

**JOSE S. DAILISAN, PETITIONER, VS. COURT OF APPEALS AND THE
HRS. OF THE “LATE” FEDERICO PUGAO, NAMELY:
FLORENTINA PUGAO, FLORIDA PUGAO-UBALDO, FE
PUGAO-VILLANUEVA, FERNANDO PUGAO...**

G.R. No. 176448. July 28, 2008

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TINGA, J.:

This is a Petition for Review[1] of the 25 May 2006 Decision[2] and 26 January 2007 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 82642,[4] which reversed and set aside the Decision[5] of the Regional Trial Court (RTC) of Quezon City, Branch 88, dated 3 September 2003.

On 8 July 1993, petitioner filed a Complaint[6] for partition before the RTC of Quezon City,[7] alleging that he purchased one-fourth (¼) of the land of Federico Pugao (Federico) identified as Lot 16, Block NB 22 of subdivision Psd-57020 located in Bago Bantay, Quezon City and covered by Transfer Certificate of Title No. No. 75133.

According to petitioner, he and Federico had initially agreed to the sale of one-half (1/2) portion of the same land for P12,000.00 and that he had paid Federico several installments from 1976 to 1979, which all in all totaled to P6,000.00, but was told to stop further payments because per Federico's representation he could only sell one-fourth (¼) of the lot.[8] Federico could not deliver the title to him because the property was still mortgaged to a bank. When the mortgage was released, petitioner demanded the execution of a deed of absolute sale. Instead of acceding, Federico proposed to mortgage the property to petitioner as security for a P10,000.00 loan, payable in three (3) months, and upon payment of the loan the deed of absolute sale would be executed. Petitioner agreed, and they executed a deed of real estate mortgage.[9] The loan was paid after three (3) months, after which petitioner and Federico executed a deed of absolute sale on 5 February 1979. Petitioner asked for the partition of the lot and caused a resurvey to expedite the partition.[10] However, Federico still refused to effect the partition and even sent a notice of eviction[11] against petitioner.

According to Federico, petitioner is the husband of his niece and that when the couple's house was demolished during martial law, he allowed them out of pity to occupy one fourth (¼) of his lot. While averring that the property had been the subject of real estate mortgages in favor of other banks, he admitted that he executed in favor of petitioner a deed of real estate mortgage as security for a P10,000.00 loan. He was able to pay the said loan which resulted in the cancellation of the mortgage, he added.[12]

However, Federico denied having voluntarily executed the deed of absolute sale, and instead alleged that when he was seriously ill in January of 1992, petitioner, with a certain Atty. Juanitas, made him sign pages of what the former told him to be parts of the real estate mortgage he had earlier executed in favor of petitioner. Federico filed a complaint for falsification and ejectment against petitioner before the barangay, but attempts at conciliation failed. Due to his failing health, Federico failed to carry out his intention to file and pursue a formal complaint before the court.[13]

Federico passed away while this case was pending before the trial court.[14] And so he was substituted by his heirs, herein respondents.[15]

On 3 September 2003, the trial court, finding that respondents failed to disprove the validity of the deed of absolute sale, ruled in favor of petitioner and ordered the partition of the subject property.[16] The dispositive portion of the decision reads:

IN VIEW OF THE FOREGOING, judgment is rendered as follows:

- Ordering the partition of the said parcel of land mentioned and described in paragraph 3 of the complaint, adopting for the purpose of said partition, the survey plan prepared by the Geodetic Engineer;
- Ordering the defendant to surrender and execute all the necessary documents to effect the partition and issuance of separate Transfer Certificate of Title over the subject matter of the Deed of Absolute Sale;
- Ordering the defendants to pay the amount of fifty thousand pesos (P50,000.00) as moral and exemplary damages;
- Ordering the defendant to pay attorney's fees in the amount of P30,000.00 and P500.00 per appearance, plus costs;
- Ordering the Register of Deeds of Quezon City to issue a Transfer Certificate of Title to effect the partition in the name of plaintiff.

SO ORDERED.[17]

Respondents moved for the reconsideration of the decision but their motion was denied by the trial court on 19 January 2004.[18] Hence, they appealed the decision to the Court of Appeals.

The Court of Appeals granted the appeal. It noted that petitioner should have filed an action for specific performance to compel Federico to honor the deed of absolute sale;[19] yet the right to file such action, had already expired.[20] It further noted that petitioner "filed the instant action for partition simply because it is not barred by prescription." [21] It ruled against the validity of the sale between Federico and petitioner, finding that there was no consent on Federico's part and that there was no proof of payment of the price or consideration on the part of petitioner.[22] It concluded that the deed of sale is fictitious and invalid, and hence could not serve as basis of any claim of ownership.[23]

Petitioner filed a motion for reconsideration but his motion was denied for lack of merit.[24]

Petitioner now claims that the appellate court's decision is contrary to law. He argues that his action is "actually a case of 'specific performance' for the delivery/surrender of title in view of the duly executed 'Deed of Absolute Sale,' and thus, the validity of the said deed cannot be collaterally attacked, but must be raised in an independent action." [25] He insists that his action for specific performance has not prescribed because upon the execution of the deed of sale, ownership of the subject property has passed to him, the buyer, and an action for specific performance is only incidental to his claim of ownership; on the contrary, it is respondents' right (duty) [26] to question the validity of the deed of sale, which they did not do despite knowledge of the existence of the said instrument as early as 1984. Finally, he questions the specific findings of the Court of Appeals concerning the execution of the deed of absolute sale as not borne by the evidence.[27]

For their part, respondents point out that this is the first time that petitioner alleged that his action for partition is actually a case of specific performance for the delivery/surrender of the title of the subject property. This being so, respondents believe that petitioner's cause of action has already prescribed since more than ten (10) years have already lapsed since the execution of the deed of sale. They add that in any case, petitioner's arguments and

allegations are untrue, baseless and misleading.[28]

We resolve to grant the petition.

The two determinative issues in this case are: (1) whether the deed of absolute sale is valid; and (2) what is the prescriptive period within which to file petitioner's action.

The notarized deed of absolute sale is a public document, and has in its favor the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate.[29] The burden of proof to overcome the presumption of due execution of a notarized document lies on the party contesting such execution.

First, a distinction must be made between void and voidable contracts. A contract is inexistent and void from the very beginning when (i) its cause, object or purpose is contrary to law, morals, good customs, public order or public policy; (ii) it is absolutely simulated or fictitious; (iii) its cause or object did not exist at the time of the transaction; (iv) its object is outside the commerce of men; (v) it contemplates an impossible service; (vi) the intention of the parties relative to the principal object of the contract cannot be ascertained; or (vii) it is expressly prohibited or declared void by law.[30] The action or defense for the declaration of the inexistence of a contract does not prescribe.[31] On the other hand, a voidable or annulable contract is one where (i) one of the parties is incapable of giving consent to a contract; or (ii) the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.[32] The action for annulment must be brought within four (4) years from the time the intimidation, violence or undue influence ceases, or four (4) years from the time of the discovery of the mistake or fraud.[33]

Respondents claim that the deed of sale "is not valid because there was absolutely no consent on the part of" Federico "to said contract, which was in English," considering that Federico "did not even finish Grade 2 of the elementary school level,"[34] and that he was only led to believe that the pages thereof corresponded to and were part of the real estate mortgage. Basically, respondents' claim is that the deed of sale is a voidable, and not void, contract and the ground to be raised is mistake and/or fraud because Federico was led to believe that what he was signing was still part of the earlier deed of real estate mortgage. In that regard, respondents stress Federico's low educational attainment and inability to understand the English language.

Nevertheless, Florida Pugao, one of the respondents, testified that she became aware of the existence of the deed of sale way back in 1984.[35] Despite this knowledge, as well as Federico's and/or his other heirs' knowledge of the assailed deed even prior to 1984, none of them took any action to annul the deed within the prescribed four (4)-year period which expired in 1988.

Anent Federico's low educational attainment and unfamiliarity with English, Article 1332 of the Civil Code is the governing provision:

Art. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.

That Federico did not even reach Grade 2, that he was unable to read or understand English, and that his consent was vitiated by mistake or fraud, make the situation fall under the above-quoted provision. Thus, it would have been incumbent upon petitioner to show that he fully explained the terms of the contract to Federico if not for a crucial point. Respondents failed to file an action for annulment of the deed of sale on the ground of mistake or fraud within the four-year period provided by law. Thus, they have lost both their right to file an action for annulment or to set up such nullity of the deed of sale as a defense in an action to enforce the same,[36] which

was the case filed by petitioner. Likewise, respondents failed to assign the matter of mistake or fraud as an error before the Court of Appeals.

Anent the "inconsistencies" in the deed of sale, suffice it to say that they are really not inconsistencies but rather trivial flaws appearing in the acknowledgment, and not in the body of the deed itself which contains the operative provisions. Moreover, there is no allegation that the signatures appearing in the deed were forged or falsified.

All told, respondents were unable to overcome the presumption of validity of the deed of absolute sale as well as the regularity in its execution.

With the issue of the deed of sale's validity already settled, the question of prescription of action becomes easy to resolve. We note that the Court of Appeals ruled that petitioner's cause of action has prescribed following its conclusion that petitioner's action is actually one for specific performance, not partition. Interestingly, petitioner, after having triumphed in the trial court with his action for partition, suddenly changed tack and declared that his original action was indeed an action for specific performance. He should not have gone that far and executed an apparent somersault. In light of the facts which impelled petitioner to seek judicial relief, there is no discernible change in the ultimate relief he seeks, as his complaint for partition is also an action for specific performance. His objective is to make Federico honor their contract and perform his obligation to deliver a separate title covering the lot he sold to him but which can be done only after the portion is segregated from the rest of Federico's property.[37]

Petitioner's action before the trial court was properly captioned as one for partition because there are sufficient allegations in the complaint that he is a co-owner of the property. The regime of co-ownership exists when ownership of an undivided thing or right belongs to different persons.[38] By the nature of a co-ownership, a co-owner cannot point to a specific portion of the property owned in common as his own because his share therein remains intangible.[39] The pertinent portion of the deed reads:

- That for and in consideration of the sum of Six Thousand (P6,000.00), Pesos, Philippine Currency, paid unto the VENDOR by the VENDEE, the VENDOR hereby SELLS, TRANSFERS, CEDES, and CONVEY unto the VENDEE, his heirs, successors or assigns an undivided ONE-FOURTH (1/4) portion (50 square meters, more or less, in the particular portion of the lot where the house of the VENDEE now stands) of the above-described residential lot together with all improvements thereon free from all liens and encumbrances.[40] (Emphasis supplied)

The description "undivided ONE-FOURTH (1/4) portion (50 square meters, more or less, in the particular portion of the lot where the house of the VENDEE now stands)" shows that the portion sold is still undivided and not sufficiently identified. While the description provides a guide for identifying the location of the lot sold, there was no indication of its exact metes and bounds. This is the reason why petitioner was constrained to cause the survey of the property.[41] As a co-owner of the property, therefore, petitioner has the right to demand partition, a right which does not prescribe.[42]

Ownership of the thing sold is acquired only from the time of delivery thereof, either actual or constructive. Article 1498 of the Civil Code provides that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot be inferred.[43] The Court notes that Federico had already delivered the portion he sold to petitioner, subject of course to the execution of a technical survey, when he executed the deed of absolute sale, which is a public instrument.[44] In view of the delivery in law, coupled with petitioner's actual occupation of the portion where his house stands, all that is needed is its segregation from the rest of the property.

WHEREFORE, the petition is GRANTED. The challenged Decision and Resolution of the Court of Appeals in

CA-G.R. SP No. 82642 are SET ASIDE, and the Decision of the Regional Trial Court of Quezon City, Branch 98 is REINSTATED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 3-26.

[2] Id. at 28-37.

[3] Id. at 39.

[4] Jose S. Dailisan v. Federico Pugao, and all Persons claiming rights and Interest over Transfer Certificate of Title No. 36130; penned by Associate Justice Eliezer R. De los Santos, with Associate Justices Jose C. Reyes and Arturo G. Tayag, concurring.

[5] Rollo, pp. 86-89.

[6] Id. at 40-44.

[7] The case was thereafter raffled to Branch 98.

[8] TSN, 15 October 1998, p. 5.

[9] Deed of Real Estate Mortgage, Records, pp. 54-55.

[10] Exhibit "E," Folder of Exhibits.

[11] Letter dated 3 May 1993, Exhibit "C," Folder of Exhibits.

[12] Rollo, pp. 57-72, Answer with Counterclaim.

[13] Id.

[14] Records, p. 186; Death Certificate of Federico L. Pugao.

[15] Id. at 189.

[16] Rollo, pp. 86-89.

[17] Id. at 88-89.

[18] Id. at 90.

[19] Id. at 33.

[20] Art. 1144 of the Civil Code provides that actions upon a written contract must be brought within ten years.

[21] Rollo, p. 33.

[22] Id. at 34.

[23] Id. at 36.

[24] Id. at 39; Resolution dated 26 January 2007.

[25] Id. at 11.

[26] Word in parenthesis supplied.

[27] Rollo, p. 12.

[28] Id. at 149-162.

[29] Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals, G.R. No. 125283, 10 February 2006, 482 SCRA, 164, 174.

[30] CIVIL CODE, Art. 1409.

[31] CIVIL CODE, Art. 1410.

[32] CIVIL CODE, Art. 1390.

[33] CIVIL CODE, Art. 1391.

[34] Rollo, p. 65

[35] TSN, 6 October 2000, pp. 21-28.

[36] Caram, Jr. v. Laureta, No. L-28740, 24 February 1981, 103 SCRA 7, 17.

[37] Gala, et al., v. Ellise-Agro Industrial Corporation, et al., 463 Phil. 846, 860 (2003).

[38] Felices v. Colegado, G.R. No. L-23374, 30 September 1970, 35 SCRA 173, 178.

[39] Salatandol v. Retes, G.R. No. L-38120, 27 June 1988, 162 SCRA 568, 573.

[40] Rollo, p. 47; Deed of Absolute Sale.

[41] Survey Plan, Exhibit "H" Folder of Exhibits.

[42] Tomas Claudio Memorial College, Inc. v. Court of Appeals, 374 Phil. 859, 866 (1999).

[43] Balatbat v. Court of Appeals, 329 Phil. 858, 870 (1996).

[44] CIVIL CODE, Art. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot be clearly inferred.

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