

SONIA F. LONDRES, ARMANDO V. FUENTES, CHI-CHITA FUENTES QUINTIA, ROBERTO V. FUENTES, LEOPOLDO V. FUENTES, OSCAR V. FUENTES AND MARILOU FUENTES ESPLANA, PETITIONERS, VS. THE COUR...*G.R. No. 136427. December 17, 2002*

Ponente: CARPIO, J.

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Before us is a petition for review on certiorari[1] of the March 17, 1997 Decision[2] and the November 16, 1998 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 35540 entitled “Londres vs. Alovera”. The assailed decision affirmed the validity of the Absolute Sale dated April 24, 1959 vesting ownership of two parcels of land, Lots 1320 and 1333, to private respondents. The same decision also ordered public respondents to pay just compensation to private respondents. The questioned resolution denied the motion for reconsideration of petitioners.

The Antecedent Facts

The present case stemmed from a battle of ownership over Lots 1320 and 1333 both located in Barrio Baybay, Roxas City, Capiz. Paulina Arcenas (“Paulina” for brevity) originally owned these two parcels of land. After Paulina’s death, ownership of the lots passed to her daughter, Filomena Vidal (“Filomena” for brevity). The surviving children of Filomena, namely, Sonia Fuentes Londres (“Sonia” for brevity), Armando V. Fuentes, Chi-Chita Fuentes Quintia, Roberto V. Fuentes, Leopoldo V. Fuentes and Marilou Fuentes Esplana (“petitioners” for brevity) now claim ownership over Lots 1320 and 1333.

On the other hand, private respondents Consolacion Alivio Alovera (“Consolacion” for brevity) and Elena Alovera Santos (“Elena” for brevity) anchor their right of ownership over Lots 1320 and 1333 on the Absolute Sale executed by Filomena on April 24, 1959 (“Absolute Sale” for brevity). Filomena sold the two lots in favor of Consolacion and her husband, Julian Alovera (“Julian” for brevity). Elena is the daughter of Consolacion and Julian (deceased).

On March 30, 1989, petitioners filed a complaint for the declaration of nullity of contract, damages and just compensation. Petitioners sought to nullify the Absolute Sale conveying Lots 1320 and 1333 and to recover just compensation from public respondents Department of Public Works and Highways (“DPWH” for brevity) and Department of Transportation and Communication (“DOTC” for brevity). The case was raffled to the Regional Trial Court, Branch 18, Roxas City, Capiz and docketed as Civil Case No. V-5668.

In their Complaint, petitioners claimed that as the surviving children of Filomena, they are the owners of Lots 1320 and 1333. Petitioners claimed that these two lots were never sold to Julian. Petitioners doubt the validity of the Absolute Sale because it was tampered. The cadastral lot number of the second lot mentioned in the Absolute Sale was altered to read Lot 1333 when it was originally written as Lot 2034. Petitioners pointed out that Lot

2034, situated in Barrio Culasi, Roxas City, Capiz, was also owned by their grandmother, Paulina.

Petitioners alleged that it was only recently that they learned of the claim of private respondents when Consolacion filed a petition for the judicial reconstitution of the original certificates of title of Lots 1320 and 1333 with the Capiz Cadastre.[4] Upon further inquiry, petitioners discovered that there exists a notarized Absolute Sale executed on April 24, 1959 registered only on September 22, 1982 in the Office of the Register of Deeds of Roxas City. The private respondents' copy of the Absolute Sale was tampered so that the second parcel of lot sold, Lot 2034 would read as Lot 1333. However, the Records Management and Archives Office kept an unaltered copy of the Absolute Sale. This other copy shows that the objects of the sale were Lots 1320 and 2034.

In their Answer, private respondents maintained that they are the legal owners of Lots 1333 and 1320. Julian purchased the lots from Filomena in good faith and for a valid consideration. Private respondents explained that Julian was deaf and dumb and as such, was placed in a disadvantageous position compared to Filomena. Julian had to rely on the representation of other persons in his business transactions. After the sale, Julian and Consolacion took possession of the lots. Up to now, the spouses' successors-in-interest are in possession of the lots in the concept owners. Private respondents claimed that the alteration in the Absolute Sale was made by Filomena to make it conform to the description of the lot in the Absolute Sale. Private respondents filed a counterclaim with damages.

The cross-claim of petitioners against public respondents was for the recovery of just compensation. Petitioners claimed that during the lifetime of Paulina, public respondents took a 3,200-square meter portion of Lot 1320. The land was used as part of the Arnaldo Boulevard in Roxas City without any payment of just compensation. In 1988, public respondents also appropriated a 1,786-square meter portion of Lot 1333 as a vehicular parking area for the Roxas City Airport. Sonia, one of the petitioners, executed a deed of absolute sale in favor of the Republic of the Philippines over this portion of Lot 1333. According to petitioners, the vendee agreed to pay petitioners P214,320.00. Despite demands, the vendee failed to pay the stipulated amount.

Public respondents in their Answer raised the following defenses: (1) they have no capacity to sue and be sued since they have no corporate personality separate and distinct from the Government; (2) they cannot comply with their undertaking since ownership over the portions of land is disputed by private respondents and until the issue of ownership is settled, petitioners have no cause of action against public respondents; and (3) they are not proper parties since they were not parties to the Absolute Sale sought to be nullified.

On May 28, 1991, the trial court issued its decision upholding the validity of the Absolute Sale. The dispositive portion of the decision reads:

“IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:

1. Declaring the Absolute Sale executed by Filomina Vidal in favor of spouses Julian Alovera and Consolacion Alivio on April 24, 1959 over subject Lots 1320 and 1333 (Exh. 4) valid and effective;
2. Declaring private defendants Consolacion Alivio Alovera and Elena Alovera Santos legal owners of subject Lots 1320 and 1333;
3. Ordering public defendants Department of Public Works and Highways and Department of Transportation and Communications to pay jointly and severally private defendants Consolacion Alivio Alovera and Elena Alovera Santos just compensation of the 3,200-square meter portion taken by the government from subject Lot 1320 used as part of the Arnaldo Boulevard in Roxas City, and the 1,786-square meter portion also taken by the government from subject Lot 1333 to be used as vehicle parking area of the Roxas City Airport; and
4. Ordering the dismissal of the complaint for lack of merit.

The cross-claim of private defendants against public defendants and private defendants' counterclaim for damages against the plaintiffs are likewise ordered dismissed. Costs against plaintiffs.

SO ORDERED.”[5]

Petitioners and private respondents appealed. On March 17, 1997, the Court of Appeals promulgated its decision affirming the decision of the trial court, thus:

“PREMISES CONSIDERED, the decision appealed from is hereby AFFIRMED.

SO ORDERED.”[6]

On November 16, 1998, the Court of Appeals denied the respective motions for reconsideration of petitioners and private respondents. The dispositive portion of the resolution reads:

“WHEREFORE, for lack of merit, the two motions for reconsideration are hereby DENIED.

SO ORDERED.”[7]

The Ruling of the Trial Court

The trial court ruled that the Absolute Sale is valid based on the following facts:

“First, the description of subject Lot 1333, as appearing in the Absolute Sale dated April 24, 1959 executed by Filomena Vidal in favor of spouses Julian Alovera and Consolacion Alivio (Exhs. 24 and 24-A), reads:

“2) A parcel of land (Lot No. 1333 of the Cadastral Survey of Capiz), with the improvements thereon, situated in the Barrio of Baybay, Municipality of Capiz (now Roxas City). Bounded on the N. by the property of Nemesio Fuentes; on the S. by the property of Rufo Arcenas; on the E. by the property of Mateo Arcenas; and on the W. by the property of Valeriano Arcenas; containing an area of Eighteen Thousand Five Hundred Fifty Seven (18,557) square meters, more or less. This parcel of land is all rice land and the boundaries thereon are visible consisting of stone monuments erected thereon by the Bureau of Lands. It is declared under Tax Dec. No. 336 in the name of Filomena Vidal and assessed at P930.00.”

In the Absolute Sale executed by the same parties on the same date, the above-quoted description is the same except the lot number, i.e., instead of the figure “1333” what is written therein is the figure “1320”;

Second, subject Lot 1333 is situated in Barangay Baybay, Roxas City, whereas Lot 2034 which is the second lot subject of the questioned absolute sale is situated in Barangay Culasi, Roxas City as evidenced by a certified true/xerox copy of a sketch plan (Exh. 29) thereby indicating that said Lot 2034 in said Barangay Culasi (Exh. 29-A).

Third, Lot 2034 was previously owned by Jose Altavas (Exhs. 38 and 38-A) and later is owned in common by Libertad Altavas Conlu, et al. (Exhs. 37 and 37-A) and there is no convincing evidence showing that this lot was ever owned, at one time or another, by Paulina Arcenas or by Filomena Vidal or by plaintiffs, or their predecessors-in-interest;

Fourth, the two lots have been the subject of the transactions made by their former owner, Filomena Vidal, with some persons, including spouses Julian Alovera and defendant Consolacion Alivio;

Fifth, the subject two lots have been continuously worked on since the early 1950's up to the present by Alejandro Berlandino, and later by his son, Zosimo Berlandino, who were instituted therein as tenants by Julian Alovera and the private defendants;

Sixth, these two lots have never been in the possession of the plaintiffs.”[8]

The trial court further noted that while petitioners and private respondents claimed that Lots 1320 and 1333 are

titled, both failed to account for the certificates of title. The trial court then concluded that there is merely a disputable presumption that Lots 1320 and 1333 are titled and covered by certificates of title. The trial court further declared that ownership over the two lots can still be acquired by ordinary prescription as in this case.

Private respondents and their predecessors-in-interest have been in continuous possession of Lots 1320 and 1333 for nearly 30 years in good faith and with just title. The tax declarations issued in the name of Consolacion and the real estate taxes paid by private respondents are strong evidence of ownership over Lots 1320 and 1333. Petitioners' late filing of the complaint, 30 years after the execution of the Absolute Sale or seven years after the registration of the same, was considered by the trial court as laches.

The trial court gave more credence to the explanation of private respondents as to why the Absolute Sale was altered. Consolacion noticed that the lot number of the second parcel of land sold to them by Filomena under the Absolute Sale appeared to be "Lot 2034" and not "Lot 1333". Together with her husband, Julian, Consolacion went to Filomena. It was Filomena who erased "Lot 2034" in the deed of sale and changed it to "Lot 1333". However, the copies of the document in the custody of the Notary Public were not correspondingly corrected. Consequently, the copies kept by the Records Management and Archives Office still referred to the second parcel of land sold as "Lot 2034".

Based on its factual findings, the trial court held that private respondents are the legal owners of Lots 1320 and 1333. Private respondents are therefore entitled to just compensation for the portions of land taken by public respondents from the two lots. However, the trial court ruled that private respondents could not recover attorney's fees since there was no indication that the complaint was maliciously filed and intended to prejudice private respondents. The trial court held that petitioners filed the action in good faith, believing that they were the real owners of the two lots.

The Ruling of the Court of Appeals

The Court of Appeals sustained the factual findings of the trial court, specifically the six points enumerated by the trial court establishing Lots 1320 and 1333 as the objects of the Absolute Sale. Applying Article 1370 of the Civil Code,[9] the Court of Appeals agreed with the trial court that there could be no room for interpretation as to the intention of the parties on the objects of their contract.

The Court of Appeals upheld the ruling of the trial court that private respondents are not entitled to attorney's fees and damages. The Court of Appeals opined that while there might have been incipient greed when the DPWH and DOTC notified petitioners of the just compensation from the government, there was, however, no evidence that petitioners filed the complaint in bad faith. There was nothing in the records to indicate that petitioners had actual or constructive knowledge of the sale of the two lots to Julian. The document on file with the Records Management archives Office alluded to a parcel of land denominated as Lot 2034 which is different from the property in question, Lot 1333. It was only during the hearing of the case that it was made clear through the presentation of evidence that the lot referred to in the Absolute Sale was Lot 1333, not Lot 2034, in addition to Lot 1320.

The Issues

Petitioners thus interposed this appeal, raising the following errors allegedly committed by the Court of Appeals:

"I.

THE COURT OF APPEALS ACTED WITH PATENT GRAVE ABUSE OF DISCRETION IN NOT REVERSING THE DECISION OF THE TRIAL COURT, INSOFAR AS IT DECLARED VALID AND

EFFECTIVE AN ABSOLUTE SALE”, PURPORTEDLY EXECUTED BY FILOMENA VIDAL, PREDECESSOR-IN-INTEREST OF PETITIONERS, IN FAVOR OF PRIVATE RESPONDENT CONSOLACION ALIVIO AND HER SPOUSE, JULIAN ALOVERA, ON 24 APRIL 1959, OVER SUBJECT LOTS 1320 AND 1333.

II.

THE COURT OF APPEALS ACTED WITH PATENT GRAVE ABUSE OF DISCRETION IN NOT REVERSING THE DECISION OF THE TRIAL COURT, INSOFAR AS IT DECLARED PRIVATE RESPONDENTS “LEGAL OWNERS OF SUBJECT LOTS 1320 AND 1333”.

III.

THE COURT OF APPEALS ACTED WITH PATENT GRAVE ABUSE OF DISCRETION IN NOT REVERSING THE DECISION OF THE TRIAL COURT, INSOFAR AS IT RULED THAT THE COMPENSATION FOR PORTIONS OF THE SUBJECT LOTS TAKEN BY THE PUBLIC RESPONDENTS BE PAID TO THE PRIVATE RESPONDENTS AND NOT TO THE PETITIONERS.

IV.

THE COURT OF APPEALS ACTED WITH PATENT GRAVE ABUSE OF DISCRETION IN NOT REVERSING THE DECISION OF THE TRIAL COURT, INSOFAR AS IT DISMISSED THE COMPLAINT IN CIVIL CASE NO. V-5668, RTC-ROXAS CITY, BRANCH 18.”[10]

The Court’s Ruling

At the outset, it must be pointed out that this petition was seasonably filed, contrary to private respondents’ contention that it was filed one day late. Petitioners had until January 17, 1999 to file this petition, which was a Sunday. Since the last day for filing this petition fell on a Sunday, the time to file the petition would not have run until the next working day.[11] Petitioners filed the petition the next working day, January 18, 1999. Plainly then, the petition was filed on time.

The petition, however, must fail on substantive grounds.

Petitioners implore the Court to declare the Absolute Sale void for failing to identify with certainty the two parcels of land sold by Filomena, their mother, to private respondents. However, there is no valid ground for annulling the Absolute Sale. The Absolute Sale is clear as to the first parcel of lot sold, which is Lot 1320. What raises some doubt is the identity of the second parcel of lot sold, Is it Lot 2034 as indicated in the registered copy of the Absolute Sale? Or is it Lot 1333 as made to appear in the copy of the Absolute Sale of private respondents?

In civil cases, the party with the burden of proof must establish his case by a preponderance of evidence.[12] By “preponderance of evidence” is meant that the evidence as a whole adduced by one side is superior to that of the other.[13] Petitioners have the burden of proving that Lot 2034 was the real object of the Absolute Sale and the alteration of the same instrument was unauthorized, warranting the absolute nullification of the sale. The trial court and the Court of Appeals found the evidence of private respondents far more convincing in explaining the alteration in their copy of the Absolute Sale. Both courts ruled that the correction was made by the parties to reflect the true object of the sale, which was Lot 1333, not Lot 2034. In arriving at this conclusion, the two courts considered contemporaneous and subsequent acts that indicate that what Filomena actually sold to private respondents were Lots 1320 and 1333. These factual findings are binding upon the Court.[14]

As a rule, the appellate jurisdiction of the Court is limited only to question of law.[15] There is a question of law

in a given case when the doubt or difference arises as to what the law is given a certain set of facts, and there is a question of fact when the doubt arises as to the truth or the falsity of the alleged facts.[16] No exceptional circumstances are present in this case that would justify a re-evaluation of the factual findings of the trial court and the Court of Appeals, findings that are duly supported by evidence of record.

Petitioners insist that there is serious doubt as to the identity of the objects of the Absolute Sale because the descriptions of Lots 1320 and 1333 in the Absolute Sale do not correspond to the technical descriptions of the two lots as found by the Bureau of Lands. Petitioners direct the Court's attention to these discrepancies:

TECHNICAL DESCRIPTION[17]Lot 1320, Cad-133, C-01
Capiz Cadastre, Ap-06-004023

A PARCEL OF LAND (Lot 1320, Cad-133, C-01, Capiz Cadastre, Ap-06-004023, situated in the barrio of Baybay, municipality of Capiz (Now Roxas City), province of Capiz, island of Panay.

Bounded on the NE., along line 1-2 by Lot 1327; along line 2-3 by Lot 1328; along line 3-4 by Lot 1329; on the E., along line 4-5 by Lot 1326; on and the S., along line 5-6 by Lot 1325; along lines 6-7-8 by Lot 1321; on the W., along line 8-9 by Lot 1295; on the NW., along lines 9-10-11 by Lot 1319; along line 11-12 by Lot 1318; along line 12-13 by Lot 1328; on the NE., along line 13-1 by Lot 1327, all of Cad-133, Capiz Cadastre.

Beginning at point marked "1" on plan being N. 88-28 W., 651.78 meters from BBM No. 12, Cad-133, Capiz Cadastre, thence

N. 85-01 E., 23.00 m. to point 2;
N. 83-40 E., 19.03 m. to point 4;
S. 84-22 W., 61.31 m. to point 6;
S. 83-00 W., 145.33 m. to point 8;
N. 87-42 E., 26.49 m. to point 10;
N. 83-07 E., 31.86 m. to point 12;
N. 83-09 E., 76.04 m. to point 13;
S. 07-04 E., 41. 88 m. to point 1.

Point of beginning;

Containing an area of TWENTY-FIVE THOUSAND SEVEN HUNDRED SEVENTY-FIVE (25,775) SQUARE METERS, more or less.

TECHNICAL DESCRIPTION[18]Lot 1333, Cad-133, C-01
Capiz Cadastre, Ap-06-004022

A PARCEL OF LAND (Lot 1333, Cad-133, C-01, Capiz Cadastre, Ap-06-004022, situated in the barrio of Baybay, municipality of Capiz (now Roxas City), province of Capiz, island of Panay.

Bounded on the SE., along line 1-2 by Lot 1330; on the W., & NW., along lines 2-3-4-5 by Lot 1329; on the NW., along line 5-6 by Lot 1334; along line 6-7 by Lot 1335; on the NE., & SE., along lines 7-8-1 by Lot 1332; all of Cad-133, Capiz Cadastre.

Beginning at a point marked "1" on plan being N. 78-44., 326.64 meters from BBM No. 12, Cad-133, Capiz Cadastre, thence

S. 81-42 W., 59.67 meters to point 2;
N. 07-36 W., 46.62 meters to point 3;
N. 82-34 E., 84.29 meters to point 4;

N. 09-13 W., 40-05 meters to point 5;
N. 82-57 E., 59.24 meters to point 6;
N. 81-48 E., 18.71 meters to point 7;
S. 03-30 E., 95.46 meters to point 8;
S. 82-57 W., 94.35 meters to point 1;
Point of beginning.

Containing an area of TEN THOUSAND EIGHT HUNDRED SIXTY (10,860) SQUARE METERS, more or less.

DESCRIPTION PER ABSOLUTE SALE

1) A parcel of land (Lot No. 1320 of the Cadastral Survey of Capiz), with the improvements thereon, situated in the Barrio of Baybay, Municipality of Capiz (now Roxas City).

Bounded on the N. by the property of Matea Arcenas; on the S. by the property of Roque Severino; on the E. by the property of Matea Arcenas; the W. by the property of Damaso Arches;

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containing an area of THIRTY THOUSAND NINE HUNDRED FORTY-FOUR (30,944) SQUARE METERS, more or less. This parcel of land is all rice land and the boundaries thereon are visible consisting of stone monuments erected thereon by the Bureau of Lands. It is declared under Tax Dec. No. 4338 in the name of Filomena Vidal and assessed at P1,550.00.

DESCRIPTION PER ABSOLUTE SALE

2) A parcel of land (Lot No. 1333 of the Cadastral Survey of Capiz), with the Improvements thereon, situated in the Barrio of Baybay, Municipality of Capiz (now Roxas City).

Bounded on the N. by the property of Nemesio Fuentes; on the S. by the property of Rufo Arcenas; on the E. by the property of Matea Arcenas; and on the W. by the property of Valeriano Arcenas;

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containing an area of EIGHTEEN THOUSAND FIVE HUNDRED FIFTY SEVEN (18,557) SQUARE METERS, more or less. This parcel of land is all rice land and the boundaries thereon are visible consisting of stone monuments erected thereon by the Bureau of Lands. It is declared under Tax Dec. No. 4336 in the name of Filomena Vidal and assessed at P930.00.

We are not persuaded. Petitioners rely on the technical descriptions of Lots 1320 and 1333 that were issued by the Bureau of Lands on November 8, 1988. It must be pointed out that when private respondents and Filomena executed the sale in 1959, they based the description of the two lots on the tax declarations of Filomena. Early tax declarations are, more often than not, based on approximation or estimation rather than on computation.[19] This is understandably so because of the absence then of technical knowledge in the accurate measurement of lands.[20] What really defines a piece of land is not the area mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits.[21] In this case, the boundaries of the two lots are sufficiently designated in the Absolute Sale, leaving no room to doubt the identity of the objects of the sale.

Petitioners anchor their right of ownership over Lots 1320 and 1333 as the sole heirs of their mother, Filomena, who previously owned the lots. However, Filomena had already ceded her right of ownership over Lots 1320 and 1333 to private respondents when she executed the Absolute Sale. A sale of real property is a contract transferring dominion and other real rights in the thing sold.[22] Proof of the conveyance of ownership is the fact that from the time of the sale, or after more than 30 years, private respondents have been in possession of Lots 1320 and 1333. Petitioners on the other hand have never been in possession of the two lots.

Filomena died sometime in 1985[23] and petitioners instituted the complaint four years after Filomena's death. It is unthinkable for Filomena to have allowed private respondents to enjoy ownership of Lots 1320 and 1333 if she never really intended to sell the two lots to private respondents or if she had Lot 2034 in mind when she signed the Absolute Sale. In the first place, Lot 2034 could not have been contemplated by the parties since this parcel of land was never owned by Filomena, or by her mother, Paulina. Secondly, Lot 2034 does not fit the description of the second parcel of lot mentioned in the Absolute Sale. The Absolute Sale describes the second lot as located in Barangay Baybay, Roxas City. Lot 2034 is situated in Barangay Culasi, Roxas City.

In resolving the similar case of *Atilano vs. Atilano*,[24] where there was also a mistake in the designation of the lot number sold, the Court took into account facts and circumstances to uncover the true intentions of the parties. The Court held that when one sells or buys real property, one sells or buys the property as he sees it, in its actual setting and by its physical metes and bounds, and not by the mere lot number assigned to it in the certificate of title. As long as the true intentions of the parties are evident, the mistake will not vitiate the consent of the parties, or affect the validity and binding effect of the contract between them. In this case, the evidence shows that the designation of the second parcel of land sold as Lot 2034 was merely an oversight or a typographical error. The intention of the parties to the Absolute Sale became unmistakably clear when private respondents, as vendees, took possession of Lots 1320 and 1333 in the concept of owners without the objection of Filomena, the vendor.

Petitioners harp on the fact that the notarized and registered copy of the Absolute Sale should have, been correspondingly corrected. Petitioners believe that the notarized and archived copy should prevail. We disagree. A contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price.[25] Being consensual, a contract of sale has the force of law between the contracting parties and they are expected to abide in good faith with their respective contractual commitments.[26] Article 1358 of the Civil Code, which requires certain contracts to be embodied in a public instrument, is only for convenience, and registration of the instrument is needed only to adversely affect third parties.[27] Formal requirements are, therefore, for the purpose of binding or informing third parties.[28] Non-compliance with formal requirements does not adversely affect the validity of the contract or the contractual rights and obligations of the parties.[29]

Petitioners fault the trial court for declaring that Lots 1333 and 1320 can be acquired by prescription even though these lots are already covered by certificates of title. The real issue in this case is the true intentions of the parties to the Absolute Sale, not adverse possession. The decisions of the trial court and the Court of Appeals are clear on this point. In fact, the Court of Appeals no longer dealt with the issue of acquisitive prescription since it was already convinced that private respondents' right over Lots 1333 and 1320 emanates from the Absolute Sale.

In a desperate bid to compel the Court to disregard the evidence of private respondents, petitioners question the admissibility of the testimony of Consolacion on the ground that it violates the Dead Man's Statute. Petitioners contend that Consolacion's testimony as to how the alteration of the Absolute Sale took place should have been disregarded since at the time that Consolacion testified, death had already sealed the lips of Filomena, precluding petitioners from refuting Consolacion's version.

The contention is without basis. The Dead Man's Statute then embodied in Section 20 (a) of Rule 130 of the 1988 Rules of Court provides:

“SEC. 20. Disqualification by reason of interest or relationship. - The following persons cannot testify as to matters in which they are interested, directly or indirectly, as herein enumerated:

(a) Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind;

xxx xxx xxx”

The foregoing prohibition applies to a case against the administrator or representative of an estate upon a claim against the estate of the deceased person.[30] The present case was not filed against the administrator of the estate, nor was it filed upon claims against the estate since it was the heirs of Filomena who filed the complaint against private respondents. Even assuming that Consolacion's testimony was within the purview of the Dead Man's Statute, the fact that the counsel of petitioners failed to timely object to the admissibility of Consolacion's testimony is a waiver of the prohibition.[31] The waiver was made more evident when the counsel of petitioners cross-examined Consolacion.[32] Petitioners cannot now invoke the rule they knowingly waived.

From the time of the execution of the Absolute Sale on April 24, 1959, private respondents became the owners of Lots 1320 and 1333. The expropriation of any portion of the two lots from the time of the execution of the Absolute Sale would necessarily entitle private respondents to the payment of just compensation. We cannot, however, agree with the trial court and the Court of Appeals that public respondents could be ordered to pay private respondents just compensation in the same suit. Public respondents were impleaded in this case when

petitioners filed a cross-claim against them for just compensation. The cross-claim should have been dismissed, as it does not comply with Section 7 of Rule 6 of the 1988 Rules of Court. The rule provides:

“SEC. 7. Cross-claim. A cross-claim is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.”

Based on the foregoing rule, the cross-claim is proper only when:

- “1. It arises out of the subject matter of the complaint.
2. It is filed against a co-party.
3. The cross-claimant stands to be prejudiced by the filing of the action against him.”[33]

The three requisites are absent in this case. The cross-claim for just compensation is a new matter raising a new cause of action that must be litigated in a separate action, not in the same action for the nullification of contract. The purpose of a cross-claim is to avoid multiplicity of suits.[34] Multiplicity of suits should be avoided if the filing of a separate and independent action to recover a claim would entail proving exactly the same claim in an existing action.[35] However, when the causes of action are distinct and separate from each other, as in this case, the independent interest should be pursued in another proceeding.[36] Also, petitioners and public respondents are not co-parties as they are not co-plaintiffs. Lastly, petitioners, as cross-claimants, would not be prejudiced by the filing of the action since they are the plaintiffs in this case.

At any rate, private respondents are not left without any recourse. They can file their claim for compensation with the proper government agency. Public respondent DPWH in its Comment points out that it is now public respondent DOTC that has jurisdiction over the claim for compensation since the portions of the properties subject of this case were taken to form part of the parking area of the Roxas Airport.[37] In the same Comment, public respondent DPWH concedes that they have never denied their obligation from the very beginning of this case.[38] Public respondents were only constrained to withhold payment of just compensation as the reel owners of the lots in question were yet to be declared by the Court. Since the issue of ownership has been settled, private respondents can now rightfully claim just compensation for the portions of Lots 1320 and 1333 taken by the government after the execution of the Absolute Sale.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CV No. 35540 is hereby AFFIRMED with the MODIFICATION that the cross-claim against public respondents is DISMISSED. Costs against petitioners.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Ynares-Santiago and Azcuna, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Emeterio C. Cui with Associate Justices Lourdes K. Tayao-Jaguros and Romeo A. Brawner concurring, Seventh Division.

[3] Penned by Associate Justice Romeo A. Brawner with Associate Justices Eloy R. Bello, Jr. and Martin S. Villarama, Jr. concurring, Special Former Seventh Division.

[4] Docketed as Reconstitution Case No. R-1843.

[5] Rollo, p. 97, Penned by Judge Roger B. Patricio.

[6] Ibid., p. 80.

[7] Ibid., p. 82.

[8] Ibid., pp. 93-94.

[9] “ART. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.”

[10] Rollo, p. 17.

[11] Section 1, Rule 22 of the 1997 Rules of Court. See also *Zacate vs. Commission on Elections*, 353 SCRA 441 (2001).

[12] *Sapu-an vs. Court of Appeals*, 214 SCRA 701 (1992).

[13] Ibid.

[14] See *Serna vs. Court of Appeals*, 308 SCRA 527 (1999).

[15] *Fabela vs. Court of Appeals*, G.R. No. 142546, August 9, 2001.

[16] *Serna vs. Court of Appeals*, *supra*.

[17] Rollo, p. 98.

[18] Ibid., p. 99.

[19] *Director of Lands vs. Funtilar*, 142 SCRA 557 (1986).

[20] Ibid.

[21] *Fabela vs. Court of Appeals*, *supra*.

[22] *Titong vs. Court of Appeals*, 287 SCRA 102 (1998).

[23] TSN, November 6, 1990, p. 17. Testimony of Elfigo Londres, son-in-law of Filomena and husband of Sonia.

[24] 28 SCRA 231 (1969).

[25] *Agasen vs. Court of Appeals*, 325 SCRA 504 (2000) citing *Fule vs. Court of Appeals*, 286 SCRA 698 (1998).

[26] Ibid.

[27] Ibid.

[28] Ibid.

[29] Ibid.

[30] *Razon vs. Intermediate Appellate Court*, 207 SCRA 234 (1992).

[31] See *Cruz vs. Court of Appeals*, 192 SCRA 209 (1990).

[32] See *Razon vs. Intermediate Appellate Court*, *supra*.

[33] OSCAR M. HERRERA, REMEDIAL LAW, REVISED ED., 1994, VOL. I, p. 339.

[34] Ibid., p. 338.

[35] Asset Privatization Trust vs. Court of Appeals, 324 SCRA (2000).

[36] Ibid.

[37] Rollo, p. 258.

[38] Ibid., p. 257.

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