

HEIRS OF WILLIAM SEVILLA, NAMELY: WILFREDO SEVILLA, WILSON SEVILLA, WILMA SEVILLA, WILLINGTON SEVILLA, AND WILLIAM SEVILLA, JR., HEIRS OF MARIA SEVILLA, NAMELY: AMADOR SEVILLA, ...

G.R. No. 150179. April 30, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

One who alleges defect or lack of valid consent to a contract by reason of fraud or undue influence must establish by full, clear and convincing evidence such specific acts that vitiated a party's consent, otherwise, the latter's presumed consent to the contract prevails.[1]

The instant petition for review seeks to set aside the September 26, 2000 Decision[2] of the Court of Appeals in CA-G.R. CV No. 48956, affirming in toto the Decision[3] of the Regional Trial Court of Dipolog City, Branch 6, in Civil Case No. 4240 which declared, inter alia, the questioned Deed of Donation Inter Vivos valid and binding on the parties.

The undisputed facts reveal that on December 10, 1973, Filomena Almirol de Sevilla died intestate leaving 8 children, namely: William, Peter, Leopoldo, Felipe, Rosa, Maria, Luzvilla, and Jimmy, all surnamed Sevilla. William, Jimmy and Maria are now deceased and are survived by their respective spouses and children.[4] Filomena Almirol de Sevilla left the following properties:

PARCEL I:

A parcel of land known as Lot No. 653 situated at General Luna St., Dipolog City, with an area of about 804 square meters, more or less, duly covered by Transfer Certificate of Title No. (T-6671)-1448 [in the name of Filomena Almirol de Sevilla, Honorata Almirol and Felisa Almirol] and assessed at P31,360.00 according to Tax Dec. No. 018-947;

PARCEL II:

A parcel of land known as Lot No. 3805-B situated at Olingan, Dipolog City, with an area of about 18,934 square meters, more or less, duly covered by Transfer Certificate of Title No. T-6672 and assessed at P5,890 according to Tax Dec. No. 009-761;

PARCEL III:

A parcel of land known as Lot No. 837-1/4 situated at Magsaysay Street, Dipolog City, with an area of about 880 square meters more or less, duly covered by Original Certificate of Title No. 0-6064 and assessed at P12,870.00 according to Tax Dec. No. 020-1078;

PARCEL IV:

A parcel of residential land known as Lot No. 1106-B-3 situated at Sta. Filomena, Dipolog City, with an area

of 300 square meters, more or less, assessed at P3,150.00 according to Tax Dec. No. 006-317;

Commercial building erected on Parcel I above-described; and residential building erected just at the back of the commercial building above-described and erected on Parcel I above-described;[5]

Parcel I, Lot No. 653, is the paraphernal property of Filomena Almirol de Sevilla which she co-owned with her sisters, Honorata Almirol and Felisa Almirol,[6] who were both single and without issue. Parcels II, II and IV are conjugal properties of Filomena Almirol de Sevilla and her late husband Andres Sevilla.[7] When Honorata died in 1982, her 1/3 undivided share in Lot No. 653 was transmitted to her heirs, Felisa Almirol and the heirs of Filomena Almirol de Sevilla, who thereby acquired the property in the proportion of one-half share each.

During the lifetime of Felisa and Honorata Almirol, they lived in the house of Filomena Almirol de Sevilla, together with their nephew, respondent Leopoldo Sevilla and his family. Leopoldo attended to the needs of his mother, Filomena, and his two aunts, Honorata and Felisa.[8]

Felisa died on July 6, 1988.[9] Previous thereto, on November 25, 1985, she executed a last will and testament devising her 1/2 share in Lot No. 653 to the spouses Leopoldo Sevilla and Belen Leyson.[10] On August 8, 1986, Felisa executed another document denominated as "Donation Inter Vivos" ceding to Leopoldo Sevilla her 1/2 undivided share in Lot No. 653, which was accepted by Leopoldo in the same document.[11]

On September 3, 1986, Felisa Almirol and Peter Sevilla, in his own behalf and in behalf of the heirs of Filomena Almirol de Sevilla, executed a Deed of Extra-judicial Partition, identifying and adjudicating the 1/3 share of Honorata Almirol to the heirs of Filomena Almirol de Sevilla and to Felisa Almirol.[12]

Thereafter, respondents Leopoldo, Peter and Luzvilla Sevilla obtained the cancellation of Transfer Certificate of Title No. (T-6671)-1448, over Lot No. 653, and the issuance of the corresponding titles to Felisa Almirol and the heirs of Filomena Almirol de Sevilla. However, the requested titles for Lot Nos. 653-A and 653-B, were left unsigned by the Register of Deeds of Dipolog City, pending submission by Peter Sevilla of a Special Power of Attorney authorizing him to represent the other heirs of Filomena Almirol de Sevilla.[13]

On June 21, 1990, Felipe Sevilla, Rosa Sevilla, and the heirs of William, Jimmy and Maria, all surnamed Sevilla, filed the instant case against respondents Leopoldo Sevilla, Peter Sevilla and Luzvilla Sevilla, for annulment of the Deed of Donation and the Deed of Extrajudicial Partition, Accounting, Damages, with prayer for Receivership and for Partition of the properties of the late Filomena Almirol de Sevilla.[14] They alleged that the Deed of Donation is tainted with fraud because Felisa Almirol, who was then 81 years of age, was seriously ill and of unsound mind at the time of the execution thereof; and that the Deed of Extra-judicial Partition is void because it was executed without their knowledge and consent.[15]

In their answer,[16] respondents denied that there was fraud or undue pressure in the execution of the questioned documents. They alleged that Felisa was of sound mind at the time of the execution of the assailed deeds and that she freely and voluntarily ceded her undivided share in Lot No. 653 in consideration of Leopoldo's and his family's love, affection, and services rendered in the past. Respondents further prayed that Parcels II, III, and IV be partitioned among the heirs of Filomena Almirol de Sevilla in accordance with the law on intestate succession.

On December 16, 1994, a decision was rendered by the Regional Trial Court of Dipolog City, Zamboanga del Norte, Branch 6, upholding the validity of the Deed of Donation and declaring the Deed of Extra-judicial Partition unenforceable. The dispositive portion thereof, reads:

WHEREFORE, IN VIEW OF THE FOREGOING, summing up the evidence for both the plaintiffs and the defendants, the Court hereby renders judgment:

1)

Declaring the questioned Deed of Donation Inter Vivos valid and binding, and, therefore, has the full force and effect of law;

2)

Declaring the questioned Deed of Extra-Judicial Partition as unenforceable as yet as against the other heirs, as it lacks the legal requisites of Special Power of Attorney or any other appropriate instrument to be executed by the other heirs who were not made parties thereto;

3)

Finding the parties herein entitled to the partition of Parcel II, III, IV as designated in the Complaint, in equal shares, and, as to Lot No. 653 designated as Parcel I, it shall be divided equally into two, between defendant Leopoldo Sevilla on one hand, and, collectively, the Heirs of William Sevilla, Heirs of Jimmy Sevilla, Heirs of Maria Sevilla, Felipe Sevilla, Leopoldo Sevilla, Peter Sevilla, Luzvilla Sevilla-Tan, on the other hand, as well as the two buildings thereon in proportionate values;

4)

Directing the parties, if they can agree, to submit herewith a project of partition, which shall designate the share which pertains to the heirs entitled thereto, that is, the particular and specific portions of the properties subject of the partition;

5)

Directing defendant Peter Sevilla to pay and/or collect from the parties the amounts corresponding to each one entitled or liable thereto, as recorded in the Statement of Accounts, except for defendant Leopoldo Sevilla who is found by the Court to have incurred only an overdraft of P5,742.98 and not P33,204.33 as earlier computed therein.

6)

Dismissing the plaintiffs' claim for damages, which is not proved with sufficient evidence, and defendants' counterclaim, on the same ground.

7)

With costs de officio.

IT IS SO ORDERED.[17]

Both parties appealed to the Court of Appeals. Petitioners contended that the Deed of Donation should be declared void and that Lot No. 653 should be divided equally among them. Respondents, on the other hand, posited that the trial court erred in declaring the Deed of Extra-judicial Partition unenforceable against the other heirs of Filomena Almirol de Sevilla who were not parties to said Deed.

On September 26, 2000, the Court of Appeals affirmed in toto the assailed decision of the trial court.[18] Petitioners filed a motion for reconsideration but the same was denied on August 30, 2001.[19]

Hence, the instant petition based on the following assignment of errors:

THAT THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING AS VOID AB INITIO THE DEED OF DONATION EXECUTED BY FELISA ALMIROL IN FAVOR OF RESPONDENT LEOPOLDO SEVILLA CEDING TO HIM ONE HALF PORTION OF LOT 653, DIPOLOG CADASTRE, IT HAVING

BEEN EXECUTED WITH FRAUD, UNDUE PRESSURE AND INFLUENCE;

THAT THE APPELLATE COURT GREATLY ERRED IN NOT ORDERING THE PARTITION OF LOT 653, DIPOLOG CADASTRE EQUALLY AMONG THE EIGHT (8) HEIRS OF FILOMENA, HONORATA AND FELISA, ALL SURNAMED ALMIROL.[20]

To resolve the issue raised in the instant petition for review, the validity of the donation inter vivos executed by Felisa Almirol in favor of Leopoldo Sevilla must first be determined.

Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another who accepts it.[21] Under Article 737 of the Civil Code, the donor's capacity shall be determined as of the time of the making of the donation. Like any other contract, an agreement of the parties is essential,[22] and the attendance of a vice of consent renders the donation voidable.[23]

In the case at bar, there is no question that at the time Felisa Almirol executed the deed of donation she was already the owner of 1/2 undivided portion of Lot No. 653. Her 1/3 undivided share therein was increased by 1/2 when she and Filomena inherited the 1/3 share of their sister Honorata after the latter's death. Hence, the 1/2 undivided share of Felisa in Lot No. 653 is considered a present property which she can validly dispose of at the time of the execution of the deed of donation.[24]

Petitioners, however, insist that respondent Leopoldo Sevilla employed fraud and undue influence on the person of the donor. This argument involves appreciation of the evidence.[25] The settled rule is that factual findings of the trial court, if affirmed by the Court of Appeals, are entitled to great respect.[26] There are exceptional circumstances when findings of fact of lower courts may be set aside[27] but none is present in the case at bar. Indeed, neither fraud nor undue influence can be inferred from the following circumstance alleged by the petitioners, to wit –

- That Felisa Almirol lived with respondent Leopoldo Sevilla in the residential house owned by petitioners and respondents;
- That the old woman Felisa Almirol was being supported out of the rentals derived from the building constructed on the land which was a common fund...
- That when Felisa Almirol was already 82 years old, he [Leopoldo Sevilla] accompanied her in the Office of Atty. Vic T. Lacaya, Sr., for the purpose of executing her last will and testament...
- That in the last will and testament executed by Felisa Almirol, she had devised in favor of respondent Leopoldo Sevilla one-half of the land in question;
- That respondent Leopoldo Sevilla not contented with the execution by Felisa Almirol of her last will and testament, had consulted a lawyer as to how he will be able to own the land immediately;
- That upon the advice of Atty. Helen Angeles, Clerk of Court of the Regional Trial Court of Zamboanga del Norte, Dipolog City, Felisa Almirol executed a Deed of Donation, hence, the questioned Deed of Donation executed in his favor;
- That the subject matter of the Deed of Donation was the one-half portion of Lot 653, Dipolog Cadastre, which was willed by Felisa Almirol, in favor of respondent Leopoldo Sevilla in her last will and testament;
- That at the time of the execution of the Deed of Donation, Lot No. 653, Dipolog Cadastre, was not yet partitioned between petitioners and respondents they being heirs of the late Filomena and Honorata, all surnamed Almirol;
- That after the execution of the Deed of Donation, respondent Peter Sevilla and the late Felisa Almirol were

the only ones who executed the Deed of Extra-judicial Partition over Lot 653, Dipolog Cadastre, the petitioners were not made parties in the said Deed of Extrajudicial Partition;

- That on the basis of the Deed of Extrajudicial Partition and Deed of Donation, respondent Leopoldo Sevilla caused the subdivision survey of Lot 653, Dipolog Cadastre, dividing the same into two (2) lots, adjudicating one-half of the lot in his favor and the other half in favor of respondents peter Sevilla and Luzvilla Sevilla, and to respondent Leopoldo Sevilla himself;

- That only two persons knew the actual survey of the land, petitioner Felipe Sevilla and respondent Leopoldo Sevilla himself, the rest of the co-owners were not even notified;

- That on the basis of the Extrajudicial Partition, Deed of Donation, the approved subdivision plan, respondent Leopoldo Sevilla filed a petition for issuance of the corresponding titles for the two lots, but the Register of Deeds of Dipolog City refused to issue the corresponding titles for the two lots to respondent Leopoldo Sevilla so that up to this moment ... the two tiles were left unsigned by the Register of Deeds.[28]

There is fraud when, through the insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.[29] There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress.[30]

Ei incumbit probatio qui dicit, non qui negat. He who asserts, not he who denies, must prove. We have consistently applied the ancient rule that if the plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner facts on which he bases his claim, the defendant is under no obligation to prove his exception or defense.[31] In the instant case, the self-serving testimony of the petitioners are vague on what acts of Leopoldo Sevilla constituted fraud and undue influence and on how these acts vitiated the consent of Felisa Almirol. Fraud and undue influence that vitiated a party's consent must be established by full, clear and convincing evidence, otherwise, the latter's presumed consent to the contract prevails.[32] Neither does the fact that the donation preceded the partition constitute fraud. It is not necessary that partition should first be had because what was donated to Leopoldo was the 1/2 undivided share of Felisa in Lot No. 653.

Moreover, petitioners failed to show proof why Felisa should be held incapable of exercising sufficient judgment in ceding her share to respondent Leopoldo.[33] As testified by the notary public who notarized the Deed of Donation, Felisa confirmed to him her intention to donate her share in Lot No. 653 to Leopoldo. He stressed that though the donor was old, she was of sound mind and could talk sensibly. Significantly, there is nothing in the record that discloses even an attempt by petitioners to rebut said declaration of the notary public.

Clearly, therefore, the courts below did not err in sustaining the validity of the deed of donation.

Anent the Deed of Extra-judicial Partition, we find that the same is void ab initio and not merely unenforceable. In *Delos Reyes v. Court of Appeals*, [34] which is a case involving the sale of a lot by a person who is neither the owner nor the legal representative, we declared the contract void ab initio. It was held that one of the requisites of a valid contract under Article 1318 of the Civil Code is the consent and the capacity to give consent of the parties to the contract. The legal capacity of the parties is an essential element for the existence of the contract because it is an indispensable condition for the existence of consent. There is no effective consent in law without the capacity to give such consent. In other words, legal consent presupposes capacity. Thus, there is said to be no consent, and consequently, no contract when the agreement is entered into by one in behalf of another who has never given him authorization therefor unless he has by law a right to represent the latter.[35]

In the case at bar, at the time Felisa executed the deed of extra-judicial partition dividing the share of her deceased sister Honarata between her and the heirs of Filomena Almirol de Sevilla, she was no longer the owner of the 1/2 undivided portion of Lot No. 653, having previously donated the same to respondent Leopoldo Sevilla who accepted the donation in the same deed. A donation inter vivos, as in the instant case, is immediately operative and final.[36] As a mode of acquiring ownership, it results in an effective transfer of title over the property from the donor to the donee and the donation is perfected from the moment the donor knows of the acceptance by the donee. And once a donation is accepted, the donee becomes the absolute owner of the property donated.

Evidently, Felisa did not possess the capacity to give consent to or execute the deed of partition inasmuch as she was neither the owner nor the authorized representative of respondent Leopoldo to whom she previously transmitted ownership of her undivided share in Lot No. 653. Considering that she had no legal capacity to give consent to the deed of partition, it follows that there is no consent given to the execution of the deed, and therefore, there is no contract to speak of. As such, the deed of partition is void ab initio, hence, not susceptible of ratification.

Nevertheless, the nullity of the deed of extra-judicial partition will not affect the validity of the donation inter vivos ceding to respondent Leopoldo Sevilla the 1/2 undivided share of Felisa Almirol in Lot No. 653. Said lot should therefore be divided as follows: 1/2 shall go to respondent Leopoldo Sevilla by virtue of the deed of donation, while the other half shall be divided equally among the heirs of Filomena Almirol de Sevilla including Leopoldo Sevilla, following the rules on intestate succession.

Finally, we note that the name of Rosa Sevilla, daughter of Filomena Almirol de Sevilla, and one of the plaintiffs herein, was omitted in the dispositive portion of the trial court's decision.[37] Her name should therefore be included in the dispositive portion as one of the heirs entitled to share in the properties of the late Filomena Almirol de Sevilla.

WHEREFORE, in view of all the foregoing, the Decision of the Court of Appeals in CA-G.R. CV No. 48956, affirming in toto the Decision of the Regional Trial Court of Dipolog City, Branch 6, in Civil Case No. 4240, is **AFFIRMED** with **MODIFICATION**. The Deed of Extra-judicial Partition dated September 3, 1986 is declared void, and the name of Rosa Sevilla is ordered included in the dispositive portion of the trial court's judgment.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

[*] Also spelled as Alili in the Petition.

[**] Also spelled as Anggie in the Petition.

[1] *Cenido v. Apacionado*, 376 Phil. 801, 816-817 (1999), citing *Centenera v. Palicio*, 29 Phil. 470, 485-486; (1915); also cited in *Tolentino*, Civil Code, vol. 4, p. 475; see also *Palmares v. Court of Appeals*, 351 Phil. 664 (1998); *Samson v. Court of Appeals*, G.R. No. 108245, 25 November 1994, 238 SCRA 397, 408 [1994]; *Cu v. Court of Appeals*, G.R. No. 75504, 2 April 1991, 195 SCRA 647, 657; Civil Code, Articles 1337 and 1338.

[2] Penned by Associate Justice Presbitero J. Velasco, Jr., and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Juan Q. Enriquez, Jr. (Rollo, p. 23)

[3] Penned by Judge Milagros JB. Marcaida (Records, p. 164).

[4] TSN, October 6, 1992, p. 8; 5 April 1993, p. 3.

- [5] Amended Complaint, Records, pp. 37-38.
- [6] Transfer Certificate of Title of Lot No. 653, Exhibit “A”, Folder of Exhibits, p. 1.
- [7] TSN, 6 October 1992, p. 9.
- [8] TSN, 7 September 1993, pp. 5-6.
- [9] Exhibit “Q”, Death Certificate, Folder of Exhibits, p. 103.
- [10] Exhibit “1”, “Katapusang Panugon”, Folder of Exhibits, p. 146; Exhibit “2”, English translation of Exhibit “1”, Folder of Exhibits, p. 148.
- [11] Exhibit “8”, Folder of Exhibits, p. 155.
- [12] Exhibit “9”, Folder of Exhibits, p. 157.
- [13] TSN, October 6, 1992, pp. 4-5.
- [14] Complaint, Records, p. 1; Amended Complaint, Records, p. 35.
- [15] Amended Complaint, Records, pp. 39-40.
- [16] Records, p. 21.
- [17] Records, p. 191.
- [18] Rollo, p. 23.
- [19] Rollo, p. 18.
- [20] Rollo, pp. 9-10.
- [21] Civil Code, Article 725.
- [22] Vitug, Compendium of Civil Law and Jurisprudence, 1993 edition, p. 349.
- [23] Civil Code, Article 1330 in relation to Article 732.
- Article 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable.
- Article 732. Donations which are to take effect inter vivos shall be governed by the general provisions on contracts and obligations in all that is not determined in this Title.
- [24] *Id.*, Articles 750 and 751.
- Art 750. The donation may comprehend all the present property of the donor, or part thereof, provided he reserves, in full ownership or in usufruct, sufficient means for the support of himself, and of all relatives who, at the time of the acceptance of the donation, are by law entitled to be supported by the donor. Without such reservation, the donation shall be reduced on petition of any person affected.
- Article 751. Donations cannot comprehend future property.
- By future property is understood anything which the donor cannot dispose at the time of the donation.
- [25] *Non v. Court of Appeals*, 382 Phil. 538, 543 (2000).
- [26] *British Airways v. Court of Appeals*, G.R. No. 121824, 29 January 1998, 285 SCRA 450, 461, citing

Meneses v. Court of Appeals, 316 Phil. 210 (1995).

[27] Lagandaon v. Court of Appeals, G.R. No. 102526-31, 21 May 1998, 290 SCRA 330, 341, citing Engineering & Machinery Corporation v. Court of Appeals, 322 Phil. 161 (1998).

[28] Petition, Rollo, pp. 10-11.

[29] Civil Code, Article 1338.

[30] Civil Code, Article 1337.

[31] Castilex Industrial Corporation v. Vasquez, G.R. No. 132266, 21 December 1999, 321 SCRA 393, citing Belen v. Belen, 13 Phil. 202, 206 (1909) cited in Martin v. Court of Appeals, G.R. No. 82248, 30 January 1992, 205 SCRA 591 (1992).

[32] Supra, note 1.

[33] Non v. Court of Appeals, supra, note 26.

[34] 372 Phil. 522, 534-535 (1999)

[35] Id., citing Tolentino, "Commentaries and Jurisprudence on the Civil Code of the Philippines," Vol. IV, p. 445 citing 8 Manresa 646; Bumanlag vs. Alzate, G.R. No. L-39119, 14 September 1986, 144 SCRA 480; Mindanao Academy vs. Yap, 121 Phil. 204 (1965); Estoque v. Pajimula, 133 Phil. 55 (1968); Segura v. Segura, G.R. No. L-29320, 19 September 1988, 165 SCRA 368; Frias v. Esquive, G.R. No. L-24679, 30 October 1975, 167 SCRA 487; Civil Code, Articles 1317 and 1453.

[36] Alejandro v. Geraldez, 78 Phil. 245, 255 (1977).

[37] Complaint, Records, p. 1; Amended Complaint, Records, p. 35; TSN, 6 October 1992, p. 8.

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