

MARILLA MAYANG CAVILE, DON C. DELA CRUZ, JOSE C. DELA CRUZ, JR., SOLON C. DELA CRUZ, JAMELA CAVILE BACOLINAO, HENRIETTA GELLEGANI CAVILE, BERNARDO CAVILE, LAWRENCE CAVILE, FRANC...

G.R. No. 148635. April 01, 2003

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review of the Decision of the Court of Appeals dated December 21, 2000 in CA-G.R. CV. No. 36617 entitled “Heirs of Clarita Cavili,[*] et al. vs. Heirs of Perfecta Cavili, et al.” reversing the Decision of the Regional Trial Court of Dumaguete City, Branch 36 in Civil Case No. 6880 for Partition, Accounting and Damages, and its Resolution dated June 28, 2001 denying the motion for reconsideration.

This case has its roots in the complaint filed by the respondents against the petitioners for partition of the properties left by their common ascendant, Bernardo Cavili.

It appears that Bernardo Cavili contracted three marriages. The first marriage was with Ines Dumat-ol with whom he had one child, Simplicia. The second was with Orfia Colalho with whom he had two children: Fortunato and Vevencia. And the third was with Tranquilina Galon with whom he had three children: Castor, Susana and Benedicta. Throughout his lifetime, Bernardo Cavili acquired six parcels of land which became the subject of the instant case.

In October 1977, the descendants of Bernardo’s first and second marriage (herein respondents) filed a complaint for partition against the descendants of his third marriage (herein petitioners). The complaint alleged, among others, that respondents and petitioners were co-owners of the properties in question, having inherited the same from Bernardo Cavili. Upon the death of Bernardo, his son by his third marriage, Castor Cavili, took possession of the properties as administrator for and in behalf of his co-owners. However, when Castor died, his children took possession of the parcels of land but no longer as administrators. They claimed the properties as well as their fruits as their own and repeatedly refused respondents’ demand for partition.

As petitioners failed to file an Answer within the reglementary period, they were declared in default and respondents were allowed to present evidence ex parte. The trial court rendered a decision on October 5, 1979 ordering the partition of the six parcels of land.[1] However, upon motion of Primitivo Cavili and Quirino Cavili who were not properly served with summons, the trial court held a new trial and allowed said parties to present evidence. Among the evidence they proffered was a Deed of Partition which appeared to have been executed by the heirs of Bernardo Cavili on April 5, 1937.[2] Giving weight to the documentary evidence presented by Primitivo Cavili and Quirino Cavili, the trial court rendered another decision on May 7, 1991 dismissing the complaint for partition.[3] The court reasoned:

“xxx xxx xxx

The court observes that there is only one important issue in this case, that is, was there already division or partition made by the co-owners of the properties left by the deceased Bernardo Cavili. All other issues are subsidiary. Partition is the division of the property or properties by those entitled to them with the desire to put an end to co-ownership. In 1937, a document of partition, marked as Exhibit “1” for the defendants, was executed, it is known as Doc. No. 41; Book No. II; Page No. 100; Series of 1937; and ratified by Notary Public Iluminado Golez; which reveals Simplicia Cavili, the only child of Bernardo Cavili of his first marriage, participated and concurred in the same partition; likewise, the children of the second marriage, were also represented and also the spouse Tranquilina Galon of the third marriage gave her concurrence as well as her legitimate children had with the deceased Bernardo Cavili. In the said document, all the parcels of land acquired during the third marriage were partitioned into two (2) parts: one part pertained to Bernardo Cavili which in turn divided by his children, namely: Simplicia Cavili, the only child of the first marriage, Lucio Cavili in representation of Fortunato Cavili eldest son in the second marriage; Vicenta Navarra in representation of Vevencia Cavili second child of the second marriage; and Susana Cavili, Castor Cavili and Benedicta Cavili, the third marriage; and the second part, or the other half, was equally divided by the three children of the third marriage, namely: Susana, Castor and Benedicta all surnamed Cavili.

That the court observed further, that in the same document of deed of partition the share of Bernardo Cavili which was up to the extent of one-half (1/2) share of the conjugal properties with Tranquilina Galon was sold to Castor Cavili for the sum of P166.00 by his legal heirs, likewise, the other one-half (1/2) share of Tranquilina Galon was sold for the same amount by her rightful heirs in favor also of Castor Cavili, who in turn took immediate possession, exercised acts of ownership and made subsequent transfers. Likewise, other heirs of Bernardo Cavili did the same act of subsequent transfers of what they had inherited just as the heirs of Tranquilina Galon also made subsequent transfer of what they succeeded as inheritance.

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Respondents appealed the case to the Court of Appeals raising the following errors:

- The court a quo erred in concluding that the properties in question were partitioned in 1937;
- The court a quo erred in admitting the Deed of Partition (Exhibit “1”); and
- The court a quo erred in dismissing the complaint.[4]

The appellate court reversed the decision of the trial court. It ruled that the trial court erred in admitting the Deed of Partition as evidence without proof of its authenticity and due execution. It held that said Deed cannot be considered as an ancient document whose authenticity and due execution need not be proved as the respondents have presented evidence that cast doubt on its authenticity and due execution. The respondents presented the testimonies of Ramona Tacang and Filomena Pareja who testified that Simplicia Cavili, one of the signatories in the Deed, resided in Mindanao from 1934 until 1947. It further observed that the supposed thumbprint of Simplicia Cavili imprinted on the document appeared more like an inkblot than a thumbmark. The Court of Appeals thus directed the trial court “to immediately appoint and constitute the necessary number of commissioners who shall expeditiously effect the partition and accounting of the subject properties in accordance with Rule 69 of the Rules of Court of the Philippines.”[5]

Hence, this petition. Petitioners pose the following issues for resolution by the Court:

- Whether or not the Honorable Court of Appeals acted in accordance with law in ruling that the notarized Deed of Partition (Exhibit “1”), a public document, could not be validly admitted in evidence because its genuineness and due execution was not proved by the petitioners?
- Whether or not the Honorable Court of Appeals acted in accordance with law and prevailing jurisprudence in not ruling that prescription had set in since the petitioners have been in open and adverse occupation of the

subject properties for more than forty-five (45) years without recognizing the alleged co-ownership with the respondents?[6]

Petitioners essentially argue that the Deed of Partition is a public document duly acknowledged before a Notary Public. Hence, its genuineness and due execution need not be proved. Its character as an ancient document under the Revised Rules on Evidence is immaterial in this case since said rule applies only to private documents. They further contend that the Court of Appeals erred in giving credence to the testimonies of Ramona Tacang and Filomena Pareja which were mere general denials.

Respondents, on the other hand, pray for the denial of the petition on two grounds: first, it violates the rule on the certification against forum shopping required to be attached to petitions for review filed with this Court; and second, the Court of Appeals did not commit any error in its assailed decision. Respondents harp on the fact that only one of the twenty-two (22) petitioners, Thomas George Cavili, Sr., executed and signed the certification against forum shopping when the Rules require that said certification must be signed by all the petitioners. Furthermore, respondents argue that the Deed of Partition presented by the petitioners may not be admitted in evidence as said document has not been identified and its due execution has not been fully established. Respondents allege that said document is tainted with forgery because it was shown that Simplicia Cavili was in Mindanao before, during and after its execution.

Before going into the substantive issue raised in the petition, we shall first resolve the procedural issue raised by the respondents, that is, that the certification against forum shopping attached to the petition was signed by only one of the petitioners.

The rule is that the certificate of non-forum shopping must be signed by all the petitioners or plaintiffs in a case and the signing by only one of them is insufficient. However, the Court has also stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective.[7] The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. It does not thereby interdict substantial compliance with its provisions under justifiable circumstances.[8]

We find that the execution by Thomas George Cavile, Sr. in behalf of all the other petitioners of the certificate of non-forum shopping constitutes substantial compliance with the Rules. All the petitioners, being relatives and co-owners of the properties in dispute, share a common interest thereon. They also share a common defense in the complaint for partition filed by the respondents. Thus, when they filed the instant petition, they filed it as a collective, raising only one argument to defend their rights over the properties in question. There is sufficient basis, therefore, for Thomas George Cavili, Sr. to speak for and in behalf of his co-petitioners that they have not filed any action or claim involving the same issues in another court or tribunal, nor is there other pending action or claim in another court or tribunal involving the same issues. Moreover, it has been held that the merits of the substantive aspects of the case may be deemed as “special circumstance” for the Court to take cognizance of a petition for review although the certification against forum shopping was executed and signed by only one of the petitioners.[9]

After a thorough study of the records of this case, we find the petition to be meritorious.

We hold that the trial court was correct in dismissing the complaint for partition, it appearing that the lawful heirs of Bernardo Cavili have already divided the properties among themselves, as evidenced by the Deed of Partition

dated April 5, 1937. The terms of the Deed read:

“DEED OF PARTITION

KNOW ALL MEN BY THESE PRESENTS:

THAT Susana Cavile, Castor Cavile, Benedicta Cavile, Simplicia Cavile, Lucio Cavile and Vicenta Navarra both (sic) of legal age and residents in the Municipality of Tolong, Province of Oriental Negros, Philippine Islands, after being duly sworn to in legal form, WITNESSETH:

That Susana Cavile, Castor Cavile and Benedicta Cavile are the only children of Bernardo Cavile with his wife Tranquilina Galon, and that Simplicia Cavile and Fortunato Cavile and Vevencia Cavile are the children of Bernardo Cavile outside from the conjugal home of Bernardo Cavile and Tranquilina Galon.

That Fortunato Cavile and Vevencia Cavile having already been dead are survived by their corresponding children and represented in this document by their oldest child, Lucio Cavile and Vicenta Navarra, respectively.

That during the union of Bernardo Cavile and Tranquilina Galon several properties have been acquired by them and declared under the name of Bernardo Cavile all situated in the Municipality of Tolong, Province of Oriental Negros, which properties are described as follows:

xxx xxx xxx

That by this document it is hereby agreed by the legal heirs of Bernardo Cavile and Tranquilina Galon to divide and by these presents it is hereby divided the above mentioned properties in the following manner:

1 – That the conjugal properties of said Bernardo Cavile and Tranquilina Galon which are already described are hereby divided into two parts ONE (1) part which corresponds to the share of Bernardo Cavile is also divided into SIX (6) equal parts, that is among Susana Cavile, Castor Cavile, Benedicta Cavile, Simplicia Cavile, Fortunato Cavile represented by his oldest son, Lucio Cavile, and Vevencia Cavile represented by her oldest child Vicenta Navarra.

2 – That the other ONE (1) part which corresponds to the share of Tranquilina Galon is also hereby equally divided into THREE (3) parts, that is among Susana Cavile, Castor Cavile and Benedicta Cavile.

SHARE OF BERNARDO CAVILE

xxx xxx xxx

That the share of Bernardo Cavile in parcels Tax Declaration Nos. 7421, 7143 and 7956 are sold by the legal heirs to Castor Cavile in consideration of the sum of ONE HUNDRED SIXTY(-) SIX PESOS (P166.00), Philippine currency, which amount has been received and divided equally among them.

That parcel under Tax Declaration No. 5729 is hereby sold to Ulpiano Cavile by the legal heirs of Bernardo Cavile and Tranquilina Galon, in consideration of the sum of FIFTY PESOS (P50.00), Philippine currency, which amount has been received and divided equally among them.

SHARE OF TRANQUILINA GALON

xxx xxx xxx

That the share of Tranquilina Galon in parcels Tax Declaration Nos. 7421, 7143 and 7956 are hereby sold by the heirs of said Tranquilina Galon to Castor Cavile in consideration of the sum of ONE HUNDRED SIXTY(-)SIX PESOS (P166.00), Philippine currency(,) which sum has been received and divided equally among them.

That the said heirs of Bernardo Cavile and Tranquilina Galon above mentioned hereby agree and accept as it is hereby agreed and accepted all the items and conditions in this DEED OF PARTITION.

IN WITNESS HEREOF we have this 5[th] day of April, 1937, A.D., sign our names below in the Municipality of Tolong, Province of Oriental Negros, Philippine Islands.

(sgd)CASTOR CAVILE

(sgd)SUSANA CAVILE

(sgd)BENEDICTA CAVILE

(sgd)SIMPLICIA CAVILE

(sgd)LUCIO CAVILE

(sgd)VICENTA NAVARRA

Signed in the presence of:

(sgd) F.B. Malanog

(sgd) Iluminado Golez

WITH MY CONSENT:

(thumbmarked)

TRANQUILINA GALON

ESTADOS UNIDOS DE AMERICA
COMMONWEALTH DE FILIPINAS
PROVINCIA DE NEGROS ORIENTAL S.S.
MUNICIPIO DE TOLONG.

En el dia de hoy 6 de Abril de 1937, A.D., ante mi comparecieron personalmente Castor Cavile, Lucio Cavile, Susana Cavile, Benedicta Cavile, Simplicia Cavile, y Vicenta Cavile y Tranquilina Galon de quienes doy fe que los conozco por ser las personas que otorgaron el documento preinserto y ratificaron ser este un acto de sus libres voluntades y otorgamiento. Castor Cavile me exhibe su cedula personal No. F1138758 expedida el dia 1 de Febrero de 1937, y Lucio Cavile me exhibe con el No. F11393521 expedida el dia 2 de Abril de 1937, y las comparecientes no me exhiben por razon de sus sexos.

El documento se refiere a un convenio de particion entre los comparecientes arriba mencionados sobre ciertas porciones de terreno radicadas todas en el municipio de Tolong, Negros Oriental consistente en cuatro (4) paginas utiles inclusive la de ratificacion, cada una de las cuales estan firmadas pos los otorgantes y pos los testigos instrumentales al pie y al margen izquierdo que lleva mi sello notarial y ratifican que el documento preinserto se otorgo bajo sus libres y expontanea voluntad.

A N T E M I:

- (sgd)

ILUMINADO GOLEZ

Notario Publico

Mi comision expira el Diciembre 31, 1937

Reg. Not. No. 41

Pag. 100

Lib. II

Serie de 1937”

The document speaks for itself. The foregoing document was acknowledged before Notary Public Iluminado Golez and recorded in his notarial book as “Reg. Not. No. 41; Pag. 100; Lib. II, Serie de 1937.” Documents acknowledged before notaries public are public documents which are admissible in evidence without necessity of preliminary proof as to their authenticity and due execution. They enjoy the presumption of regularity. It is a prima facie evidence of the facts stated therein. To overcome the presumption, there must be evidence that is clear, convincing and more than merely preponderant. Absent such evidence, the presumption must be upheld.[10]

Contrary to the findings of the Court of Appeals, we find that respondents in this case failed to overcome the presumption of regularity. The appellate court based its conclusion on the testimonies of Ramona Tacang and Filomena Pareja who both testified that Simplicia Cavili resided in Mindanao from 1934 until 1947.[11] Granting such fact to be true, it does not preclude the possibility that Simplicia Cavile could have traveled from her residence in Mindanao to Tolong, Negros Oriental to participate in the execution of the Deed of Partition. Filomena Pareja, a granddaughter of Simplicia Cavili, in fact stated during cross examination that the latter was in perfect health and was completely mobile at that time. She also admitted that there was available transportation from Mindanao to Negros Oriental.[12] Their testimonies, therefore, are insufficient to overturn the presumption that the questioned Deed of Partition has been duly executed. Furthermore, a close examination of the questioned Deed of Partition shows that what respondents claim to be mere inkblot is actually a thumbmark. We note the visible grooves or lines on the imprint that indicate that they are not mere drops of ink but an actual thumbprint. Hence, we uphold the ruling of the trial court finding that the properties left by Bernardo Cavili have already been partitioned among his heirs.

In view of the foregoing discussion, we deem it unnecessary to discuss the issue on prescription raised by petitioners.

IN VIEW WHEREOF, the petition is GRANTED. The questioned Decision of the Court of Appeals is SET ASIDE and the Decision of the Regional Trial Court of Dumaguete City is hereby REINSTATED.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

[*] Sometimes spelled in the records as “Cavile.”

[1] Original Records, vol. 1, pp. 47-51.

[2] Exhibit 1, Original Records, vol. 5, pp. 1047-1050.

[3] Id., Vol. 5, pp. 1112-1116.

[4] CA Rollo, p. 70.

[5] Rollo, pp. 33-50.

[6] Id., p. 18.

[7] See *Docena vs. Lapesura*, 355 SCRA 658 (2001); *Dar vs. Alonzo-Legasto*, 339 SCRA 306 (2000).

[8] *MC Engineering, Inc. vs. NLRC*, 360 SCRA 183 (2001).

[9] *Uy vs. Land Bank of the Philippines*, 336 SCRA 419 (2000).

[10] *Ruiz, Sr. vs. CA*, 362 SCRA 40 (2001); *Llana vs. CA*, 361 SCRA 27 (2001); *Abapo vs. CA*, 327 SCRA 180 (2000); *Cleofas vs. St. Peter Memorial Park, Inc.*, 324 SCRA 223 (2000).

[11] TSN, June 14, 1990, pp. 10-12; TSN, July 13, 1990, pp. 6-8.

[12] TSN, July 13, 1990, pp. 9-10.

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