MARIA ANTONIA SIGUAN, PETITIONER, VS. ROSA LIM, LINDE LIM, INGRID LIM AND NEIL LIM, RESPONDENTS.

G.R. No. 134685. November 19, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

May the Deed of Donation executed by respondent Rosa Lim (hereafter LIM) in favor of her children be rescinded for being in fraud of her alleged creditor, petitioner Maria Antonia Siguan? This is the pivotal issue to be resolved in this petition for review on certiorari under Rule 45 of the Revised Rules of Court.

The relevant facts, as borne out of the records, are as follows:

On 25 and 26 August 1990, LIM issued two Metrobank checks in the sums of P300,000 and P241,668, respectively, payable to "cash." Upon presentment by petitioner with the drawee bank, the checks were dishonored for the reason "account closed." Demands to make good the checks proved futile. As a consequence, a criminal case for violation of Batas Pambansa Blg. 22, docketed as Criminal Cases Nos. 22127-28, were filed by petitioner against LIM with Branch 23 of the Regional Trial Court (RTC) of Cebu City. In its decision[1] dated 29 December 1992, the court a quo convicted LIM as charged. The case is pending before this Court for review and docketed as G.R. No. 134685.

It also appears that on 31 July 1990 LIM was convicted of estafa by the RTC of Quezon City in Criminal Case No. Q-89-2216[2] filed by a certain Victoria Suarez. This decision was affirmed by the Court of Appeals. On appeal, however, this Court, in a decision[3] promulgated on 7 April 1997, acquitted LIM but held her civilly liable in the amount of P169,000, as actual damages, plus legal interest.

Meanwhile, on 2 July 1991, a Deed of Donation[4] conveying the following parcels of land and purportedly executed by LIM on 10 August 1989 in favor of her children, Linde, Ingrid and Neil, was registered with the Office of the Register of Deeds of Cebu City:

> (1) a parcel of land situated at Barrio Lahug, Cebu City, containing an area of 563 sq. m. and covered by TCT No. 93433;
>
> (2) a parcel of land situated at Barrio Lahug, Cebu City, containing an area of 600 sq. m. and covered by TCT No. 93434;
>
> (3) a parcel of land situated at Cebu City containing an area of 368 sq. m. and covered by TCT No. 87019; and
>
> (4) a parcel of land situated at Cebu City, Cebu containing an area of 511 sq. m. and covered by TCT No. 87020.

New transfer certificates of title were thereafter issued in the names of the donees.[5]

On 23 June 1993, petitioner filed an accion pauliana against LIM and her children before Branch 18 of the RTC of Cebu City to rescind the questioned Deed of Donation and to declare as null and void the new transfer

certificates of title issued for the lots covered by the questioned Deed. The complaint was docketed as Civil Case No. CEB-14181. Petitioner claimed therein that sometime in July 1991, LIM, through a Deed of Donation, fraudulently transferred all her real property to her children in bad faith and in fraud of creditors, including her; that LIM conspired and confederated with her children in antedating the questioned Deed of Donation, to petitioner's and other creditors' prejudice; and that LIM, at the time of the fraudulent conveyance, left no sufficient properties to pay her obligations.

On the other hand, LIM denied any liability to petitioner. She claimed that her convictions in Criminal Cases Nos. 22127-28 were erroneous, which was the reason why she appealed said decision to the Court of Appeals. As regards the questioned Deed of Donation, she maintained that it was not antedated but was made in good faith at a time when she had sufficient property. Finally, she alleged that the Deed of Donation was registered only on 2 July 1991 because she was seriously ill.

In its decision of 31 December 1994,[6] the trial court ordered the rescission of the questioned deed of donation; (2) declared null and void the transfer certificates of title issued in the names of private respondents Linde, Ingrid and Neil Lim; (3) ordered the Register of Deeds of Cebu City to cancel said titles and to reinstate the previous titles in the name of Rosa Lim; and (4) directed the LIMs to pay the petitioner, jointly and severally, the sum of P10,000 as moral damages; P10,000 as attorney's fees; and P5,000 as expenses of litigation.

On appeal, the Court of Appeals, in a decision[7] promulgated on 20 February 1998, reversed the decision of the trial court and dismissed petitioner's accion pauliana. It held that two of the requisites for filing an accion pauliana were absent, namely, (1) there must be a credit existing prior to the celebration of the contract; and (2) there must be a fraud, or at least the intent to commit fraud, to the prejudice of the creditor seeking the rescission.

According to the Court of Appeals, the Deed of Donation, which was executed and acknowledged before a notary public, appears on its face to have been executed on 10 August 1989. Under Section 23 of Rule 132 of the Rules of Court, the questioned Deed, being a public document, is evidence of the fact which gave rise to its execution and of the date thereof. No antedating of the Deed of Donation was made, there being no convincing evidence on record to indicate that the notary public and the parties did antedate it. Since LIM's indebtedness to petitioner was incurred in August 1990, or a year after the execution of the Deed of Donation, the first requirement for accion pauliana was not met.

Anent petitioner's contention that assuming that the Deed of Donation was not antedated it was nevertheless in fraud of creditors because Victoria Suarez became LIM's creditor on 8 October 1987, the Court of Appeals found the same untenable, for the rule is basic that the fraud must prejudice the creditor seeking the rescission.

Her motion for reconsideration having been denied, petitioner came to this Court and submits the following issue:

> WHETHER OR NOT THE DEED OF DONATION, EXH. 1, WAS ENTERED INTO IN FRAUD OF [THE] CREDITORS OF RESPONDENT ROSA [LIM].

Petitioner argues that the finding of the Court of Appeals that the Deed of Donation was not in fraud of creditors is contrary to well-settled jurisprudence laid down by this Court as early as 1912 in the case of Oria v. McMicking,[8] which enumerated the various circumstances indicating the existence of fraud in a transaction. She reiterates her arguments below, and adds that another fact found by the trial court and admitted by the parties but untouched by the Court of Appeals is the existence of a prior final judgment against LIM in Criminal Case No. Q-89-2216 declaring Victoria Suarez as LIM's judgment creditor before the execution of the Deed of Donation.

Petitioner further argues that the Court of Appeals incorrectly applied or interpreted Section 23,[9] Rule 132 of the Rules of Court, in holding that "being a public document, the said deed of donation is evidence of the fact

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which gave rise to its execution and of the date of the latter." Said provision should be read with Section 30[10] of the same Rule which provides that notarial documents are prima facie evidence of their execution, not "of the facts which gave rise to their execution and of the date of the latter."

Finally, petitioner avers that the Court of Appeals overlooked Article 759 of the New Civil Code, which provides: "The donation is always presumed to be in fraud of creditors when at the time of the execution thereof the donor did not reserve sufficient property to pay his debts prior to the donation." In this case, LIM made no reservation of sufficient property to pay her creditors prior to the execution of the Deed of Donation.

On the other hand, respondents argue that (a) having agreed on the law and requisites of accion pauliana, petitioner cannot take shelter under a different law; (b) petitioner cannot invoke the credit of Victoria Suarez, who is not a party to this case, to support her accion pauliana; (c) the Court of Appeals correctly applied or interpreted Section 23 of Rule 132 of the Rules of Court; (d) petitioner failed to present convincing evidence that the Deed of Donation was antedated and executed in fraud of petitioner; and (e) the Court of Appeals correctly struck down the awards of damages, attorney's fees and expenses of litigation because there is no factual basis therefor in the body of the trial court's decision.

The primordial issue for resolution is whether the questioned Deed of Donation was made in fraud of petitioner and, therefore, rescissible. A corollary issue is whether the awards of damages, attorney's fees and expenses of litigation are proper.

We resolve these issues in the negative.

The rule is well settled that the jurisdiction of this Court in cases brought before it from the Court of Appeals via Rule 45 of the Rules of Court is limited to reviewing errors of law. Findings of fact of the latter court are conclusive, except in a number of instances.[11] In the case at bar, one of the recognized exceptions warranting a review by this Court of the factual findings of the Court of Appeals exists, to wit, the factual findings and conclusions of the lower court and Court of Appeals are conflicting, especially on the issue of whether the Deed of Donation in question was in fraud of creditors.

Article 1381 of the Civil Code enumerates the contracts which are rescissible, and among them are "those contracts undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them."

The action to rescind contracts in fraud of creditors is known as accion pauliana. For this action to prosper, the following requisites must be present: (1) the plaintiff asking for rescission has a credit prior to the alienation,[12] although demandable later; (2) the debtor has made a subsequent contract conveying a patrimonial benefit to a third person; (3) the creditor has no other legal remedy to satisfy his claim; [13] (4) the act being impugned is fraudulent;[14] (5) the third person who received the property conveyed, if it is by onerous title, has been an accomplice in the fraud.[15]

The general rule is that rescission requires the existence of creditors at the time of the alleged fraudulent alienation, and this must be proved as one of the bases of the judicial pronouncement setting aside the contract.[16] Without any prior existing debt, there can neither be injury nor fraud. While it is necessary that the credit of the plaintiff in the accion pauliana must exist prior to the fraudulent alienation, the date of the judgment enforcing it is immaterial. Even if the judgment be subsequent to the alienation, it is merely declaratory, with retroactive effect to the date when the credit was constituted.[17]

In the instant case, the alleged debt of LIM in favor of petitioner was incurred in August 1990, while the deed of donation was purportedly executed on 10 August 1989.

We are not convinced with the allegation of the petitioner that the questioned deed was antedated to make it appear that it was made prior to petitioner's credit. Notably, that deed is a public document, it having been acknowledged before a notary public.[18] As such, it is evidence of the fact which gave rise to its execution and of its date, pursuant to Section 23, Rule 132 of the Rules of Court.

Petitioner's contention that the public documents referred to in said Section 23 are only those entries in public records made in the performance of a duty by a public officer does not hold water. Section 23 reads:

> SEC. 23. Public documents as evidence. - Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter. (Emphasis supplied).

The phrase "all other public documents" in the second sentence of Section 23 means those public documents other than the entries in public records made in the performance of a duty by a public officer. And these include notarial documents, like the subject deed of donation. Section 19, Rule 132 of the Rules of Court provides:

> SEC. 19. Classes of documents. -- For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are:
>
> (a) . . .
>
> (b) Documents acknowledged before a notary public except last wills and testaments. . . .

It bears repeating that notarial documents, except last wills and testaments, are public documents and are evidence of the facts that gave rise to their execution and of their date.

In the present case, the fact that the questioned Deed was registered only on 2 July 1991 is not enough to overcome the presumption as to the truthfulness of the statement of the date in the questioned deed, which is 10 August 1989. Petitioner's claim against LIM was constituted only in August 1990, or a year after the questioned alienation. Thus, the first two requisites for the rescission of contracts are absent.

Even assuming arguendo that petitioner became a creditor of LIM prior to the celebration of the contract of donation, still her action for rescission would not fare well because the third requisite was not met. Under Article 1381 of the Civil Code, contracts entered into in fraud of creditors may be rescinded only when the creditors cannot in any manner collect the claims due them. Also, Article 1383 of the same Code provides that the action for rescission is but a subsidiary remedy which cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same. The term "subsidiary remedy" has been defined as "the exhaustion of all remedies by the prejudiced creditor to collect claims due him before rescission is resorted to."[19] It is, therefore, essential that the party asking for rescission prove that he has exhausted all other legal means to obtain satisfaction of his claim.[20] Petitioner neither alleged nor proved that she did so. On this score, her action for the rescission of the questioned deed is not maintainable even if the fraud charged actually did exist."[21]

The fourth requisite for an accion pauliana to prosper is not present either.

Article 1387, first paragraph, of the Civil Code provides: "All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors when the donor did not reserve sufficient property to pay all debts contracted before the donation. Likewise, Article 759 of the same Code, second paragraph, states that the donation is always presumed to be in fraud of creditors when at the time

thereof the donor did not reserve sufficient property to pay his debts prior to the donation.

For this presumption of fraud to apply, it must be established that the donor did not leave adequate properties which creditors might have recourse for the collection of their credits existing before the execution of the donation.

As earlier discussed, petitioner's alleged credit existed only a year after the deed of donation was executed. She cannot, therefore, be said to have been prejudiced or defrauded by such alienation. Besides, the evidence disclose that as of 10 August 1989, when the deed of donation was executed, LIM had the following properties:

(1)

A parcel of land containing an area of 220 square meters, together with the house constructed thereon, situated in Sto. Niño Village, Mandaue City, Cebu, registered in the name of Rosa Lim and covered by TCT No. 19706;[22]

(2)

A parcel of land located in Benros Subdivision, Lawa-an, Talisay, Cebu;[23]

(3)

A parcel of land containing an area of 2.152 hectares, with coconut trees thereon, situated at Hindag-an, St. Bernard, Southern Leyte, and covered by Tax Declaration No. 13572.[24]

(4)

A parcel of land containing an area of 3.6 hectares, with coconut trees thereon, situated at Hindag-an, St. Bernard, Southern Leyte, and covered by Tax Declaration No. 13571.[25]

During her cross-examination, LIM declared that the house and lot mentioned in no. 1 was bought by her in the amount of about P800,000 to P900,000.[26] Thus:

ATTY. FLORIDO:

Q

These properties at the Sto. Niño Village, how much did you acquire this property?

A Including the residential house P800,000.00 to P900,000.00.

Q

How about the lot which includes the house. How much was the price in the Deed of Sale of the house and lot at Sto. Niño Violage [sic]?

A

I forgot.

Q

How much did you pay for it?

A

That is P800,000.00 to P900,000.00.

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Petitioner did not adduce any evidence that the price of said property was lower. Anent the property in no. 2, LIM testified that she sold it in 1990.[27] As to the properties in nos. 3 and 4, the total market value stated in the tax declarations dated 23 November 1993 was P56,871.60. Aside from these tax declarations, petitioner did not present evidence that would indicate the actual market value of said properties. It was not, therefore, sufficiently established that the properties left behind by LIM were not sufficient to cover her debts existing before the donation was made. Hence, the presumption of fraud will not come into play.

Nevertheless, a creditor need not depend solely upon the presumption laid down in Articles 759 and 1387 of the Civil Code. Under the third paragraph of Article 1387, the design to defraud may be proved in any other manner recognized by the law of evidence. Thus in the consideration of whether certain transfers are fraudulent, the Court has laid down specific rules by which the character of the transaction may be determined. The following have been denominated by the Court as badges of fraud:

> (1) The fact that the consideration of the conveyance is fictitious or is inadequate;
>
> (2) A transfer made by a debtor after suit has begun and while it is pending against him;
>
> (3) A sale upon credit by an insolvent debtor;
>
> (4) Evidence of large indebtedness or complete insolvency;
>
> (5) The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or greatly embarrassed financially;
>
> (6) The fact that the transfer is made between father and son, when there are present other of the above circumstances; and
>
> (7) The failure of the vendee to take exclusive possession of all the property.[28]

The above enumeration, however, is not an exclusive list. The circumstances evidencing fraud are as varied as the men who perpetrate the fraud in each case. This Court has therefore declined to define it, reserving the liberty to deal with it under whatever form it may present itself.[29]

Petitioner failed to discharge the burden of proving any of the circumstances enumerated above or any other circumstance from which fraud can be inferred. Accordingly, since the four requirements for the rescission of a gratuitous contract are not present in this case, petitioner's action must fail.

In her further attempt to support her action for rescission, petitioner brings to our attention the 31 July 1990 Decision[30] of the RTC of Quezon City, Branch 92, in Criminal Case No. Q-89-2216. LIM was therein held guilty of estafa and was ordered to pay complainant Victoria Suarez the sum of P169,000 for the obligation LIM incurred on 8 October 1987. This decision was affirmed by the Court of Appeals. Upon appeal, however, this Court acquitted LIM of estafa but held her civilly liable for P169,000 as actual damages.

It should be noted that the complainant in that case, Victoria Suarez, albeit a creditor prior to the questioned alienation, is not a party to this accion pauliana. Article 1384 of the Civil Code provides that rescission shall only be to the extent necessary to cover the damages caused. Under this Article, only the creditor who brought the action for rescission can benefit from the rescission; those who are strangers to the action cannot benefit from its effects.[31] And the revocation is only to the extent of the plaintiff creditor's unsatisfied credit; as to the excess, the alienation is maintained.[32] Thus, petitioner cannot invoke the credit of Suarez to justify rescission of the subject deed of donation.

Now on the propriety of the trial court's awards of moral damages, attorney's fees and expenses of litigation in

favor of the petitioner. We have pored over the records and found no factual or legal basis therefor. The trial court made these awards in the dispositive portion of its decision without stating, however, any justification for the same in the ratio decidendi. Hence, the Court of Appeals correctly deleted these awards for want of basis in fact, law or equity.

WHEREFORE, the petition is hereby DISMISSED and the challenged decision of the Court of Appeals in CA-G.R. CV. No. 50091 is AFFIRMED in toto.

No pronouncement as to costs.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Original Record (OR), 42.

[2] Id., 135.

[3] G.R. No. 102784, 271 SCRA 12 [1997].

[4] OR, 10-12.

[5] Id., 6-9.

[6] OR, 160; Rollo, 22. Per Judge Galicano C. Arriesgado.

[7] Rollo, 31. Per Tuquero, A., J., with Imperial, J., and Verzola, E., JJ., concurring.

[8] 21 Phil. 243 [1912].

[9] Sec. 23. Public documents as evidence. -- Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

[10] Sec. 30. Proof of notarial documents. -- Every instrument duly acknowledged or proved and certified as provided by law may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved.

[11] In Sta. Maria v. Court of Appeals, 285 SCRA 351 [1998], the Court enumerated some of the instances when the factual findings of the Court of Appeals are not deemed conclusive, to wit: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

[12] Panlilio v.Victoria, 35 Phil. 706 [1916]; Solis v.Chua Pua Hermanos, 50 Phil. 636 [1927].

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[13] Article 1383, Civil Code.

[14] 4 Tolentino, Arturo M., Civil Code of the Philippines 576 (1991), [hereafter 4 Tolentino]; citing 8 Manresa 756, 2 Castan 543-555, and 3 Camus 207.

[15] 4 Tolentino 576, citing 2 Castan 543-555 and 3 Camus 107.

[16] Solis v. Chua Pua Hernanes, supra note 12, at 639.

[17] 4 Tolentino 576-577, citing Sentencia (Cuba) of 7 May 1910 and 1 Gasperi 484-485.

[18] Section 19(b), Rule 132, Rules of Court.

[19] MORENO, FEDERICO B., PHILIPPINE LAW DICTIONARY 915 (1988).

[20] Article 1177, Civil Code.

[21] See Goquiolay v. Sycip, 9 SCRA 663, 677 [1963]; Solis v.Chua Pua Hermanos, supra note 12, at 639-640.

[22] Exhibit "M"; Exhibit "2"; OR, 114.

[23] TSN, 12 November 1993, 4.

[24] Exhibit "N"; OR, 146.

[25] Exhibit "O"; Id., 147.

[26] TSN, 12 November 1993, 7.

[27] Id., 6.

[28] Oria v. McMicking, supra note 8.

[29] Rivera v.Litam & Co., 4 SCRA 1072 [1962].

[30] Exhibit "K"; OR, 135.

[31] 4 Paras, Edgardo L., Civil Code Of The Philippines, 70 (1994); 4 Tolentino 586, citing 7 Planiol & Ripert 274-275.

[32] 4 TOLENTINO 586, Citing 7 Planiol & Ripert 271-272.

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