

GREGORIO F. AVERIA AND SYLVANNA A. VERGARA, REPRESENTING THE ABSENTEE HEIR TERESA AVERIA, PETITIONERS, VS. DOMINGO AVERIA, ANGEL AVERIA, FELIPE AVERIA, AND THE HEIRS OF FELIMON ...

G.R. No. 141877. August 13, 2004

Ponente: CARPIO MORALES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-141877/>

CARPIO MORALES, J.:

Macaria Francisco (Macaria) and Marcos Averia contracted marriage which bore six issues, namely: Gregorio, Teresa, Domingo, Angel, Felipe and Felimon.

Macaria was widowed and she contracted a second marriage with Roberto Romero (Romero) which bore no issue.

Romero died on February 28, 1968,[1] leaving three adjoining residential lots located at Sampaloc, Manila.

In a Deed of Extrajudicial Partition and Summary Settlement of the Estate of Romero, the house and lot containing 150 square meters at 725 Extremadura Street, Sampaloc was apportioned to Macaria.

Transfer Certificate of Title (TCT) No. 93310 covering the Extremadura property was accordingly issued in the name of Macaria.[2]

Alleging that fraud was employed by her co-heirs in the partition of the estate of Romero, Macaria filed on June 1, 1970 an action for annulment of title and damages before the Court of First Instance of Manila against her co-heirs Domingo Viray, et al., docketed as Civil Case No. 79955. Macaria was represented in the case by Atty. Mario C. R. Domingo. The case was pending litigation for about ten years until the decision of the Court of Appeals which adjudged Macaria as entitled to an additional 30 square meters of the estate of Romero became final and executory.

Macaria's son Gregorio and his family and daughter Teresa's family lived with her at Extremadura until her death on March 28, 1983.[3]

Close to six years after Macaria's demise or on January 19, 1989, her children Domingo, Angel and Felipe, along with Susan Pelayo vda. de Averia (widow of Macaria's deceased son Felimon), filed before the Regional Trial Court (RTC) of Manila a complaint against their brother Gregorio and niece Sylvanna Vergara "representing her absentee mother" Teresa Averia, for judicial partition of the Extremadura property inclusive of the 30 square meters judicially awarded.[4] The case which was docketed as Civil Case No. 89-47554 is now the subject of the present decision.

The defendants Gregorio and Sylvanna Vergara, in their February 8, 1989 Answer to the Complaint, countered that Gregorio and his late wife Agripina spent for the litigation expenses in Civil Case No. 79955, upon the request of Macaria, and the couple spent not less P20,000.00 for the purpose "which amount due to the inflation of the Philippine peso is now equivalent to more or less P200,000.00;" that from 1974 to 1983, Macaria was

bedridden and it was Gregorio's wife Agripina who nursed and took care of her; that before Macaria died, she in consideration of the court and other expenses which were defrayed by Gregorio and his wife in prosecuting Civil Case No. 79955 and of "the kindness of the said couple in caring for her," verbally sold to the spouses Gregorio and Agripina one-half ($\frac{1}{2}$) of her Extremadura property.

Gregorio and Sylvanna further countered that the plaintiff Domingo sold and assigned to the spouses Gregorio and Agripina his one sixth ($\frac{1}{6}$) share in the remaining $\frac{1}{2}$ portion of the Extremadura property.

Gregorio and Sylvanna concluded in their Answer that the plaintiffs are not co-owners of the Extremadura property as $\frac{1}{2}$ thereof is solely owned by Gregorio and $\frac{1}{6}$ of the other half representing Domingo's share thereof had already been sold and assigned by him (Domingo) to Gregorio and his wife who died on May 20, 1987.[5]

During the pendency of the case or on June 7, 1989, Macaria's son Felipe executed a Waiver-Affidavit[6] waiving his "share" in the property subject of litigation in favor of his co-heirs.

After trial, the trial court, Branch 31 RTC of Manila, rendered a decision of July 19, 1991[7] crediting the version of the defendants in this wise, quoted verbatim:

The defendant Gregorio Averia, Sr. had established that he had paid plaintiff Domingo Averia P10,000.00 although denied by the latter but Domingo Averia did not deny receiving the amount of P5,000.00 on July 10, 1983 given by Gregorio Averia's wife Agrifina. According to the testimony of defendant's witness, plaintiff Domingo Averia sold on July 10, 1983 his inheritance share in the property [consisting of a] house and lot located at 725 Extremadura because he was in . . . need of money and that he was paid P5,000.00 on July 10, 1983 by Agrifina Averia and another P5,000.00 by Major Gregorio Averia inside his room at the Makati Police Department three (3) days later. The reason why Domingo Averia became insistent in claiming his inheritance is the fact that Gregorio Averia refused the request of Domingo Averia and his children to occupy the portion of subject house which was sold to him by their mother and it was for this reason that they sought the assistance of the Citizens Legal Assistance Office (CLAO), Atty. Benjamin Roxas in writing defendant Gregorio Averia to allow him (Domingo Averia) to occupy a portion of subject house but plaintiff Domingo Averia did not tell his brothers and sisters that he had already sold his $\frac{1}{6}$ share of the inheritance although verbally in favor of Gregorio Averia and his wife.

In the light of the foregoing, the Court, after a circumspect assessment of the evidence presented by both parties, hereby declares, that defendant Gregorio Averia then a major of police precinct in Makati was the person responsible for the expenses in litigation in Civil Case No. 79955, involving the property and their mother had indeed awarded him with $\frac{1}{2}$ portion of the property and that Domingo Averia sold $\frac{1}{6}$ of [his] share of the remaining $\frac{1}{2}$ portion of the property to defendant Gregorio. (Underscoring supplied)

Accordingly, the trial court disposed as follows, quoted verbatim:

WHEREFORE, the remaining $\frac{5}{6}$ of $\frac{1}{2}$ of the property may still be subject of partition among the remaining heirs but the summary settlement of the remaining estate of the $\frac{5}{6}$ remaining portion of the estate . . . may be sold and the proceeds thereof be distributed among the heirs in accordance with the aliquot portions of each and every heir of the deceased Macaria Francisco.

Both parties are hereby ordered to shoulder their respective expenses for attorney's fees and litigation costs. (Underscoring supplied)

On appeal to the Court of Appeals (CA) wherein the plaintiffs Domingo et al. assigned two errors, to wit:

- THE TRIAL COURT ERRED IN ITS FINDING THAT THERE WAS A SALE OF ONE-HALF OF THE DECEASED MACARIA F. AVERIA'S INTEREST AND OWNERSHIP OVER THE SUBJECT PROPERTY IN FAVOR OF DEFENDANT-APPELLEE GREGORIO AVERIA.

- THE TRIAL COURT ERRED IN ALLOWING THE RECEPTION OF PAROL EVIDENCE TO THE EFFECT THAT PLAINTIFF-APPELLANT DOMINGO AVERIA HAD ALREADY DISPOSED OF HIS ONE SIXTH (1/6) SHARE OF THE SUBJECT PROPERTY IN FAVOR OF DEFENDANT-APPELLEE GREGORIO AVERIA[8] (Emphasis supplied),

the appellate court reversed the decision of the trial court.

In reversing the trial court, the appellate court, noting that the alleged transfers made by Macaria and Domingo in favor of Gregorio were bereft of any written memoranda, held that it was error for the trial court to rely solely on the evidence adduced by the defendants consisting of the testimonies of Gregorio, Veronica Bautista, Sylvanna Vergara Clutario, Atty. Mario C.R. Domingo, Felimon Dagondon and Gregorio Averia, Jr. The CA explained its ruling in this wise:

[T]he alleged conveyances purportedly made by Macaria Francisco and plaintiff-appellant Domingo Averia are unenforceable as the requirements under the Statute of Frauds have not been complied with. Article 1403, 2(e) of the New Civil Code is explicit:

Art. 1403. The following contracts are unenforceable, unless they are ratified:

(1) x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement thereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party charged, or by this agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

(a) x x x;

(b) x x x;

(e) an agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

(f) x x x”

The two (2) transactions in question being agreements for the sale of real property or of an interest therein are in clear contravention of the prescription that it must be in writing and subscribed by the party charged or by an agent thereof. Hence, the strong insistence by defendants-appellees on the verbal conveyances cannot be made the basis for the alleged ownership over the undivided interests claimed by Gregorio Averia.

The parol evidence upon which the trial court anchored its award in favor of defendant-appellee Gregorio Averia is irregular as such kind of evidence is foreclosed by Article 1403 of the Civil Code that no evidence of the alleged agreements can be received without the writing of secondary evidence which embodies the sale of the real property. The introduction of the testimonies of Gregorio Averia’s witnesses were timely objected to by plaintiffs-appellants. Since the testimonies of defendants-appellees’ witnesses are inadmissible, then such exclusion has pulled the rug under the assailed decision of the trial court and it has no more leg to stand on.

In the vain attempt to salvage the situation, defendants-appellees however argue that the Article 1403 or the Statute of Frauds does not apply because the same only refers to purely executory contracts and not to partially or completely executed contracts.

This contention is untenable. It was not amply demonstrated how such alleged transfers were executed since plaintiffs-appellants have vigorously objected and opposed the claims of ownership by defendants-appellees. He who asserts a fact or the affirmative of an issue has the burden of proving it. Defendants-appellees miserably

failed in this respect.

While this Court cannot discount the fact that either defendant-appellee Gregorio Averia or plaintiff-appellant Domingo Averia may have valid claims against the estate of Macaria Francsico, such matter can best be threshed out in the proceedings for partition before the court a quo bearing in mind that such partition is subject to the payment of the debts of the deceased under Article 1078 of the Civil Code.[9] (Citations omitted; Emphasis and underscoring supplied)

The appellate court thus remanded the case to the trial court.

WHEREFORE, the decision dated July 19, 1991 is reversed and set aside. The case is remanded to the court a quo which is directed to effect the partition of the subject property or if not, possible, sell the entire lot and distribute the proceeds of the sale based on equal shares among the children of the late Macaria Francisco after debts of the said deceased are paid or settled pursuant to Article 1078 of the Civil Code.[10] (Underscoring supplied)

Gregorio and Sylvanna's motion for reconsideration having been denied by the appellate court, they lodged the Petition for Review on Certiorari at bar upon the following assignment of errors:

- THE COURT OF APPEALS (SECOND DIVISION) ERRED IN ITS FINDING THAT THERE WAS NO SALE OF ONE-HALF (1/2) OF THE DECEASED MACARIA F. AVERIA'S INTEREST AND OWNERSHIP OVER THE SUBJECT PROPERTY IN FAVOR OF PETITIONER GREGORIO F. AVERIA.
- THE COURT OF APPEALS (SECOND DIVISION) ERRED IN ITS FINDING THAT THE RECEPTION OF PAROL EVIDENCE TO THE EFFECT THAT RESPONDENT DOMINGO AVERIA HAD ALREADY SOLD HIS ONE SIXTH (1/6) SHARE IN THE SUBJECT PROPERTY IN FAVOR OF PETITIONER GREGORIO AVERIA IS NOT IN ACCORDANCE WITH LAW.[11]

Petitioners contend that contrary to the findings of the Court of Appeals, they were able to amply establish, by the testimonies of credible witnesses, the conveyances to Gregorio of ½ of the Sampaloc property and 1/6 of the remaining half representing the share of Domingo.[12]

With respect to the application by the appellate court of the Statute of Frauds, petitioners contend that the same refers only to purely executory contracts and not to partially or completely executed contracts as in the instant case. The finding of the CA that the testimonies of petitioners' witnesses were timely objected to by respondents is not, petitioners insist, borne out in the records of the case except with respect to the testimony of Gregorio.[13]

Petitioners thus conclude that respondents waived any objection to the admission of parol evidence, hence, it is admissible and enforceable[14] following Article 1405[15] of the Civil Code.[16]

The Court finds for petitioner.

Indeed, except for the testimony of petitioner Gregorio bearing on the verbal sale to him by Macaria of the property, the testimonies of petitioners' witnesses Sylvanna Vergara Clutario and Flora Lazaro Rivera bearing on the same matter were not objected to by respondents. Just as the testimonies of Gregorio, Jr. and Veronica Bautista bearing on the receipt by respondent Domingo on July 23, 1983 from Gregorio's wife of P5,000.00 representing partial payment of the P10,000.00 valuation of his (Domingo's) 1/6 share in the property, and of the testimony of Felimon Dagondon bearing on the receipt by Domingo of P5,000.00 from Gregorio were not objected to. Following Article 1405 of the Civil Code,[17] the contracts which infringed the Statute of Frauds were ratified by the failure to object to the presentation of parol evidence, hence, enforceable.

ARTICLE 1403. The following contracts are unenforceable, unless they are ratified:

x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

x x x

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

x x x (Emphasis and underscoring supplied),

Contrary then to the finding of the CA, the admission of parol evidence upon which the trial court anchored its decision in favor of respondents is not irregular and is not foreclosed by Article 1405.

In any event, the Statute of Frauds applies only to executory contracts and not to contracts which are either partially or totally performed.[18] In the case at bar, petitioners claimed that there was total performance of the contracts, full payment of the objects thereof having already been made and the vendee Gregorio having, even after Macaria's death in 1983, continued to occupy the property until and after the filing on January 19, 1989 of the complaint subject of the case at bar as in fact he is still occupying it.

In proving the fact of partial or total performance, oral evidence may be received as what the trial court in the case at bar did. Noted civilist Arturo M. Tolentino elucidates on the matter:

The statute of frauds is not applicable to contracts which are either totally or partially performed, on the theory that there is a wide field for the commission of frauds in executory contracts which can only be prevented by requiring them to be in writing, a fact which is reduced to a minimum in executed contracts because the intention of the parties becomes apparent by their execution, and execution concludes, in most cases, the rights of the parties. However it is not enough for a party to allege partial performance in order to render the Statute of Frauds inapplicable; such partial performance must be duly proved. But neither is such party required to establish such partial performance by documentary proof before he could have the opportunity to introduce oral testimony on the transaction. The partial performance may be proved by either documentary or oral evidence.[19] (Emphasis, underscoring and italics supplied)

The testimonies of petitioners' witnesses being credible and straightforward, the trial court did not err in giving them credence.

The testimony of Sylvana Vergara Clutario, daughter of Teresa, in fact was more than sufficient to prove the conveyance of half of the subject property by Macaria to Gregorio.

ATTY. DOMINGO:

Q:

Are you the same Sylvana Vergara representing the defendant Teresa Averia in this case?

WITNESS:

A:

Yes, sir.

Q:

Now on February 28, 1972, about 5:30 in the afternoon, where were you?

A:

As far as I can remember, I was inside my residence at 725 Extremadura at that date, and time.

Q:

On that date and time, where were you residing?

A:

At said address, 725 Extremadura Street, that time and date at 5:30 in the afternoon.

Q:

Who were your companions if you have any?

A:

I was there with my brothers and sisters and Uncle Gregorio and Auntie Agripina and the children and my grand mother and also the lady who is leading in the prayers because on that date it is the anniversary of the death of my grandfather.

Q:

What is the name of your grandmother?

A:

Macaria Averia, sir.

Q:

Now, this Gregorio Averia whom you identified to be your Uncle, is he the same Gregorio Averia who is also the defendant in this case?

WITNESS:

A:

The same, sir.

What is the name of your grandfather whom you said whose death anniversary you are then celebrating on that date?

Roberto Romero, sir.

Q:

What actually you were doing that time 5:30?

A:

We had a gathering and merienda in recollection of the celebration (sic) of the death of my grandfather, sir.

Q:

When you said you were eating then, where were you eating then?

A:

It was beside my grandmother.

Q:

Where?

A:

At the dining room, sir.

Q:

So you were sitting at the dining table all of you?

A:

Yes, sir the others were a little bit near the table.

Q:

Who were seated in the dining table?

A:

The Spouses Gregorio and Agripina, my sister Beth and my cousins and my Lola Macaria.

Q:

When you were then seated in taking that ginatan as you stated what transpired?

A:

Somebody called up and the one who called up was the Secretary of a lawyer and they were asking for [payment of] expenses in connection with . . . [Criminal Case No. 79955].

Q:

You said that it was Agripina who was the one who answered that telephone call. After answering it, what did she say to anyone seated in that table?

A:

Agripina said if Gregorio has some money, he will pay them but Gregorio said he will be responsible for the expenses.

Q:

Did you come to know how much was amount being asked?

A:

P500.00, sir.

Q:

What else happened after Gregorio said that he would answer for the expenses to be sent to the lawyer?

A:

My Lola said that she was embarrassed and ashamed because at that time she did not have any money and it was the couple who was taking the expenses of the case.

Q:

When you said “Lola,” you are referring to Macaria Averia?

A:

Yes, sir.

Q:

What else transpired?

A:

Because of her embarrassment, she told [them that] one half (1/2) of the House and Lot will be given to the couple to cover the expenses of the case.

ATTY. DOMINGO:

Q:

To whom did your grandmother say this?

A:

Well, she said that to Gregorio and Agripina and Gregorio told her, if that is what you wish, I will agree to your proposal.

Q:

What was the reply of your grand mother?

A:

My Lola told Gregorio that since you agree, you better prepare all the documents and we will make ready the documents for the division or partition.

Q:

Do you know what House and Lot one half (1/2) of which your grand mother was given (sic) to your Uncle and Auntie . . . ?

A:

She is referring to the House and Lot where I used to live before.

Q:

You are referring to the House and Lot located at 725 Extremadura Street, Sampaloc, Manila.

A:

Yes, sir.

x x x[20] (Emphasis and underscoring supplied)

Not only on account of Sylvana’s manner of testifying that her testimony should be given weight. Her testimony was against the interest of her mother Teresa whom she represented, her mother being also an heir of Macaria. If the transfer by Macaria to Gregorio of ½ of the property is upheld as valid and enforceable, then the share of the other heirs including Sylvanna’s mother would considerably be reduced.

That Atty. Mario C. R. Domingo who was admittedly Macaria's counsel in Civil Case No. 79955 (which, as priorly reflected, entailed a period of ten years in court), affirmed on the witness stand that Gregorio and his wife were the ones who paid for his attorney's fees amounting to P16,000.00[21] should no doubt strongly lend credence to Gregorio's claim to that effect.

As to the sale of Domingo's 1/6 share to Gregorio, petitioners were able to establish said transaction by parol evidence, consisting of the testimonies of Gregorio Averia, Jr.,[22] Veronica Averia[23] and Felimon Dagondon[24] the presentation of which was, it bears repeating, not objected to.

Albeit Domingo never denied having received the total amount of P10,000.00 from Gregorio and his wife, he denied having sold to Gregorio his interest over the property. Such disclaimer cannot, however, prevail over the categorical, positive statements of petitioners' above-named witnesses.

In sum, not only did petitioners' witnesses prove, by their testimonies, the forging of the contracts of sale or assignment. They proved the full performance or execution of the contracts as well.

WHEREFORE, the petition is hereby GRANTED. The January 31, 2000 Decision of the Court of Appeals in CA-G.R. No. 44704 is hereby SET ASIDE.

The case is hereby remanded to the trial court, Branch 31 of the RTC of Manila, for appropriate action, following Section 2 of Rule 69 of the Rules of Civil Procedure.

SO ORDERED.

Panganiban, (Chairman), and Corona, JJ., concur.
Sandoval-Gutierrez, J., on leave.

[1] TSN, August 9, 1990 at 4.

[2] Records at 58.

[3] Id. at 8.

[4] Id. at 1-3.

[5] TSN, April 25, 1990 at 4.

[6] Records at 21.

[7] Id. at 111-114.

[8] Court of Appeals Rollo at 33.

[9] Rollo at 25-27.

[10] Id. at 28.

[11] Id. at 13-14.

[12] Id. at 15-16.

[13] Id. at 17.

[14] Id. at 15-17.

[15] ARTICLE 1405. Contracts infringing the Statute of Frauds, referred to in No. 2 of Article 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefits under them.

[16] Rollo at 17.

[17] Vide note 15.

[18] Alfredo v. Borrás, 404 SCRA 145, 158 (2003), Cordial v. Miranda, 348 SCRA 158, 171 (2000). (citations omitted)

[19] ARTURO M. TOLENTINO, IV CIVIL CODE OF THE PHILIPPINES, 1997 ed. 618-619 citing Pascual v. Realty Investment, Inc., G.R. No. L-4002, May 12, 1952, Khan, et al. v. Asuncion, et al., 19 SCRA 996, Iñigo v. Estate of Adriana Manaloto, etc., 21 SCRA 247, Carbonnel v. Poncio, et al., (S.C.) 55 Off. Gaz. 2415, April, 1959.

[20] TSN, March 15, 1990 at 4-7.

[21] TSN, September 4, 1990 at 5.

[22] TSN, January 9, 1990 at 2-11.

[23] TSN, January 25, 1990 at 4-8.

[24] TSN, February 22, 1990 at 5-9.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

Start free at <https://batas.org>

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

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

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