

**MANUEL O. FUENTES AND LETICIA L. FUENTES, PETITIONERS, VS.
CONRADO G. ROCA, ANNABELLE R. JOSON, ROSE MARIE R.
CRISTOBAL AND PILAR MALCAMPO, RESPONDENTS.**

G.R. No. 178902. April 21, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case is about a husband's sale of conjugal real property, employing a challenged affidavit of consent from an estranged wife. The buyers claim valid consent, loss of right to declare nullity of sale, and prescription.

The Facts and the Case

Sabina Tarroza owned a titled 358-square meter lot in Canelar, Zamboanga City. On October 11, 1982 she sold it to her son, Tarciano T. Roca (Tarciano) under a deed of absolute sale. [1] But Tarciano did not for the meantime have the registered title transferred to his name.

Six years later in 1988, Tarciano offered to sell the lot to petitioners Manuel and Leticia Fuentes (the Fuentes spouses). They arranged to meet at the office of Atty. Romulo D. Plagata whom they asked to prepare the documents of sale. They later signed an agreement to sell that Atty. Plagata prepared[2] dated April 29, 1988, which agreement expressly stated that it was to take effect in six months.

The agreement required the Fuentes spouses to pay Tarciano a down payment of P60,000.00 for the transfer of the lot's title to him. And, within six months, Tarciano was to clear the lot of structures and occupants and secure the consent of his estranged wife, Rosario Gabriel Roca (Rosario), to the sale. Upon Tarciano's compliance with these conditions, the Fuentes spouses were to take possession of the lot and pay him an additional P140,000.00 or P160,000.00, depending on whether or not he succeeded in demolishing the house standing on it. If Tarciano was unable to comply with these conditions, the Fuentes spouses would become owners of the lot without any further formality and payment.

The parties left their signed agreement with Atty. Plagata who then worked on the other requirements of the sale. According to the lawyer, he went to see Rosario in one of his trips to Manila and had her sign an affidavit of consent.[3] As soon as Tarciano met the other conditions, Atty. Plagata notarized Rosario's affidavit in Zamboanga City. On January 11, 1989 Tarciano executed a deed of absolute sale[4] in favor of the Fuentes spouses. They then paid him the additional P140,000.00 mentioned in their agreement. A new title was issued in the name of the spouses[5] who immediately constructed a building on the lot. On January 28, 1990 Tarciano passed away, followed by his wife Rosario who died nine months afterwards.

Eight years later in 1997, the children of Tarciano and Rosario, namely, respondents Conrado G. Roca, Annabelle R. Joson, and Rose Marie R. Cristobal, together with Tarciano's sister, Pilar R. Malcampo, represented by her son, John Paul M. Trinidad (collectively, the Rocas), filed an action for annulment of sale and reconveyance of the land against the Fuentes spouses before the Regional Trial Court (RTC) of Zamboanga City in Civil Case 4707.

The Rocas claimed that the sale to the spouses was void since Tarciano's wife, Rosario, did not give her consent to it. Her signature on the affidavit of consent had been forged. They thus prayed that the property be reconveyed to them upon reimbursement of the price that the Fuentes spouses paid Tarciano.[6]

The spouses denied the Rocas' allegations. They presented Atty. Plagata who testified that he personally saw Rosario sign the affidavit at her residence in Paco, Manila, on September 15, 1988. He admitted, however, that he notarized the document in Zamboanga City four months later on January 11, 1989.[7] All the same, the Fuentes spouses pointed out that the claim of forgery was personal to Rosario and she alone could invoke it. Besides, the four-year prescriptive period for nullifying the sale on ground of fraud had already lapsed.

Both the Rocas and the Fuentes spouses presented handwriting experts at the trial. Comparing Rosario's standard signature on the affidavit with those on various documents she signed, the Rocas' expert testified that the signatures were not written by the same person. Making the same comparison, the spouses' expert concluded that they were.[8]

On February 1, 2005 the RTC rendered judgment, dismissing the case. It ruled that the action had already prescribed since the ground cited by the Rocas for annulling the sale, forgery or fraud, already prescribed under Article 1391 of the Civil Code four years after its discovery. In this case, the Rocas may be deemed to have notice of the fraud from the date the deed of sale was registered with the Registry of Deeds and the new title was issued. Here, the Rocas filed their action in 1997, almost nine years after the title was issued to the Fuentes spouses on January 18, 1989.[9]

Moreover, the Rocas failed to present clear and convincing evidence of the fraud. Mere variance in the signatures of Rosario was not conclusive proof of forgery.[10] The RTC ruled that, although the Rocas presented a handwriting expert, the trial court could not be bound by his opinion since the opposing expert witness contradicted the same. Atty. Plagata's testimony remained technically un rebutted.[11]

Finally, the RTC noted that Atty. Plagata's defective notarization of the affidavit of consent did not invalidate the sale. The law does not require spousal consent to be on the deed of sale to be valid. Neither does the irregularity vitiate Rosario's consent. She personally signed the affidavit in the presence of Atty. Plagata.[12]

On appeal, the Court of Appeals (CA) reversed the RTC decision. The CA found sufficient evidence of forgery and did not give credence to Atty. Plagata's testimony that he saw Rosario sign the document in Quezon City. Its jurat said differently. Also, upon comparing the questioned signature with the specimen signatures, the CA noted significant variance between them. That Tarciano and Rosario had been living separately for 30 years since 1958 also reinforced the conclusion that her signature had been forged.

Since Tarciano and Rosario were married in 1950, the CA concluded that their property relations were governed by the Civil Code under which an action for annulment of sale on the ground of lack of spousal consent may be brought by the wife during the marriage within 10 years from the transaction. Consequently, the action that the Rocas, her heirs, brought in 1997 fell within 10 years of the January 11, 1989 sale.

Considering, however, that the sale between the Fuentes spouses and Tarciano was merely voidable, the CA held that its annulment entitled the spouses to reimbursement of what they paid him plus legal interest computed from the filing of the complaint until actual payment. Since the Fuentes spouses were also builders in good faith, they were entitled under Article 448 of the Civil Code to payment of the value of the improvements they introduced on the lot. The CA did not award damages in favor of the Rocas and deleted the award of attorney's fees to the Fuentes spouses.[13]

Unsatisfied with the CA decision, the Fuentes spouses came to this court by petition for review.[14]

The Issues Presented

The case presents the following issues:

1. Whether or not Rosario's signature on the document of consent to her husband Tarciano's sale of their conjugal land to the Fuentes spouses was forged;
2. Whether or not the Rocas' action for the declaration of nullity of that sale to the spouses already prescribed; and
3. Whether or not only Rosario, the wife whose consent was not had, could bring the action to annul that sale.

The Court's Rulings

First. The key issue in this case is whether or not Rosario's signature on the document of consent had been forged. For, if the signature were genuine, the fact that she gave her consent to her husband's sale of the conjugal land would render the other issues merely academic.

The CA found that Rosario's signature had been forged. The CA observed a marked difference between her signature on the affidavit of consent^[15] and her specimen signatures.^[16] The CA gave no weight to Atty. Plagata's testimony that he saw Rosario sign the document in Manila on September 15, 1988 since this clashed with his declaration in the jurat that Rosario signed the affidavit in Zamboanga City on January 11, 1989.

The Court agrees with the CA's observation that Rosario's signature strokes on the affidavit appears heavy, deliberate, and forced. Her specimen signatures, on the other hand, are consistently of a lighter stroke and more fluid. The way the letters "R" and "s" were written is also remarkably different. The variance is obvious even to the untrained eye.

Significantly, Rosario's specimen signatures were made at about the time that she signed the supposed affidavit of consent. They were, therefore, reliable standards for comparison. The Fuentes spouses presented no evidence that Rosario suffered from any illness or disease that accounted for the variance in her signature when she signed the affidavit of consent. Notably, Rosario had been living separately from Tarciano for 30 years since 1958. And she resided so far away in Manila. It would have been quite tempting for Tarciano to just forge her signature and avoid the risk that she would not give her consent to the sale or demand a stiff price for it.

What is more, Atty. Plagata admittedly falsified the jurat of the affidavit of consent. That jurat declared that Rosario swore to the document and signed it in Zamboanga City on January 11, 1989 when, as Atty. Plagata testified, she supposedly signed it about four months earlier at her residence in Paco, Manila on September 15, 1988. While a defective notarization will merely strip the document of its public character and reduce it to a private instrument, that falsified jurat, taken together with the marks of forgery in the signature, dooms such document as proof of Rosario's consent to the sale of the land. That the Fuentes spouses honestly relied on the notarized affidavit as proof of Rosario's consent does not matter. The sale is still void without an authentic consent.

Second. Contrary to the ruling of the Court of Appeals, the law that applies to this case is the Family Code, not the Civil Code. Although Tarciano and Rosario got married in 1950, Tarciano sold the conjugal property to the Fuentes spouses on January 11, 1989, a few months after the Family Code took effect on August 3, 1988.

When Tarciano married Rosario, the Civil Code put in place the system of conjugal partnership of gains on their property relations. While its Article 165 made Tarciano the sole administrator of the conjugal partnership, Article 166^[17] prohibited him from selling commonly owned real property without his wife's consent. Still, if he sold the

same without his wife's consent, the sale is not void but merely voidable. Article 173 gave Rosario the right to have the sale annulled during the marriage within ten years from the date of the sale. Failing in that, she or her heirs may demand, after dissolution of the marriage, only the value of the property that Tarciano fraudulently sold. Thus:

Art. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband.

But, as already stated, the Family Code took effect on August 3, 1988. Its Chapter 4 on Conjugal Partnership of Gains expressly superseded Title VI, Book I of the Civil Code on Property Relations Between Husband and Wife.[18] Further, the Family Code provisions were also made to apply to already existing conjugal partnerships without prejudice to vested rights.[19] Thus:

Art. 105. x x x The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256. (n)

Consequently, when Tarciano sold the conjugal lot to the Fuentes spouses on January 11, 1989, the law that governed the disposal of that lot was already the Family Code.

In contrast to Article 173 of the Civil Code, Article 124 of the Family Code does not provide a period within which the wife who gave no consent may assail her husband's sale of the real property. It simply provides that without the other spouse's written consent or a court order allowing the sale, the same would be void. Article 124 thus provides:

Art. 124. x x x In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. x x x

Under the provisions of the Civil Code governing contracts, a void or inexistent contract has no force and effect from the very beginning. And this rule applies to contracts that are declared void by positive provision of law,[20] as in the case of a sale of conjugal property without the other spouse's written consent. A void contract is equivalent to nothing and is absolutely wanting in civil effects. It cannot be validated either by ratification or prescription.[21]

But, although a void contract has no legal effects even if no action is taken to set it aside, when any of its terms have been performed, an action to declare its inexistence is necessary to allow restitution of what has been given under it.[22] This action, according to Article 1410 of the Civil Code does not prescribe. Thus:

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

Here, the Rocas filed an action against the Fuentes spouses in 1997 for annulment of sale and reconveyance of the real property that Tarciano sold without their mother's (his wife's) written consent. The passage of time did not erode the right to bring such an action.

Besides, even assuming that it is the Civil Code that applies to the transaction as the CA held, Article 173 provides that the wife may bring an action for annulment of sale on the ground of lack of spousal consent during

the marriage within 10 years from the transaction. Consequently, the action that the Rocas, her heirs, brought in 1997 fell within 10 years of the January 11, 1989 sale. It did not yet prescribe.

The Fuentes spouses of course argue that the RTC nullified the sale to them based on fraud and that, therefore, the applicable prescriptive period should be that which applies to fraudulent transactions, namely, four years from its discovery. Since notice of the sale may be deemed given to the Rocas when it was registered with the Registry of Deeds in 1989, their right of action already prescribed in 1993.

But, if there had been a victim of fraud in this case, it would be the Fuentes spouses in that they appeared to have agreed to buy the property upon an honest belief that Rosario's written consent to the sale was genuine. They had four years then from the time they learned that her signature had been forged within which to file an action to annul the sale and get back their money plus damages. They never exercised the right.

If, on the other hand, Rosario had agreed to sign the document of consent upon a false representation that the property would go to their children, not to strangers, and it turned out that this was not the case, then she would have four years from the time she discovered the fraud within which to file an action to declare the sale void. But that is not the case here. Rosario was not a victim of fraud or misrepresentation. Her consent was simply not obtained at all. She lost nothing since the sale without her written consent was void. Ultimately, the Rocas ground for annulment is not forgery but the lack of written consent of their mother to the sale. The forgery is merely evidence of lack of consent.

Third. The Fuentes spouses point out that it was to Rosario, whose consent was not obtained, that the law gave the right to bring an action to declare void her husband's sale of conjugal land. But here, Rosario died in 1990, the year after the sale. Does this mean that the right to have the sale declared void is forever lost?

The answer is no. As stated above, that sale was void from the beginning. Consequently, the land remained the property of Tarciano and Rosario despite that sale. When the two died, they passed on the ownership of the property to their heirs, namely, the Rocas.[23] As lawful owners, the Rocas had the right, under Article 429 of the Civil Code, to exclude any person from its enjoyment and disposal.

In fairness to the Fuentes spouses, however, they should be entitled, among other things, to recover from Tarciano's heirs, the Rocas, the P200,000.00 that they paid him, with legal interest until fully paid, chargeable against his estate.

Further, the Fuentes spouses appear to have acted in good faith in entering the land and building improvements on it. Atty. Plagata, whom the parties mutually entrusted with closing and documenting the transaction, represented that he got Rosario's signature on the affidavit of consent. The Fuentes spouses had no reason to believe that the lawyer had violated his commission and his oath. They had no way of knowing that Rosario did not come to Zamboanga to give her consent. There is no evidence that they had a premonition that the requirement of consent presented some difficulty. Indeed, they willingly made a 30 percent down payment on the selling price months earlier on the assurance that it was forthcoming.

Further, the notarized document appears to have comforted the Fuentes spouses that everything was already in order when Tarciano executed a deed of absolute sale in their favor on January 11, 1989. In fact, they paid the balance due him. And, acting on the documents submitted to it, the Register of Deeds of Zamboanga City issued a new title in the names of the Fuentes spouses. It was only after all these had passed that the spouses entered the property and built on it. He is deemed a possessor in good faith, said Article 526 of the Civil Code, who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

As possessor in good faith, the Fuentes spouses were under no obligation to pay for their stay on the property

prior to its legal interruption by a final judgment against them.[24] What is more, they are entitled under Article 448 to indemnity for the improvements they introduced into the property with a right of retention until the reimbursement is made. Thus:

Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (361a)

The Rocas shall of course have the option, pursuant to Article 546 of the Civil Code,[25] of indemnifying the Fuentes spouses for the costs of the improvements or paying the increase in value which the property may have acquired by reason of such improvements.

WHEREFORE, the Court DENIES the petition and AFFIRMS WITH MODIFICATION the decision of the Court of Appeals in CA-G.R. CV 00531 dated February 27, 2007 as follows:

1. The deed of sale dated January 11, 1989 that Tarciano T. Roca executed in favor of Manuel O. Fuentes, married to Leticia L. Fuentes, as well as the Transfer Certificate of Title T-90,981 that the Register of Deeds of Zamboanga City issued in the names of the latter spouses pursuant to that deed of sale are DECLARED void;
2. The Register of Deeds of Zamboanga City is DIRECTED to reinstate Transfer Certificate of Title 3533 in the name of Tarciano T. Roca, married to Rosario Gabriel;
3. Respondents Gonzalo G. Roca, Annabelle R. Joson, Rose Marie R. Cristobal, and Pilar Malcampo are ORDERED to pay petitioner spouses Manuel and Leticia Fuentes the P200,000.00 that the latter paid Tarciano T. Roca, with legal interest from January 11, 1989 until fully paid, chargeable against his estate;
4. Respondents Gonzalo G. Roca, Annabelle R. Joson, Rose Marie R. Cristobal, and Pilar Malcampo are further ORDERED, at their option, to indemnify petitioner spouses Manuel and Leticia Fuentes with their expenses for introducing useful improvements on the subject land or pay the increase in value which it may have acquired by reason of those improvements, with the spouses entitled to the right of retention of the land until the indemnity is made; and
5. The RTC of Zamboanga City from which this case originated is DIRECTED to receive evidence and determine the amount of indemnity to which petitioner spouses Manuel and Leticia Fuentes are entitled.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and Mendoza, JJ., concur.

[1] Records, p. 8.

[2] Id. at 149.

[3] Id. at 10.

[4] Id. at 9.

[5] Id. at 171.

[6] Id. at 1-5.

[7] TSN, April 12, 2000, pp. 16-18.

[8] Rollo, p. 42.

[9] Id. at 72.

[10] Id. at 73.

[11] Id. at 92.

[12] Id. at 95-96.

[13] Id. at 45-50.

[14] A Division of the Court already denied the petition for having been filed late and on other technical grounds. (Rollo, pp. 7 and 110-111). But it was reinstated on second motion for reconsideration and referred to the En Banc on a consulta. (Rollo, pp. 199-200).

[15] Records, p. 10.

[16] Exhibits E to E-21 consisting of personal letters and legal documents signed by Rosario relative to a special proceedings case tried by another court.

[17] Art. 166. Unless the wife has been declared a non compos mentis or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same.

[18] Family Code of the Philippines, Art. 254.

[19] Id., Art. 105; see also Homeowners Savings and Loan Bank v. Miguela C. Dailo, G.R. No. 153802, March 11, 2005, 453 SCRA 283, 290.

[20] Civil Code of the Philippines, Art. 1409.

[21] Id., Vol. IV (1990-1991 Edition) Arturo M. Tolentino, pp. 629 & 631.

[22] Id. at 632.

[23] Id., Art. 979. "Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages. x x x

[24] Id., Art. 544.

[25] Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor. Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof. (453a)

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