Intervenor, who is either an heir, devisee or legatee to the will, has no personality to intervene in probate proceedings, once the Court's attention is called upon to remedy a situation where the interest of justice is affected, the Court must institute just remedial measures, on its own accord. Its corresponding action thereto is well within its inherent power to amend its order so as to make it conformable to law and justice.

The Court finds no merit in the contention of Sanchez that the annulment of the sale would create an instability of probate proceedings. Since the Court's action in annulling the sale in question is impelled by its own duty to right a wrong, such action, on the contrary, would give more strength to the probate mechanism."^[4] .

Almost immediately after his order, Judge Abarquez also approved the proposal of Atty. Cabilao to purchase the property for P1.5 million. However, on December 5, 1991, before Judge Abarquez inhibited himself and before the case was re-raffled to Branch 12, the Branch Clerk of Court, Branch 19, issued a certification that the Order dated November 15, 1991 of Judge Abarquez declaring the Deed of Sale dated April 15, 1991 executed by Aida Morada in favor of Sofia Sanchez was void and without effect; and that the Order dated November 15, 1991 approving the sale to Atty. Cabilao issued by Judge Abarquez had become final and executory since there was no motion for reconsideration filed by the parties and no appeal was taken therefrom.^[5] Atty. Cabilao then filed a motion for execution.

On January 13, 1992, Judge Portia Aliño-Hormachuelos, presiding over Branch 12 where the case was re-raffled, issued an Omnibus Order granting the motion for execution and dismissing the urgent motion of Sanchez. The Order stated:

"WHEREFORE, considering that the order sought to be executed has become final and executory, the offeror's urgent motion for execution dated December 18, 1991 (p. 109, Ibid) is hereby granted. Atty. Federico Cabilao is hereby ordered to prepare, for the approval [of] the court, the corresponding Deed of Sale to be signed for and in behalf of the Estate by the Clerk of Court, Atty. Nicolas Jomud, pursuant to sec. 10. Rule 39, Rules of Court, it appearing to be unlikely that the administratrix will appear before the court to execute the Deed of Sale having failed to comply with her promise to do so as contained in the Order dated December 12, 1991 (p. 115, Record).

The Manifestation and the Urgent Motion filed by Mrs. Sofia Sanchez is hereby dismissed.

SO ORDERED."^[6]

On January 29, 1992, Sanchez filed a motion for reconsideration and made a counter-offer of P1.6 million, a hundred thousand pesos more than the amount offered by Atty. Cabilao. The motion was denied in an order dated February 25, 1992. The court said that the Order approving the sale to Atty. Cabilao had become final and executory and that the counter offer was not a compelling reason for the court to vacate its order. As it turned out, the property was bought by Felix Uy Chua, Roberto Iping Chua and Richard Uy Chua, the clients of Atty. Cabilao who are now petitioners before this Court.

Sanchez filed a petition for certiorari before the Court of Appeals alleging that respondent Judges Abarquez and Aliño-Hormachuelos abused their discretion amounting to lack of jurisdiction when they issued the questioned orders dated November 15, 1991, January 13, 1992 and February 25, 1992.

As earlier stated, the appellate court granted the petition in favor of private respondent Sanchez and the Deed of Absolute Sale in her favor was affirmed and reinstated. Reconsideration was denied. Hence, the instant petition, alleging that the appellate court committed the following errors:

"1. THE COURT OF APPEALS GRAVELY ERRED WHEN IT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT GRANTED PRIVATE

RESPONDENT'S PETITION FOR CERTIORARI FILED UNDER RULE 65 AFTER MORE THAN 6 MONTHS HAD ELAPSED SINCE HER RECEIPT OF THE ORDER COMPLAINED OF AND AFTER MORE THAN 5 MONTHS AFTER SAID ORDER WAS CERTIFIED AS FINAL AND EXECUTORY.

2. THE COURT OF APPEALS GRAVELY ERRED IN NULLIFYING A FINAL AND EXECUTED ORDER OF A PROBATE COURT ISSUED AFTER SUMMARY HEARING AND EVIDENCE OF FRAUD WAS UNEARTHED AND AFTER PRIVATE RESPONDENT THRU NEGLIGENCE OR INDIFFERENCE LOST THE PRIVILEGE TO APPEAL WHERE SUCH AN APPEAL WAS THE ADEQUATE AND APPROPRIATE REMEDY IN THE ORDINARY COURSE OF LAW.

3. THE COURT OF APPEALS ACTED WITH MANIFEST PARTIALITY AND BEYOND THE BOUNDS OF SOUND DISCRETION WHEN IT RENDERED THE QUESTIONED JUDGMENT PREMISED ON MISAPPREHENSION OF FACTS, OR A SUPPOSED ABSENCE OF EVIDENCE BUT IS CONTRADICTED BY EVIDENCE OF RECORD."[7]

First, petitioners challenge the appellate court's decision to reinstate the sale of Lot 832 in favor of Sanchez arguing that the November 15, 1991 order approving the sale to them had become final and executory. Ironically, it is the same argument private respondent used to plead her claim, that the much earlier May 3, 1991 order of Judge Abarquez approving the sale to her had become final and executory. Ironically too, both rely on the same doctrine enunciated in *Pan Realty Corporation vs. Court of Appeals*[8] where we ruled, "

...[T]he order of the Probate Court authorizing, or subsequently approving, the absolute sale of property of the estate in favor of a specified buyer undoubtedly constitutes a final determination of the rights not only of the buyer and the estate but also of any heir or party claiming to be prejudiced by the sale. For obviously, once the sale is consummated and approved by the Court, the buyer will acquire title to the property to the exclusion of the estate and the heirs or other party participating or otherwise involved in the proceedings for settlement of the estate, unless the authority to sell or the approval of the sale by the Court be reversed seasonably and by the proper adjective mode. After its approval of the sale, nothing is left to be done by the Probate Court with respect to the merits thereof; and it is thus in this sense, a final order 'subject to appeal' pursuant to Sec. 2, Rule 41 of the Rules of Court."[9]

It will be recalled that the probate court declared the sale to Sanchez, null and void due to fraud and misrepresentation, then it entertained the offer of Atty. Cabilao to purchase the property at a higher price. The Court of Appeals ruled that the sale of the property to Atty. Cabilao was void because the court was already without jurisdiction to enter the same after the sale to Sanchez, which was previously approved by the same court, was consummated and the intervenors failed to seasonably appeal therefrom.

Section 1, Rule 109 of the Rules of Court[10] provides that an interested person may appeal from an order or judgment rendered by the probate court where such order constitutes the settlement of the estate of a deceased person. In the case before us, the probate court approved the Deed of Sale in favor of Sanchez on May 3, 1991. In special proceedings under Rule 109 of the Rules of Court and in other cases where multiple appeals are allowed, the period of appeal is thirty days. A record on appeal is required.[11] Recall that Atty. Rodolfo M. Morelos did not appeal but filed a motion for reconsideration only on July 16, 1991, while Atty. Cabilao intervened and offered to buy the property on August 6, 1991. By then, the sale of the property to Sanchez was already consummated and final. When the probate court allowed Atty. Cabilao to propose to buy the land and allowed the sale to the latter, the probate court, at this juncture, had clearly gravely abused its discretion. All other proceedings thereafter were conducted by the probate court without jurisdiction including the erroneous nullification of the sale to Sanchez and the subsequent sale to petitioners. The Court of Appeals, therefore did not err in its order nullifying and voiding the orders dated November 15, 1991, January 13, 1992 and February 25, 1992.

Additionally, the belated proposal to buy the property was filed by an offeror, Atty. Federico Cabilao, who had no

legal personality to impugn the validity of the sale between the administratrix and Sanchez. In CFI of Rizal, Br. IX vs. Court of Appeals,[12] when an intervenor-offeror sought to annul a private sale duly authorized by the probate court, this Court said: "

. . . It is well settled that for a person to be able to intervene in an administration proceeding concerning the estate of a deceased person, it is necessary for him to have an interest in such estate. An interested party in the estate of a decedent has been defined as one who would be benefited by the estate, such as an heir, or one who has a claim against the estate, such as a creditor (*Saguinsin vs. Lindayag*, 116 Phil. 1193)."[13]

Atty. Cabilao was neither a creditor nor an heir of the decedent. He had no right to intervene in the probate hearings nor in the settlement of the succession. As correctly observed by the Court of Appeals:

"x x x In this case, the only heirs of the late Fernando B. Morada are his surviving spouse, Administratrix Aida N. Morada and their two (2) minor children. Intervenor Sagrario Morelos and Atty. Federico Cabilao are not heirs, devisees and legatees of the deceased Fernando B. Morada. Under Section 2 of Rule 89 of the Revised Rules of Court, both Morelos and Atty. Cabilao are not entitled to notice of the orders of the court on the sale of the subject property, not being heirs, devisees and legatees of the late Fernando Morada. The record of this case shows that Administratrix Aida Morada thru her counsel received the order of May 3, 1991 on May 7, 1991. . . . [T]he order dated May 3, 1991 became final and executory. It was no longer subject to a motion for reconsideration nor an appeal therefrom. It is thus clear that respondent Judge Abarquez had no more jurisdiction to alter or annul the order of May 3, 1991 when he entertained the motion for reconsideration that was filed by Intervenor Morelos on July 23, 1991 and the 'Proposal to Purchase Property' that was filed by Atty. Federico Cabilao on August 6, 1991. These two (2) papers or 'pleadings' were filed more than two (2) months after the order dated May 3, 1991 had become final and executory."[14]

Second, petitioners contend the respondent court erred when it disregarded the finding of the trial court that there was fraud. The probate court, on its own, concluded there was connivance between Aida and Sanchez in not disclosing to the court that Aida owed money from Sanchez and that the loan was to be paid from the proceeds of the sale. On this matter, Section 5 of Rule 8 is pertinent. The rule states:

"Sec. 5. Fraud, mistake, condition of the mind -- In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge or other condition of mind of a person may be averred generally."[15]

Fraud must be both alleged and proven, it is never presumed.[16] Fraud and mistake must be averred to enable the opposing party to controvert the particular facts allegedly constituting the same. Affidavits must show the fraud, accident, mistake or excusable negligence relied upon. The Court of Appeals noted that fraud was not stated specifically in the pleadings, either in the motion for reconsideration by Morelos or in the proposal to buy the property by Atty. Cabilao.

While a sale by an administrator of the personal property of the estate, without the authority of an order of court, or of a will, or under an order of court is void for want of jurisdiction, and does not confer on the purchaser a title,[17] in this case, the probate court was not unaware of the loan from Sanchez and the agreement that part of the proceeds of the sale will be applied to the loan. In fact, the probate court had full knowledge that part of the proceeds of the sale to Sanchez was to be used to reimburse the Enriquez spouses for P200,000.00. In its order dated November 15, 1991 the probate court acknowledged that it issued an order dated January 20, 1988 allowing the re-sale so the Enriquez spouses could be reimbursed.[18] In our view, this improperly alleged and unproved "fraud" cannot be the basis of the probate court for nullifying the sale to Sanchez after it had already become final and executory.

Petitioners argue that private respondent, by filing a motion for reconsideration and making a counter-offer of

P1.6 million against petitioner's P1.5 million, waived whatever rights she had acquired under the deed of sale in her favor and had in effect consented to the re-opening of the sale. They aver that Sanchez by so doing is now estopped from raising the validity and finality of the sale to her. We need not delve on this disingenuous proposition. As we have discussed, all proceedings before the probate court after the sale to Sanchez became final and executory, and after said court had lost jurisdiction, were null and void. All subsequent events by legal contemplation were non-events, immaterial to this case.

Finally, was it error to bring the case before the Court of Appeals on certiorari under Rule 65? Petitioners allege that the proper remedy for respondent was to appeal under Rule 45 under which private respondent was already time-barred and the Court of Appeals should not have taken cognizance of the petition. Petitioners misread the applicable law, Rules and precedents. A special civil action for certiorari challenging the RTC with grave abuse of discretion may be instituted either in the Court of Appeals or the Supreme Court. Both have original concurrent jurisdiction.[19] Certiorari is an extraordinary remedy available only when there is no appeal, nor any plain, speedy or adequate remedy in the ordinary course of law.[20] While ordinarily, certiorari is unavailing where the appeal period has lapsed, there are exceptions. Among them are (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires;[21] (c) when the writs issued are null and void; (d) or when the questioned order amounts to an oppressive exercise of judicial authority.[22] As early as *Crisostomo vs. Endencia*,[23] we held: "

...The remedy by certiorari may be successfully invoked both in cases wherein an appeal does not lie and in those wherein the right to appeal having been lost with or without the appellant's negligence, the court has no jurisdiction to issue the order or decision which is the subject matter of the remedy." [24]

The questioned orders of the probate court nullifying the sale to Sanchez after it approved the sale and after its order of approval had become final and executory amount to oppressive exercise of judicial authority, a grave abuse of discretion amounting to lack of jurisdiction. Further orders stemming therefrom are also null and without effect.

WHEREFORE, the instant petition for certiorari is DENIED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 28171, are both AFFIRMED. Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1]Rollo, p.17.

[2]Id. at 66-67.

[3]Id. at 125-126.

[4]Id. at 75-77.

[5]Id. at 85.

[6]Id. at 104.

[7]Id. at 38.

[8]167 SCRA 564 (1988).

[9]Id. at 572.

[10]Section 1. Orders or judgments from which appeals may be taken.-An interested person may appeal in special proceedings from an order or judgment rendered by a Regional Trial Court [or a Juvenile and Domestic Relations Court], where such order or judgment:

x x x

(c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;

(d) Settles the account of an executor, administrator, trustee or guardian;

(e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and

(f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for a new trial or for reconsideration.

[11]SECTION 19(B), THE INTERIM RULES AND GUIDELINES, RULES OF COURT.

[12]106 SCRA 114 (1981).

[13]Id. at 117.

[14]Rollo, p. 15.

[15]See RULES OF COURT.

[16]Atilano vs. Inclan, 45 Phil. 246, 252 (1923).

[17]Godoy vs. Orellano, 42 Phil. 347, 350 (1921) citing Wyatt's Adm'r vs. Rambo 29 Ala., 510.

[18]Rollo, p. 73.

[19]Sec. 9 (1), B.P. 129.

[20]Section 1, Rule 65, RULES OF COURT.

[21]Marcelo vs. De Guzman, 114 SCRA 657, 663-664 (1982); Tirona vs. Nañawa, 21 SCRA 395 (1967).

[22]Sunbeam Convenience Foods Inc., et al., vs. Court of Appeals, 181 SCRA 443, 449 (1990); Acain vs. Intermediate Appellate Court, 155 SCRA 100 (1987).

[23]66 Phil. 1 (1938).

[24]Id. at 8.

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