

**JUAN LAO AND CANDELARIA C PERIOD LAO COMMA PETITIONERS
COMMA VS. HON PERIOD MELECIO A. GENATO, AS PRESIDING
JUDGE, COURT OF FIRST INSTANCE, BRANCH I, MISAMIS
OCCIDENTAL, S...**

G.R. No. 56451. June 19, 1985

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CUEVAS COMMA J PERIOD COLON PARAGRAPH

Petition for CERTIORARI with prayer for the declaration of nullity of the Order[1] dated February 18, 1981 of the then Court of First Instance of Misamis Occidental — Branch I which confirmed and approved the two Deeds of Sale, both dated August 15, 1980, involving a commercial property belonging to the estate of the deceased Rosenda Abuton .

Petitioner spouses were promisees in a Mutual Agreement of Promise to Sell executed between them and private respondent Sotero B.Dionisio III, son of respondent Sotero A.Dionisio, Jr ., heir and administrator of the intestate estate of the deceased, whereby of the promisor bound himself to sell the subject property to petitioners. Private respondents, except Sotero Dionisio III and William Go, are the children and only compulsory heirs of the deceased.

On June 25, 1980, respondent administrator Sotero Dionisio, Jr ., with due notice to all his co-heirs, filed with the Probate Court in Special Proceedings No. 842 a Motion for Authority to Sell a certain properties of the deceased to settle the outstanding obligations of the estate.

On July 8, 1980, after hearing, there being no opposition, the lower court issued an Order[2] authorizing the administrator to sell the therein described properties of the estate and such other properties under his administration at the best price obtainable, and directing him to submit to the court for approval the transaction made by him.

On August 15, 1980, respondent-administrator pursuant to said authorization, sold to his son, Sotero Dionisio III, the subject property for P75,000.00 per deed of sale[3] acknowledged before Notary Public Triumfo R. Velez. On the same date, Sotero Dionisio III executed a deed of sale[4] of the same property in favor of respondent William Go for a consideration of P80,000.00. On August 18, 1980, title was transferred to respondent Go.

On August 27, 1980, respondent-heir Florida Nuqui, filed a Motion for Annulment/Revocation of the Deeds of Absolute Sale for the reasons that the sales and subsequent transfer of title of the property were made in violation of the court's order of July 8, 1980 and that the consideration of the two sales were grossly inadequate as in fact many are willing to buy the property for P400,000.00 since it is located along the corner of two main streets in the commercial center of Oroquieta City.

The respondent-administrator filed an opposition to said motion of co-heir Nuqui alleging that the actual consideration of the sale made by him is P200,000.00 and that it is the agreement of the heirs that if any of the heirs or close relatives is interested in buying the property, preference will be given to him or her in order to keep

the property within the family of the deceased.

On September 9, 1980, respondent Nuqui filed a Reply to said Opposition, stating that the two sales were but a single transaction simultaneously hatched and consummated in one occasion as shown by the Notary Public's document Nos. 56 & 57 and with the same witnesses; that the sales were in reality a single deal between the administrator and William Go, because Sotero Dionisio III is without means or income and so has no capacity to buy the property; and that the transaction is an evidence of the administrator's intent to defraud the estate and his co-heirs, for had it not been for the Motion for Annulment, he would not have disclosed the true and actual consideration of the sale.

On September 10, 1980, all the co-heirs of respondent-administrator filed a Manifestation to Adopt the Motion for Annulment/Revocation of Deeds of Absolute Sale. They likewise filed a Manifestation on February 5, 1981 alleging that the Court order merely authorized the sale of the subject property but did not approve the same. Thus, their prayer for the cancellation of the registration of sale transaction between respondent-administrator and his son, and that between the latter and respondent William Go.

Respondent Go filed a Motion for Leave to Intervene to protect his rights, manifesting that he paid Sotero Dionisio III the actual consideration of P225,000.00 and being a purchaser in good faith and for value, his title to the property is indefeasible pursuant to la.

On February 6, 1981, petitioner spouses filed a "Manifestation In Intervention of Interest to Purchase Property Authorized by the Court to be Sold", wherein they alleged that respondent-administrator, without revealing that the property had already been sold to William Go, entered into a Mutual Agreement of Promise to Sell^[5] to herein petitioners, for the amount of P270,00.00 which was reduced to P220,000.00; that immediately upon the execution of the agreement, petitioners paid the earnest money in the amount of P70,000.00 by IBAA Check No. OQT-40063026 drawn out in favor of Sotero Dionisio III, as requested by respondent -administrator; that it was agreed upon that the balance of P150,000.00 shall immediately be paid upon the production of the Transfer Certificate of Title and the execution of the final Deed of Sale; that although the agreement was executed in the name of Sotero Dionisio III, the latter was merely a nominal party, for technically according to the administrator, he executed a Deed of Absolute Sale in favor of his son, but the negotiations and transactions were directly and personally entered into between the administrator and petitioners; that the contract of sale has been perfected considering that the earnest money was already paid; that despite repeated demands, the administrator refused to execute a final Deed of Sale in favor of petitioners, who later on found out that the subject property was sold to William Go; that both contracts of sale were made to defraud the estate and the other heirs; that assuming the consideration of P200,000.00 was supplied by William Go to Sotero Dionisio III who was not gainfully employed, then the contract of sale to Go would be without consideration, hence, it would become fictitious and simulated and there is no other recourse left to the court but to declare the sale null and void. Petitioners also manifested that in the event that the court should finally declare the sale null and void, they are still interested to purchase the property for the same amount of P220,000.00 as previously agreed upon.

At the hearing of the said incident involving the questioned sales, petitioners submitted a copy of the Contract of Mortgage^[6] dated July 18, 1980 executed by respondent-administrator in favor of Juan Lao, one of the petitioners, whereby the former mortgaged "all his undivided interest in the estate of his deceased mother, Rosenda Abuton Vda. de Nuqui, subject matter of Intestate Estate No. 842 now pending before the Court of First Instance of Oroquieta City, Branch I."

Respondent heir Florida A. Nuqui filed an Opposition to William Go's Motion to Intervene averring therein that the deed of sale executed by Sotero Dionisio, Jr. in favor of Sotero Dionisio III created no legal force and effect,

since the validity of the sale absolutely depended on its approval by the court; that it therefore follows that the succeeding sale to Go and consequent issuance of the title to him are also null and void from their inception; and that the admission by William Go of the actual and true consideration of the sale at this late stage, hardly bespeaks of his "innocence" or "good faith".

After several days of hearing, respondent Judge allowed all the interested parties to bid for the property at the highest obtainable price pursuant to his Order of July 8, 1980.

On February 16, 1981, in open court, respondent Go offered to buy the property in the amount of P280,000.00. Petitioners counter-offered at P282,000.00, spot cash. On that same day, all the heirs, except the administrator, filed a Motion Ex-Parte,[7] stating among other things, that the offer of William Go appears the highest obtainable price and that the offer of petitioners is not well taken as the same has not been made within a reason-able period of five (5) days from February 11, 1981.

On February 17, 1981, all the parties, with the exception of the Lao spouses and Sotero Dionisio III, submitted for approval an Amicable Settlement[8] stating –

"xxx xxx xxx

That after the administrator, Sotero A. Dionisio, Jr., had accounted for the actual price received by him out of the transaction between him and Sotero B. Dionisio III in the amount of Two Hundred Thousand (P200,000.00) Pesos and that in the interest of a peaceful settlement William L. Go has offered and is ready, able and willing to pay to the heirs an additional amount of Eighty Thousand (P80,000.00) Pesos an arrangement which is most advantageous to the heirs and which they willingly accept to their satisfaction, the heirs of Rosenda Abuton hereby declare that they have no objection to the confirmation and approval of the sales/transactions executed by Sotero A. Dionisio, Jr., in favor of Sotero B. Dionisio III and that executed by Sotero B. Dionisio III in favor of the intervenor, William L. Go, and they likewise have no more objection to the lifting and cancellation of the notice of lis pendens from TCT No. 8807.

WHEREFORE, it is most respectfully prayed that an order issue by this Hon. Court confirming and approving the transaction executed by Sotero A. Dianisio, Jr., in favor of Sotero B. Dionisio III and that between the latter and William L. Go, and to direct the Register of Deeds of the Province of Misamis Occidental at Oroquieta City, for the cancellation of the notice of lis pendens annotated on Transfer Certificate of Title No. 8807, and to finally consider the matter treated in the motion of Florida A. Nuqui dated August 27, 1980 and adopted by all the other heirs forever closed and terminated.

Oroquieta City, February 17, 1981.

"xxx xxx xxx"

On February 18, 1981, petitioners filed an opposition to the approval of the Amicable Settlement on the following grounds:

- (a) They have an interest in the property as vendees in a promise to sell and as Mortgagee of an undivided share of one of the heirs but they were not signatories to the amicable settlement, hence it is contrary to Article 2028 of the Civil Code providing that "A compromise is a contract whereby the parties, by making reciprocal concessions, avoid liti-gation or put an end to one already commenced";
- (b) The Amicable Settlement seeks the confirmation and approval of the questioned transactions but as borne out by the pleadings and oral arguments, the Deed of Absolute Sale executed by the administrator in favor of his son is without consideration, therefore, it is fictitious and simulated hence it cannot be confirmed or ratified pursuant to Article 1409 of the New Civil Code;
- (c) The Amicable Settlement is a device to defraud the Government of Capital Gains Tax, charges and other

fees because the Deeds of Sales do not reflect the true consideration; and

(d) The Deeds of Sale sought to be confirmed included the undivided share of Sotero A. Dionisio, Jr. which is presently mortgaged to herein spouses, which was executed prior to the sale, thus, if ap-proved, the Court would abet the commission of the crime of estafa as the mortgage has not yet been paid and released.

Petitioners likewise pointed out in their opposition that respondent Judge had intimated in open court that somebody offered to buy the property for the price of P300,000.00 but since there was no formal offer in writing, they (petitioners) are ready and willing to buy the property at that amount, which definitely is the best price obtainable in the market and most beneficial to all the heirs.

Despite said opposition, respondent Judge issued an Order[9] on February 18, 1981 approving the Amicable Settlement, confirming and ratifying the two questioned Deeds of Sale. Petitioners' motion for reconsideration having been denied, they now come before Us through the instant petition raising the issue of whether or not respondent Judge is guilty of grave abuse of discretion in 1) approving the amicable settlement and confirming the two (2) Deeds of Sale in question; and 2) in not accepting the offer of the petitioners in the amount of P300,000.00 for the purchase of the lot in question.

Sotero Dionisio, Jr. is the Administrator of the estate of his deceased mother Rosenda Abutan. As such Administrator, he occupies a position of the highest trust and confidence. He is required to exercise reasonable diligence and act in entire good faith in the performance of that trust. Although he is not a guarantor or insurer of the safety of the estate nor is he expected to be infallible, yet the same degree of prudence, care and judgment which a person of a fair average capacity and ability exercises in similar transactions of his own, serves as the standard by which his conduct is to be judged.

In the discharge of his functions, the administrator should act with utmost circumspection in order to preserve the estate and guard against its dissipation so as not to prejudice its creditors and the heirs of the decedents who are entitled to the net residue thereof. In the case at bar, the sale was made necessary "in order to settle other existing obligations of the estate". This purpose is clearly manifested in the Motion for Authority to Sell[10] filed by Dionisio, Jr. The subsisting obligations referred to, although not specified, must be those due and owing to the creditors of the estate and also the taxes due the government. In order to guarantee faithful compliance with the authority granted[11] respondent Judge, through the aforesaid Order made it an emphatic duty on the part of the administrator Dionisio "x x x to submit to this Court for approval the transactions made by him".

The sale was made. But of all people, to his very son Sotero Dionisio III and for the grossly low price of only P75,000.00. That sale was indubitably shown to be fictitious, it clearly appearing that Dionisio III has no income whatsoever. In fact, he is still a dependent of his father, administrator Dionisio, Jr. On top of that, not a single centavo of the P75,000.00 stated consideration was ever accounted for nor reported by Dionisio, Jr. to the probate court. Neither did he submit said transaction as mandated by the order authorizing him to sell, to the probate court for its approval and just so its validity and fairness may be passed upon and resolved. It was only upon the filing by one of the heirs, Florida A. Nuqui, of the "Motion for Annulment/Revocation of Deeds of Absolute Sale"[12] questioning the genuineness and validity of the transactions, that Dionisio, Jr. was compelled to admit that the actual consideration for the sale made by him was P200,000.00.[13] This sale is one of the illegal and irregular transactions that was confirmed and legalized by His HONOR's approval of the assailed Amicable Settlement. No doubt, respondent Judge's questioned approval violates Article 1409 of the New Civil Code and cannot work to confirm nor serve to ratify a fictitious contract which is non-existent and void from the very beginning. The fact that practically all the heirs are parties-signatories to the said Compromise Agreement is of no moment. Their assent to such an illegal scheme does not legalize the same nor does it impose any obligation upon respondent Judge to approve the same to the prejudice not only of the creditors of the estate, and the government by the

non-payment of the correct amount of taxes legally due from the estate.

The offer by the petitioner of P300,000.00 for the purchase of the property in question does not appear seriously disputed on record. As against the price stated in the assailed Compromise Agreement, the former amount is decidedly more beneficial and advantageous not only to the estate, the heirs of the decedents, but more importantly to its creditors, for whose account and benefit the sale was made. No satisfactory and convincing reason appeared given for the rejection and/or non-acceptance of said offer thus giving rise to a well-grounded suspicion that a collusion of same sort exists between the administrator and the heirs to defraud the creditors and the government.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the assailed Order dated February 18, 1981 of the respondent Judge approving the questioned Amicable Settlement is declared NULL and VOID and hereby SET ASIDE. Consequently, the sale in favor of Sotero Dionisio III and by the latter to William Go is likewise declared NULL and VOID. The Transfer Certificate of Title issued to the latter is hereby ordered CANCELLED.

The proper Regional Trial Court of Misamis Occidental to whom this case is now assigned is hereby ordered to conduct new proceedings for the sale of the property involved in this case.

No pronouncement as to costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.

Aquino, J., in the result.

[1] Order in Special Proc. No. 842, "In the Matter of Intestate Estate of Rosenda Abuton, Deceased-Sotero A. Dionisio, Jr., Petitioner, pages 80-81, Rollo.

[2] Annex "B", Petition, page 35, Rollo.

[3] Annex "C-1", Petition, page 38, Rollo.

[4] Annex "C-2", Ibid, page 40, Rollo.

[5] Annex "J-4", Petition, page 68, Rollo.

[6] Annex "J-6", Petition, page 70, Rollo.

[7] Annex "L", Petition, page 73.

[8] Annex "M", Ibid, page 75.

[9] Annex "O", Petition, p. 80, Rollo.

[10] Annex "A", Petition on January 24, 1980.

[11] Order of July 8, 1980.

[12] Annex "CC-1", Petition.

[13] Par. 1, Opposition, Annex "D", Petition.

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