

**LEONOR CAMCAM, JOSE, FORTUNATO, VIRGINIA, GLORIA,  
FLORENDO, DELFIN, RODRIGO, LEUTERIO, NARCISO, ONOFRE,  
ZENAIDA, AURELIA, TEOFILA, FELICIDAD, MERCEDES, LYDIA,  
ALFREDO, BIENVENID...**

*G.R. No. 142977. September 30, 2008*

Ponente: CARPIO MORALES, J.

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**CARPIO MORALES, J.:**

Petitioner Leonor Camcam (Leonor) and her husband Laureano Salvador (Laureano) were the registered owners of two parcels of land, Lot Nos. 19554 and 18738 of the Cadastral Survey of San Carlos, Pangasinan, located in the Barrio of Basista, San Carlos, Pangasinan.

Laureano died intestate on December 9, 1941. He was survived by his wife-petitioner Leonor; his brothers Agapito and petitioners Jose and Fortunato, all surnamed Salvador; and the heirs of his deceased brother Luis Salvador (Luis), namely, petitioners Virginia, Gloria, Florendo, Delfin, Rodrigo, Eleuterio, Narciso, Onofre, Zenaida, and Aurelia, all surnamed Salvador.

On February 9, 1983, Leonor, together with her brothers-in-law Agapito, Jose, Fortunato, and Luis' heirs, filed before the Regional Trial Court of San Carlos City, Pangasinan a Complaint,[1] docketed as Civil Case No. SCC-833, against respondent Arcadio Frias (Frias), for annulment of the following documents executed by Leonor in Frias' favor covering Lot Nos. 19554 and 18738:

- November 4, 1982 Deed of Adjudication with Sale of the entire Lot No. 19554 and ½ of Lot No. 18738, for a P11,000 consideration signed by Leonor (Exhibit "B"/"1");[2]
- November 4, 1982 Deed of Extra-Judicial Partition and Sale of "ONE-HALF (½) portion EACH [of the two lots] together with [Leonor's] conjugal share of ONE-HALF (½) EACH of the [two lots] with all the improvements thereon" for a P45,000 consideration, signed by Leonor (Exhibit "A"/"3");[3] and
- November 23, 1982 Deed of Absolute Sale of the other half of Lot No. 18738, for a consideration of P3,000, signed by Leonor (Exhibit "C"/"2").[4]

Before the trial court, petitioners advanced the following version of the case:

In November 1982, Frias offered to purchase the two lots from Leonor. Leonor, however, was only willing to enter into a sale with right of repurchase within five years. Frias agreed to Leonor's condition but he deceived her into signing the Deed of Adjudication-Exhibit "B"/"1," after which he paid her P9,000 out of the P11,000 consideration, he promising that he would settle the balance of P2,000 before the end of the month.

In the latter part of November 1982, Frias, instead of delivering the balance of P2,000, again deceived Leonor into signing another document, the Deed of Absolute Sale-Exhibit "C"/"2," he telling her that since two lots were involved, she had to sign another instrument pertaining to the other lot.

Upon verification with Rodolfo Acosta (Acosta), the notary public who notarized Exhibits "B"/"1" and "C"/"2," petitioners discovered that the deeds Leonor signed transferred ownership of the entire area covering the two lots. They also, upon inquiry with the Register of Deeds at Lingayen, discovered that Original Certificate of Title Nos. 11634[5] and 12027[6] in the name of Leonor and her husband covering the two lots were cancelled and Transfer Certificate of Title Nos. 143752[7] and 143753[8] were in their stead issued in Frias' name. Further, they discovered that Frias registered the document-Exhibit "A"/"3," which had the same date and notarial details as those of Exhibit "B"/"1."

Petitioners alleged that assuming that the documents are valid, it is void with respect to the shares of Leonor's co-heirs-co-petitioners as they were conveyed without their knowledge and participation.

They thus prayed for judgment

(1)

Declaring null and void, the Deed of Adjudication with Sale dated November 4, 1982 [Exhibit "B"/"1"], and the Deed of Absolute Sale dated November 23, 1982 [Exhibit "C"/"2"] on the ground that the said documents did not reflect the true intention of the parties x x x, moreover, the shares of the plaintiffs, other than plaintiff Camcam, were included without their knowledge, participation and consent x x x;

(2)

Declaring null and void, the Deed of Extrajudicial Partition and Sale dated November 4, 1982 [Exhibit "A"/"3"] based on the fact that it is absolutely fictitious and simulated x x x;

(3)

That as a consequence of the nullity of [Exhibit "A"/"3"], TCT Nos. 143752 and 143753 be declared null and void and ordering the Register of Deeds of Lingayen, Pangasinan to cancel said transfer certificates of titles issued in the name of defendant Frias and the annotations on OCT Nos. 11634 and 12027 relative to the cancellation be cancelled; or, in the alternative, the defendant Frias xxx be ordered to execute a deed of reconveyance over the parcels subject of this suit in favor of the plaintiffs, in the following proportion, to wit: one half (1/2) to plaintiff Camcam, and the other half shall pertain to the other plaintiffs, namely, Agapito, Jose, Fortunato and the heirs of the late Luis, all surnamed Salvador, in equal proportion;

(4)

Declaring plaintiffs Agapito, Jose, Fortunato, and the late Luis, all surnamed Salvador, the latter being represented in this suit by his heirs, as the only legitimate heirs to inherit the estate of their deceased brother, Laureano Salvador who died on December 9, 1941, thereby excluding the widow from participating xxx;

(5)

Declaring the defendant liable for actual, compensatory and moral damages to plaintiffs and litigation expenses, assessable in terms of money in such amount as will be proved in court, and to pay exemplary damages as may be assessed by the court;

(6)

Declaring the defendant liable for the attorney's fees in the amount of P10,000.00 and to pay the costs.[9] (Emphasis and underscoring supplied)

They likewise prayed for other just and equitable reliefs.[10]

Upon the other hand, Frias advanced the following version:

Leonor inherited the two lots, to the exclusion of her co-petitioners, under the old Civil Code[11] and it was she who convinced him to buy them.

Leonor later changed her mind and was willing to sell only the whole of the residential land, Lot No. 19554, and ½ of the mango and coconut land, Lot No. 18739,[12] as she was giving her brothers-in-law two weeks to buy the ½ remaining portion thereof,[13] hence, he and Leonor forged Exhibit "B"/"1." Leonor later informed him that her brothers-in-law could not buy the remaining ½ portion of Lot No. 18739, hence, he and Leonor forged Exhibit "C"/"2."[14]

After the execution of the two documents dated November 4, 1982, Frias brought them to the Municipal Building to pay taxes. When asked by an employee of the then-Ministry of Agrarian Reform how much he paid for the lots, Frias confessed to not having indicated the correct consideration on the documents because he wanted to "escape" paying taxes such as capital gains taxes. On being informed of the consequences of not reflecting the true consideration of the two lots in the documents, he had the third document, Exhibit "A"/"3," prepared which, after explaining to Leonor the reason beyond the necessity therefor, she signed in notary public Acosta's office.[15]

During the pendency of the proceedings before the trial court, Leonor's brother-in-law Agapito died and was substituted by his heirs, namely petitioners Teofila, Felicidad, Mercedes, Lydia, Alfredo, Bienvenido, Efren, Lilia, Erlinda, Melinda, Marylou, and Meriam, all surnamed Salvador.[16]

By Decision[17] of December 12, 1990, Branch 57 of the Pangasinan RTC, holding that:

x x x x

We cannot agree that Leonor Camcam signed [these] document[s] without reading them. She signed [them] and read [them] because she was one who had enough learning. x x x Besides that, Evangeline Pira, and Gertrudes Calpo signed it themselves as [witnesses according to] the testimony of Atty. Rodolfo Acosta.

x x x x

But this is true only with regards to ½ of the properties as [they are] conjugal in nature. As regards x x x the other half of the property the rights of inheritance by x x x brothers and sisters under the old law is provided thus:

Article 948. If there are brothers and sisters and nephews, who are children of brothers and sisters of the whole blood, the former shall inherit per capita, and the latter per stirpes.

Article 953. In case there are brothers or sisters or children of brothers or sisters, the widow or widower shall have a right to receive, in concurrence with the former, the portion of the inheritance in usufruct granted him or her in Article 837.

Article 837. When the testator leaves no legitimate descendants or ascendants, the surviving spouse shall be entitled to one-half of the inheritance also in usufruct[18] (The old civil code) (Emphasis and underscoring supplied),

disposed as follows:

WHEREFORE the other half [of the two lots] should be divided among the brothers and sisters and nephews and nieces by the right of intestate succession; to brothers and sisters, per capita; and the nephews and nieces per stirpes; of one-half of the property. The remaining one-half belong[s] to defendant [herein-respondent Frias].

Ordering the Register of Deeds of Lingayen, Pangasinan to cancel TCT No. 143752 and 143753 and instead issue another title, one half of the property to the brothers and sisters, per capita; and to the nieces and nephews per stirpes; the other half to the defendants.[19] (Emphasis and underscoring supplied)

On appeal,[20] the Court of Appeals, by Decision[21] of April 30, 1992, affirmed with modification the trial court's decision. Thus it disposed:

WHEREFORE, in view of the foregoing, the decision of the lower court dated December 12, 1990 is hereby AFFIRMED with MODIFICATION. One-half of the properties in question belong to defendant-appellee Arcadio Frias, by virtue of the valid sale by Leonor Camcam. The other half should be divided among the brothers, nephews and nieces of the late Laureano Salvador by right of intestate succession: to brothers per capita and to the nephews and nieces per stirpes.

THE Register of Deeds of Lingayen, Pangasinan is directed to cancel TCT Nos. 143752 and 143753 and issue the corresponding titles in accordance with the above pronouncement. The expenses of the survey should be borne equally by plaintiffs-appellants and defendant-appellee. Costs against plaintiffs-appellants.[22] (Underscoring supplied)

Their Motion for Reconsideration[23] having been denied,[24] petitioners filed the present Petition for Review on Certiorari,[25] faulting the appellate court

- . . . IN NOT DECLARING NULL AND VOID THE THREE (3) DEEDS X X X CONSIDERING THEIR PHYSICAL APPEARANCE AND CONDITIONS INDICATING STRONGLY THE IRREGULARITIES OF THEIR EXECUTION.

- [IN NOT DECLARING THAT] THE SALES WERE ILLEGAL, CONSIDERING THE OTHER PETITIONERS [,] BEING OWNERS OF THE OTHER HALF, HAVE THE PREFERENTIAL RIGHT TO PURCHASE THAT HALF PORTION INSTEAD OF PRIVATE RESPONDENT.[26]

Petitioners contend as follows:

x x x x

From the appearance of these documents, particularly the Deed of Extrajudicial Partition and Sale (Annex "A" or Exh. "A"/"3") and the Deed of Adjudication with Sale (Annex "B" or Exh. "B"/"1"), while both were notarized by the same notary public, yet they have identical notarial documentary identification, i.e., the same documentary number to be 464, same page number 44, the same book number X and the same series of 1982, and appeared to have been "sworn" before the notary public on the same date - November 4, 1982.

x x x x

Aside from the anomalous situation created by the irregularly executed deeds and advantageously employed by the private respondent, in order to conceal the apparent irregularities, the private respondent claimed that the Deed of Partition and Sale (Annex "A" or Exh. "A"/"3") dated November 4, 1982, was a consolidation deed of the Deed of Adjudication with Sale dated November 4, 1982 (Annex "B" or Exh. "B"/"1") and the Deed of Absolute Sale dated November 23, 1982 (Annex "C" or Exh. "C"/"2"). However, summing up the consideration stated in Annex "B" of P11,000.00 and the consideration stated in Annex "C" of P3,000.00, the total will naturally be P14,000.00, but the alleged [consolidation] deed (Annex "A" or Exh. "A"/"3") shows the consideration is not P14,000.00 but P45,000.00.[27]

x x x x

Assuming, without admitting, that petitioner Leonor Camcam regularly sold her one-half portion in the two parcels of land in favor of private respondent Arcadio Frias, however, considering the preferential right of the other petitioners, who are admittedly the owners of the other half portion in said parcels of land, and considering further the attendant circumstances of this case, as discussed above, the petitioners, with the exception of petitioner Leonor Camcam, should be allowed to jointly exercise their right of redemption, the consideration of which shall proportionately be based on that Deed (Annex "B" or Exh. "B"/"1") which was

published in the newspaper.[28] (Underscoring supplied)

The petition is bereft of merit.

Without passing on the merits of Frias' claim that Leonor originally sold to him ½ of Lot No. 18739 as reflected in the first November 4, 1982 document but later conveyed the remaining ½ thereof, hence, the execution of the second document bearing the same date, an irregular notarization merely reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence.[29] The irregular notarization - or, for that matter, the lack of notarization - does not thus necessarily affect the validity of the contract reflected in the document. *Tigno v. Aquino*[30] enlightens:

x x x [F]rom a civil law perspective, the absence of notarization of the Deed of Sale would not necessarily invalidate the transaction evidenced therein. Article 1358 of the Civil Code requires that the form of a contract that transmits or extinguishes real rights over immovable property should be in a public document, yet it is also an accepted rule that the failure to observe the proper form does not render the transaction invalid. Thus, it has been uniformly held that the form required in Article 1358 is not essential to the validity or enforceability of the transaction, but required merely for convenience. We have even affirmed that a sale of real property though not consigned in a public instrument or formal writing, is nevertheless valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale or real estate produces effects between the parties.[31] (Underscoring supplied)

Petitioners alleged fraud on Frias' part, hence, they had the burden of establishing the same by clear and convincing evidence.[32] This they failed to discharge.

By Leonor's account, she signed the three documents relying on Frias' word that they were deeds of "mortgage," and she did not read them because she "[did] not know how to read,"[33] When asked, however, on cross-examination about her educational attainment, Leonor answered that she finished the third year of a nursing course at San Juan de Dios Hospital.[34]

Clarifying her statement that she did not know how to read, Leonor explained that she knew how to read but her eyesight was blurred.[35] Leonor's granddaughter-witness Gertrudes Calpo (Gertrudes) who signed as witness in Exhibit "B"/"1" declared, however, that she read the contents of Exhibit "B"/"1" to Leonor,[36] thus belying petitioners' claim that Leonor signed the same without knowing its true contents.

As for Exhibit "A"/"3" which petitioners maintain is spurious, Leonor's signature therein being allegedly forged,[37] Leonor herself admitted having signed the same,[38] and this was corroborated by Gertrudes.[39]

As for Leonor's co-petitioners' invocation of their right of redemption of the share of Leonor in the lots sold to Frias, points of law, theories, issues of fact, and arguments not brought to the attention of the trial court ordinarily are not considered by a reviewing court as they cannot be raised for the first time on appeal.[40] Besides, given that petitioners already knew of the sale as early as 1983, they are guilty of laches, having raised their right of redemption for the first time in 2000 when they filed the present petition.[41]

At all events, even assuming that the invocation by Leonor's co-petitioners of their right of redemption was timely made, it cannot be considered a valid exercise thereof as it was not accompanied by a reasonable and valid tender of the entire repurchase price.[42]

WHEREFORE, the petition is, in light of the foregoing disquisition, DENIED.

**SO ORDERED.**

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

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[1] Records, Vol. I, pp. 1-9.

[2] Id. at 178.

[3] Id. at 177.

[4] Id. at 179.

[5] Exhibit "4."

[6] Exhibit "5."

[7] Exhibit "6."

[8] Exhibit "7."

[9] Id. at 7-8.

[10] Ibid.

[11] Id. at 18.

[12] TSN, October 23, 1986, pp. 12-13.

[13] Id. at 13, 16-17.

[14] Id. at 17-19.

[15] Id. at 21-27.

[16] Records, pp. 202-205.

[17] Id. at 329-332.

[18] Id. at 331.

[19] Id. at 331-332.

[20] Id. at 337.

[21] Penned by Court of Appeals Associate Justice Jainal D. Rasul, with the concurrence of Associate Justices Santiago M. Kapunan and Oscar M. Herrera. CA rollo, pp. 49-unnumbered page before p. 50.

[22] Pp. 5-6 of CA decision.

[23] CA rollo, pp. 50-56.

[24] Resolution of April 18, 2000 penned by then-Court of Appeals Associate Justice Romeo J. Callejo, Jr. with the concurrence of then-Court of Appeals Associate Justice Cancio C. Garcia and Associate Justice Martin S. Villarama, Jr. Id. at 62.

[25] Rollo, pp. 3-13.

[26] Id. at 6-7.

[27] Id. at 8-9.

[28] Id. at 12.

[29] Rules of Court, Rule 132, Section 20; Vide Soriano v. Basco, A.C. No. 6648, September 21, 2005, 470 SCRA 423, 430.

[30] G.R. No. 129416, November 25, 2004, 444 SCRA 61.

[31] Id. at 76. Citing Agasen v. Court of Appeals, 382 Phil. 391, 401 (2000); Tapeç v. Court of Appeals, G.R. No. 111952, October 26, 1994, 237 SCRA 749, 758-759; Republic v. Sandiganbayan, G.R. Nos. 108292, 108368, 108548-48, 108550, September 10, 1993, 226 SCRA 314, 322-323; Bucton v. Gabar, 154 Phil. 447, 453 (1974); Hawaiian Philippine Co. v. Hernaez, 45 Phil. 746, 749 (1924).

[32] Vide Republic v. Guerrero, G.R. No. 133168, March 28, 2006, 485 SCRA 424, 438; Sps. Morandarte v. Court of Appeals, 479 Phil. 870, 882-883 (2004).

[33] TSN, August 23, 1983, p. 13.

[34] TSN, January 25, 1984, p. 13-14.

[35] Id. at 8.

[36] TSN, August 8, 1985, pp. 14-16.

[37] Records, p. 6.

[38] TSN, August 23, 1983, pp. 25-27.

[39] TSN, August 8, 1985, p. 75.

[40] Vide Santos v. Intermediate Appellate Court, G.R. No. L-74243, November 14, 1986, 145 SCRA 592, 595.

[41] Vide Aguilar v. Aguilar, G.R. No. 141613, December 16, 2005, 478 SCRA 187, 192-194; records, pp. 1-9; CA rollo, pp. 13-35.

[42] Vide Villegas v. Court of Appeals, G.R. Nos. 111495 and 122404, August 18, 2006, 499 SCRA 276, 297-300.

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