

**NATIVIDAD P. NAZARENO, MAXIMINO P. NAZARENO, JR.,
PETITIONERS, VS. COURT OF APPEALS, ESTATE OF MAXIMINO A.
NAZARENO, SR., ROMEO P. NAZARENO AND ELIZA NAZARENO,
RESPONDENTS.**

G.R. No. 138842. October 18, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals in CA-GR CV No. 39441 dated May 29, 1998 affirming with modifications the decision of the Regional Trial Court, Branch 107, Quezon City, in an action for annulment of sale and damages.

The facts are as follows:

Maximino Nazareno, Sr. and Aurea Poblete were husband and wife. Aurea died on April 15, 1970, while Maximino, Sr. died on December 18, 1980. They had five children, namely, Natividad, Romeo, Jose, Pacifico, and Maximino, Jr. Natividad and Maximino, Jr. are the petitioners in this case, while the estate of Maximino, Sr., Romeo, and his wife Eliza Nazareno are the respondents.

During their marriage, Maximino Nazareno, Sr. and Aurea Poblete acquired properties in Quezon City and in the Province of Cavite. It is the ownership of some of these properties that is in question in this case.

It appears that after the death of Maximino, Sr., Romeo filed an intestate case in the Court of First Instance of Cavite, Branch XV, where the case was docketed as Sp. Proc. No. NC-28. Upon the reorganization of the courts in 1983, the case was transferred to the Regional Trial Court of Naic, Cavite. Romeo was appointed administrator of his father's estate.

In the course of the intestate proceedings, Romeo discovered that his parents had executed several deeds of sale conveying a number of real properties in favor of his sister, Natividad. One of the deeds involved six lots in Quezon City which were allegedly sold by Maximino, Sr., with the consent of Aurea, to Natividad on January 29, 1970 for the total amount of P47,800.00. The Deed of Absolute Sale reads as follows:

DEED OF ABSOLUTE SALE

KNOW ALL MEN BY THESE PRESENTS:

I, MAXIMINO A. NAZARENO, Filipino, married to Aurea Poblete-Nazareno, of legal age and a resident of the Mun. of Naic, Prov. of Cavite, Philippines, -

W I T N E S S E T H -

That I am the absolute registered owner of six (6) parcels of land with the improvements thereon situated in Quezon City, Philippines, which parcels of land are herewith described and bounded as follows, to wit:

"TRANS. CERT. OF TITLE NO. 140946"

"A parcel of land (Lot 3-B of the subdivision plan Psd-47404, being a portion of Lot 3, Block D-3 described on plan Bsd-10642, G.L.R.O. Record No.) situated in the Quirino District, Quezon City. Bounded on the N., along line 1-2 by Lot 15, Block D-3 of plan Bsd - 10642; along line 2-3 by Lot 4, Block D-3 of plan Bsd-10642; along line 3-4 by Aurora Boulevard (Road Lot-1, Bsd-10642); and along line 4-1 by Lot 3-D of the subdivision plan. Beginning at a point marked "1" on plan, being S.29 deg. 26'E., 1156.22 m. from B.L.L.M. 9, Quezon City,

thence N. 79 deg. 53'E., 12.50 m. to point 2;

thence S. 10 deg. 07'E., 40.00 m. to point 3;

thence S. 79 deg. 53'W., 12.50 m. to point 4;

thence N. 10 deg. 07'W., 40.00 m. to the point

of beginning; containing an area of FIVE HUNDRED (500) SQUARE METERS. All points referred to are indicated on the plan and are marked on the ground as follows: points "1" and "4" by P.L.S. Cyl. Conc. Mons. bearings true; date of the original survey, April 8-July 15, 1920 and that of the subdivision survey, March 25, 1956."

"TRANS. CERT. OF TITLE NO. 132019"

"A parcel of land (Lot 3, Block 93 of the subdivision plan Psd-57970 being a portion of Lot 6, Pcs-4786, G.L.R.O. Rec. No. 917) situated in Quirino District Quezon City. Bounded on the NW., along line 1-2, by Lot 1, Block 93; on the NE., along line 2-3, by Road Lot 101; on the SE., along line 3-4, by Road Lot 100; on the SW., along line 4-1, by Lot 4, Block 93; all of the subdivision plan. Beginning at point marked "1" on plan, being S. 65 deg. 40' 3339.92 m. from B.L.L.M. No. 1, Marikina, Rizal;

thence N. 23 deg. 28 min. E., 11.70 m. to point "2";

thence S. 66 deg. 32 min. E., 18.00 m. to point "3";

thence S. 23 deg. 28 min. W., 11.70 m. to point "4";

thence N. 66 deg. 32. min. W., 18.00 m. to the point

of beginning; containing an area of TWO HUNDRED TEN SQUARE METERS AND SIXTY SQUARE DECIMETERS (210.60). All points referred to are indicated on the plan and are marked on the ground by B.L. Cyl. Conc. Mons. 15 x 60 cm.; bearings true; date of the original survey, Nov. 10, 1920 and Jan. 31-March 31, 1924 and that of the subdivision survey, February 1 to September 30, 1954. Date approved - March 9, 1962."

"TRANS. CERT. OF TITLE NO. 118885"

"A parcel of land (Lot No. 10, of the consolidation and subdivision plan Pcs-988, being a portion of the consolidated Lot No. 26, Block No. 6, Psd-127, and Lots Nos. 27-A and 27-B, Psd-14901, G.L.R.O. Record No. 917), situated in the District of Cubao, Quezon City, Island of Luzon. Bounded on the NE., by Lot No. 4 of the consolidation and subdivision plan; on the SE., by Lot No. 11 of the consolidation and subdivision plan; on the SW., by Lot No. 3 of the consolidation and subdivision plan; and on the NW., by Lot No. 9 of the

consolidation and subdivision plan. Beginning at a point marked "1" on the plan, being S. 7 deg. 26'W., 4269.90 m. more or less from B.L.L.M. No. 1, Mp. of Mariquina;

thence S. 25 deg. 00'E., 12.00 m. to point "2";

thence S. 64 deg. 59'W., 29.99 m. to point "3";

thence N. 25 deg. 00'W., 12.00 m to point "4";

thence N. 64 deg. 59'E., 29.99 m. to the point of

beginning; containing an area of THREE HUNDRED SIXTY SQUARE METERS (360), more or less. All points referred to are indicated on the plan and on the ground are marked by P.L.S. Conc. Mons. 15 x 60 cm.; bearings true; declination 0 deg. 50'E., date of the original survey, April 8 to July 15, 1920, and that of the consolidation and subdivision survey, April 24 to 26, 1941." "TRANS. CERT. OF TITLE NO. 118886"

"A parcel of land (Lot No. 11, of the consolidation and subdivision plan Pcs-988, being a portion of the consolidated Lot No. 26, Block No. 6, Psd-127, and Lots Nos. 27-A and 27-B, Psd-14901, G.L.R.O. Record No. 917), situated in the District of Cubao, Quezon City, Island of Luzon. Bounded on the NE., by Lot No. 4 of the consolidation and subdivision plan; on the SE., by Lot No. 12 of the consolidation and subdivision plan; on the SW., by Lot No. 3 of the consolidation and subdivision plan; on the NW., by Lot No. 10 of the consolidation and subdivision plan. Beginning at a point marked "1" on plan, being S. 79 deg. 07'W., 4264.00 m. more or less from B.L.L.M. No. 1, Mp. of Mariquina;

thence S. 64 deg. 59'W., 29.99 m. to point "2";

thence N. 25 deg. 00'W., 12.00 m. to point "3";

thence N. 64 deg. 59'E., 29.99 m. to point "4";

thence S. 26 deg. 00'E., 12.00 m. to the point of

beginning; containing an area of THREE HUNDRED SIXTY SQUARE METERS (360), more or less. All points referred to are indicated on the plan and on the ground, are marked by P.L.S. Conc. Mons. 15 x 60 cm.; bearings true; declination 0 deg. 50'E.; date of the original survey, April 8 to July 15, 1920, and that of the consolidation and subdivision survey, April 24 to 26, 1941."

thence S. 64 deg. 59'W., 29.99 m. to point "2";

thence N. 25 deg. 00'W., 12.00 m. to point "3";

thence N. 64 deg. 59'E., 29.99 m. to point "4";

thence S. 26 deg. 00'E., 12.00 m. to the point of

"A parcel of land (Lot No. 13 of the consolidation and subdivision plan Pcs-988, being a portion of the consolidated Lot No. 26, Block No. 6, Psd-127, and Lots Nos. 27-A and 27-B, Psd-14901, G.L.R.O. Record No. 917), situated in the District of Cubao, Quezon City, Island of Luzon. Bounded on the NE., by Lot No. 4 of the consolidation and subdivision plan; on the SE., by Lot No. 14, of the consolidation; and subdivision plan; on the SW., by Lot No. 3 of the consolidation and subdivision plan; and on the NW., by Lot No. 12, of the consolidation and subdivision plan. Beginning at the point marked "1" on plan, being S.78 deg. 48'W., 4258.20 m. more or less from B.L.L.M. No. 1, Mp. of Mariquina;

thence S. 64 deg. 58'W., 30.00 m. to point "2";

thence N. 25 deg. 00'W., 12.00 m. to point "3";

thence N. 64 deg. 59'E., 29.99 m. to point "4";

thence S.25 deg. 00'E., 12.00 m. to point of

beginning; containing an area of THREE HUNDRED SIXTY SQUARE METERS (360, more or less. All points referred to are indicated on the plan and on the ground are marked by P.L.S. Conc. Mons. 15 x 60 cm.; bearings true; declination 0 deg. 50'E., date of the original survey, April 8 to July 15, 1920, and that of the consolidation and subdivision survey, April 24 to 26, 1941."

"A parcel of land (Lot No. 14, of the consolidation and subdivision plan Pcs-988, being a portion of the consolidated Lot No. 26, Block No. 6, Psd-127, and Lots Nos. 27-A and 27-B, Psd-14901, G.L.R.O. Record No. 917), situated in the District of Cubao, Quezon City, Island of Luzon. Bounded on the NE., by Lot No. 4 of the consolidation and subdivision plan; on the SE., by Lot No. 15, of the consolidation and subdivision plan; on the SW., by Lot No. 3 of the consolidation and subdivision plan; and on the NW., by Lot No. 13 of the consolidation and subdivision plan. Beginning at the point marked "1" on plan, being S.78 deg. 48'W., 4258.20 m. more or less from B.L.L.M. No. 1, Mp. of Mariquina;

thence S. 25 deg. 00'E., 12.00 m. to point "2";

thence S. 65 deg. 00'W., 30.00 m. to point "3";

thence S. 65 deg. 00'W., 12.00 m. to point "4";

thence N.64 deg. 58'E., 30.00 m. to the point of

beginning; containing an area of THREE HUNDRED SIXTY SQUARE METERS (360), more or less. All points referred to are indicated on the plan and on the ground are marked by P.L.S. Conc. Mons. 15 x 60 cm.; bearings true; declination 0 deg. 50'E., date of the original survey, April 8 to July 15, 1920, and that of the consolidation and subdivision survey, April 24 to 26, 1941."

That for and in consideration of the sum of FORTY THREE THOUSAND PESOS (P43,000.00) PHILIPPINE CURRENCY, to me in hand paid by NATIVIDAD P. NAZARENO, Filipino, single, of legal age and a resident of the Mun. of Naic, Prov. of Cavite, Philippines, the receipt whereof is acknowledged to my entire satisfaction, I do hereby CEDE, SELL, TRANSFER, CONVEY and ASSIGN unto the said Natividad P. Nazareno, her heirs, administrators and assigns, all my title, rights, interests and participations to the abovedescribed parcels of land with the improvements thereon, with the exception of LOT NO. 11 COVERED BY T.C.T. NO. 118886, free of any and all liens and encumbrances; and

That for and in consideration of the sum of FOUR THOUSAND EIGHT HUNDRED PESOS (P4,800.00) PHILIPPINE CURRENCY, to me in hand paid by NATIVIDAD P. NAZARENO, Filipino, single, of legal age and a resident of the Mun. of Naic, Prov. of Cavite, Philippines, the receipt whereof is acknowledged to my entire satisfaction, I do hereby CEDE, SELL, TRANSFER, CONVEY and ASSIGN unto the said Natividad P. Nazareno, her heirs, administrators and assigns, all my title, rights, interests and participations in and to Lot No. 11 covered by T.C.T. No. 118886 above-described, free of any and all liens and encumbrances, with the understanding that the title to be issued in relation hereto shall be separate and distinct from the title to be issued in connection with Lots Nos. 13 and 14, although covered by the same title.

IN WITNESS WHEREOF, I have hereunto signed this deed of absolute sale in the City of Manila, Philippines, this 29th day of January, 1970.[2]

By virtue of this deed, transfer certificates of title were issued to Natividad, to wit: TCT No. 162738 (Lot 3-B),[3] TCT No. 162739 (Lot 3),[4] TCT No. 162735 (Lot 10),[5] TCT No. 162736 (Lot 11),[6] and TCT No. 162737 (Lots 13 and 14),[7] all of the Register of Deeds of Quezon City.

Among the lots covered by the above Deed of Sale is Lot 3-B which is registered under TCT No. 140946. This lot

had been occupied by Romeo, his wife Eliza, and by Maximino, Jr. since 1969. Unknown to Romeo, Natividad sold Lot 3-B on July 31, 1982 to Maximino, Jr.,^[8] for which reason the latter was issued TCT No. 293701 by the Register of Deeds of Quezon City.^[9]

When Romeo found out about the sale to Maximino, Jr., he and his wife Eliza locked Maximino, Jr. out of the house. On August 4, 1983, Maximino, Jr. brought an action for recovery of possession and damages with prayer for writs of preliminary injunction and mandatory injunction with the Regional Trial Court of Quezon City. On December 12, 1986, the trial court ruled in favor of Maximino, Jr. In CA-G.R. CV No. 12932, the Court of Appeals affirmed the decision of the trial court.^[10]

On June 15, 1988, Romeo in turn filed, on behalf of the estate of Maximino, Sr., the present case for annulment of sale with damages against Natividad and Maximino, Jr. The case was filed in the Regional Trial Court of Quezon City, where it was docketed as Civil Case No. 88-58.^[11] Romeo sought the declaration of nullity of the sale made on January 29, 1970 to Natividad and that made on July 31, 1982 to Maximino, Jr. on the ground that both sales were void for lack of consideration.

On March 1, 1990, Natividad and Maximino, Jr. filed a third-party complaint against the spouses Romeo and Eliza.^[12] They alleged that Lot 3, which was included in the Deed of Absolute Sale of January 29, 1970 to Natividad, had been surreptitiously appropriated by Romeo by securing for himself a new title (TCT No. 277968) in his name.^[13] They alleged that Lot 3 is being leased by the spouses Romeo and Eliza to third persons. They therefore sought the annulment of the transfer to Romeo and the cancellation of his title, the eviction of Romeo and his wife Eliza and all persons claiming rights from Lot 3, and the payment of damages.

The issues having been joined, the case was set for trial. Romeo presented evidence to show that Maximino and Aurea Nazareno never intended to sell the six lots to Natividad and that Natividad was only to hold the said lots in trust for her siblings. He presented the Deed of Partition and Distribution dated June 28, 1962 executed by Maximino Sr. and Aurea and duly signed by all of their children, except Jose, who was then abroad and was represented by their mother, Aurea. By virtue of this deed, the nine lots subject of this Deed of Partition were assigned by raffle as follows:

- Romeo - Lot 25-L (642 m²)
- Natividad - Lots 23 (312 m²) and 24 (379 m²)
- Maximino, Jr. - Lots 6 (338 m²) and 7 (338 m²)
- Pacifico - Lots 13 (360 m²) and 14 (360 m²)
- Jose - Lots 10 (360 m²) and 11 (360 m²)

Romeo received the title to Lot 25-L under his name,^[14] while Maximino, Jr. received Lots 6 and 7 through a Deed of Sale dated August 16, 1966 for the amount of P9,500.00.^[15] Pacifico and Jose's shares were allegedly given to Natividad, who agreed to give Lots 10 and 11 to Jose, in the event the latter came back from abroad. Natividad's share, on the other hand, was sold to third persons^[16] because she allegedly did not like the location of the two lots. But, Romeo said, the money realized from the sale was given to Natividad.

Romeo also testified that Lot 3-B was bought for him by his father, while Lot 3 was sold to him for P7,000.00 by his parents on July 4, 1969.^[17] However, he admitted that a document was executed by his parents transferring six properties in Quezon City, i.e., Lots 3, 3-B, 10, 11, 13, and 14, to Natividad.

Romeo further testified that, although the deeds of sale executed by his parents in their favor stated that the sale was for a consideration, they never really paid any amount for the supposed sale. The transfer was made in this

manner in order to avoid the payment of inheritance taxes.[18] Romeo denied stealing Lot 3 from his sister but instead claimed that the title to said lot was given to him by Natividad in 1981 after their father died.

Natividad and Maximino, Jr. claimed that the Deed of Partition and Distribution executed in 1962 was not really carried out. Instead, in December of 1969, their parents offered to sell to them the six lots in Quezon City, i.e., Lots 3, 3-B, 10, 11, 13 and 14. However, it was only Natividad who bought the six properties because she was the only one financially able to do so. Natividad said she sold Lots 13 and 14 to Ros-Alva Marketing Corp.[19] and Lot 3-B to Maximino, Jr. for P175,000.00.[20] Natividad admitted that Romeo and the latter's wife were occupying Lot 3-B at that time and that she did not tell the latter about the sale she had made to Maximino, Jr.

Natividad said that she had the title to Lot 3 but it somehow got lost. She could not get an original copy of the said title because the records of the Registrar of Deeds had been destroyed by fire. She claimed she was surprised to learn that Romeo was able to obtain a title to Lot 3 in his name.

Natividad insisted that she paid the amount stated in the Deed of Absolute Sale dated January 29, 1970. She alleged that their parents had sold these properties to their children instead of merely giving the same to them in order to impose on them the value of hardwork.

Natividad accused Romeo of filing this case to harass her after Romeo lost in the action for recovery of possession (Civil Case No. Q-39018) which had been brought against him by Maximino, Jr. It appears that before the case filed by Romeo could be decided, the Court of Appeals rendered a decision in CA-GR CV No. 12932 affirming the trial court's decision in favor of Maximino, Jr.

On August 10, 1992, the trial court rendered a decision, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered declaring the nullity of the Deed of Sale dated January 29, 1970. Except as to Lots 3, 3-B, 13 and 14 which had passed on to third persons, the defendant Natividad shall hold the rest in trust for Jose Nazareno to whom the same had been adjudicated. The Register of Deeds of Quezon City is directed to annotate this judgment on Transfer Certificate of Titles Nos. 162735 and 162736 as a lien in the titles of Natividad P. Nazareno.

The defendants' counterclaim is dismissed. Likewise, the third-party complaint is dismissed.

The defendants are hereby directed to pay to the plaintiff jointly and severally the sum of P30,000 as and for attorney's fees. Likewise, the third-party plaintiff is directed to pay the third-party defendant's attorney's fees of P20,000.

All other claims by one party against the other are dismissed.

SO ORDERED.[21]

Natividad and Maximino, Jr. filed a motion for reconsideration. As a result, on October 14, 1992 the trial court modified its decision as follows: WHEREFORE, the plaintiff's Partial Motion for Reconsideration is hereby granted. The judgment dated August 10, 1992 is hereby amended, such that the first paragraph of its dispositive portion is correspondingly modified to read as follows:

"WHEREFORE, judgment is hereby rendered declaring the nullity of the Deeds of Sale dated January 29, 1970 and July 31, 1982. "Except as to Lots 3, 13 and 14 which had passed on to third person, the defendant Natividad shall hold the rest OF THE PROPERTIES COVERED BY THE DEED OF SALE DATED JANUARY 29, 1970 (LOTS 10 and 11) in trust for Jose Nazareno to whom the same had been adjudicated.

"The Register of Deeds of Quezon City is directed to annotate this judgment on Transfer Certificates of Title No. 162735 and 162736 as a lien on the titles of Natividad P. Nazareno.

"LIKEWISE, THE SAID REGISTER OF DEEDS IS DIRECTED TO CANCEL TCT NO. 293701 (formerly 162705) OVER LOT 3-B AND RESTORE TCT NO. 140946 IN THE NAME OF MAXIMINO NAZARENO SR. AND AUREA POBLETE."[22]

On appeal to the Court of Appeals, the decision of the trial court was modified in the sense that titles to Lot 3 (in the name of Romeo Nazareno) and Lot 3-B (in the name of Maximino Nazareno, Jr.), as well as to Lots 10 and 11 were cancelled and ordered restored to the estate of Maximino Nazareno, Sr. The dispositive portion of the decision dated May 29, 1998 reads:

WHEREFORE, the appeal is GRANTED. The decision and the order in question are modified as follows:

- The Deed of Absolute Sale dated 29 January 1970 and the Deed of Absolute Sale dated 31 July 1982 are hereby declared null and void;
- Except as to Lots 13 and 14 ownership of which has passed on to third persons, it is hereby declared that Lots 3, 3-B, 10 and 11 shall form part of the estate of the deceased Maximino Nazareno, Sr.;
- The Register of Deeds of Quezon City is hereby ordered to restore TCT No. 140946 (covering Lot 3-B), TCT No. 132019 (covering Lot 3), TCT No. 118885 (covering Lot 10), and TCT No. 118886 (covering Lot 11).[23]

Petitioners filed a motion for reconsideration but it was denied in a resolution dated May 27, 1999. Hence this petition.

Petitioners raise the following issues:

- WHETHER OR NOT THE UNCORROBORATED TESTIMONY OF PRIVATE RESPONDENT ROMEO P. NAZARENO CAN DESTROY THE FULL FAITH AND CREDIT ACCORDED TO NOTARIZED DOCUMENTS LIKE THE DEED OF ABSOLUTE SALE DATED JANUARY 29, 1970 (EXH. 1) EXECUTED BY THE DECEASED SPOUSES MAXIMINO A. NAZARENO, SR. AND AUREA POBLETE IN FAVOR OF PETITIONER NATIVIDAD P. NAZARENO.

- WHETHER OR NOT THE RESPONDENT COURT GROSSLY MISAPPRECIATED THE FACTS OF THE CASE WITH RESPECT TO THE VALIDITY OF THE SAID DEED OF ABSOLUTE SALE DATED JANUARY 29, 1970 (EXH. 1) IN THE LIGHT OF THE FOLLOWING:

A) THE DOCUMENTARY EVIDENCE, ALL OF WHICH ARE NOTARIZED, EXECUTED BY THE DECEASED SPOUSES DURING THEIR LIFETIME INVOLVING SOME OF THEIR CONJUGAL PROPERTIES.

B) THE EXECUTION OF AN EXTRA-JUDICIAL PARTITION WITH WAIVER OF RIGHTS AND CONFIRMATION OF SALE DATED MAY 24, 1975 (EXH. 14A) OF THE ESTATE OF AUREA POBLETE BY THE DECEASED MAXIMINO A. NAZARENO, SR. AND THEIR CHILDREN INVOLVING THE ONLY REMAINING ESTATE OF AUREA POBLETE THUS IMPLIEDLY ADMITTING THE VALIDITY OF PREVIOUS DISPOSITIONS MADE BY SAID DECEASED SPOUSES ON THEIR CONJUGAL PROPERTIES, HALF OF WHICH WOULD HAVE BECOME A PART OF AUREA POBLETE'S ESTATE UPON HER DEMISE.

C) THE ADMISSION MADE BY MAXIMINO A. NAZARENO, SR. IN HIS TESTIMONY IN OPEN COURT ON AUGUST 13, 1980 DURING HIS LIFETIME IN CIVIL CASE NO. NC-712 (EXH. 81, 81B) THAT HE HAD SOLD CERTAIN PROPERTIES IN FAVOR OF NATIVIDAD P. NAZARENO THUS BELYING THE CLAIM OF ROMEO P. NAZARENO THAT THE DEED OF ABSOLUTE SALE DATED JANUARY 29, 1970 IS ONE AMONG THE DOCUMENTS EXECUTED BY THE DECEASED SPOUSES TO BE WITHOUT CONSIDERATION.

D) THE ADMISSIONS MADE BY ROMEO P. NAZARENO HIMSELF CONTAINED IN A FINAL DECISION OF THE RESPONDENT COURT IN CA-GR CV NO. 12932 DATED AUGUST 31, 1992 AND AN ANNEX APPEARING IN HIS ANSWER TO THE COMPLAINT IN CIVIL CASE NO. Q-39018 (EXH. 11-B) INVOLVING LOT 3B, ONE OF THE PROPERTIES IN QUESTION THAT THE SAID PROPERTY IS OWNED BY PETITIONER NATIVIDAD P. NAZARENO.

E) THE PARTIAL PROJECT OF PARTITION DATED MAY 24, 1995 WHICH WAS APPROVED BY THE INTESTATE COURT IN SP. PROC. NO. NC-28 AND EXECUTED IN ACCORDANCE WITH THE LATTER COURT'S FINAL ORDER DATED JULY 9, 1991 DETERMINING WHICH WERE THE REMAINING PROPERTIES OF THE ESTATE.

- WHETHER OR NOT THE DEED OF ABSOLUTE SALE DATED JANUARY 29, 1970 EXECUTED BY THE DECEASED SPOUSES MAXIMINO A. NAZARENO, SR. AND AUREA POBLETE DURING THEIR LIFETIME INVOLVING THEIR CONJUGAL PROPERTIES IS AN INDIVISIBLE CONTRACT? AND IF SO WHETHER OR NOT UPON THEIR DEATH, THE ESTATE OF MAXIMINO A. NAZARENO, SR. ALONE CAN SEEK THE ANNULMENT OF SAID SALE?

- WHETHER OR NOT THE SALE OF LOT 3 UNDER THE DEED OF ABSOLUTE SALE DATED JANUARY 29, 1970 IN FAVOR OF PETITIONER NATIVIDAD P. NAZARENO, IS VALID CONSIDERING THAT AS PER THE ORDER OF THE LOWER COURT DATED NOVEMBER 21, 1990. ROMEO NAZARENO ADMITTED THAT HE DID NOT PAY THE CONSIDERATION STATED IN THE DEED OF ABSOLUTE SALE DATED JULY 4, 1969 EXECUTED BY THE DECEASED SPOUSES IN HIS FAVOR (EXH. M-2).

- WHETHER OR NOT AS A CONSEQUENCE, THE TITLE ISSUED IN THE NAME OF ROMEO P. NAZARENO, TCT NO. 277968 (EXH. M) SHOULD BE CANCELLED AND DECLARED NULL AND VOID AND A NEW ONE ISSUED IN FAVOR OF NATIVIDAD P. NAZARENO PURSUANT TO THE DEED OF ABSOLUTE SALE EXECUTED IN THE LATTER'S FAVOR ON JANUARY 29, 1970 BY THE DECEASED SPOUSES.[24]

We find the petition to be without merit.

First. Petitioners argue that the lone testimony of Romeo is insufficient to overcome the presumption of validity accorded to a notarized document.

To begin with, the findings of fact of the Court of Appeals are conclusive on the parties and carry even more weight when these coincide with the factual findings of the trial court. This Court will not weigh the evidence all over again unless there is a showing that the findings of the lower court are totally devoid of support or are clearly erroneous so as to constitute serious abuse of discretion.[25] The lone testimony of a witness, if credible, is sufficient. In this case, the testimony of Romeo that no consideration was ever paid for the sale of the six lots to Natividad was found to be credible both by the trial court and by the Court of Appeals and it has not been successfully rebutted by petitioners. We, therefore, have no reason to overturn the findings by the two courts giving credence to his testimony.

The fact that the deed of sale was notarized is not a guarantee of the validity of its contents. As held in *Suntay v. Court of Appeals*:[26]

Though the notarization of the deed of sale in question vests in its favor the presumption of regularity, it is not the intention nor the function of the notary public to validate and make binding an instrument never, in the first place, intended to have any binding legal effect upon the parties thereto. The intention of the parties still and always is the primary consideration in determining the true nature of a contract.

Second. Petitioners make capital of the fact that in C.A.-G.R. CV No. 12932, which was declared final by this Court in G.R. No. 107684, the Court of Appeals upheld the right of Maximino, Jr. to recover possession of Lot 3-B. In that case, the Court of Appeals held:

As shown in the preceding disquisition, Natividad P. Nazareno acquired the property in dispute by purchase in 1970. She was issued Transfer Certificate of Title No. 162738 of the Registry of Deeds of Quezon City. When her parents died, her mother Aurea Poblete-Nazareno in 1970 and her father Maximino A. Nazareno, Sr. in 1980, Natividad P. Nazareno had long been the exclusive owner of the property in question. There was no way therefore that the aforesaid property could belong to the estate of the spouses Maximino Nazareno, Sr. and Aurea Poblete. The mere fact that Romeo P. Nazareno included the same property in an inventory of the properties of the deceased Maximino A. Nazareno, Sr. will not adversely affect the ownership of the said realty. Appellant Romeo P. Nazareno's suspicion that his parents had entrusted all their assets under the care and in the name of Natividad P. Nazareno, their eldest living sister who was still single, to be divided upon their demise to all the compulsory heirs, has not progressed beyond mere speculation. His barefaced allegation on the point not only is without any corroboration but is even belied by documentary evidence. The deed of absolute sale (Exhibit "B"), being a public document (Rule 132, Secs. 19 and 23, Revised Rules on Evidence), is entitled to great weight; to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant (*Yturalde vs. Aganon*, 28 SCRA 407; *Favor vs. Court of Appeals*, 194 SCRA 308). Defendants-appellants' own conduct disproves their claim of co-ownership over the property in question. Being themselves the owner of a ten-unit apartment building along Stanford St., Cubao Quezon City, defendants-appellants, in a letter of demand to vacate addressed to their tenants (Exhibits "P", "P-1" and "P-2") in said apartment, admitted that the house and lot located at No. 979 Aurora Blvd., Quezon City where they were residing did not belong to them. Also, when they applied for a permit to repair the subject property in 1977, they stated that the property belonged to and was registered in the name of Natividad P. Nazareno. Among the documents submitted to support their application for a building permit was a copy of TCT No. 162738 of the Registry of Deeds of Quezon City in the name of Natividad Nazareno (Exhibit "O" and submarkings; tsn March 15, 1985, pp. 4-5).[27]

To be sure, that case was for recovery of possession based on ownership of Lot 3-B. The parties in that case were Maximino, Jr., as plaintiff, and the spouses Romeo and Eliza, as defendants. On the other hand, the parties in the present case for annulment of sale are the estate of Maximino, Sr., as plaintiff, and Natividad and Maximino, Jr., as defendants. Romeo and Eliza were named third-party defendants after a third-party complaint was filed by Natividad and Maximino, Jr. As already stated, however, this third-party complaint concerned Lot 3, and not Lot 3-B.

The estate of a deceased person is a juridical entity that has a personality of its own.[28] Though Romeo represented at one time the estate of Maximino, Sr., the latter has a separate and distinct personality from the former. Hence, the judgment in CA-GR CV No. 12932 regarding the ownership of Maximino, Jr. over Lot 3-B binds Romeo and Eliza only, and not the estate of Maximino, Sr., which also has a right to recover properties which were wrongfully disposed.

Furthermore, Natividad's title was clearly not an issue in the first case. In other words, the title to the other five lots subject of the present deed of sale was not in issue in that case. If the first case resolved anything, it was the ownership of Maximino, Jr. over Lot 3-B alone.

Third. Petitioners allege that, as shown by several deeds of sale executed by Maximino, Sr. and Aurea during their lifetime, the intention to dispose of their real properties is clear. Consequently, they argue that the Deed of Sale of January 29, 1970 should also be deemed valid.

This is a non-sequitur. The fact that other properties had allegedly been sold by the spouses Maximino, Sr. and

Aurea does not necessarily show that the Deed of Sale made on January 29, 1970 is valid.

Romeo does not dispute that their parents had executed deeds of sale. The question, however, is whether these sales were made for a consideration. The trial court and the Court of Appeals found that the Nazareno spouses transferred their properties to their children by fictitious sales in order to avoid the payment of inheritance taxes.

Indeed, it was found both by the trial court and by the Court of Appeals that Natividad had no means to pay for the six lots subject of the Deed of Sale.

All these convince the Court that Natividad had no means to pay for all the lots she purportedly purchased from her parents. What is more, Romeo's admission that he did not pay for the transfer to him of lots 3 and 25-L despite the considerations stated in the deed of sale is a declaration against interest and must ring with resounding truth. The question is, why should Natividad be treated any differently, i.e., with consideration for the sale to her, when she is admittedly the closest to her parents and the one staying with them and managing their affairs? It just seems without reason. Anyway, the Court is convinced that the questioned Deed of Sale dated January 29, 1970 (Exh. "A" or "1") is simulated for lack of consideration, and therefore ineffective and void.[29]

In affirming this ruling, the Court of Appeals said:

Facts and circumstances indicate badges of a simulated sale which make the Deed of Absolute Sale dated 29 January 1970 void and of no effect. In the case of *Suntay vs. Court of Appeals* (251 SCRA 430 [1995]), the Supreme Court held that badges of simulation make a deed of sale null and void since parties thereto enter into a transaction to which they did not intend to be legally bound.

It appears that it was the practice in the Nazareno family to make simulated transfers of ownership of real properties to their children in order to avoid the payment of inheritance taxes. Per the testimony of Romeo, he acquired Lot 25-L from his parents through a fictitious or simulated sale wherein no consideration was paid by him. He even truthfully admitted that the sale of Lot 3 to him on 04 July 1969 (Deed of Absolute Sale, Records, Vol. II, p. 453) likewise had no consideration. This document was signed by the spouses Max, Sr. and Aurea as vendors while defendant-appellant Natividad signed as witness.[30]

Fourth. Petitioners argue further:

The Deed of Absolute Sale dated January 29, 1970 is an indivisible contract founded on an indivisible obligation. As such, it being indivisible, it can not be annulled by only one of them. And since this suit was filed only by the estate of Maximino A. Nazareno, Sr. without including the estate of Aurea Poblete, the present suit must fail. The estate of Maximino A. Nazareno, Sr. can not cause its annulment while its validity is sustained by the estate of Aurea Poblete.[31]

An obligation is indivisible when it cannot be validly performed in parts, whatever may be the nature of the thing which is the object thereof. The indivisibility refers to the prestation and not to the object thereof.[32] In the present case, the Deed of Sale of January 29, 1970 supposedly conveyed the six lots to Natividad. The obligation is clearly indivisible because the performance of the contract cannot be done in parts, otherwise the value of what is transferred is diminished. Petitioners are therefore mistaken in basing the indivisibility of a contract on the number of obligors.

In any case, if petitioners' only point is that the estate of Maximino, Sr. alone cannot contest the validity of the Deed of Sale because the estate of Aurea has not yet been settled, the argument would nonetheless be without merit. The validity of the contract can be questioned by anyone affected by it.[33] A void contract is inexistent from the beginning. Hence, even if the estate of Maximino, Sr. alone contests the validity of the sale, the outcome of the suit will bind the estate of Aurea as if no sale took place at all.

Fifth. As to the third-party complaint concerning Lot 3, we find that this has been passed upon by the trial court and the Court of Appeals. As Romeo admitted, no consideration was paid by him to his parents for the Deed of Sale. Therefore, the sale was void for having been simulated. Natividad never acquired ownership over the property because the Deed of Sale in her favor is also void for being without consideration and title to Lot 3 cannot be issued in her name.

Nonetheless, it cannot be denied that Maximino, Sr. intended to give the six Quezon City lots to Natividad. As Romeo testified, their parents executed the Deed of Sale in favor of Natividad because the latter was the only "female and the only unmarried member of the family." [34] She was thus entrusted with the real properties in behalf of her siblings. As she herself admitted, she intended to convey Lots 10 and 11 to Jose in the event the latter returned from abroad. There was thus an implied trust constituted in her favor. Art. 1449 of the Civil Code states:

There is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he nevertheless is either to have no beneficial interest or only a part thereof.

There being an implied trust, the lots in question are therefore subject to collation in accordance with Art. 1061 which states:

Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition.

As held by the trial court, the sale of Lots 13 and 14 to Ros-Alva Marketing, Corp. on April 20, 1979 [35] will have to be upheld for Ros-Alva Marketing is an innocent purchaser for value which relied on the title of Natividad. The rule is settled that "every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property." [36]

WHEREFORE, the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

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

Buena, J., no part.

[1] Per Justice Buenaventura J. Guerrero and concurred in by Justice Arturo B. Buena (now Associate Justice of the Supreme Court) and Justice Portia Aliño-Hormachuelos.

[2] Rollo, pp. 170-173.

[3] Records, p. 567.

[4] This was alleged by Natividad Nazareno in her third-party complaint. No copy of the TCT was presented in court; Rollo, p. 55.

[5] Records, p. 563.

- [6] Id., p. 564.
- [7] Id., p. 565.
- [8] Id., pp. 11-12.
- [9] Id., p. 568.
- [10] Rollo, p. 72.
- [11] Id., p. 49.
- [12] Id., p. 55.
- [13] Records, p. 450.
- [14] Id., p. 446.
- [15] Rollo, pp. 165-166.
- [16] Records, pp. 579-580.
- [17] See Records, p. 453.
- [18] TSN, pp. 31-32, April 10, 1991.
- [19] Rollo, pp. 242-243.
- [20] Records, pp. 11-12.
- [21] Rollo, p. 104.
- [22] Id., pp. 107-108.
- [23] CA Decision, p. 17; Rollo, p. 142.
- [24] Rollo, pp. 28-30.
- [25] Fortune Motors (Phils.) Corp. v. Court of Appeals, 267 SCRA 653, 669 (1997).

[26] 251 SCRA 430, 452 (1995).

- [27] Rollo, pp. 82-83.
- [28] Limjoco v. Intestate Estate of Fragante, 80 Phil. 776 (1948).
- [29] Rollo, p. 103.
- [30] Id., p. 140.
- [31] Id., p. 44.

[32] 4 A. TOLENTINO, CIVIL CODE OF THE PHILIPPINES, 254 (1991).

- [33] Id., p. 632.
- [34] Rollo, p. 94.
- [35] Records, pp. 658-659.

[36] Cruz v. Court of Appeals, 281 SCRA 491, 496 (1997).

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