

HEIRS OF POLICRONIO M. URETA, SR., NAMELY: CONRADO B. URETA, MACARIO B. URETA, GLORIA URETA-GONZALES, ROMEO B. URETA, RITA URETA-SOLANO, NENA URETA-TONGCUA, VENANCIO B. URETA, L...

G.R. No. 165748. September 14, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

These consolidated petitions for review on certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure assail the April 20, 2004 Decision[1] of the Court of Appeals (CA), and its October 14, 2004 Resolution[2] in C.A.-G.R. CV No. 71399, which affirmed with modification the April 26, 2001 Decision[3] of the Regional Trial Court, Branch 9, Kalibo, Aklan (RTC) in Civil Case No. 5026.

The Facts

In his lifetime, Alfonso Ureta (Alfonso) begot 14 children, namely, Policronio, Liberato, Narciso, Prudencia, Vicente, Francisco, Inocensio, Roque, Adela, Wenefreda, Merlinda, Benedicto, Jorge, and Andres. The children of Policronio (Heirs of Policronio), are opposed to the rest of Alfonso's children and their descendants (Heirs of Alfonso).

Alfonso was financially well-off during his lifetime. He owned several fishpens, a fishpond, a sari-sari store, a passenger jeep, and was engaged in the buying and selling of copra. Policronio, the eldest, was the only child of Alfonso who failed to finish schooling and instead worked on his father's lands.

Sometime in October 1969, Alfonso and four of his children, namely, Policronio, Liberato, Prudencia, and Francisco, met at the house of Liberato. Francisco, who was then a municipal judge, suggested that in order to reduce the inheritance taxes, their father should make it appear that he had sold some of his lands to his children. Accordingly, Alfonso executed four (4) Deeds of Sale covering several parcels of land in favor of Policronio,[4] Liberato,[5] Prudencia,[6] and his common-law wife, Valeriana Dela Cruz.[7] The Deed of Sale executed on October 25, 1969, in favor of Policronio, covered six parcels of land, which are the properties in dispute in this case.

Since the sales were only made for taxation purposes and no monetary consideration was given, Alfonso continued to own, possess and enjoy the lands and their produce.

When Alfonso died on October 11, 1972, Liberato acted as the administrator of his father's estate. He was later succeeded by his sister Prudencia, and then by her daughter, Carmencita Perlas. Except for a portion of parcel 5, the rest of the parcels transferred to Policronio were tenanted by the Fernandez Family. These tenants never turned over the produce of the lands to Policronio or any of his heirs, but to Alfonso and, later, to the administrators of his estate.

Policronio died on November 22, 1974. Except for the said portion of parcel 5, neither Policronio nor his heirs ever took possession of the subject lands.

On April 19, 1989, Alfonso's heirs executed a Deed of Extra-Judicial Partition,[8] which included all the lands that were covered by the four (4) deeds of sale that were previously executed by Alfonso for taxation purposes. Conrado, Policronio's eldest son, representing the Heirs of Policronio, signed the Deed of Extra-Judicial Partition in behalf of his co-heirs.

After their father's death, the Heirs of Policronio found tax declarations in his name covering the six parcels of land. On June 15, 1995, they obtained a copy of the Deed of Sale executed on October 25, 1969 by Alfonso in favor of Policronio.

Not long after, on July 30, 1995, the Heirs of Policronio allegedly learned about the Deed of Extra-Judicial Partition involving Alfonso's estate when it was published in the July 19, 1995 issue of the Aklan Reporter.

Believing that the six parcels of land belonged to their late father, and as such, excluded from the Deed of Extra-Judicial Partition, the Heirs of Policronio sought to amicably settle the matter with the Heirs of Alfonso. Earnest efforts proving futile, the Heirs of Policronio filed a Complaint for Declaration of Ownership, Recovery of Possession, Annulment of Documents, Partition, and Damages[9] against the Heirs of Alfonso before the RTC on November 17, 1995 where the following issues were submitted: (1) whether or not the Deed of Sale was valid; (2) whether or not the Deed of Extra-Judicial Partition was valid; and (3) who between the parties was entitled to damages.

The Ruling of the RTC

On April 26, 2001, the RTC dismissed the Complaint of the Heirs of Policronio and ruled in favor of the Heirs of Alfonso in a decision, the dispositive portion of which reads:

WHEREFORE, the Court finds that the preponderance of evidence tilts in favor of the defendants, hence the instant case is hereby DISMISSED.

The counterclaims are likewise DISMISSED.

With costs against plaintiffs.

SO ORDERED.

The RTC found that the Heirs of Alfonso clearly established that the Deed of Sale was null and void. It held that the Heirs of Policronio failed to rebut the evidence of the Heirs of Alfonso, which proved that the Deed of Sale in the possession of the former was one of the four (4) Deeds of Sale executed by Alfonso in favor of his 3 children and second wife for taxation purposes; that although tax declarations were issued in the name of Policronio, he or his heirs never took possession of the subject lands except a portion of parcel 5; and that all the produce were turned over by the tenants to Alfonso and the administrators of his estate and never to Policronio or his heirs.

The RTC further found that there was no money involved in the sale. Even granting that there was, as claimed by the Heirs of Policronio, ₱2,000.00 for six parcels of land, the amount was grossly inadequate. It was also noted that the aggregate area of the subject lands was more than double the average share adjudicated to each of the other children in the Deed of Extra-Judicial Partition; that the siblings of Policronio were the ones who shared in the produce of the land; and that the Heirs of Policronio only paid real estate taxes in 1996 and 1997. The RTC opined that Policronio must have been aware that the transfer was merely for taxation purposes because he did not subsequently take possession of the properties even after the death of his father.

The Deed of Extra-Judicial Partition, on the other hand, was declared valid by the RTC as all the heirs of Alfonso were represented and received equal shares and all the requirements of a valid extra-judicial partition were met. The RTC considered Conrado's claim that he did not understand the full significance of his signature when he signed in behalf of his co-heirs, as a gratuitous assertion. The RTC was of the view that when he admitted to have signed all the pages and personally appeared before the notary public, he was presumed to have understood their contents.

Lastly, neither party was entitled to damages. The Heirs of Alfonso failed to present testimony to serve as factual basis for moral damages, no document was presented to prove actual damages, and the Heirs of Policronio were found to have filed the case in good faith.

The Ruling of the CA

Aggrieved, the Heirs of Policronio appealed before the CA, which rendered a decision on April 20, 2004, the dispositive portion of which reads as follows:

WHEREFORE, the appeal is PARTIALLY GRANTED. The appealed Decision, dated 26 April 2001, rendered by Hon. Judge Dean R. Telan of the Regional Trial Court of Kalibo, Aklan, Branch 9, is hereby AFFIRMED with MODIFICATION:

- 1.) The Deed of Sale in favor of Policronio Ureta, Sr., dated 25 October 1969, covering six (6) parcels of land is hereby declared VOID for being ABSOLUTELY SIMULATED;
- 2.) The Deed of Extra-Judicial Partition, dated 19 April 1989, is ANNULLED;
- 3.) The claim for actual and exemplary damages are DISMISSED for lack of factual and legal basis.

The case is hereby REMANDED to the court of origin for the proper partition of ALFONSO URETA'S Estate in accordance with Rule 69 of the 1997 Rules of Civil Procedure. No costs at this instance.

SO ORDERED.

The CA affirmed the finding of the RTC that the Deed of Sale was void. It found the Deed of Sale to be absolutely simulated as the parties did not intend to be legally bound by it. As such, it produced no legal effects and did not alter the juridical situation of the parties. The CA also noted that Alfonso continued to exercise all the rights of an owner even after the execution of the Deed of Sale, as it was undisputed that he remained in possession of the subject parcels of land and enjoyed their produce until his death.

Policronio, on the other hand, never exercised any rights pertaining to an owner over the subject lands from the time they were sold to him up until his death. He never took or attempted to take possession of the land even after his father's death, never demanded delivery of the produce from the tenants, and never paid realty taxes on the properties. It was also noted that Policronio never disclosed the existence of the Deed of Sale to his children, as they were, in fact, surprised to discover its existence. The CA, thus, concluded that Policronio must have been aware that the transfer was only made for taxation purposes.

The testimony of Amparo Castillo, as to the circumstances surrounding the actual arrangement and agreement between the parties prior to the execution of the four (4) Deeds of Sale, was found by the CA to be un rebutted. The RTC's assessment of the credibility of her testimony was accorded respect, and the intention of the parties was given the primary consideration in determining the true nature of the contract.

Contrary to the finding of the RTC though, the CA annulled the Deed of Extra-Judicial Partition due to the incapacity of one of the parties to give his consent to the contract. It held that before Conrado could validly bind his co-heirs to the Deed of Extra-Judicial Partition, it was necessary that he be clothed with the proper authority.

The CA ruled that a special power of attorney was required under Article 1878 (5) and (15) of the Civil Code. Without a special power of attorney, it was held that Conrado lacked the legal capacity to give the consent of his co-heirs, thus, rendering the Deed of Extra-Judicial Partition voidable under Article 1390 (1) of the Civil Code.

As a consequence, the CA ordered the remand of the case to the RTC for the proper partition of the estate, with the option that the parties may still voluntarily effect the partition by executing another agreement or by adopting the assailed Deed of Partition with the RTC's approval in either case. Otherwise, the RTC may proceed with the compulsory partition of the estate in accordance with the Rules.

With regard to the claim for damages, the CA agreed with the RTC and dismissed the claim for actual and compensatory damages for lack of factual and legal basis.

Both parties filed their respective Motions for Reconsideration, which were denied by the CA for lack of merit in a Resolution dated October 14, 2004.

In their Motion for Reconsideration, the Heirs of Policronio argued that the RTC violated the best evidence rule in giving credence to the testimony of Amparo Castillo with regard to the simulation of the Deed of Sale, and that prescription had set in precluding any question on the validity of the contract.

The CA held that the oral testimony was admissible under Rule 130, Section 9 (b) and (c), which provides that evidence aliunde may be allowed to explain the terms of the written agreement if the same failed to express the true intent and agreement of the parties thereto, or when the validity of the written agreement was put in issue. Furthermore, the CA found that the Heirs of Policronio waived their right to object to evidence aliunde having failed to do so during trial and for raising such only for the first time on appeal. With regard to prescription, the CA ruled that the action or defense for the declaration of the inexistence of a contract did not prescribe under Article 1410 of the Civil Code.

On the other hand, the Heirs of Alfonso argued that the Deed of Extra-Judicial Partition should not have been annulled, and instead the preterited heirs should be given their share. The CA reiterated that Conrado's lack of capacity to give his co-heirs' consent to the extra-judicial settlement rendered the same voidable.

Hence, the present Petitions for Review on Certiorari.

The Issues

The issues presented for resolution by the Heirs of Policronio in G.R. No. 165748 are as follows:

I.

Whether the Court of Appeals is correct in ruling that the Deed of Absolute Sale of 25 October 1969 is void for being absolutely fictitious and in relation therewith, may parol evidence be entertained to thwart its binding effect after the parties have both died?

Assuming that indeed the said document is simulated, whether or not the parties thereto including their successors in interest are estopped to question its validity, they being bound by Articles 1412 and 1421 of the Civil Code?

II.

Whether prescription applies to bar any question respecting the validity of the Deed of Absolute Sale dated 25 October 1969? Whether prescription applies to bar any collateral attack on the validity of the deed of absolute sale executed 21 years earlier?

III.

Whether the Court of Appeals correctly ruled in nullifying the Deed of Extrajudicial Partition because Conrado Ureta signed the same without the written authority from his siblings in contravention of Article 1878 in relation to Article 1390 of the Civil Code and in relation therewith, whether the defense of ratification and/or preterition raised for the first time on appeal may be entertained?

The issues presented for resolution by the Heirs of Alfonso in G.R. No. 165930 are as follows:

I.

Whether or not grave error was committed by the Trial Court and Court of Appeals in declaring the Deed of Sale of subject properties as absolutely simulated and null and void thru parol evidence based on their factual findings as to its fictitious nature, and there being waiver of any objection based on violation of the parol evidence rule.

II.

Whether or not the Court of Appeals was correct in holding that Conrado Ureta's lack of capacity to give his co-heirs' consent to the Extra-Judicial Partition rendered the same voidable.

III.

Granting arguendo that Conrado Ureta was not authorized to represent his co-heirs and there was no ratification, whether or not the Court of Appeals was correct in ordering the remand of the case to the Regional Trial Court for partition of the estate of Alfonso Ureta.

IV.

Since the sale in favor of Policronio Ureta Sr. was null and void ab initio, the properties covered therein formed part of the estate of the late Alfonso Ureta and was correctly included in the Deed of Extrajudicial Partition even if no prior action for nullification of the sale was filed by the heirs of Liberato Ureta.

V.

Whether or not the heirs of Policronio Ureta Sr. can claim that estoppel based on Article 1412 of the Civil Code as well as the issue of prescription can still be raised on appeal.

These various contentions revolve around two major issues, to wit: (1) whether the Deed of Sale is valid, and (2) whether the Deed of Extra-Judicial Partition is valid. Thus, the assigned errors shall be discussed jointly and in seriatim.

The Ruling of the Court

Validity of the Deed of Sale

Two veritable legal presumptions bear on the validity of the Deed of Sale: (1) that there was sufficient consideration for the contract; and (2) that it was the result of a fair and regular private transaction. If shown to hold, these presumptions infer prima facie the transaction's validity, except that it must yield to the evidence adduced.[10]

As will be discussed below, the evidence overcomes these two presumptions.

Absolute Simulation

First, the Deed of Sale was not the result of a fair and regular private transaction because it was absolutely simulated.

The Heirs of Policronio argued that the land had been validly sold to Policronio as the Deed of Sale contained all the essential elements of a valid contract of sale, by virtue of which, the subject properties were transferred in his name as evidenced by the tax declaration. There being no invalidation prior to the execution of the Deed of Extra-Judicial Partition, the probity and integrity of the Deed of Sale should remain undiminished and accorded respect as it was a duly notarized public instrument.

The Heirs of Policronio posited that his loyal services to his father and his being the eldest among Alfonso's children, might have prompted the old man to sell the subject lands to him at a very low price as an advance inheritance. They explained that Policronio's failure to take possession of the subject lands and to claim their produce manifests a Filipino family practice wherein a child would take possession and enjoy the fruits of the land sold by a parent only after the latter's death. Policronio simply treated the lands the same way his father Alfonso treated them - where his children enjoyed usufructuary rights over the properties, as opposed to appropriating them exclusively to himself. They contended that Policronio's failure to take actual possession of the lands did not prove that he was not the owner as he was merely exercising his right to dispose of them. They argue that it was an error on the part of the CA to conclude that ownership by Policronio was not established by his failure to possess the properties sold. Instead, emphasis should be made on the fact that the tax declarations, being indicia of possession, were in Policronio's name.

They further argued that the Heirs of Alfonso failed to appreciate that the Deed of Sale was clear enough to convey the subject parcels of land. Citing jurisprudence, they contend that there is a presumption that an instrument sets out the true agreement of the parties thereto and that it was executed for valuable consideration,[11] and where there is no doubt as to the intention of the parties to a contract, the literal meaning of the stipulation shall control.[12] Nowhere in the Deed of Sale is it indicated that the transfer was only for taxation purposes. On the contrary, the document clearly indicates that the lands were sold. Therefore, they averred that the literal meaning of the stipulation should control.

The Court disagrees.

The Court finds no cogent reason to deviate from the finding of the CA that the Deed of Sale is null and void for being absolutely simulated. The Civil Code provides:

Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement.

Art. 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.

Valerio v. Refresca[13] is instructive on the matter of simulation of contracts:

In absolute simulation, there is a colorable contract but it has no substance as the parties have no intention to be bound by it. The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties. As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract. However, if the parties state a false cause in the contract to conceal their real agreement, the contract is relatively simulated and the parties are still bound by their real agreement. Hence, where the essential requisites of a contract are present and the simulation refers only to the content or terms of the contract, the agreement is absolutely binding and enforceable between the parties and their successors in interest.

Lacking, therefore, in an absolutely simulated contract is consent which is essential to a valid and enforceable

contract.[14] Thus, where a person, in order to place his property beyond the reach of his creditors, simulates a transfer of it to another, he does not really intend to divest himself of his title and control of the property; hence, the deed of transfer is but a sham.[15] Similarly, in this case, Alfonso simulated a transfer to Policronio purely for taxation purposes, without intending to transfer ownership over the subject lands.

The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[16] The true intention of the parties in this case was sufficiently proven by the Heirs of Alfonso.

The Heirs of Alfonso established by a preponderance of evidence[17] that the Deed of Sale was one of the four (4) absolutely simulated Deeds of Sale which involved no actual monetary consideration, executed by Alfonso in favor of his children, Policronio, Liberato, and Prudencia, and his second wife, Valeriana, for taxation purposes.

Amparo Castillo, the daughter of Liberato, testified, to wit:

Q: Now sometime in the year 1969 can you recall if your grandfather and his children [met] in your house?

A: Yes sir, that was sometime in October 1969 when they [met] in our house, my grandfather, my late uncle Policronio Ureta, my late uncle Liberato Ureta, my uncle Francisco Ureta, and then my auntie Prudencia Ureta they talk[ed] about, that idea came from my uncle Francisco Ureta to [sell] some parcels of land to his children to lessen the inheritance tax whatever happened to my grandfather, actually no money involved in this sale.

Q: Now you said there was that agreement, verbal agreement. [W]here were you when this Alfonso Ureta and his children gather[ed] in your house?

A: I was near them in fact I heard everything they were talking [about]

x x x

Q: Were there documents of sale executed by Alfonso Ureta in furtherance of their verbal agreement?

A: Yes sir.

Q: To whom in particular did your grandfather Alfonso Ureta execute this deed of sale without money consideration according to you?

A: To my uncle Policronio Ureta and to Prudencia Ureta Panadero.

Q: And who else?

A: To Valeriana dela Cruz.

Q: How about your father?

A: He has.[18]

The other Deeds of Sale executed by Alfonso in favor of his children Prudencia and Liberato, and second wife Valeriana, all bearing the same date of execution, were duly presented in evidence by the Heirs of Alfonso, and were uncontested by the Heirs of Policronio. The lands which were the subject of these Deeds of Sale were in fact included in the Deed of Extra-Judicial Partition executed by all the heirs of Alfonso, where it was expressly stipulated:

That the above-named Amparo U. Castillo, Prudencia U. Panadero, Conrado B. Ureta and Merlinda U. Rivera do hereby recognize and acknowledge as a fact that the properties presently declared in their respective names

or in the names of their respective parents and are included in the foregoing instrument are actually the properties of the deceased Alfonso Ureta and were transferred only for the purpose of effective administration and development and convenience in the payment of taxes and, therefore, all instruments conveying or affecting the transfer of said properties are null and void from the beginning.[19]

As found by the CA, Alfonso continued to exercise all the rights of an owner even after the execution of the Deeds of Sale. It was undisputed that Alfonso remained in possession of the subject lands and enjoyed their produce until his death. No credence can be given to the contention of the Heirs of Policronio that their father did not take possession of the subject lands or enjoyed the fruits thereof in deference to a Filipino family practice. Had this been true, Policronio should have taken possession of the subject lands after his father died. On the contrary, it was admitted that neither Policronio nor his heirs ever took possession of the subject lands from the time they were sold to him, and even after the death of both Alfonso and Policronio.

It was also admitted by the Heirs of Policronio that the tenants of the subject lands never turned over the produce of the properties to Policronio or his heirs but only to Alfonso and the administrators of his estate. Neither was there a demand for their delivery to Policronio or his heirs. Neither did Policronio ever pay real estate taxes on the properties, the only payment on record being those made by his heirs in 1996 and 1997 ten years after his death. In sum, Policronio never exercised any rights pertaining to an owner over the subject lands.

The most protuberant index of simulation of contract is the complete absence of an attempt in any manner on the part of the ostensible buyer to assert rights of ownership over the subject properties. Policronio's failure to take exclusive possession of the subject properties or, in the alternative, to collect rentals, is contrary to the principle of ownership. Such failure is a clear badge of simulation that renders the whole transaction void. [20]

It is further telling that Policronio never disclosed the existence of the Deed of Sale to his children. This, coupled with Policronio's failure to exercise any rights pertaining to an owner of the subject lands, leads to the conclusion that he was aware that the transfer was only made for taxation purposes and never intended to bind the parties thereto.

As the above factual circumstances remain unrebutted by the Heirs of Policronio, the factual findings of the RTC, which were affirmed by the CA, remain binding and conclusive upon this Court.[21]

It is clear that the parties did not intend to be bound at all, and as such, the Deed of Sale produced no legal effects and did not alter the juridical situation of the parties. The Deed of Sale is, therefore, void for being absolutely simulated pursuant to Article 1409 (2) of the Civil Code which provides:

Art. 1409. The following contracts are inexistent and void from the beginning:

x x x

(2) Those which are absolutely simulated or fictitious;

x x x

For guidance, the following are the most fundamental characteristics of void or inexistent contracts:

- 1) As a general rule, they produce no legal effects whatsoever in accordance with the principle "quod nullum est nullum producit effectum."
- 2) They are not susceptible of ratification.
- 3) The right to set up the defense of inexistence or absolute nullity cannot be waived or renounced.
- 4) The action or defense for the declaration of their inexistence or absolute nullity is imprescriptible.

5) The inexistence or absolute nullity of a contract cannot be invoked by a person whose interests are not directly affected.[22]

Since the Deed of Sale is void, the subject properties were properly included in the Deed of Extra-Judicial Partition of the estate of Alfonso.

Absence and Inadequacy of Consideration

The second presumption is rebutted by the lack of consideration for the Deed of Sale.

In their Answer,[23] the Heirs of Alfonso initially argued that the Deed of Sale was void for lack of consideration, and even granting that there was consideration, such was inadequate. The Heirs of Policronio counter that the defenses of absence or inadequacy of consideration are not grounds to render a contract void.

The Heirs of Policronio contended that under Article 1470 of the Civil Code, gross inadequacy of the price does not affect a contract of sale, except as it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract. Citing jurisprudence, they argued that inadequacy of monetary consideration does not render a conveyance inexistent as liberality may be sufficient cause for a valid contract, whereas fraud or bad faith may render it either rescissible or voidable, although valid until annulled.[24] Thus, they argued that if the contract suffers from inadequate consideration, it remains valid until annulled, and the remedy of rescission calls for judicial intervention, which remedy the Heirs of Alfonso failed to take.

It is further argued that even granting that the sale of the subject lands for a consideration of ₱2,000.00 was inadequate, absent any evidence of the fair market value of the land at the time of its sale, it cannot be concluded that the price at which it was sold was inadequate.[25] As there is nothing in the records to show that the Heirs of Alfonso supplied the true value of the land in 1969, the amount of ₱2,000.00 must thus stand as its saleable value.

On this issue, the Court finds for the Heirs of Alfonso.

For lack of consideration, the Deed of Sale is once again found to be void. It states that Policronio paid, and Alfonso received, the P2,000.00 purchase price on the date of the signing of the contract:

That I, ALFONSO F. URETA, x x x for and in consideration of the sum of TWO THOUSAND (P2,000.00) PESOS, Philippine Currency, to me in hand paid by POLICRONIO M. URETA, x x x, do hereby CEDE, TRANSFER, and CONVEY, by way of absolute sale, x x x six (6) parcels of land x x x.[26] [Emphasis ours]

Although, on its face, the Deed of Sale appears to be supported by valuable consideration, the RTC found that there was no money involved in the sale.[27] This finding was affirmed by the CA in ruling that the sale is void for being absolutely simulated. Considering that there is no cogent reason to deviate from such factual findings, they are binding on this Court.

It is well-settled in a long line of cases that where a deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void for lack of consideration.[28] Thus, although the contract states that the purchase price of ₱2,000.00 was paid by Policronio to Alfonso for the subject properties, it has been proven that such was never in fact paid as there was no money involved. It must, therefore, follow that the Deed of Sale is void for lack of consideration.

Given that the Deed of Sale is void, it is unnecessary to discuss the issue on the inadequacy of consideration.

Parol Evidence and Hearsay

The Heirs of Policronio aver that the rules on parol evidence and hearsay were violated by the CA in ruling that the Deed of Sale was void.

They argued that based on the parol evidence rule, the Heirs of Alfonso and, specifically, Amparo Castillo, were not in a position to prove the terms outside of the contract because they were not parties nor successors-in-interest in the Deed of Sale in question. Thus, it is argued that the testimony of Amparo Castillo violates the parol evidence rule.

Stemming from the presumption that the Heirs of Alfonso were not parties to the contract, it is also argued that the parol evidence rule may not be properly invoked by either party in the litigation against the other, where at least one of the parties to the suit is not a party or a privy of a party to the written instrument in question and does not base a claim on the instrument or assert a right originating in the instrument or the relation established thereby.[29]

Their arguments are untenable.

The objection against the admission of any evidence must be made at the proper time, as soon as the grounds therefor become reasonably apparent, and if not so made, it will be understood to have been waived. In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer.[30] In this case, the Heirs of Policronio failed to timely object to the testimony of Amparo Castillo and they are, thus, deemed to have waived the benefit of the parol evidence rule.

Granting that the Heirs of Policronio timely objected to the testimony of Amparo Castillo, their argument would still fail.

Section 9 of Rule 130 of the Rules of Court provides:

Section 9. Evidence of written agreements. -- When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:

- (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
- (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
- (c) The validity of the written agreement; or
- (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills.

[Emphasis ours]

Paragraphs (b) and (c) are applicable in the case at bench.

The failure of the Deed of Sale to express the true intent and agreement of the parties was clearly put in issue in the Answer[31] of the Heirs of Alfonso to the Complaint. It was alleged that the Deed of Sale was only made to lessen the payment of estate and inheritance taxes and not meant to transfer ownership. The exception in paragraph (b) is allowed to enable the court to ascertain the true intent of the parties, and once the intent is clear, it shall prevail over what the document appears to be on its face.[32] As the true intent of the parties was duly proven in the present case, it now prevails over what appears on the Deed of Sale.

The validity of the Deed of Sale was also put in issue in the Answer, and was precisely one of the issues submitted to the RTC for resolution.[33] The operation of the parol evidence rule requires the existence of a valid written agreement. It is, thus, not applicable in a proceeding where the validity of such agreement is the fact in dispute, such as when a contract may be void for lack of consideration.[34] Considering that the Deed of Sale has been shown to be void for being absolutely simulated and for lack of consideration, the Heirs of Alfonso are not precluded from presenting evidence to modify, explain or add to the terms of the written agreement.

The Heirs of Policronio must be in a state of confusion in arguing that the Heirs of Alfonso may not question the Deed of Sale for not being parties or successors-in-interest therein on the basis that the parol evidence rule may not be properly invoked in a proceeding or litigation where at least one of the parties to the suit is not a party or a privy of a party to the written instrument in question and does not base a claim on the instrument or assert a right originating in the instrument or the relation established thereby. If their argument was to be accepted, then the Heirs of Policronio would themselves be precluded from invoking the parol evidence rule to exclude the evidence of the Heirs of Alfonso.

Indeed, the applicability of the parol evidence rule requires that the case be between parties and their successors-in-interest.[35] In this case, both the Heirs of Alfonso and the Heirs of Policronio are successors-in-interest of the parties to the Deed of Sale as they claim rights under Alfonso and Policronio, respectively. The parol evidence rule excluding evidence aliunde, however, still cannot apply because the present case falls under two exceptions to the rule, as discussed above.

With respect to hearsay, the Heirs of Policronio contended that the rule on hearsay was violated when the testimony of Amparo Castillo was given weight in proving that the subject lands were only sold for taxation purposes as she was a person alien to the contract. Even granting that they did not object to her testimony during trial, they argued that it should not have been appreciated by the CA because it had no probative value whatsoever.[36]

The Court disagrees.

It has indeed been held that hearsay evidence whether objected to or not cannot be given credence for having no probative value.[37] This principle, however, has been relaxed in cases where, in addition to the failure to object to the admissibility of the subject evidence, there were other pieces of evidence presented or there were other circumstances prevailing to support the fact in issue. In *Top-Weld Manufacturing, Inc. v. ECED S.A.*, [38] this Court held:

Hearsay evidence alone may be insufficient to establish a fact in an injunction suit (*Parker v. Furlong*, 62 P. 490) but, when no objection is made thereto, it is, like any other evidence, to be considered and given the importance it deserves. (*Smith v. Delaware & Atlantic Telegraph & Telephone Co.*, 51 A 464). Although we should warn of the undesirability of issuing judgments solely on the basis of the affidavits submitted, where as here, said affidavits are overwhelming, uncontroverted by competent evidence and not inherently improbable, we are constrained to uphold the allegations of the respondents regarding the multifarious violations of the contracts made by the petitioner.

In the case at bench, there were other prevailing circumstances which corroborate the testimony of Amparo Castillo. First, the other Deeds of Sale which were executed in favor of Liberato, Prudencia, and Valeriana on the same day as that of Policronio's were all presented in evidence. Second, all the properties subject therein were included in the Deed of Extra-Judicial Partition of the estate of Alfonso. Third, Policronio, during his lifetime, never exercised acts of ownership over the subject properties (as he never demanded or took possession of them, never demanded or received the produce thereof, and never paid real estate taxes thereon). Fourth, Policronio

never informed his children of the sale.

As the Heirs of Policronio failed to controvert the evidence presented, and to timely object to the testimony of Amparo Castillo, both the RTC and the CA correctly accorded probative weight to her testimony.

Prior Action Unnecessary

The Heirs of Policronio averred that the Heirs of Alfonso should have filed an action to declare the sale void prior to executing the Deed of Extra-Judicial Partition. They argued that the sale should enjoy the presumption of regularity, and until overturned by a court, the Heirs of Alfonso had no authority to include the land in the inventory of properties of Alfonso's estate. By doing so, they arrogated upon themselves the power of invalidating the Deed of Sale which is exclusively vested in a court of law which, in turn, can rule only upon the observance of due process. Thus, they contended that prescription, laches, or estoppel have set in to militate against assailing the validity of the sale.

The Heirs of Policronio are mistaken.

A simulated contract of sale is without any cause or consideration, and is, therefore, null and void; in such case, no independent action to rescind or annul the contract is necessary, and it may be treated as non-existent for all purposes.[39] A void or inexistent contract is one which has no force and effect from the beginning, as if it has never been entered into, and which cannot be validated either by time or ratification. A void contract produces no effect whatsoever either against or in favor of anyone; it does not create, modify or extinguish the juridical relation to which it refers.[40] Therefore, it was not necessary for the Heirs of Alfonso to first file an action to declare the nullity of the Deed of Sale prior to executing the Deed of Extra-Judicial Partition.

Personality to Question Sale

The Heirs of Policronio contended that the Heirs of Alfonso are not parties, heirs, or successors-in-interest under the contemplation of law to clothe them with the personality to question the Deed of Sale. They argued that under Article 1311 of the Civil Code, contracts take effect only between the parties, their assigns and heirs. Thus, the genuine character of a contract which personally binds the parties cannot be put in issue by a person who is not a party thereto. They posited that the Heirs of Alfonso were not parties to the contract; neither did they appear to be beneficiaries by way of assignment or inheritance. Unlike themselves who are direct heirs of Policronio, the Heirs of Alfonso are not Alfonso's direct heirs. For the Heirs of Alfonso to qualify as parties, under Article 1311 of the Civil Code, they must first prove that they are either heirs or assignees. Being neither, they have no legal standing to question the Deed of Sale.

They further argued that the sale cannot be assailed for being barred under Article 1421 of the Civil Code which provides that the defense of illegality of a contract is not available to third persons whose interests are not directly affected.

Again, the Court disagrees.

Article 1311 and Article 1421 of the Civil Code provide:

Art. 1311. Contracts take effect only between the parties, their assigns and heirs, x x x

Art. 1421. The defense of illegality of contracts is not available to third persons whose interests are not directly affected.

The right to set up the nullity of a void or non-existent contract is not limited to the parties, as in the case of annulable or voidable contracts; it is extended to third persons who are directly affected by the contract. Thus,

where a contract is absolutely simulated, even third persons who may be prejudiced thereby may set up its inexistence.[41] The Heirs of Alfonso are the children of Alfonso, with his deceased children represented by their children (Alfonso's grandchildren). The Heirs of Alfonso are clearly his heirs and successors-in-interest and, as such, their interests are directly affected, thereby giving them the right to question the legality of the Deed of Sale.

Inapplicability of Article 842

The Heirs of Policronio further argued that even assuming that the Heirs of Alfonso have an interest in the Deed of Sale, they would still be precluded from questioning its validity. They posited that the Heirs of Alfonso must first prove that the sale of Alfonso's properties to Policronio substantially diminished their successional rights or that their legitimes would be unduly prejudiced, considering that under Article 842 of the Civil Code, one who has compulsory heirs may dispose of his estate provided that he does not contravene the provisions of the Civil Code with regard to the legitime of said heirs. Having failed to do so, they argued that the Heirs of Alfonso should be precluded from questioning the validity of the Deed of Sale.

Still, the Court disagrees.

Article 842 of the Civil Code provides:

Art. 842. One who has no compulsory heirs may dispose by will of all his estate or any part of it in favor of any person having capacity to succeed.

One who has compulsory heirs may dispose of his estate provided he does not contravene the provisions of this Code with regard to the legitime of said heirs.

This article refers to the principle of freedom of disposition by will. What is involved in the case at bench is not a disposition by will but by Deed of Sale. Hence, the Heirs of Alfonso need not first prove that the disposition substantially diminished their successional rights or unduly prejudiced their legitimes.

Inapplicability of Article 1412

The Heirs of Policronio contended that even assuming that the contract was simulated, the Heirs of Alfonso would still be barred from recovering the properties by reason of Article 1412 of the Civil Code, which provides that if the act in which the unlawful or forbidden cause does not constitute a criminal offense, and the fault is both on the contracting parties, neither may recover what he has given by virtue of the contract or demand the performance of the other's undertaking. As the Heirs of Alfonso alleged that the purpose of the sale was to avoid the payment of inheritance taxes, they cannot take from the Heirs of Policronio what had been given to their father.

On this point, the Court again disagrees.

Article 1412 of the Civil Code is as follows:

Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

Article 1412 is not applicable to fictitious or simulated contracts, because they refer to contracts with an illegal cause or subject-matter.[42] This article presupposes the existence of a cause, it cannot refer to fictitious or

simulated contracts which are in reality non-existent.[43] As it has been determined that the Deed of Sale is a simulated contract, the provision cannot apply to it.

Granting that the Deed of Sale was not simulated, the provision would still not apply. Since the subject properties were included as properties of Alfonso in the Deed of Extra-Judicial Partition, they are covered by corresponding inheritance and estate taxes. Therefore, tax evasion, if at all present, would not arise, and Article 1412 would again be inapplicable.

Prescription

From the position that the Deed of Sale is valid and not void, the Heirs of Policronio argued that any question regarding its validity should have been initiated through judicial process within 10 years from its notarization in accordance with Article 1144 of the Civil Code. Since 21 years had already elapsed when the Heirs of Alfonso assailed the validity of the Deed of Sale in 1996, prescription had set in. Furthermore, since the Heirs of Alfonso did not seek to nullify the tax declarations of Policronio, they had impliedly acquiesced and given due recognition to the Heirs of Policronio as the rightful inheritors and should, thus, be barred from laying claim on the land.

The Heirs of Policronio are mistaken.

Article 1410 of the Civil Code provides:

Art. 1410. The action for the declaration of the inexistence of a contract does not prescribe.

This is one of the most fundamental characteristics of void or inexistent contracts.[44]

As the Deed of Sale is a void contract, the action for the declaration of its nullity, even if filed 21 years after its execution, cannot be barred by prescription for it is imprescriptible. Furthermore, the right to set up the defense of inexistence or absolute nullity cannot be waived or renounced.[45] Therefore, the Heirs of Alfonso cannot be precluded from setting up the defense of its inexistence.

Validity of the Deed of Extra-Judicial Partition

The Court now resolves the issue of the validity of the Deed of Extra-Judicial Partition.

Unenforceability

The Heirs of Alfonso argued that the CA was mistaken in annulling the Deed of Extra-Judicial Partition due to the incapacity of Conrado to give the consent of his co-heirs for lack of a special power of attorney. They contended that what was involved was not the capacity to give consent in behalf of the co-heirs but the authority to represent them. They argue that the Deed of Extra-Judicial Partition is not a voidable or an annulable contract under Article 1390 of the Civil Code, but rather, it is an unenforceable or, more specifically, an unauthorized contract under Articles 1403 (1) and 1317 of the Civil Code. As such, the Deed of Extra-Judicial Partition should not be annulled but only be rendered unenforceable against the siblings of Conrado.

They further argued that under Article 1317 of the Civil Code, when the persons represented without authority have ratified the unauthorized acts, the contract becomes enforceable and binding. They contended that the Heirs of Policronio ratified the Deed of Extra-Judicial Partition when Conrado took possession of one of the parcels of land adjudicated to him and his siblings, and when another parcel was used as collateral for a loan entered into by some of the Heirs of Policronio. The Deed of Extra-Judicial Partition having been ratified and its benefits accepted, the same thus became enforceable and binding upon them.

The Heirs of Alfonso averred that granting arguendo that Conrado was not authorized to represent his co-heirs and there was no ratification, the CA should not have remanded the case to the RTC for partition of Alfonso's

estate. They argued that the CA should not have applied the Civil Code general provision on contracts, but the special provisions dealing with succession and partition. They contended that contrary to the ruling of the CA, the extra-judicial partition was not an act of strict dominion, as it has been ruled that partition of inherited land is not a conveyance but a confirmation or ratification of title or right to the land.[46] Therefore, the law requiring a special power of attorney should not be applied to partitions.

On the other hand, the Heirs of Policronio insisted that the CA pronouncement on the invalidity of the Deed of Extra-Judicial Partition should not be disturbed because the subject properties should not have been included in the estate of Alfonso, and because Conrado lacked the written authority to represent his siblings. They argued with the CA in ruling that a special power of attorney was required before Conrado could sign in behalf of his co-heirs.

The Heirs of Policronio denied that they ratified the Deed of Extra-Judicial Partition. They claimed that there is nothing on record that establishes that they ratified the partition. Far from doing so, they precisely questioned its execution by filing a complaint. They further argued that under Article 1409 (3) of the Civil Code, ratification cannot be invoked to validate the illegal act of including in the partition those properties which do not belong to the estate as it provides another mode of acquiring ownership not sanctioned by law.

Furthermore, the Heirs of Policronio contended that the defenses of unenforceability, ratification, and preterition are being raised for the first time on appeal by the Heirs of Alfonso. For having failed to raise them during the trial, the Heirs of Alfonso should be deemed to have waived their right to do so.

The Court agrees in part with the Heirs of Alfonso.

To begin, although the defenses of unenforceability, ratification and preterition were raised by the Heirs of Alfonso for the first time on appeal, they are concomitant matters which may be taken up. As long as the questioned items bear relevance and close relation to those specifically raised, the interest of justice would dictate that they, too, must be considered and resolved. The rule that only theories raised in the initial proceedings may be taken up by a party thereto on appeal should refer to independent, not concomitant matters, to support or oppose the cause of action.[47]

In the RTC, the Heirs of Policronio alleged that Conrado's consent was vitiated by mistake and undue influence, and that he signed the Deed of Extra-Judicial Partition without the authority or consent of his co-heirs.

The RTC found that Conrado's credibility had faltered, and his claims were rejected by the RTC as gratuitous assertions. On the basis of such, the RTC ruled that Conrado duly represented his siblings in the Deed of Extra-Judicial Partition.

On the other hand, the CA annulled the Deed of Extra-Judicial Partition under Article 1390 (1) of the Civil Code, holding that a special power of attorney was lacking as required under Article 1878 (5) and (15) of the Civil Code. These articles are as follows:

Art. 1878. Special powers of attorney are necessary in the following cases:

x x x

(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

x x x

(15) Any other act of strict dominion.

Art. 1390. The following contracts are voidable or annulable, even though there may have been no damage to the contracting parties:

- (1) Those where one of the parties is incapable of giving consent to a contract;
- (2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

This Court finds that Article 1878 (5) and (15) is inapplicable to the case at bench. It has been held in several cases^[48] that partition among heirs is not legally deemed a conveyance of real property resulting in change of ownership. It is not a transfer of property from one to the other, but rather, it is a confirmation or ratification of title or right of property that an heir is renouncing in favor of another heir who accepts and receives the inheritance. It is merely a designation and segregation of that part which belongs to each heir. The Deed of Extra-Judicial Partition cannot, therefore, be considered as an act of strict dominion. Hence, a special power of attorney is not necessary.

In fact, as between the parties, even an oral partition by the heirs is valid if no creditors are affected. The requirement of a written memorandum under the statute of frauds does not apply to partitions effected by the heirs where no creditors are involved considering that such transaction is not a conveyance of property resulting in change of ownership but merely a designation and segregation of that part which belongs to each heir.^[49]

Neither is Article 1390 (1) applicable. Article 1390 (1) contemplates the incapacity of a party to give consent to a contract. What is involved in the case at bench though is not Conrado's incapacity to give consent to the contract, but rather his lack of authority to do so. Instead, Articles 1403 (1), 1404, and 1317 of the Civil Code find application to the circumstances prevailing in this case. They are as follows:

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

- (1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

Art. 1404. Unauthorized contracts are governed by Article 1317 and the principles of agency in Title X of this Book.

Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

Such was similarly held in the case of *Badillo v. Ferrer*:

The Deed of Extrajudicial Partition and Sale is not a voidable or an annulable contract under Article 1390 of the New Civil Code. Article 1390 renders a contract voidable if one of the parties is incapable of giving consent to the contract or if the contracting party's consent is vitiated by mistake, violence, intimidation, undue influence or fraud. x x x

The deed of extrajudicial partition and sale is an unenforceable or, more specifically, an unauthorized contract under Articles 1403(1) and 1317 of the New Civil Code.^[50]

Therefore, Conrado's failure to obtain authority from his co-heirs to sign the Deed of Extra-Judicial Partition in

their behalf did not result in his incapacity to give consent so as to render the contract voidable, but rather, it rendered the contract valid but unenforceable against Conrado's co-heirs for having been entered into without their authority.

A closer review of the evidence on record, however, will show that the Deed of Extra-Judicial Partition is not unenforceable but, in fact, valid, binding and enforceable against all the Heirs of Policronio for having given their consent to the contract. Their consent to the Deed of Extra-Judicial Partition has been proven by a preponderance of evidence.

Regarding his alleged vitiated consent due to mistake and undue influence to the Deed of Extra-Judicial Partition, Conrado testified, to wit:

Q: Mr. Ureta you remember having signed a document entitled deed of extra judicial partition consisting of 11 pages and which have previously [been] marked as Exhibit I for the plaintiffs?

A: Yes sir.

Q: Can you recall where did you sign this document?

A: The way I remember I signed that in our house.

Q: And who requested or required you to sign this document?

A: My aunties.

Q: Who in particular if you can recall?

A: Nay Pruding Panadero.

Q: You mean that this document that you signed was brought to your house by your Auntie Pruding Pa[r]adero [who] requested you to sign that document?

A: When she first brought that document I did not sign that said document because I [did] no[t] know the contents of that document.

Q: How many times did she bring this document to you [until] you finally signed the document?

A: Perhaps 3 times.

Q: Can you tell the court why you finally signed it?

A: Because the way she explained it to me that the land of my grandfather will be partitioned.

Q: When you signed this document were your brothers and sisters who are your co-plaintiffs in this case aware of your act to sign this document?

A: They do not know.

x x x

Q: After you have signed this document did you inform your brothers and sisters that you have signed this document?

A: No I did not. [51]

x x x

Q: Now you read the document when it was allegedly brought to your house by your aunt Pruding Pa[r]adero?

A: I did not read it because as I told her I still want to ask the advise of my brothers and sisters.

Q: So do I get from you that you have never read the document itself or any part thereof?

A: I have read the heading.

x x x

Q: And why is it that you did not read all the pages of this document because I understand that you know also how to read in English?

A: Because the way Nay Pruding explained to me is that the property of my grandfather will be partitioned that is why I am so happy.

x x x

Q: You mean to say that after you signed this deed of extra judicial partition up to the present you never informed them?

A: Perhaps they know already that I have signed and they read already the document and they have read the document.

Q: My question is different, did you inform them?

A: The document sir? I did not tell them.

Q: Even until now?

A: Until now I did not inform them.[52]

This Court finds no cogent reason to reverse the finding of the RTC that Conrado's explanations were mere gratuitous assertions not entitled to any probative weight. The RTC found Conrado's credibility to have faltered when he testified that perhaps his siblings were already aware of the Deed of Extra-Judicial Partition. The RTC was in the best position to judge the credibility of the witness' testimony. The CA also recognized that Conrado's consent was not vitiated by mistake and undue influence as it required a special power of attorney in order to bind his co-heirs and, as such, the CA thereby recognized that his signature was binding to him but not with respect to his co-heirs. Findings of fact of the trial court, particularly when affirmed by the CA, are binding to this Court.[53]

Furthermore, this Court notes other peculiarities in Conrado's testimony. Despite claims of undue influence, there is no indication that Conrado was forced to sign by his aunt, Prudencia Paradero. In fact, he testified that he was happy to sign because his grandfather's estate would be partitioned. Conrado, thus, clearly understood the document he signed. It is also worth noting that despite the document being brought to him on three separate occasions and indicating his intention to inform his siblings about it, Conrado failed to do so, and still neglected to inform them even after he had signed the partition. All these circumstances negate his claim of vitiated consent. Having duly signed the Deed of Extra-Judicial Partition, Conrado is bound to it. Thus, it is enforceable against him.

Although Conrado's co-heirs claimed that they did not authorize Conrado to sign the Deed of Extra-Judicial Partition in their behalf, several circumstances militate against their contention.

First, the Deed of Extra-Judicial Partition was executed on April 19, 1989, and the Heirs of Policronio claim that they only came to know of its existence on July 30, 1995 through an issue of the Aklan Reporter. It is difficult to believe that Conrado did not inform his siblings about the Deed of Extra-Judicial Partition or at least broach its

subject with them for more than five years from the time he signed it, especially after indicating in his testimony that he had intended to do so.

Second, Conrado retained possession of one of the parcels of land adjudicated to him and his co-heirs in the Deed of Extra-Judicial Partition.

Third, after the execution of the partition on April 19, 1989 and more than a year before they claimed to have discovered the existence of the Deed of Extra-Judicial Partition on July 30, 1995, some of the Heirs of Policronio, namely, Rita Solano, Macario Ureta, Lilia Tayco, and Venancio Ureta executed on June 1, 1994, a Special Power of Attorney^[54] in favor of their sister Gloria Gonzales, authorizing her to obtain a loan from a bank and to mortgage one of the parcels of land adjudicated to them in the Deed of Extra-Judicial Partition to secure payment of the loan. They were able to obtain the loan using the land as collateral, over which a Real Estate Mortgage^[55] was constituted. Both the Special Power of Attorney and the Real Estate Mortgage were presented in evidence in the RTC, and were not controverted or denied by the Heirs of Policronio.

Fourth, in the letter dated August 15, 1995, sent by the counsel of the Heirs of Policronio to the Heirs of Alfonso requesting for amicable settlement, there was no mention that Conrado's consent to the Deed of Extra-Judicial Partition was vitiated by mistake and undue influence or that they had never authorized Conrado to represent them or sign the document on their behalf. It is questionable for such a pertinent detail to have been omitted. The body of said letter is reproduced hereunder as follows:

Greetings:

Your nephews and nieces, children of your deceased brother Policronio Ureta, has referred to me for appropriate legal action the property they inherited from their father consisting of six (6) parcels of land which is covered by a Deed of Absolute Sale dated October 25, 1969. These properties ha[ve] already been transferred to the name of their deceased father immediately after the sale, machine copy of the said Deed of Sale is hereto attached for your ready reference.

Lately, however, there was published an Extra-judicial Partition of the estate of Alfonso Ureta, which to the surprise of my clients included the properties already sold to their father before the death of said Alfonso Ureta. This inclusion of their property is erroneous and illegal because these properties were covered by the Deed of Absolute Sale in favor of their father Policronio Ureta no longer form part of the estate of Alfonso Ureta. Since Policronio Ureta has [sic] died in 1974 yet, these properties have passed by hereditary succession to his children who are now the true and lawful owners of the said properties.

My clients are still entitled to a share in the estate of Alfonso Ureta who is also their grandfather as they have stepped into the shoes of their deceased father Policronio Ureta. But this estate of Alfonso Ureta should already exclude the six (6) parcels of land covered by the Deed of Absolute Sale in favor of Policronio Ureta.

My clients cannot understand why the properties of their late father [should] be included in the estate of their grandfather and be divided among his brothers and sisters when said properties should only be divided among themselves as children of Policronio Ureta.

Since this matter involves very close members of the same family, I have counseled my clients that an earnest effort towards a compromise or amicable settlement be first explored before resort to judicial remedy is pursued. And a compromise or amicable settlement can only be reached if all the parties meet and discuss the problem with an open mind. To this end, I am suggesting a meeting of the parties on September 16, 1995 at 2:00 P.M. at B Place Restaurant at C. Laserna St., Kalibo, Aklan. It would be best if the parties can come or be represented by their duly designated attorney-in-fact together with their lawyers if they so desire so that the problem can be discussed unemotionally and intelligently.

I would, however, interpret the failure to come to the said meeting as an indication that the parties are not willing to or interested in amicable settlement of this matter and as a go signal for me to resort to legal and/or judicial remedies to protect the rights of my clients.

Thank you very much.[56]

Based on the foregoing, this Court concludes that the allegation of Conrado's vitiated consent and lack of authority to sign in behalf of his co-heirs was a mere afterthought on the part of the Heirs of Policronio. It appears that the Heirs of Policronio were not only aware of the existence of the Deed of Extra-Judicial Partition prior to June 30, 1995 but had, in fact, given Conrado authority to sign in their behalf. They are now estopped from questioning its legality, and the Deed of Extra-Judicial Partition is valid, binding, and enforceable against them.

In view of the foregoing, there is no longer a need to discuss the issue of ratification.

Preterition

The Heirs of Alfonso were of the position that the absence of the Heirs of Policronio in the partition or the lack of authority of their representative results, at the very least, in their preterition and not in the invalidity of the entire deed of partition. Assuming there was actual preterition, it did not render the Deed of Extra-Judicial Partition voidable. Citing Article 1104 of the Civil Code, they aver that a partition made with preterition of any of the compulsory heirs shall not be rescinded, but the heirs shall be proportionately obliged to pay the share of the person omitted. Thus, the Deed of Extra-Judicial Partition should not have been annulled by the CA. Instead, it should have ordered the share of the heirs omitted to be given to them.

The Heirs of Alfonso also argued that all that remains to be adjudged is the right of the preterited heirs to represent their father, Policronio, and be declared entitled to his share. They contend that remand to the RTC is no longer necessary as the issue is purely legal and can be resolved by the provisions of the Civil Code for there is no dispute that each of Alfonso's heirs received their rightful share. Conrado, who received Policronio's share, should then fully account for what he had received to his other co-heirs and be directed to deliver their share in the inheritance.

These arguments cannot be given credence.

Their posited theory on preterition is no longer viable. It has already been determined that the Heirs of Policronio gave their consent to the Deed of Extra-Judicial Partition and they have not been excluded from it. Nonetheless, even granting that the Heirs of Policronio were denied their lawful participation in the partition, the argument of the Heirs of Alfonso would still fail.

Preterition under Article 854 of the Civil Code is as follows:

Art. 854. The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious.

If the omitted compulsory heirs should die before the testator, the institution shall be effectual, without prejudice to the right of representation.

Preterition has been defined as the total omission of a compulsory heir from the inheritance. It consists in the silence of the testator with regard to a compulsory heir, omitting him in the testament, either by not mentioning him at all, or by not giving him anything in the hereditary property but without expressly disinheriting him, even if he is mentioned in the will in the latter case.[57] Preterition is thus a concept of testamentary succession and requires a will. In the case at bench, there is no will involved. Therefore, preterition cannot apply.

Remand Unnecessary

The Deed of Extra-Judicial Partition is in itself valid for complying with all the legal requisites, as found by the RTC, to wit:

A persual of the Deed of Extra-judicial Partition would reveal that all the heirs and children of Alfonso Ureta were represented therein; that nobody was left out; that all of them received as much as the others as their shares; that it distributed all the properties of Alfonso Ureta except a portion of parcel 29 containing an area of 14,000 square meters, more or less, which was expressly reserved; that Alfonso Ureta, at the time of his death, left no debts; that the heirs of Policronio Ureta, Sr. were represented by Conrado B. Ureta; all the parties signed the document, was witnessed and duly acknowledged before Notary Public Adolfo M. Iligan of Kalibo, Aklan; that the document expressly stipulated that the heirs to whom some of the properties were transferred before for taxation purposes or their children, expressly recognize and acknowledge as a fact that the properties were transferred only for the purpose of effective administration and development convenience in the payment of taxes and, therefore, all instruments conveying or effecting the transfer of said properties are null and void from the beginning (Exhs. 1-4, 7-d).[58]

Considering that the Deed of Sale has been found void and the Deed of Extra-Judicial Partition valid, with the consent of all the Heirs of Policronio duly given, there is no need to remand the case to the court of origin for partition.

WHEREFORE, the petition in G.R. No. 165748 is DENIED. The petition in G.R. No. 165930 is GRANTED. The assailed April 20, 2004 Decision and October 14, 2004 Resolution of the Court of Appeals in CA-G.R. CV No. 71399, are hereby MODIFIED in this wise:

(1) The Deed of Extra-Judicial Partition, dated April 19, 1989, is

VALID, and

(2) The order to remand the case to the court of origin is hereby DELETED.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Sereno,[*] JJ., concur.

[*] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

[1] Penned by Associate Justice Perlita J. Tria Tirona with Associate Justice B.A. Adefuin-De La Cruz and Associate Justice Arturo D. Brion (now a member of this Court), concurring.

[2] Penned by Associate Justice Perlita J. Tria Tirona with Associate Justice Ruben T. Reyes and Associate Justice Arturo D. Brion (now a member of this Court), concurring.

[3] Rollo (G.R. No. 165748), pp. 75-81.

[4] Exhibit "G," records, p. 349.

[5] Exhibit "5," id. at 526.

[6] Exhibit "11," id. at 528.

[7] Exhibit "6," id. at 527.

[8] Exhibit "7," id. at 529-539.

- [9] Rollo (G.R. No. 165748), pp. 51-65.
- [10] Manila Banking Corporation v. Silverio, 504 Phil. 17, 25-26 (2005), citing *Suntay v. Court of Appeals*, 321 Phil. 809 (1995) and Rules of Court, Rule 131, Sec. 3 (r) and (p).
- [11] *Gatmaitan v. Court of Appeals*, G.R. No. 76500, August 2, 1991, 200 SCRA 38.
- [12] *Ascalon v. Court of Appeals*, 242 Phil. 265 (1988).
- [13] G.R. No. 163687, March 28, 2006, 485 SCRA 494, 500-501; citing *Loyola v. Court of Appeals*, 383 Phil. 171 (2000), and *Balite v. Lim*, 487 Phil. 281 (2004).
- [14] Manila Banking Corporation v. Silverio, *supra* note 10 at 27, citing *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, 357 Phil. 850 (1998).
- [15] *Tongoy v. Court of Appeals*, 208 Phil. 95, 113 (1983); citing *Rodriguez v. Rodriguez*, 127 Phil. 294, 301-302 (1967).
- [16] *Lopez v. Lopez*, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 367.
- [17] Rules of Court, Rule 133, Sec. 1. Preponderance of evidence, how determined. - In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstance of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.
- [18] TSN, April 6, 1998, pp. 9-10.
- [19] Exhibit "7-d," records, p. 533.
- [20] Manila Banking Corporation v. Silverio, *supra* note 10 at 31, citing *Suntay v. Court of Appeals*, 321 Phil. 809 (1995); *Santiago v. Court of Appeals*, 343 Phil. 612 (1997); *Cruz v. Bancom Finance Corporation*, 429 Phil. 225 (2002); and *Ramos v. Heirs of Ramos*, 431 Phil. 337 (2002).
- [21] *Samala v. Court of Appeals*, 467 Phil. 563, 568 (2004).
- [22] *Tongoy v. Court of Appeals*, *supra* note 15; Manila Banking Corporation v. Silverio, 504 Phil. 17, 33 (2005).
- [23] Rollo (G.R. No. 165748), p. 69-70.
- [24] *Morales Development Company, Inc. v. Court of Appeals*, 137 Phil. 307 (1969).
- [25] *Acabal v. Acabal*, 494 Phil. 528 (2005).
- [26] Exhibit "G," records, p. 349.
- [27] Rollo (G.R. No. 165748), p. 79; and TSN, April 6, 1998, p. 9.
- [28] *Montecillo v. Reynes*, 434 Phil. 456, 469 (2002); citing *Ocejo Perez & Co. v. Flores*, 40 Phil 921 (1920); *Mapalo v. Mapalo*, 123 Phil. 979 (1966); *Vda. de Catindig v. Roque*, 165 Phil. 707 (1976); *Rongavilla v. Court of Appeals*, 355 Phil. 721 (1998); and *Yu Bu Guan v. Ong*, 419 Phil. 845 (2001).
- [29] *Lechugas v. Court of Appeals*, 227 Phil. 310 (1986).

- [30] Rules of Court, Rule 132, Sec. 36.
- [31] Rollo (G.R. No. 165748), pp. 66-74.
- [32] Premier Insurance v. Intermediate Appellate Court, 225 Phil. 370, 381 (1986); citing Labasan v. Lacuesta, 175 Phil. 216 (1978).
- [33] Rollo (G.R. No. 165748), p. 77.
- [34] Herrera, Remedial Law, Vol. V, pp. 208-209, [1999].
- [35] Lechugas v. Court of Appeals, 227 Phil. 310, 319 (1986).
- [36] Eugenio v. Court of Appeals, G.R. No. 103737, December 15, 1994, 239 SCRA 207.
- [37] People v. Parungao, 332 Phil. 917, 924 (1996).
- [38] 222 Phil. 424, 437 (1985).
- [39] Ocejo Perez & Co. v. Flores, 40 Phil. 921 (1920); De Belen v. Collector of Customs, 46 Phil. 241 (1924); Gallion v. Gayares, 53 Phil. 43 (1929); Escutin v. Escutin, 60 Phil. 922 (1934); Gonzales v. Trinidad, 67 Phil. 682 (1939); Portugal v. IAC, 242 Phil. 709 (1988).
- [40] Tongoy v. Court of Appeals, supra note 15.
- [41] Arsenal v. Intermediate Appellate Court, 227 Phil. 36, 46-47 (1986); Tolentiono, Civil Code of the Philippines, Vol. IV, p. 643, [2002].
- [42] Sta. Romana v. Imperio, 122 Phil. 1001, 1007 (1965); Tolentino, Civil Code of the Philippines, Vol. IV, p. 634, (2002).
- [43] Gonzales v. Trinidad, 67 Phil. 682, 683-684 (1939); Castro v. Escutin, 179 Phil. 277, 284 (1979).
- [44] Tongoy v. Court of Appeals, supra note 15; Manila Banking Corporation v. Silverio, 504 Phil. 17, 33 (2005).
- [45] Id.
- [46] Barcelona v. Barcelona, 100 Phil 251, 255 (1956).
- [47] Borbon II v. Servicewide Specialists, Inc., 328 Phil. 150, 160 (1996).
- [48] Barcelona v. Barcelona, 100 Phil. 251, 255 (1956); Maestrado v. Court of Appeals, 384 Phil. 418, 432 (2000); Castro v. Miat, 445 Phil. 282 297-298 (2003), citing Pada-Kilario v. Court of Appeals, 379 Phil. 515 (2000).
- [49] Maestrado v. Court of Appeals, 384 Phil. 418, 432 (2000).
- [50] 236 Phil. 438, 447-448 (1987).
- [51] TSN, October 1, 1997, pp. 4-6.
- [52] Id. at 8-11.
- [53] Philippine Rabbit Bus Lines Inc. v. Macalinao, 491 Phil. 249, 255 (2005).
- [54] Exhibit "2," records, p. 524.
- [55] Exhibit "3," id. at 525.

[56] Exhibit "A," id. at 335-336.

[57] *Neri v. Akutin*, 72 Phil. 322, 325 (1914); *Maninang v. Court of Appeals*, 199 Phil. 640, 647 (1982).

[58] *Rollo* (G.R. No. 165748), p. 80.

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