

**RAFAEL PAGSUYUIN AND PEREGRINA PAGSUYUIN-SUBIDO,
PETITIONERS, VS. INTERMEDIATE APPELLATE COURT AND SALUD
PAGSUYUIN, RESPONDENTS.***G.R. No. 72121, February 06, 1991*

Ponente: PARAS, J.

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In this petition for review on certiorari, petitioners seek to reverse and set aside the decision[1] of the Intermediate Appellate Court (now Court of Appeals) dated June 6, 1985 in AC-G.R. No. CV-67019 entitled “Salud Pagsuyuin vs. Rafael Pagsuyuin, et al.” affirming with modification the decision[2] of the then Court of First Instance (now RTC) of Zambales, Branch I in Civil Case No. 2139-0 entitled “Salud Pagsuyuin v. Rafael Pagsuyuin et al.” for annulment of document damages with preliminary injunction.

Records show that private respondent Salud Pagsuyuin and petitioners Peregrina Pagsuyuin-Subido and Rafael Pagsuyuin are first cousins.

Sometime in August, 1974, one Mrs. Gregoria B. Schlander, then a resident of Olongapo City and an acquaintance of private respondent Salud Pagsuyuin was able to secure a loan in the amount of P165,000.00 with the Manila Banking Corporation at Olongapo City upon a security of a real estate mortgage of property belonging to Salud Pagsuyuin consisting of two (2) two-storey buildings: the first two-storey building has an area of 114 square meters and the second two-storey building has an area of 98 square meters, as well as the commercial lot (Lot 3114, TS-308, Olongapo Townsite Subdivision) with an area of 339 square meters upon which these two (2) storey buildings are erected, which loan was obtained by the said Mrs. Gregoria B. Schlander upon a forged power of attorney allegedly signed by Salud Pagsuyuin (Rollo, Annex “D”, Amended Record on Appeal, p. 54; pp. 6-7).

On December 1975, Salud Pagsuyuin was informed that her property had been mortgaged by Mrs. Gregoria B. Schlander in favor of said bank and she immediately went to verify the accuracy of the information which she found to be true, but then Mrs. Schlander had already absconded and left for the United States (Rollo, Ibid., p. 46).

As the loan indicated hereinabove was not paid at maturity, the Manila Banking Corporation at Olongapo City started to foreclose the mortgaged properties extrajudicially (Rollo, Ibid., p. 7).

To protect her interest on her property, Salud Pagsuyuin filed suit in the Court of First Instance of Olongapo City, Branch III, Civil Case No. 1918-0 against the Manila Banking Corporation, Mrs. Gregoria B. Schlander and her husband Mr. Schlander, including the City Sheriff of Olongapo City, to annul the said real estate mortgage with a prayer for preliminary injunction (Rollo, Ibid., p. 8).

Petitioners Rafael Pagsuyuin and Peregrina Pagsuyuin-Subido, brother and sister and first cousins of Salud Pagsuyuin, offered to the latter to settle the bank loan so as to keep her peace of mind and to retain the ownership

of her mortgaged properties (Rollo, Ibid, p. 47).

The three cousins, namely Peregrina, Rafael and Salud, went to the Manila Banking Corporation to inquire about the possibility of an amicable settlement of the loan, and it was at this juncture that the petitioners told Salud Pagsuyuín that they would help her in settling her mortgage loan if petitioner Peregrina Pagsuyuín-Subido will stay free of charge in the leased premises and that Salud Pagsuyuín will repay whatever amount will be advanced by the petitioners to Salud with interest (Rollo, Ibid., p. 48).

Consequently, two (2) documents were allegedly executed involving the transfer of the properties of Salud Pagsuyuín to Peregrina Pagsuyuín-Subido and Rafael Pagsuyuín. These documents were:

- 1) Deed of Assignment (morning version) stating that Salud Pagsuyuín allegedly transferred her properties for and in consideration of the amount of P256,362.95, and that the amount of P30,000.00 will be delivered to Salud Pagsuyuín upon signing the instrument, which was allegedly signed in the morning of September 13, 1976 (Rollo, Petition, pp. 13-16);
- 2) Deed of Assignment (afternoon version) stating that Salud Pagsuyuín allegedly transferred her properties for and in consideration of the amount of P256,362.96 but there was no indication that there will be a down payment of P30,000.00, which was allegedly signed in the afternoon of September 13, 1976 (Rollo, Petition, pp. 17-19).

The two (2) documents (Deeds of Assignment) were notarized by Notary Public Edmundo Tubio allegedly on the 13th of September, 1976 in the presence of witnesses Marietta Javier and Federico Javier (Rollo, Petition, pp. 16; 18).

Salud Pagsuyuín and her witnesses denied having executed the above deeds of assignment on September 13, 1976 as she was on that date at Alitagtag, Batangas while her instrumental witnesses Federico Javier was working at the U.S. Naval Base, while his wife Marietta Javier was at Olongapo City.

Consequently, on March 1, 1977, an amended complaint was filed by Salud Pagsuyuín before the Court of First Instance of Zambales for the annulment of documents, damages with preliminary injunction, alleging among others, that the signature of private respondent Salud Pagsuyuín and her witnesses, namely; Marietta Pagsuyuín-Javier and Federico Javier in the Deeds of Assignment were obtained thru fraud and trickery perpetrated by the petitioners Rafael Pagsuyuín and Peregrina Pagsuyuín-Subido (Rollo, Annex “D”, Amended Record on Appeal, 54; pp. 5-19).

On March 24, 1977, petitioners filed an answer claiming by way of special defense that it was the private respondent Salud Pagsuyuín who proposed to the petitioners the transfer of all the properties covered by a Real Estate Mortgage (Rollo, Annex “D”, Amended Record on Appeal, p. 54; pp. 23-32).

On March 21, 1980, the trial court rendered its decision, the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiff (Salud) and against the defendants (herein petitioners) as follows:

- a) Declaring the Deeds of Assignment (Exhs. A and B) as null and void;
- b) If there was payment of indebtedness in the amount of P226,362.96 to the Manila Bank, the plaintiff is hereby directed to refund the same amount to the defendants with legal interest;
- c) Ordering all other payments made by the defendants offsetting the plaintiff’s indebtedness such as made to Felix Makalintal, Theodore Ilagan, and Irene de Leon, refunded by the plaintiff to the defendants with legal interest;

d) Ordering defendants jointly and severally to pay plaintiff the amount of P20,000.00 as moral damages and exemplary damages; and

e) Ordering defendants jointly and severally to pay the amount of P20,000.00 as attorney's fees.

Defendants' counterclaim are hereby denied.

SO ORDERED." (Rollo, Annex "H"; Amended Record on Appeal, p. 54; pp. 69-70).

On appeal, the Intermediate Appellate Court in its decision dated June 6, 1985, ruled:

"WHEREFORE, premises considered, the decision appealed from is affirmed but with the modification of paragraphs b, d, and e of the dispositive portion of the decision to read as follows:

b.) Ordering plaintiff to pay defendants the amount of P226,362.96 with legal interest from dates of said payment and expenses paid by the defendants to the Manila Bank;

d.) Ordering defendants jointly and severally to pay plaintiff the amount of P5,000.00 as moral and exemplary damages; and

e.) Ordering defendants jointly and severally to pay the amount of P5,000.00 as attorney's fees.

With costs against the defendants

SO ORDERED." (Rollo, Annex "A", Decision, pp. 50-51).

A motion for reconsideration was filed on June 25, 1985, however, it was denied (Rollo, Annex "B", p. 52).

Hence, this petition.

The main issue in the instant case is whether or not parol evidence is admissible to annul the deed of assignment on the ground of fraud.

Petitioners Rafael Pagsuyuin, et al. contend that both lower courts gravely erred in voiding the Deeds of Assignment based upon extrinsic evidence of alleged vitiated consent of the assignor-private respondent Salud Pagsuyuin in defiance of the settled rule of parol evidence that a document reduced to writing is deemed to have contained all such terms and conditions as contemplated by the parties and there can be, between the said parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing itself.

The contention is untenable.

The rule on parol evidence recognizes the following exceptions:

(a) where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;

(b) xxx xxx (Sec. 7, Rule. 130).

As can be clearly gleaned from the foregoing, the rule making a writing the exclusive evidence of the agreement therein stated, is not applicable when the validity of such agreement is the fact in dispute. A contract may be annulled where the consent of one of the contracting parties was procured by mistake, fraud, intimidation, violence or undue influence (Art. 1330, New Civil Code). In fact, as early as 1919 in the case of *Bough v. Cantiveros*, 40 Phil. 209, this Court laid down the rule that where the validity of the agreement is the issue, parol evidence may be introduced to establish illegality or fraud.

In the case at bar, petitioners relied heavily on the fact of notarial certification of the Deeds of Assignment by

Notary Public Edmundo Tubio allegedly on the 13th of September, 1976 in the presence of witnesses Marietta Pagsuyuín-Javier and Federico Javier to deflect the admissibility of parol evidence.

On the other hand, private respondent's evidence clearly shows that on September 7, 1976 a document was brought to her at the Manila International Airport, which she signed that same evening (when she returned to her house) in the presence of witnesses Federico and Marietta Javier but they were not given copies thereof (Rollo, pp. 72-76). Then on September 8, 1976 at around 6:00 a.m., Rafael Pagsuyuín went to the house of the private respondent Salud Pagsuyuín with more documents for signature. Relying on the assurances of petitioner Rafael that the same were additional copies of the documents they had signed in the evening of September 7, 1976 (TSN, Hearing of May 9, 1978, pp. 9-13; Rollo, pp. 73-74), Salud and her witnesses signed without reading as petitioner Rafael was in a hurry (TSN, Hearing of January 31, 1978; Rollo, pp. 74-75) and he only showed them the latter portion and refused to show the contents of the documents (TSN, Hearing of October 13, 1977; Rollo, pp. 75-76). After he had obtained their signatures, Rafael left the house of Salud again without leaving any copy of the document (TSN, Hearing of January 31, 1978, *Ibid.*). As it turned out, the documents were denominated as Deeds of Assignment, contrary to the intent of private respondent. These testimonies were never satisfactorily rebutted by the petitioners.

At this juncture, the findings of the trial court which were affirmed by the appellate court are quoted with approval:

"x x x the instruments of sale (Exh. "A" and "B") lacked the valid consent of the transferor Salud Pagsuyuín as there was fraud enlisted in making plaintiff sign the documents without understanding the contents thereof. The authenticity and genuineness of the documents were attacked because defendants vitiated consent in the preparation and execution of said documents as plaintiff was misled into believing the same is a deed of mortgage instead of a deed of assignment. The evidence had proven that plaintiff was tricked and deceived into signing two (2) deeds of assignment which was not her intention to do so (sic)."

The trial court continued:

"The person who could have enlightened this court as to the disputed facts is none other than Rafael Pagsuyuín himself, but said witness developed cold feet and discontinued declaring against the plaintiff, most probably because of deep-rooted fear of being discovered falsifying the truth and experiencing the fangs of guilty conscience, he broke completely down in court and could not continue his declaration against his cousin the herein plaintiff, so that his counsel withdrew him as a witness and his entire testimony was disregarded by this court. Judging from his demeanor and attitude, the court had very well observed that he could not explain the dubious circumstances that characterized the transfer of the property between him and the plaintiff. The failure of defendant Rafael Pagsuyuín to give testimony was a fatal defect that torpedoed the efforts of the defendants and witnesses to prove the defense that there was a valid transfer of the properties." (C.A. Decision, Rollo, pp. 40-51).

While the writing itself may have been accompanied by the most solemn formalities, no instrument is so sacred when tainted with fraud as to place it beyond the scrutiny of extrinsic evidence. This evidence overcomes the known presumption *fraus est odiosa et non praesumenda* (*Yturralde v. Vagilidad*, 28 SCRA 393 [1969]).

The testimonies of private respondent Salud Pagsuyuín and her two instrumental witnesses which have not been satisfactorily rebutted by the petitioners Rafael Pagsuyuín, et al. have made out a case of fraud by evidence clear, convincing and more than merely preponderant.

Moreover, it is axiomatic that the factual findings of the trial court and Court of Appeals are entitled to great respect (*Vda de Roxas v. IAC*, 143 SCRA 77 [1987]), that "it is a fundamental rule in criminal as well as in civil cases that in the matter of credibility of witnesses the findings of the trial court are given great weight and the

highest degree of respect by the appellate court (*People v. Sarol*, 139 SCRA 125 [1985]), unquestionably because the trial judge is in a superior position to gauge the credibility of those who take the witness seat before him. He has the opportunity to size up the appearance, the demeanor, the manner of testifying, the probability or improbability of the testimony, of the witnesses. Indeed, the trial court has a first hand advantage to assess the value to be given the testimony of a witness (*Yturralde v. Vagilidad*, *supra*).

Petitioners Rafael Pagsuyuin, et. al., also assign as error the grant of moral and exemplary damages plus attorney's fees in favor of private respondent Salud Pagsuyuin.

As shown in the records of the case, the trial court and respondent Court of Appeals are in unison as to the findings of the former that a sufficient cause of action had been proved by overwhelming preponderance of evidence of the private respondent as against the petitioners Rafael Pagsuyuin, et al. For moral damages to be awarded, it is essential that the claimant must have satisfactorily proved during the trial the existence of the factual basis of the damages and its causal connection with adverse party's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer (*Makabili v. Court of Appeals*, 157 SCRA 253 [1988]).

The wrongful act attributable to the petitioners - the employment of fraud - is the proximate cause of the mental anguish suffered by private respondent Salud Pagsuyuin.

PREMISES CONSIDERED, the decision of the Intermediate Appellate Court dated June 6, 1985 is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Justice Bienvenido Ejercito, concurred in by Justices Jorge Coquia, Mariano Zosa and Florelina Castro-Bartolome.

[2] Penned by Judge Regino T. Veridiano II.

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