



Republic of the Philippines
SUPREME COURT
 Manila

THIRD DIVISION

**AVELINA ABARIENTOS
 REBUSQUILLO [substituted by
 her heirs, except Emelinda R.
 Gualvez] and SALVADOR A.
 OROSCO,**

Petitioners,

- versus -

**SPS. DOMINGO and EMELINDA
 REBUSQUILLO GUALVEZ and
 the CITY ASSESSOR OF
 LEGAZPI CITY,**

Respondents.

G.R. No. 204029

Present:

VELASCO, JR., *J.*, Chairperson,
 PERALTA,
 VILLARAMA, JR.,*
 MENDOZA, and
 LEONEN, *JJ.*

Promulgated:

June 4, 2014

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DECISION

VELASCO, JR., *J.*:

Before Us is a Petition for Review on Certiorari under Rule 45 assailing the Decision¹ and Resolution² dated March 30, 2012 and September 25, 2012, respectively, of the Court of Appeals (CA) in CA-G.R. CV No. 93035, which reversed and set aside the Decision dated January 20, 2009 of the Regional Trial Court (RTC), Branch 4 in Legazpi City, in Civil Case No. 10407.

The antecedent facts may be summarized as follows:

On October 26, 2004, petitioners Avelina Abarientos Rebusquillo (Avelina) and Salvador Orosco (Salvador) filed a Complaint for annulment and revocation of an Affidavit of Self-Adjudication dated December 4, 2001 and a Deed of Absolute Sale dated February 6, 2002 before the court *a quo*. In it, petitioners alleged that Avelina was one of the children of Eulalio

* Acting member per Special Order No. 1691 dated May 22, 2014.

¹ *Rollo*, pp. 24-39. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Myra V. Garcia-Fernandez.

² *Id.* at 67-68.

Abarientos (Eulalio) and Victoria Villareal (Victoria). Eulalio died intestate on July 3, 1964, survived by his wife Victoria, six legitimate children, and one illegitimate child, namely: (1) Avelina Abarientos-Rebusquillo, petitioner in this case; (2) Fortunata Abarientos-Orosco, the mother of petitioner Salvador; (3) Rosalino Abarientos; (4) Juan Abarientos; (5) Feliciano Abarientos; (6) Abraham Abarientos; and (7) Carlos Abarientos. His wife Victoria eventually died intestate on June 30, 1983.

On his death, Eulalio left behind an untitled parcel of land in Legazpi City consisting of two thousand eight hundred sixty-nine (2,869) square meters, more or less, which was covered by Tax Declaration ARP No. (TD) 0141.

In 2001, Avelina was supposedly made to sign two (2) documents by her daughter Emelinda Rebusquillo-Gualvez (Emelinda) and her son-in-law Domingo Gualvez (Domingo), respondents in this case, on the pretext that the documents were needed to facilitate the titling of the lot. It was only in 2003, so petitioners claim, that Avelina realized that what she signed was an Affidavit of Self-Adjudication and a Deed of Absolute Sale in favor of respondents.

As respondents purportedly ignored her when she tried to talk to them, Avelina sought the intervention of the RTC to declare null and void the two (2) documents in order to reinstate TD 0141 and so correct the injustice done to the other heirs of Eulalio.

In their answer, respondents admitted that the execution of the Affidavit of Self-Adjudication and the Deed of Sale was intended to facilitate the titling of the subject property. Paragraph 9 of their Answer reads:

Sometime in the year 2001, [petitioner] Avelina together with the other heirs of Eulalio Abarientos brought out the idea to [respondent] Emelinda Rebusquillo-Gualvez to have the property described in paragraph 8 of the complaint registered under the Torrens System of Registration. **To facilitate the titling of the property, so that the same could be attractive to prospective buyers, it was agreed that the property's tax declaration could be transferred to [respondents] Spouses [Emelinda] R. Gualvez and Domingo Gualvez who will spend all the cost of titling subject to reimbursement by all other heirs in case the property is sold;** That it was agreed that all the heirs will be given their corresponding shares on the property; That pursuant to said purpose Avelina Abarientos-Rebusquillo with the knowledge and consent of the other heirs signed and executed an Affidavit of Self-Adjudication and a Deed of Absolute Sale in favor of [respondents] Gualvez. In fact, [petitioner] Avelina Rebusquillo was given an advance sum of FIFTY

THOUSAND PESOS (P50,000.00) by [respondent] spouses and all the delinquent taxes paid by [respondents].³

After trial, the RTC rendered its Decision dated January 20, 2009 annulling the Affidavit of Self-Adjudication and the Deed of Absolute Sale executed by Avelina on the grounds that (1) with regard to the Affidavit of Self-Adjudication, she was not the sole heir of her parents and was not therefore solely entitled to their estate; and (2) in the case of the Deed of Absolute Sale, Avelina did not really intend to sell her share in the property as it was only executed to facilitate the titling of such property. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

1. The subject Affidavit of Self-Adjudication of the Estate of the Deceased Spouses Eulalio Abarientos and Victoria Villareal, dated December 4, 2001 as well as the subject Deed of Absolute Sale, notarized on February 6, 2002, covering the property described in par. 8 of the Amended Complaint are hereby ordered ANNULLED;
2. That defendant City Assessor's Officer of Legazpi City is hereby ordered to CANCEL the Tax Declaration in the name of private [respondents] spouses Gualvez under ARP No. 4143 and to REINSTATE the Tax Declaration under ARP No. 0141 in the name of Eulalio Abarientos;
3. By way of restitution, [petitioner] Avelina Abarientos Rebusquillo is hereby ordered to return or refund to [respondents] spouses Domingo Gualvez and Emelinda Gualvez, the ₱50,000.00 given by the latter spouses to the former.⁴

Assailing the trial court's decision, respondents interposed an appeal with the CA arguing that the Deed of Sale cannot be annulled being a public document that has for its object the creation and transmission of real rights over the immovable subject property. The fact that Avelina's testimony was not offered in evidence, so respondents argued, the signature on the adverted deed remains as concrete proof of her agreement to its terms. Lastly, respondents contended that the Complaint filed by petitioners Avelina and Salvador before the RTC is not the proper remedy provided by law for those compulsory heirs unlawfully deprived of their inheritance.

³ Records, Folder 1, pp. 24-25.

⁴ CA *rollo*, pp. 77-78.

Pending the resolution of respondents' appeal, Avelina died intestate on September 1, 2009 leaving behind several living heirs⁵ including respondent Emelinda.

In its Decision dated March 30, 2012, the appellate court granted the appeal and reversed and set aside the Decision of the RTC. The CA held that the RTC erred in annulling the Affidavit of Self-Adjudication simply on petitioners' allegation of the existence of the heirs of Eulalio, considering that issues on heirship must be made in administration or intestate proceedings, not in an ordinary civil action. Further, the appellate court observed that the Deed of Absolute Sale cannot be nullified as it is a notarized document that has in its favor the presumption of regularity and is entitled to full faith and credit upon its face.

Aggrieved by the CA's Decision, petitioner Avelina, as substituted by her heirs except respondent Emelinda, and petitioner Salvador are now before this Court ascribing reversible error on the part of the appellate court.

We find merit in the instant petition.

It has indeed been ruled that the declaration of heirship must be made in a special proceeding, not in an independent civil action. However, this Court had likewise held that recourse to administration proceedings to determine who heirs are is sanctioned only if there is a good and compelling reason for such recourse.⁶ Hence, the Court had allowed exceptions to the rule requiring administration proceedings as when the parties in the civil case already presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment upon the issues it defined during the pre-trial.⁷ In *Portugal v. Portugal-Beltran*,⁸ this Court held:

⁵ *Rollo*, pp. 65-66. The following, including herein respondent Emelinda Rebusquillo Gualvez, are the only living heirs of petitioner Avelina Abarientos Gualvez Rebusquillo:

Children:

1. Consuelo R. Espedido – Tagdon, Barcelona, Sorsogon;
2. Teresita A. Rebusquillo – Oas, Albay;
3. Shirley R. Reduta – Salitran 3, Blk 23, Cardinal Village, Dasmariñas, Cavite;
4. Susan A. Rebusquillo, Oas, Albay;
5. Alicia A. Rebusquillo, 350 Dr. Fernandez St., Mauway, Mandaluyong City;
6. Josefina R. Raro who died intestate on July 24, 2005, is represented by: Maria Joyce R. Birrey, Romero Raro, Jr., Johncarlo R. Raro, Celso R. Raro III, Jayrome R. Raro;
7. Abdon A. Rebusquillo, who died intestate on May 30, 2004, is represented by Shiela R. Rebancos, Ryan B. Rebusquillo, Arjay B. Rebusquillo, Cyrene B. Rebusquillo, Donna B. Rebusquillo, and Cyril B. Rebusquillo.

⁶ *Pereira v. Court of Appeals*, G.R. No. 81147, June 20, 1989, 174 SCRA 154; *Intestate Estate of Mercado v. Magtibay*, 96 Phil. 383 (1953).

⁷ *Heirs of Magdalena Ypon v. Gaudioso Ponteras Ricaforte*, G.R. No. 198680, July 8, 2013, 700 SCRA 778; *Republic v. Mangotara*, G. R. No. 170375, July 7, 2010, 624 SCRA 360; *Heirs of Teofilo Gabatan v. Court of Appeals*, G.R. No. 150206, March 13, 2009, 581 SCRA 70, 80-81; *Fidel v. Court of Appeals*, G.R. No. 168263, July 21, 2008, 559 SCRA 186, 194.

⁸ G.R. No. 155555, August 16, 2005, 467 SCRA 184, 199.

In the case at bar, respondent, believing rightly or wrongly that she was the sole heir to Portugal's estate, executed on February 15, 1988 the questioned Affidavit of Adjudication under the second sentence of Rule 74, Section 1 of the Revised Rules of Court. Said rule is an exception to the general rule that when a person dies leaving a property, it should be judicially administered and the competent court should appoint a qualified administrator, in the order established in Sec. 6, Rule 78 in case the deceased left no will, or in case he did, he failed to name an executor therein.

Petitioners claim, however, to be the exclusive heirs of Portugal. A probate or intestate court, no doubt, has jurisdiction to declare who are the heirs of a deceased.

It appearing, however, that in the present case the only property of the intestate estate of Portugal is the Caloocan parcel of land to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish the status of petitioners as heirs is not only impractical; it is burdensome to the estate with the costs and expenses of an administration proceeding. And it is superfluous in light of the fact that the parties to the civil case - subject of the present case, could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial.

In fine, under the circumstances of the present case, there being no compelling reason to still subject Portugal's estate to administration proceedings since a determination of petitioners' status as heirs could be achieved in the civil case filed by petitioners, the trial court should proceed to evaluate the evidence presented by the parties during the trial and render a decision thereon upon the issues it defined during pre-trial x x x. (emphasis supplied)

Similar to *Portugal*, in the present case, there appears to be only one parcel of land being claimed by the contending parties as the inheritance from Eulalio. It would be more practical, as *Portugal* teaches, to dispense with a separate special proceeding for the determination of the status of petitioner Avelina as sole heir of Eulalio, especially in light of the fact that **respondents spouses Gualvez admitted in court that they knew for a fact that petitioner Avelina was not the sole heir of Eulalio and that petitioner Salvador was one of the other living heirs with rights over the subject land.** As confirmed by the RTC in its Decision, respondents have stipulated and have thereby admitted the veracity of the following facts during the pre-trial:

IV – UNCONTROVERTED FACTS: (Based on the stipulation of facts in the Pre-Trial Order)

A. x x x

B. [Petitioners] and private [respondents] spouses Gualvez admitted the following facts:

1. Identity of the parties;

2. Capacity of the [petitioners] and private [respondents] to sue and be sued;
3. **[Petitioner] Avelina Abarientos-Rebusquillo is not the only surviving heir of deceased spouses Eulalio and Victoria Abarientos;**
4. **Petitioner Salvador Orosco is a co-owner/possessor of a portion of the subject property;**
5. **Fortunata Abarientos-Orosco is the sister of Avelina Abarientos;**
6. [Respondent] Emelinda Rebusquillo-Gualves is a daughter of [petitioner] Avelina A. Rebusquillo;
7. [Petitioner] Avelina Rebusquillo was born on Nov. 10, 1923;
8. The existence of Affidavit of Self-Adjudication of Estate of the Deceased and Deed of Absolute Sale executed by [petitioner] Avelina A. Rebusquillo on the subject property.⁹ (emphasis supplied)

In light of the admission of respondents spouses Gualvez, it is with more reason that a resort to special proceeding will be but an unnecessary superfluity. Accordingly, the court *a quo* had properly rendered judgment on the validity of the Affidavit of Self-Adjudication executed by Avelina. As pointed out by the trial court, **an Affidavit of Self-Adjudication is only proper when the affiant is the sole heir of the decedent.** The second sentence of Section 1, Rule 74 of the Rules of Court is patently clear that self-adjudication is only warranted when there is only one heir:

Section 1. *Extrajudicial settlement by agreement between heirs.* —
 x x x **If there is only one heir**, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. x
 x x (emphasis supplied)

As admitted by respondents, Avelina was **not** the sole heir of Eulalio. In fact, as admitted by respondents, petitioner Salvador is one of the co-heirs by right of representation of his mother. Without a doubt, Avelina had perjured herself when she declared in the affidavit that she is “the only daughter and sole heir of spouses EULALIO ABARIENTOS AND VICTORIA VILLAREAL.”¹⁰ The falsity of this claim renders her act of adjudicating to herself the inheritance left by her father invalid. The RTC did not, therefore, err in granting Avelina’s prayer to declare the affidavit null and void and so correct the wrong she has committed.

In like manner, the Deed of Absolute Sale executed by Avelina in favor of respondents was correctly nullified and voided by the RTC. Avelina was not in the right position to sell and transfer the absolute ownership of the subject property to respondents. As she was not the sole heir of Eulalio and her Affidavit of Self-Adjudication is void, the subject

⁹ CA *rollo*, pp. 71-72.

¹⁰ Paragraph 1, Affidavit of Self-Adjudication, Annex “3” of the Complaint, records, p. 17.

property is still subject to partition. Avelina, in fine, did not have the absolute ownership of the subject property but only an aliquot portion. What she could have transferred to respondents was only the ownership of such aliquot portion. It is apparent from the admissions of respondents and the records of this case that Avelina had no intention to transfer the ownership, of whatever extent, over the property to respondents. Hence, the Deed of Absolute Sale is nothing more than a simulated contract.

The Civil Code provides:

Art. 1345. Simulation of a contract may be absolute or relative. **The former takes place when the parties do not intend to be bound at all;** the latter, when the parties conceal their true agreement. (emphasis supplied)

Art. 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.

In *Heirs of Policronio Ureta Sr. v. Heirs of Liberato Ureta*,¹¹ this Court explained the concept of the simulation of contracts:

In absolute simulation, there is a colorable contract but it has no substance as the parties have no intention to be bound by it. **The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties. As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract.** However, if the parties state a false cause in the contract to conceal their real agreement, the contract is relatively simulated and the parties are still bound by their real agreement. Hence, where the essential requisites of a contract are present and the simulation refers only to the content or terms of the contract, the agreement is absolutely binding and enforceable between the parties and their successors in interest. (emphasis supplied)

In the present case, the true intention of the parties in the execution of the Deed of Absolute Sale is immediately apparent from respondents' very own Answer to petitioners' Complaint. As respondents themselves acknowledge, the purpose of the Deed of Absolute Sale was simply to "facilitate the titling of the [subject] property," not to transfer the ownership of the lot to them. Furthermore, respondents concede that petitioner Salvador remains in possession of the property and that there is no indication that respondents ever took possession of the subject property after its supposed purchase. Such failure to take exclusive possession of the subject property or, in the alternative, to collect rentals from its possessor, is contrary to the

¹¹ G.R. Nos. 165748 & 165930, September 14, 2011, 657 SCRA 555, 575; citing *Valerio v. Refresca*, G.R. No. 163687, March 28, 2006, 485 SCRA 494, 500-501.

principle of ownership and is a clear badge of simulation that renders the whole transaction void.¹²

Contrary to the appellate court's opinion, the fact that the questioned Deed of Absolute Sale was reduced to writing and notarized does not accord it the quality of incontrovertibility otherwise provided by the parole evidence rule. The form of a contract does not make an otherwise simulated and invalid act valid. The rule on parole evidence is not, as it were, ironclad. Sec. 9, Rule 130 of the Rules of Court provides the exceptions:

Section 9. *Evidence of written agreements.* – x x x

However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills. (emphasis supplied)

The failure of the Deed of Absolute Sale to express the true intent and agreement of the contracting parties was clearly put in issue in the present case. Again, respondents themselves admit in their Answer that the Affidavit of Self-Adjudication and the Deed of Absolute Sale were only executed to facilitate the titling of the property. The RTC is, therefore, justified to apply the exceptions provided in the second paragraph of Sec. 9, Rule 130 to ascertain the true intent of the parties, which shall prevail over the letter of the document. That said, considering that the Deed of Absolute Sale has been shown to be void for being absolutely simulated, petitioners are not precluded from presenting evidence to modify, explain or add to the terms of the written agreement.¹³

WHEREFORE, the instant petition is **GRANTED**. The Decision dated March 30, 2012 and the Resolution dated September 25, 2012 of the Court of Appeals in CA-G.R. CV No. 93035 are hereby **REVERSED** and **SET ASIDE**. The Decision dated January 20, 2009 in Civil Case No. 10407 of the Regional Trial Court (RTC), Branch 4 in Legazpi City is **REINSTATED**.

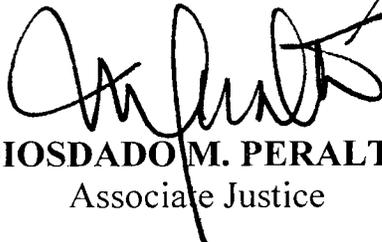
¹² Id.

¹³ See *Heirs of Policronio Ureta Sr. v. Heirs of Liberato Ureta*, id.

SO ORDERED.

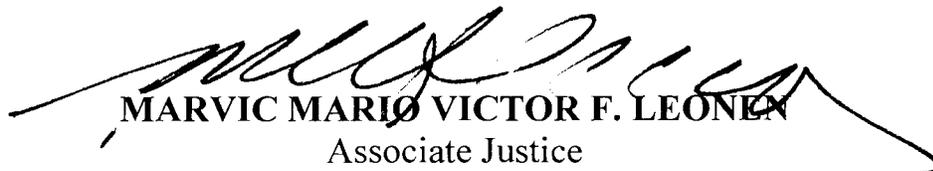
PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

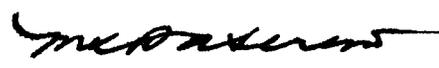
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice