RODOLFO FERNANDEZ AND MERCEDES CARANTO FERNANDEZ, HUSBAND AND WIFE, EDDIE C. FERNANDEZ AND LUZ FERNANDEZ, SPOUSES, PETITIONERS, VS. ROMEO FERNANDEZ, POTENCIANO FERNANDEZ, FRANCI...

G.R. No. 143256. August 28, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before Us is a petition for review on certiorari assailing the decision[1] of the respondent Court of Appeals dated December 22, 1999 affirming the decision[2] of the Regional Trial Court Branch 40, Dagupan City in an action for nullity of contracts, partition, recovery of possession and damages in favor of plaintiffs-appellees, herein respondents.

The facts as found by the respondent Court of Appeals, are as follows:[3]

> "The late Spouses Dr. Jose K. Fernandez, and Generosa A. de Venecia were the registered owners of a parcel of land located at Dagupan City covered by TCT No. T-9267 (525) consisting of 194 sq. meters, and the two-storey building constructed thereon covered by Tax Declaration 22-592-1. It is undisputed that Generosa gave birth to a baby boy named Rogelio who died when he was only twelve (12) years old as paralytic. In the testimony of Romeo Fernandez (TSN, Aug. 31, 1994, pp. 9-14) it was revealed that the late Spouses being childless by the death of their son, purchased from a certain Miliang for P20.00 a one (1) month baby boy. The boy being referred to was later on identified as Rodolfo Fernandez, the herein appellant. Appellant was taken care of by the couple and was sent to school and became a dental technician. He lived with the couple until they became old and disabled.
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> On July 20, 1982, Jose K. Fernandez died thereby leaving his wife Generosa A. de Venecia and Rodolfo Fernandez and an estate consisting of the following:
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> (a) "A parcel of land (Lot 9132, before Lot No. 444-C, of the Cadastral Survey of Dagupan, Cadastral Case No. 41, G.L.R.O. Cadastral Record No. 925), situated in the Barrio of Pantal, City of Dagupan. Bounded on the NE. by Lot No. 447; on the SE. by Lot No. 9134; on the SW. by the Arellano Street; and on the NW. by Lot No. 9131. Containing an area of One Hundred Ninety Four (194) square meters, more or less. Covered by Transfer Certificate of Title No. 525 (T-9267) Pangasinan Registry of Deeds."
>
> (b) "A two (2) storey residential building made of concrete and wood, G.I. roofing with a floor area of 154 square meters and 126 square meters of the first and second floor, respectively. Declared under Tax Decl. No. 22-592-1 and assessed therein at P26,000.00."

On August 31, 1989, appellant and Generosa de Venecia executed a Deed of Extra-judicial Partition dividing and allocating to themselves the following:

To: Generosa de Venecia Vda. De Fernandez

(a) 119.5 sq. m. located on the southwestern portion of the land;

(b) Whole residential house above-mentioned;

To: Rodolfo V. Fernandez

74.5 square meters to be taken on the northeastern portion of the land.

On the same day, Generosa de Venecia executed a Deed of Absolute Sale in favor of Eddie Fernandez, appellant's son over the following:

"A portion of One Hundred Nineteen and One-Half (119.5) Square meters including the building and/or all existing thereon to be taken from the southwestern portion of the parcel of land described as follows, to wit:

`A parcel of land (Lot No. 9132, before Lot No. 444-C, of the Cadastral Survey of Dagupan, Cadastral Case No. 41, G.L.R.O. Cadastral Record No. 925), situated in the Barrio of Pantal, City of Dagupan. Bounded on the NE. by Lot No. 447; on the SE by Lot No. 9134; on the SW. by the Arellano Street; and on the NW. by Lot No. 9131. Containing an area of One Hundred and Ninety-Four (194), Square Meters, more or less, covered by TRANSFER CERTIFICATE OF TITLE NO. 525 (T-9267) - Pangasinan Registry of Deeds" (Exh. "8", Exhibits for the Defendants)

After learning the transaction, Romeo, Potenciano, Francisco, Julita, William, Mary, Alejandro, Gerardo, Rodolfo and Gregorio, all surnamed Fernandez, being nephews and nieces of the deceased Jose K. Fernandez, their father Genaro being a brother of Jose, filed on September 21, 1994, an action to declare the Extra-Judicial Partition of Estate and Deed of Sale void ab initio (docketed as Civil Case No. 94-00016-D).

The complaint alleged that defendants (herein appellants), motivated by unmitigated greed, deliberate and malicious acts of depriving the plaintiff and other heirs (herein appellees) of the deceased spouses, without basis of heirship or any iota of rights to succession or inheritance, taking advantage of the total physical and mental incapacity of the deceased Generosa de Venecia aggravated by unlawful scheme confederated, colluded and conspired with each other in causing the fake, simulated grossly inauthentic contracts purporting to be executed on August 31, 1989 and jointly on the same date, caused the execution of the deed of absolute sale purportedly signed by Generosa de Venecia covering the same property described in the deed of extra-judicial partition and by virtue of the said acts, appellants were able to secure new land titles in their favor (Records, pp. 3-4, Complaint). Appellees thus prayed that the Deed of Extra-judicial Partition, Deed of Absolute Sale and Transfer Certificate of Title No. 54641 be declared void from the beginning.

Significantly, in their answer, defendants alleged:

"16. That the deceased Sps. Jose K. Fernandez and Generosa were husband and wife blessed with one child the herein defendant Rodolfo V. Fernandez whom they acknowledged during their lifetime. (underscoring supplied)

18. That the Deed of Extrajudicial Partition and Deed of Absolute Sale executed by the late Generosa de Venecia and defendant Rodolfo V. Fernandez which are now in question were all made with the full knowledge, consent and approval of the parties thereto and for value." (Records, pp. 20-21, Answer)."

On May 10, 1996, the Regional Trial Court rendered a decision in favor of the plaintiffs, the dispositive portion reads:[4]

"WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against the defendants;

- Declaring the Deed of Extra-Judicial Partition dated August 31, 1989 (Exh. "3"), the Deed of Absolute Sale dated August 31, 1989 (Exh. "8"), the TCT No. 54641, and the TCT No. 54693 null and void;

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- Ordering the defendants to reconvey to, and to peacefully surrender to the plaintiffs the possession of the house and lot in question;

- Ordering the defendants, jointly and severally to pay to plaintiffs the following:

(a) P50,000.00 as compensatory damages;

(b) P100,000.00 as moral damages;

(c) P20,000.00 as attorney's fees; and

(d) P2,000.00 as litigation costs.

SO ORDERED."

In so ruling, the trial court found that defendant Rodolfo Fernandez was not a legitimate nor a legally adopted child of spouses Dr. Jose Fernandez and Generosa de Venecia Fernandez, hence Rodolfo could not inherit from the spouses. Rodolfo's claim as a son of the deceased spouses Fernandez was negated by the fact that (1) he only reached high school and was told to stop studying so that he could help in the clinic of Dr. Fernandez, (2) he failed to present any birth certificate, (3) the book entitled Fercolla clan which was compiled and edited by respected people such as Ambassador Armando Fernandez, Justice Jorge Coquia and Teresita Coquia-Sison, showed the geneology of the family of Dr. Jose and Generosa Fernandez without a child; a pedigree may be admitted in evidence to prove the facts of genealogy and that entries in a family bible or other family books or charts, engravings or rings, family portraits and the like, may be received as evidence of pedigree,[5] (4) the certification issued by the Records Management and Archives Office that there was no available information about the birth of petitioner Rodolfo to the spouses Fernandez, (5) the application of Dr. Jose Fernandez for backpay certificate naming petitioner Rodolfo as his son was doubtful considering that there were blemishes or alteration in the original copy; (6) that Rodolfo's baptismal certificate was spurious and falsified since there were no available records of baptism with the parish from June 7, 1930 to August 8, 1936, while Rodolfo's baptismal certificate which was issued in 1989 showed that he was baptized on November 24, 1934. The court found that the extra-judicial partition and the deed of absolute sale were prepared and executed under abnormal, unusual and irregular circumstances which rendered the documents null and void.

Defendants Rodolfo Fernandez et. al appealed to the respondent Court of Appeals which affirmed the trial court's judgment in its assailed decision dated December 22, 1999.

In resolving the appeal, the respondent court delved into the legitimacy of defendant-appellant Rodolfo Fernandez' filiation with the deceased spouses. It found that appellants' evidence which consisted of a certificate of baptism stating that he was a child of the spouses Fernandez and the application for recognition of rights to back pay under RA 897 filed by Dr. Jose Fernandez, wherein the latter referred to Rodolfo as his son, did not acquire evidentiary weight to prove his filiation. The appellate court concluded that while baptismal certificates may be considered public documents, they were evidence only to prove the administration of the sacraments on the dates therein specified, but not the veracity of the statements or declarations made therein with respect to his kinsfolk; that while the application for back pay was a public document, it was not executed to admit the filiation of Jose K. Fernandez with Rodolfo V. Fernandez, the herein appellant; that the public document contemplated in Article 172 of the Family Code referred to the written admission of filiation embodied in a public document purposely executed as an admission of filiation and not as obtaining in this case wherein the public document was executed as an application for the recognition of rights to back pay under Republic Act No. 897. Appellants Rodolfo Fernandez et al filed their motion for reconsideration which was denied in a resolution dated May 17, 2000.[6]

Rodolfo Fernandez et al filed the instant petition for review with the following issues:

> I
>
> THE COURT OF APPEALS ERRED IN AFFIRMING THE JUDGMENT OF THE TRIAL COURT ORDERING THE DEFENDANTS, PETITIONERS HEREIN, TO RECONVEY TO, AND PEACEFULLY SURRENDER TO THE PLAINTIFFS, RESPONDENTS HEREIN, THE POSSESSION OF THE HOUSE AND LOT IN QUESTION BECAUSE THE SAID ORDER IS PALPABLY CONTRARY TO THE ADMITTED FACTS THE LAW AND JURISPRUDENCE, FOR THE FOLLOWING REASONS:
>
> (a) THE HOUSE AND LOT IN QUESTION ARE ADMITTED BY THE PARTIES TO BE CONJUGAL PROPERTIES OF THE SPOUSES DR. JOSE K. FERNANDEZ AND GENEROSA DE VENECIA, AND
>
> (b) RESPONDENTS, WHO ARE NOT RELATED TO GENEROSA DE VENECIA BY CONSANGUINITY, ARE NOT HER INTESTATE HEIRS AND CANNOT SUCCEED AB INTESTATO TO HER INTESTATE ESTATE.
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> II
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> THE COURT OF APPEALS ERRED IN AFFIRMING THE JUDGMENT OF THE TRIAL COURT DECLARING (1) THE DEED OF EXTRA-JUDICIAL PARTITION DATED AUGUST 31, 1989 (EXH. `3'), THE DEED OF ABSOLUTE SALE ALSO DATED AUGUST 31, 1989 (EXH. `8'), TCT NO. 54641, AND TCT NO. 54693 NULL AND VOID FOR THE FOLLOWING REASONS:
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> (a) IT HAS NO FACTUAL BASIS DULY ESTABLISHED BY THE EVIDENCE ON RECORD, AND
>
> (b) RESPONDENTS, NOT BEING PARTIES TO THE QUESTIONED DEEDS, HAVE NO PERSONALITY TO CONTEST THE VALIDITY OF SAID DOCUMENTS.
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> III
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> THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT THE PETITIONER RODOLFO FERNANDEZ WAS NOT THE CHILD OF SPOUSES DR. JOSE K. FERNANDEZ AND GENEROSA DE VENECIA BECAUSE
>
> (a) THE FILIATION OF PETITIONER RODOLFO FERNANDEZ COULD NOT BE COLLATERALLY ATTACKED IN AN ACTION FOR DECLARATION OF NULLITY OF DOCUMENTS, PARTITION, RECOVERY OF POSSESSION AND DAMAGES, AND;
>
> (b) THE DECISION AS AFFIRMED BY THE COURT OF APPEALS DID NOT DECLARE IN THE DISPOSITIVE PORTION THEREOF THAT PETITIONER RODOLFO FERNANDEZ IS NOT THE CHILD OF SPOUSES DR. JOSE FERNANDEZ AND GENEROSA FERNANDEZ.
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> IV
>
> THE COURT OF APPEALS ERRED IN AFFIRMING THE AWARD OF DAMAGES AND ATTORNEY'S FEES TO THE RESPONDENTS, THERE BEING NO FACTUAL BASIS IN THE AFFIRMED DECISION TO JUSTIFY SUCH AWARD.

The principal issue for resolution in this case concerns the rights of the parties to the conjugal property of the deceased spouses Fernandez.

Petitioners allege that the respondent court found the extra-judicial partition executed by petitioner Rodolfo Fernandez and Generosa Fernandez, widow of Dr. Jose Fernandez, null and void because the former allegedly failed to prove legitimate filiation to his putative father, the late Dr. Jose Fernandez. Petitioners, contend, however, that the burden of proof lies with the respondents because they were the ones contesting the filiation of

Rodolfo Fernandez. They insist that both lower courts had no power to pass upon the matter of filiation because it could not be collaterally attacked in the present action but in a separate and independent action directly impugning such filiation.

We are not persuaded.

It must be noted that the respondents' principal action was for the declaration of absolute nullity of two documents, namely: deed of extra-judicial partition and deed of absolute sale, and not an action to impugn one's legitimacy. The respondent court ruled on the filiation of petitioner Rodolfo Fernandez in order to determine Rodolfo's right to the deed of extra-judicial partition as the alleged legitimate heir of the spouses Fernandez. While we are aware that one's legitimacy can be questioned only in a direct action seasonably filed by the proper party, this doctrine has no application in the instant case considering that respondents' claim was that petitioner Rodolfo was not born to the deceased spouses Jose and Generosa Fernandez; we do not have a situation wherein they (respondents) deny that Rodolfo was a child of their uncle's wife. The case of Benitez-Badua vs. Court of Appeals,[7] which has a similar factual backdrop is instructive:

> "A careful reading of the above articles[8] will show that they do not contemplate a situation, like in the instant case, where a child is alleged not to be the child of nature or biological child of a certain couple. Rather, these articles govern a situation where a husband (or his heirs) denies as his own a child of his wife. Thus, under Article 166, it is the husband who can impugn the legitimacy of said child by proving: (1) it was physically impossible for him to have sexual intercourse, with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child; (2) that for biological or other scientific reasons, the child could not have been his child; (3) that in case of children conceived through artificial insemination, the written authorization or ratification by either parent was obtained through mistake, fraud, violence, intimidation or undue influence. Articles 170 and 171 reinforce this reading as they speak of the prescriptive period within which the husband or any of his heirs should file the action impugning the legitimacy of said child. Doubtless then, the appellate court did not err when it refused to apply these articles to the case at bench. For the case at bench is not where the heirs of the late Vicente are contending that petitioner is not his child by Isabel. Rather, their clear submission is that petitioner was not born to Vicente and Isabel. Our ruling in Cabatbat-Lim vs. Intermediate Appellate Court, 166 SCRA 451, 457 cited in the impugned decision is apropos, viz:
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> "Petitioners' recourse to Art. 263 of the New Civil Code (now Art. 170 of the Family Code) is not well taken. This legal provision refers to an action to impugn legitimacy. It is inapplicable to this case because this is not an action to impugn the legitimacy of a child, but an action of the private respondents to claim their inheritance as legal heirs of their childless deceased aunt. They do not claim that petitioner Violeta Cabatbat Lim is an illegitimate child of the deceased, but that she is not the decedent's child at all. Being neither legally adopted child, nor an acknowledged natural child, nor a child by legal fiction of Esperanza Cabatbat, Violeta is not a legal heir of the deceased.""

Thus, it is necessary to pass upon the relationship of petitioner Rodolfo Fernandez to the deceased spouses Fernandez for the purpose of determining what legal right Rodolfo has in the property subject of the extra-judicial partition. In fact, the issue of whether or not Rodolfo Fernandez was the son of the deceased spouses Jose Fernandez and Generosa de Venecia was squarely raised by petitioners in their pre-trial brief[9] filed before the trial court, hence they are now estopped from assailing the trial court's ruling on Rodolfo's status.

We agree with the respondent court when it found that petitioner Rodolfo failed to prove his filiation with the deceased spouses Fernandez. Such is a factual issue which has been thoroughly passed upon and settled both by the trial court and the appellate court. Factual findings of the Court of Appeals are conclusive on the parties and not reviewable by this Court and they carry even more weight[10] when the Court of Appeals affirms the factual findings of the trial court.[11] We accordingly find no cogent reason to disagree with the respondent court's

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evaluation of the evidence presented, thus:[12]

> "The Records Management and Archives Office is bereft of any records of the birth of appellant Rodolfo Fernandez. On October 11, 1995, it issued a certification worded as follows:
>
> "This is to certify that the Register of Births for the Municipality of Dagupan, Pangasinan in the year 1984 is not on file with the National Archives, hence, there is no available information about the birth of Rodolfo V. Fernandez alleged to have been born on November 24, 1934 to the spouses Jose K. Fernandez and Generosa de Venecia in Dagupan, Pangasinan" (Records, p. 146)

Appellant nonetheless, contends that the Application for Recognition of Back Pay Rights Under Act No. 897 is a public document and a conclusive proof of the legitimate filiation between him and the deceased spouses (Rollo, p. 41, Appellants' Brief). We do not agree.

It may be conceded that the Application for Recognition of Back Pay Rights Under Act No. 897 is a public document nevertheless, it was not executed to admit the filiation of Jose K. Fernandez with Rodolfo V. Fernandez, the herein appellant. The public document contemplated in Article 172 of the Family Code refer to the written admission of filiation embodied in a public document purposely executed as an admission of filiation and not as obtaining in this case wherein the public document was executed as an application for the recognition of rights to back pay under Republic Act No. 897. Section 23, Rule 132 of the Revised Rules on Evidence provides:

> "Sec. 32. Public documents as evidence - Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

The rule is not absolute in the sense that the contents of a public document are conclusive evidence against the contracting parties as to the truthfulness of the statements made therein. They constitute only prima facie evidence of the facts which give rise to their execution and of the date of the latter. Thus, a baptismal certificate issued by a Spanish priest under the Spanish regime constitutes prima facie evidence of the facts certified to by the parish priest from his own knowledge such as the administration of the sacrament on the day and in the place and manner set forth in the certificate; but it does not constitute proof of the statements made therein concerning the parentage of the person baptized (Francisco, Evidence, 1994 ed., p. 516, citing Garcia vs. Gajul, 53 Phil. 642; Adriano vs. de Jesus, 23 Phil. 350; Buan vs. Arquiza, 5 Phil. 193; Siguion vs. Siguion, 8 Phil. 7). Public documents are perfect evidence of the fact which give rise to their execution and of the date of the latter if the act which the officer witnessed and certified to or the date written by him are not shown to be false; but they are not conclusive evidence with respect to the truthfulness of the statements made therein by the interested parties (Martin, Rules of Court in the Philippines with Note and Comments, vol. 4, p. 577).

Corollarily, the Application for Recognition of Back Pay Rights Under Act No. 897 is only a proof that Jose K. Fernandez filed said application on June 5, 1954 in Dagupan City but it does not prove the veracity of the declaration and statement contained in the said application that concern the relationship of the applicant with herein appellant. In like manner, it is not a conclusive proof of the filiation of appellant with his alleged father, Jose K. Fernandez the contents being, only prima facie evidence of the facts stated therein.

Additionally, appellant claims that he enjoyed and possessed the status of being a legitimate child of the spouses openly and continuously until they died (Rollo, p. 42; Appellants' Brief). Open and continuous possession of the status of a legitimate child is meant the enjoyment by the child of the position and privileges usually attached to the status of a legitimate child such as bearing the paternal surname, treatment by the parents and family of the child as legitimate, constant attendance to the child's support and education, and giving the child the reputation of

being a child of his parents (Sempio-Diy, The Family Code of the Philippines, pp. 245-246). However, it must be noted that, as was held in Quismundo vs. WCC, 132 SCRA 590, possession of status of a child does not in itself constitute an acknowledgment; it is only a ground for a child to compel recognition by his assumed parent.

Lastly, to substantiate his claim of being a legitimate child appellant presented a baptismal certificate issued by Fr. Rene Mendoza of the St. John Metropolitan Cathedral of Dagupan City on August 10, 1989 stating therein that appellant is a child of the late spouses having been born on November 15, 1934 and baptized on November 24, 1934 (Exh. "1" Exhibits for the Defendants). As stated, while baptismal certificates may be considered public documents, they are evidence only to prove the administration of the sacraments on the dates therein specified, but not the veracity of the statements or declarations made therein with respect to his kinsfolk (Reyes vs. Court of Appeals, 135 SCRA 439). It may be argued that a baptismal certificate is one of the other means allowed by the Rules of Court and special laws of proving filiation but in this case, the authenticity of the baptismal certificate was doubtful when Fr. Raymundo Q. de Guzman of St. John the Evangelist Parish of Lingayen-Dagupan, Dagupan City issued a certification on October 16, 1995 attesting that the records of baptism on June 7, 1930 to August 8, 1936 were all damaged (Records, p. 148, Exh. "G"). Neither the family portrait offered in evidence establishes a sufficient proof of filiation Pictures do not constitute proof of filiation (Reyes vs. Court of Appeals) (supra). In fine, the evidence presented by appellant did not acquire evidentiary weight to prove his filiation. Consequently the Extra-Judicial Partition dated August 31, 1989 executed by appellant Rodolfo Fernandez and Generosa de Venecia is null and void."

Considering the foregoing findings, petitioner Rodolfo is not a child by nature of the spouses Fernandez and not a legal heir of Dr. Jose Fernandez , thus the subject deed of extra-judicial settlement of the estate of Dr. Jose Fernandez between Generosa vda. de Fernandez and Rodolfo is null and void insofar as Rodolfo is concerned[13] pursuant to Art.1105 of the New Civil Code which states:

> "A partition which includes a person believed to be an heir, but who is not, shall be void only with respect to such person."

Petitioners next contend that respondents admitted that the property in question was the conjugal property of the late spouses Dr. Jose Fernandez and Generosa de Venecia, thus when Dr. Jose Fernandez died intestate in 1982, his estate consisted solely of ½ pro indiviso of the conjugal property and the other half belonged to his wife Generosa de Venecia; that granting Dr. Jose Fernandez was only survived by his wife, the respondents nephews and nieces of Dr. Jose are entitled to inherit the ½ share of the decedent's estate while the ¾ share of the conjugal property will still belong to Generosa as the widow of Dr. Jose Fernandez, hence the trial court's order reconveying the possession of the subject lot and building to respondents was contrary to the admitted facts and law since respondents are not related by consanguinity to Generosa vda de Fernandez.

We agree.

Article 1001 of the Civil Code provides:

> "Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one half of the inheritance and the brothers and sisters or their children to the other half."

Generosa was the widow of Dr. Jose Fernandez and as provided in the above-quoted Article 1001, she is entitled to the ½ of the inheritance and the respondents to the other ½. In effect, ¾ pro indiviso is the share of Generosa as the surviving spouse, i.e., ½ as her share of the conjugal property estate and ½ of the remaining ½ as share as heir from her husband's estate. Thus, we find well taken the petitioners' assertion that the annulment of the extra-judicial partition between Generosa and petitioner Rodolfo does not necessarily result in respondents' having exclusive right to the conjugal property, as erroneously found by the respondent court. Generosa, during

her lifetime, had the right to enjoy and dispose of her property without other limitations than those established by law,[14] which right she exercised by executing a deed of sale in favor of petitioner Eddie Fernandez.

Petitioners assails respondents' right, not being heirs of Generosa, to question the validity of the deed of sale since the action for the annulment of contracts may only be instituted by all who are thereby obliged principally or subsidiarily.[15]

We disagree.

As a rule, a contract cannot be assailed by one who is not a party obliged principally or subsidiarily under a contract. However, when a contract prejudices the rights of a third person, he may exercise an action for nullity of the contract if he is prejudiced in his rights with respect to one of the contracting parties, and can show detriment which would positively result to him from the contract in which he had no intervention.[16] As we have discussed above, respondents are entitled to the ¼ of the entire conjugal property, ie., lot and building; however considering that widow Generosa, during her lifetime , sold the entire building to petitioner Eddie Fernandez, respondents had been deprived of their ¼ share therein, thus the deed of sale was prejudicial to the interest of respondents as regards their ¼ share in the building. Respondents therefore, have a cause of action to seek the annulment of said deed of sale.

Petitioners further allege that the respondent court erred in declaring null and void the deed of sale executed between Generosa and petitioner Eddie Fernandez concluding that the same was simulated or false and in affirming the trial court's findings that the deed was prepared and executed under abnormal, unusual and irregular circumstances without however, particularly stating the circumstances.

We agree.

Respondents allege that the deed of sale was fictitious and simulated because there was no consideration for the sale. However, this assertion was controverted by vendee petitioner Eddie Fernandez' declaration, that the money he paid for the sale came from his savings as overseas contract worker in Saudi Arabia from 1982-1989 which respondents failed to controvert by presenting evidence to the contrary. The presumption that a contract has sufficient consideration cannot be overthrown by a mere assertion that it has no consideration.[17] Under Art. 1354 of the Civil Code, consideration is presumed unless the contrary is proven.

Respondents also claim that the signature appearing in the deed of sale was not that of Generosa because she was already bedridden with both legs amputated before she died. Forgery cannot be presumed; it must be proved by clear, positive and convincing evidence[18] and whoever alleges it has the burden of proving the same;[19] a burden respondents failed to discharge. The respondents had not presented any convincing proof to override the evidentiary value of the duly notarized deed of sale. A notarial document is evidence of the facts in the clear unequivocal manner therein expressed. It has in its favor the presumption of regularity. To contradict all these, there must be evidence that is clear, convincing and more than merely preponderant.[20]

We note however, that Generosa sold the entire 2 storey building to petitioner Eddie Fernandez, i.e. she did not only sell her ¾ undivided share in the building but also the ¼ share of the respondents. We rule, that such a sale of the entire building without the consent of the respondents is not null and void as only the rights of the co-owner seller are transferred, thereby making the buyer, petitioner Eddie , a co-owner of the ¾ share of the building together with the respondents who owned the ¼ share therein.[21]

Finally, anent the issue of actual and moral damages and attorney's fees awarded by the trial court, we find them to be bereft of factual basis. A party is entitled to an adequate compensation for such pecuniary loss actually suffered by him as he has duly proven.[22] Such damages, to be recoverable, must not only be capable of proof,

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but must actually be proved with a reasonable degree of certainty.[23] Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages.[24] The testimony of respondent Romeo Fernandez that he suffered around P100,000 actual damages was not supported by any documentary or other admissible evidence. We also agree with the petitioners that the respondent court should not have awarded moral damages in the amount of P100,000 since they also failed to show proof of moral suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. Attorney's fees should likewise be deleted for lack of factual basis and legal justification. Both the lower courts did not cite specific factual basis to justify the award of attorney's fees, which is in violation of the proscription against the imposition of a penalty on the right to litigate.[25]

WHEREFORE, premises considered, the assailed judgment is hereby Affirmed with Modification, as follows:

1. Respondents as legitimate heirs of Dr. Jose Fernandez are entitled to the ¼ share of the conjugal lot and building of the deceased spouses Jose and Generosa Fernandez who died childless and intestate;

2. The deed of extra-judicial partition is nullified insofar as the share of petitioner Rodolfo in the conjugal lot is concerned and the title issued pursuant thereto in the name of Rodolfo Fernandez;

3. Considering that the deed of sale is valid insofar as the ¾ share of Generosa sold to petitioner Eddie Fernandez, TCT No. 54693 is cancelled and a new title should be issued in the names of petitioner Eddie Fernandez and respondents as co-owners of the ¾ and ¼ shares respectively in the conjugal building.

4. The awards of actual and moral damages and attorney's fees are deleted.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

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[1] Rollo, pp 40-49; CA-G.R. CV No. 56456; Penned by Justice Candido V. Rivera, concurred in by Justices Salome A. Montoya and Conrado M. Vasquez, Jr.

[2] Rollo, 63-70; CV Case No. 94-00016 D; Penned by Judge Deodoro J. Sison.

[3] Rollo, pp. 40-43.

[4] Rollo, p.70.

[5] Section 34 Rule 130, Rules of Court.

[6] Rollo, p. 51.

[7] 229 SCRA 468.

[8] "Art. 164. Children conceived or born during the marriage of the parents are legitimate.

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child."

Art. 166. Legitimacy of a child may be impugned only on the following grounds:

1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first

120 days of the 300 days which immediately preceded the birth of the child because of:

a) the physical incapacity of the husband to have sexual intercourse with his wife;

b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or

c) serious illness of the husband, which absolutely prevented sexual intercourse.

2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband except in the instance provided in the second paragraph of Article 164; or

3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.

Art. 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

"If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier."

Art. 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding Article only in the following cases:

1) If the husband should die before the expiration of the period fixed for bringing his action;

2) If he should die after the filing of the complaint, without having desisted therefrom; or

3) If the child was born after the death of the husband."

[9] Original Records, p. 28.

[10] Meneses vs. CA, 246 SCRA 162 citing Coca Cola Bottlers Philippines, Inc. vs. CA, 229 SCRA 533.

[11] Ibid citing Binalay vs. Manalo, 195 SCRA 374.

[12] Rollo, pp.45-49.

[13] Mendoza vs. IAC,152 SCRA 445.

[14] Art. 428, Civil Code of the Philippines.

[15] Art.1397 , Civil Code of the Philippines.

[16] Baranda vs. Baranda, 150 SCRA 59 citing Teves vs. Peoples' Homesite and Housing Corporation, et al., 23 SCRA 1141.

[17] Samanilla vs. Cajucom, et al. 107 Phil. 432.

[18] Tenio-Obsequio vs.CA , 230 SCRA 550.

[19] Sumbad vs. CA, 308 SCRA 575.

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[20] Tenio-Obsequio vs. CA, supra.

[21] Bailon-Casilao vs. CA, 160 SCRA 738.

[22]Art. 2199, Civil Code.

[23] Del Mundo vs. CA, 240 SCRA 348 Refractories Corporation vs. IAC, 176 SCRA 539; Choa Tek Hee vs. Philippine Publishing Co., 34 Phil 447.

[24] Marina Properties Corp. vs. CA, 294 SCRA 273.

[25] Congregation of the Religious of the Virgin Mary vs. CA, 291 SCRA 385 citing Refractories Corporation of the Philippines vs. IAC, supra.

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