

**MARIANO T. LIM, JAIME T. LIM, JOSE T. LIM, JOVITA T. LIM,
ANACORITA T. LIM, ANTONIETTA T. LIM, RUBEN T. LIM, BENJAMIN
T. LIM, ET AL., PETITIONER, VS. COURT OF APPEALS, LORENZO O...**

G.R. No. 55201. February 03, 1994

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review of the Decision of the Court of Appeals in CA-G.R. No. 51340-R entitled "Mariano T. Lim, et al., vs. Lorenzo O. Tan, et al., dated July 28, 1980.[1]

The case involves the partition of the properties of the deceased spouses Tan Quico and Josefa Oraa. The former died on May 11, 1932 and the latter on August 6, 1932. Both died intestate. They left some ninety six (96) hectares of land located in the municipality of Guinobatan and Camalig, Albay.[2]

The late spouses were survived by four (4) children: Crescencia, Lorenzo, Hermogenes and Elias. Elias died on May 2, 1935 without issue. Crescencia died on December 20, 1967.[3] She was survived by her husband, Lim Chay Sing,[4] and children, Mariano, Jaime, Jose Jovita, Anacoreta, Antonietta, Ruben, Benjamin and Rogelio. They are the petitioners in the case at bench.

The sad spectacle of the heirs squabbling over the properties of their deceased parents was again replayed in the case at bench. The protagonists were the widower and children of Crescencia on one side, and Lorenzo and Hermogenes on the other side.

The late Crescencia and Lorenzo had contrasting educational background. Crescencia only reached the second grade of elementary school. She could not read or write in English. On the other hand, Lorenzo is a lawyer and a CPA.

Petitioners, heirs of Crescencia, alleged that since the demise of the spouses Tan Quico and Josefa Oraa, the subject properties had been administered by respondent Lorenzo. They claimed that before her death, Crescencia had demanded their partition from Lorenzo.[5] After Crescencia's death, they likewise clamored for their partition.[6] Their efforts proved fruitless. They filed Civil Case No. 3676.

Respondents Lorenzo and Hermogenes' adamant stance against partition is based on various contentions. Principally, they urge: (1) that the properties had already been partitioned, albeit, orally; and (2) during her lifetime, the late Crescencia had sold and conveyed all her interests in said properties to respondent Lorenzo. They cited as evidence the "Deed of Confirmation of Extra Judicial Settlement of the Estate of Tan Quico and Josefa Oraa"[7] and a receipt of payment.[8]

The trial court decided in favor of the petitioners. It rejected the alleged oral petition in light of the contrary testimony of respondent Hermogenes. It voided the "Deed of Confirmation of Extra Judicial Settlement of the Estate of Tan Quico and Josefa Oraa and Sale"[9] on the ground that it was not understood by the late Crescencia when she signed it.

On appeal, the respondent Court of Appeals, voting 4-1, reversed. It held there was evidence to establish that the subject properties had been previously partitioned. It ruled that respondent Lorenzo was not shown to have exercised any undue influence over the late Crescencia when she signed the said Deed of Confirmation, etc.

Dissatisfied, petitioners filed this petition for review by certiorari. They submit:

- THE FINDING OR CONCLUSION DRAWN BY THE HONORABLE COURT OF APPEALS THAT -
'THE EVIDENCE ON RECORD ALSO SHOWS THAT THE TERMS OF EXH. "E" (ALSO EXH. "1" IN
ENGLISH) WERE READ TO CRESENCIANA O. TAN IN THE BICOL DIALECT, EXPLAINED TO AND
UNDERSTOOD BY HER, BEFORE SHE SIGNED THE SAME.

BASED ON THE FACTS STATED IN THE JUDGMENT QUOTING 'THE PERTINENT TESTIMONIES ON
THIS POINT' OF BOTH DEFENDANTS IS MANIFESTLY INCORRECT, AS THE SAME FALL FAR
SHORT OF THE MANDATORY REQUIREMENT OF ART. 1332, CIVIL CODE, THAT THE TERMS
THEREOF SHOULD BE FULLY EXPLAINED TO THE ILLITERATE CRESENCIA O. TAN WHO DID NOT
KNOW HOW TO READ AND WRITE IN ENGLISH.

- THE CONCLUSION DRAWN BY THE HONORABLE COURT OF APPEALS THAT THERE WAS NO
UNDUE INFLUENCE EXERTED ON CRESENCIA O. TAN BY HER (LAWYER-CPA) BROTHER
LORENZO O. TAN BASED ON FACTS STATED IN THE QUESTIONED JUDGMENT IS CLEARLY
INCORRECT, AS IT IS CONTRARY TO THE PROVISION OF ART. 1337, CIVIL CODE.

- THE FINDING AND DECLARATION OF THE HONORABLE COURT OF APPEALS THAT LORENZO O.
TAN IS THE LAWFUL OWNER OF THE PROPERTIES PERTAINING TO THE SHARE OF SAID
ILLITERATE OR PARTY AT A DISADVANTAGE, CRESENCIA O. TAN BY VIRTUE OF SAID
DOCUMENT (EXH. "E"; ALSO EXH. "1") IS CONTRARY TO LAW, AS THE LATTER'S CONSENT WAS
GIVEN BY MISTAKE, UNDUE INFLUENCE AND/OR FRAUD.

- THE FINDING OF THE HONORABLE COURT OF APPEALS THAT THERE WAS AN ORAL PARTITION
BY AND AMONG CRESENCIA O. TAN AND HER TWO BROTHERS LORENZO O. TAN AND
HERMOGENES O. TAN IS CONTRARY TO THE ORAL ADMISSION OF HERMOGENES O. TAN
HIMSELF WHO TESTIFIED THAT -

'WE DID NOT HAVE EXACTLY A PARTITION IN 1930.'

AS WELL AS SERIOUSLY CONTRADICTED BY CLEAR, COMPETENT AND CREDIBLE
DOCUMENTARY EVIDENCE AND THEREFORE SHOULD BE DISREGARDED."

We grant the petition.

The general rule is that factual findings of lower courts are accorded great respect by this court on review of their decisions. In the petition at bench, we are constrained to re-examine these findings considering the contrarieties in the findings made by the appellate court and the trial court. Indeed, even the Decision of the appellate court is not a unanimous but a mere majority decision.

The first issue is whether or not the subject properties had already been partitioned among the heirs of Tan Quico and Josefa Oraa. The private respondents alleged that the properties had been orally partitioned in 1930.[10] Their evidence on this score, however, leaves much to be desired. It is only respondent Lorenzo who stubbornly insisted that the said properties had already been divided. However, brother Hermogenes, the other respondent, gave a different testimony. We quote his testimony:

x x x

"Court:

Q

Never mind your sister, we are talking about your parents. During their lifetime in 1930 you said that the properties would be divided, so, in 1930, there was no actual division because it would only be divided?

A

We did not have exactly a partition in 1930.

Q

You did not have a partition in 1930?

A

No, your Honor."^[11]

The documentary evidence likewise support the conclusion that there was no such partition. Exhibit "2", the receipt dated April 20, 1966 thumbmarked by the late Crescencia and presented by the petitioners themselves reads:

"RECEIPT FOR P8,970.00

Received from LORENZO O. TAN, on various dates, the total sum of EIGHT THOUSAND NINE HUNDRED SEVENTY (P8,970.00) PESOS as partial payment for the sale of my pro-indiviso share on the properties inherited by me from my deceased parents.

As guarantee for the payment, I put up as security my pro-indiviso one-third share on the properties inherited by me from my deceased parents.

Signed this 20th day of April, 1966 at Quezon City, Philippines.

(SGD) CRESENCIA O. TAN

Witness: (SGD) ANTONIETTA T. LIM

Note: Amount of P8,970 includes P6,700 paid to acquire Lot No. 202-54-41-T from Pedro L. Morada who transferred his right to Jovita Lim."

The receipt speaks of the late Crescencia's pro-indiviso share of the subject properties or her share before division. We also note that that the subject lots are still covered by tax declarations^[12] in the name of their parents. If these lots had already been partitioned to the different heirs and then occupied by them, it appears strange that their tax declarations have not been adjusted to reflect their ownership considering the long time that has elapsed since 1930. Respondent Lorenzo testified that he took possession of the lot supposed to belong to the late Crescencia in 1966,^[13] yet, he himself did not cause any change in its tax declaration. Similarly corrosive of the claim of private respondents is their own Exhibit "E" or "1", entitled "Deed of Confirmation of Extra Judicial Settlement of the Estate of Tan Quico and Josefa Oraa." Nowhere in the text of this document prepared by no less than respondent Lorenzo, is there any intimation that the subject properties had already been partitioned. Yet, when asked why Exhibit was entitled Deed of Confirmation, respondent Lorenzo explained; "... we want to put it in black and white, the separation of the properties which was in existence since 1930 to 1932..." (TSN, March 2, 1970, p. 40) To say the least, the omission buttresses the conclusion that the subject properties have not been partitioned.

We now determine the next crucial issue of fact, i.e., whether or not the above mentioned Deed of Confirmation of Extra Judicial Settlement of the Estate of Tan Quico and Josefa Oraa (Exhibit "E" or "1") is valid. The respondent court, reversing the trial court, held that the evidence failed to establish that it was signed by the late Crescencia as a result of fraud, mistake or undue influence. We hold this ruling erroneous. In calibrating the credibility of the witnesses on this issue, we take our mandate from Article 1332 of the Civil Code which provides: "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." This substantive law came into being due to the finding of the Code Commission that there is still a fairly large number of illiterates in this country, and documents are usually drawn up in English or Spanish.[14] It is also in accord with our state policy of promoting social justice.[15] It also supplements Article 24 of the Civil Code which calls on court to be vigilant in the protection of the rights of those who are disadvantaged in life. In the petition at bench, the questioned Deed is written in English, a language not understood by the late Crescencia, an illiterate. It was prepared by the respondent Lorenzo, a lawyer and CPA. For reasons difficult to divine, respondent Lorenzo did not cause the notarization of the Deed. Petitioners alleged that the Deed was signed by the late Crescencia due to mistake, fraud or undue influence. They postulated that respondent Lorenzo took advantage of the late Crescencia's trust and confidence. Testifying on the trust of the late Crescencia on respondent Lorenzo, petitioner Jose Lim declared:[16]

x x x

"Q

Now, will you tell the Court how the relation between your mother and your uncle Lorenzo Tan before September 1967?

A

My mother was so close to his brother, Lorenzo Tan. My mother always asked him advice because he is considered by my mother as God to her. x x x."

Considering these circumstances, the burden was on private respondents to prove that the content of the Deed was explained to the illiterate Crescencia before she signed it.[17] In this regard, the evidence adduced by the respondents failed to discharge their burden. On one hand, respondent Lorenzo testified that he and his brother, respondent Hermogenes, explained in Bicolano, the meaning of the Deed to the late Crescencia, viz:[18]

"ATTY. LUDOVICE:

Q

Who read the document to her?

A

I and my brother.

Q

Who is that brother?

A

Hermogenes Tan.

COURT:

Q

Who read that document?

A

I prepared it.

Q

You prepared it yourself?

A

Yes, sir.

Q

Why do you have to prepare the document?

A

Because I have all the details.

COURT:

All right.

ATTY. LUDOVICE:

Q

In what language did you read this document to Crescencia O. Tan?

A

First it was in English then it was in Bicol so as to clarify things, they were my sister and my brother and to other persons who is going to witness the document.

Q

Did your sister understand the Bicol dialect when the contents of this was read?

A

Yes and before that, my sister knows everything what is going on.

ATTY. GATDULA:

I moved to strike out the last portion of the answer.

COURT:

Strike it out."

Respondent Hermogenes, however, gave a different testimony. He declared it was respondent Lorenzo alone who read the text of the Deed in Bicolano to the late Crescencia. We quote his testimony, viz:[19]

"Q

You presented this document, EXHIBIT 1 for the defendants, to Cresencia Tan?

A

It was presented by my brother Lorenzo Tan.

Q

On what occasion was that on August 15, 1967 was this presented?

A

August 16 coincide with the fiesta in our town, Guinobatan.

Q

Was this read to your sister by your brother Lorenzo?

A

Yes, sir, that was read.

Q

In what language was it read to her?

A

It was read in Bicol.

Q

Did your sister understand the contents of the document?

A

Yes, sir.

Q

Who read the document to her?

A

Lorenzo Tan read the document.

This variance in testimony on a material matter works against the credibility of private respondents. Nor are we prepared to give full faith and credit to the testimony that respondent Lorenzo alone explained the text of the Deed to the late Crescencia. Respondent Lorenzo has too much of a material stake on the dispute. His testimony on the issue is, therefore, not free from bias and prejudice. Indeed, the preparation and alleged signing of the said Deed leave a lot of questions unanswered. For one, the Deed as important as it is, was not caused to be notarized by respondent Lorenzo. The need for notarization could not have escaped respondent Lorenzo, a lawyer by profession. Article 1358 of the Civil Code requires that the Deed should appear in a public document. For another, respondent Lorenzo prepared the Deed in the English language when he knew all along that the late Crescencia would not be able to comprehend its meaning. For still another, none of the alleged witnesses to the Deed was presented to testify on whether it was signed by the late Crescencia voluntarily and with clear comprehension of its content. Last but not the least, it is strange that the late Crescencia was made to sign a document, written in a language she did not understand, alone and without the assistance of any of her more educated children. All these facts and circumstances compel us to conclude that private respondents failed to prove that the late Crescencia

signed the said Deed with full freedom and complete understanding of its legal significance.

Finally, we come to the issue of whether or not the late Crescencia sold her inheritance share in favor of the respondent Lorenzo. In taking the stance that there was indeed a sale, private respondents point to the receipt, Exh. "2" dated April 20, 1966 as evidence. The significance of this receipt, Exh. "2" was well analyzed by the trial court and we approve its ruling, viz:

"Said defendant likewise presented in evidence a receipt (Exhibit 2) purports to show that on April 20, 1966, Crescencia O. Tan had already received the aggregate amount of P8,970.00 from defendant Lorenzo O. Tan as "partial payment for the sale of my (Crescencia O. Tan's) pro?indiviso share on the properties inherited by me from my deceased parents."

It is contended, by these exhibits, that Crescencia O. Tan wanted to buy Lot 202-5-41-T at No. 53 Bignay, Project 2, Quezon City, with the proceeds of the sale to defendant Lorenzo O. Tan of a portion of Lot 7671 located in Singtan, Guinobatan, Albay, which is alleged to be the share of said Crescencia O. Tan.

However, the same receipt Exhibit 2 recites at the bottom thereof that the amount of P8,970.00 includes the amount of P6,700.00 paid to purchase the lot of certain Pedro L. Morada who transferred his right to Jovita Lim. This statement in Exhibit 2 belies defendant's contention that Crescencia O. Tan is the buyer of the lot in Quezon City.

IN VIEW WHEREOF, the petition for review on certiorari is granted and the Decision of the respondent appellate court in CA-G.R. No. 51340-R dated July 28, 1980 is reversed and set aside. In its lieu, the Decision of the then CFI of Albay, 10th Judicial District, Br. II in Civil Case No. 3676 is reinstated. Costs against private respondents.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Nocon, J., on leave.

[1] The Decision was penned by Associate Justice Serafin Cuevas with the concurrence of Associate Justices Crisolito Pascual, Hugo Gutierrez, Jr., and Jorge Coquia, but with Associate Justice Carolina Aquino dissenting. It reversed the Decision of the then CFI of Albay, 10th Judicial District, Br. II in Civil Case No. 3676 for Partition, Accounting with Damages, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

(1) Ordering the partition of all the real properties listed and enumerated in the INVENTORY, Annex "A" to the amended complaint on Exhibit "B", among the following and in the following proportion, to wit:

(a) One-third (1/3) to be adjudicated and awarded to Hermogenes O. Tan; and

(b) One-third (1/3) to be adjudicated and awarded to Hermogenes O. Tan; and

(c) One-third (1/3) to be adjudicated and awarded to the herein plaintiffs Mariano, Jaime, Jovita, Jose, Anacorita, Antonietta, Ruben, Benjamin, and Rogelio, all surnamed T. Lim and Lim Chay Sing, per stirpes in representation of their deceased mother CRESENCIANA C. TAN.

The partition herein adjudged may be effected either by common agreement of the parties herein mentioned as entitled thereto, or through a project of partition to be prepared by a commissioner to be suggested by said parties within a period of ten (10) days from receipt of a copy of this judgment, subject to the conformity of the parties and the approval of the court;

(2) Defendant Lorenzo O. Tan is hereby ordered to render a full and complete accounting of all the fruits and income derived from the properties subject of partition from 1932 to the present;

(3) Defendants are hereby ordered to pay unto the plaintiffs damages by way of attorney's fees in the sum of P3,000.00; and

(4) The 'Deed of Confirmation' of Extra-Judicial partition and sale dated August 15, 1967 executed by Cresenciana O. Tan, as vendor, and Lorenzo O. Tan as vendee and Hermogenes O. Tan, and acknowledged before Notary Public JOSE P. OIRA is hereby declared null and void as having been procured with fraud and/or mistake.

Costs against the defendant.

[2] Exhibit "B".

[3] Exhibit "A".

[4] Also known as Salvador Guariña.

[5] TSN, August 14, 1969, pp. 6-8.

[6] Ibid, pp. 9-12.

[7] Exh. "E" or "1".

[8] Exh. "2".

[9] Exhibit "E" or "1".

[10] TSN, March 2, 1970, pp. 40-42.

[11] TSN, April 8, 1970, p. 29.

[12] Exhibits "C", "C-1" to "C-21".

[13] TSN, March 2, 1970, p. 23.

[14] Code Commission Report, p. 136.

[15] Article II, sec. 10 of the 1987 Constitution.

[16] TSN, August 14, 1969, pp. 23-24.

[17] Tolentino, Civil Code of the Philippines, Vol. IV, 1991 ed., p. 486 citing Ayala vs. Valderama, etc., 49 O.G. 980, March 1953. Arzadon vs. Banson, et al., (CA G.R. No. 2661-R, November 15, 1963.

[18] TSN, March 2, 1970, pp. 31-32.

[19] TSN, April 8, 1970, p. 7.

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