829 Phil. 554

SECOND DIVISION

[G.R. No. 223321, April 02, 2018]

ROGELIO M. FLORETE, SR., THE ESTATE OF THE LATE TERESITA F. MENCHAVEZ, REPRESENTED BY MARY ANN THERESE F. MENCHAVEZ, ROSIE JILL F. MENCHAVEZ, MA. ROSARIO F. MENCHAVEZ, CRISTINE JOY F. MENCHAVEZ, AND EPHRAIM MENCHAVEZ, AND DIANE GRACE F. MENCHAVEZ, PETITIONERS, V. MARCELINO M. FLORETE, JR. AND MA. ELENA F. MUYCO, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Before us is a petition for review on *certiorari* seeking to nullify the Decision[1] dated August 3, 2015 of the Court of Appeals in CA-G.R. SP No. 07673, as well as the Resolution[2] dated February 19, 2016 denying the motion for reconsideration thereof.

On October 7, 1966, Marsal & Co., Inc. (*Marsal*) was organized as a close corporation by Marcelino Sr., Salome, Rogelio, Marcelino Jr., Ma. Elena, and Teresita (all surnamed Florete). Since its incorporation, the Articles of Incorporation (*AOI*) had been amended[3] several times to increase its authorized capital stocks of P500,000.00 to P5,000,000.00. Notwithstanding the amendments, paragraph 7 of their AOI which provides for the procedure in the sale of the shares of stocks of a stockholder remained the same, to wit:

> SEVENTH. - x x x Any stockholder who desires to sell his share of stock in the company must notify in writing the Board of Directors of the company of his intention to sell. The Board of Directors upon receipt of such notice must immediately notify all stockholders of record within five days upon receipt of the letter of said stockholder. Any stockholder of record has the preemptive right to buy any share offered for sale by any stockholder of the company on book value base[d] on the balance sheet approved by the Board of Directors. The aforementioned preemptive right must be exercised by any stockholder of the company within ten (10) days upon his receipt of the written notice sent to him by the Board of Directors of the offer to sell. Any sale or transfer in violation of the above terms and conditions shall be null and void. The above terms and conditions must be printed at the back of the stock certificate.[4]

And as of June 1, 1982, the capital profile of Marsal was as follows:

Name	Shareholdings
Marcelino M. Florete, Sr.	7,569 shares
Rogelio M. Florete	3,489 shares

Ma. Elena F. Muyco	3,489 shares
Marcelino M. Florete, Jr.	3,489 shares
Teresita F. Menchavez	3,464 shares[5]

On September 19, 1989, Teresita Florete Menchavez died. In 1992, Ephraim Menchavez, Teresita's husband, filed a Petition for Issuance of Letters of Administration[6] over her estate. An Amended Opposition was filed by petitioner Rogelio Florete, Sr. and Marsal, represented by petitioner as President thereof, with Atty. Raul A. Muyco, the husband of respondent Ma. Elena, as counsel, on the ground of Ephraim's incompetency. Ephraim, however, was later granted letters of administration. In 1995, Ephraim, the special administrator, entered into a Compromise Agreement and Deed of Assignment[7] with petitioner Rogelio ceding all the shareholdings of Teresita in various corporations owned and controlled by the Florete family, which included the 3,464 shares in Marsal corporation, as well as her shares, interests and participation as heir in all the real and personal properties of her parents to petitioner Rogelio. A Motion to Approve Compromise Agreement and Deed of Assignment was filed by respondent Ephraim, through counsel Atty. Henry Villegas, with the conformity of Atty. Raul Muyco, the oppositors' counsel. The motion was granted and approved by the Probate Court in its Order[8] dated February 14, 1995.

On October 3, 1990, Marcelino Florete Sr., patriarch of the Florete family, died. An intestate proceeding to settle his estate was filed by petitioner Rogelio, who was later appointed as administrator of the estate. Petitioner Rogelio filed a project of partition enumerating herein all the properties of the estate of Marcelino Sr. in accordance with the inventory earlier filed with the intestate court. In the Order[9] dated May 16, 1995, the court approved the project of partition adjudicating to petitioner Rogelio one-half (½) share of the whole estate; and to respondents Ma. Elena and Marcelino Jr., the undivided one-fourth (¼) share each of the enumerated properties. In the same Order, the Probate Court had noted the sale of all the shares of the late Teresita which she inherited from her deceased parents to petitioner Rogelio.[10]

On February 21, 2012, respondents Marcelino Jr. and Ma. Elena filed with the Regional Trial Court (*RTC*), Branch 39, Iloilo City, a case[11] for annulment/rescission of sale of shares of stocks and the exercise of their preemptive rights in Marsal corporation and damages against petitioners Rogelio Florete, Sr. and the estate of the late Teresita F. Menchavez, herein represented by her heirs, namely, Mary Ann Therese Menchavez, Christine Joy F. Menchavez, Ma. Rosario F. Menchavez, Diane Grace Menchavez, Rosie Jill F. Menchavez, and Ephraim Menchavez. Respondents claimed that the sale of Teresita's 3,464 Marsal shares of stocks made by petitioner estate to petitioner Rogelio was *void ab initio* as it violated paragraph 7 of Marsal's AOI since the sale was made *sans* written notice to the Board of Directors who was not able to notify respondents in writing of the petitioner estate and heirs' intention to sell and convey the Marsal shares and depriving respondents of their preemptive rights.

On April 26, 2013, the RTC, as a Special Commercial Court, dismissed the complaint.[12] It found that the sale of Teresita's Marsal shares of stocks to petitioner Rogelio, being one of the incorporators and stockholders of Marsal at the time of sale, was not a sale to a third party or outsider as would justify the restriction on transfer of shares in the AOI. The RTC also found that *laches* and estoppel had already set in as respondents' inaction for 17 years constituted a neglect for an unreasonable time to question the same; and that respondents could not feign ignorance of the transactions as they knew of the same and yet they did not do anything at that time.

Respondents filed with the CA a petition for review under, Rule 43 with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. Petitioners filed their Comment thereto.

On August 3, 2015, the CA rendered its assailed Decision, the decretal portion of which reads:

> WHEREFORE, in view of the foregoing, the instant appeal is GRANTED, the Decision dated April 26, 2013 of the Regional Trial Court, 6th Judicial Region, Branch 39, Iloilo City, in SCC Case No. 12-049 for Annulment/Rescission of Sale of Shares of Stocks, Pre-Emptive Rights and Damages is hereby REVERSED and SET ASIDE. Let a new one be entered declaring the conveyance of 3,464 Marsal shares of respondents in favor of Rogelio M. Florete Sr., NULL and VOID, in violation of Paragraph 7 of Marsal's Articles of Incorporation.[13]

In so ruling, the CA found that Teresita's 3,464 Marsal shares of stocks were conveyed by petitioner estate to petitioner Rogelio in a Compromise Agreement and Deed of Assignment without first offering them to the existing stockholders as provided under paragraph 7 of the AOI; that since the AOI is considered a contract between the corporation and its stockholders, the sale of Teresita's shares in favor of petitioner Rogelio constituted a breach of contract on the part of petitioner estate, hence, null and void; and that it is inconsequential whether the transfer was made to one of the existing stockholders of the closed corporation. Anent Atty. Muyco's acting as counsel of petitioner Rogelio and Marsal in Teresita's intestate proceedings and who was presumed to have transmitted to respondents his knowledge regarding the sale of Teresita's Marsal shares to petitioner Rogelio, the CA ruled that the notice acquired from a third person even if true was not the notice meant under paragraph 7 of the AOI; and that Atty. Muyco admitted that he did not know of petitioner Rogelio's plan of acquiring Teresita's shares. A void contract has no effect from the beginning, thus, the action for its nullity even if filed 17 years later after its execution, cannot be barred by prescription for it is imprescriptible; and the defense of *laches* is unavailing as it had been jurisprudentially provided that courts should never apply the doctrine of *laches* earlier than the expiration of time limited for the commencement of action at law.

Petitioners filed a motion for reconsideration, which was denied by the CA in a Resolution dated February 19, 2016.

Hence, this petition filed by petitioners alleging the following assignment of errors:

I

THE COURT OF APPEALS GRIEVOUSLY ERRED IN REFUSING TO RULE ON WHETHER OR NOT THE VERY INVALIDATION CLAUSE IN THE SUBJECT SHARE TRANSFER RESTRICTION IS VOID FROM WHICH NO CAUSE OF ACTION MAY ORIGINATE.

II

THE COURT OF APPEALS GRIEVOUSLY ERRED IN REFUSING TO RULE ON WHETHER OR NOT THE SUBJECT SHARE TRANSFER RESTRICTION CAN BE ENFORCED IN LIGHT OF THE CORPORATION CODE PROVISION WHICH RECOGNIZES AS VALID ONLY SUCH RESTRICTIONS IN A CLOSE CORPORATION AS DEFINED IN THE CODE, WHICH SUBJECT CORPORATION IS NOT.

III

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT ASSUMING *ARGUENDO* THE SUBJECT SHARE TRANSFER RESTRICTIONS ARE VALID, THE SAME CANNOT BE APPLIED TO THE QUESTIONED TRANSFER OR SALE OF STOCK. IT NOT BEING A SALE TO OUTSIDERS, AMONG OTHER MATTERS.

IV

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS' CAUSE OF ACTION, IF ANY, IS BARRED BY PRESCRIPTION.

V

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS' CAUSE OF ACTION, IF ANY, IS BARRED BY LACHES.

VI

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS ARE ESTOPPED BY THEIR DEEDS OR CONDUCT FROM PURSUING THEIR CLAIM.

VII

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS' CAUSE OF ACTION, IF ANY, IS BARRED BY *RES JUDICATA*.[14]

The pivotal issue for resolution is whether the CA erred in ruling that the sale of Teresita's 3,464 Marsal shares of stocks made by petitioner estate of Teresita to petitioner Rogelio was in violation of paragraph 7 of Marsal's Article of Incorporation and hence null and void and must be annulled or rescinded.

We rule in the affirmative.

The issue raised is factual. As a rule, the re-examination of the evidence proffered by the contending parties during the trial of the case is not a function that this Court normally undertakes inasmuch as the findings of fact of the Court of Appeals are generally binding and conclusive on the Supreme Court.[15] The jurisdiction of this

Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law. A reevaluation of factual issues by this Court is justified when the findings of fact complained of are devoid of support by the evidence on record, or when the assailed judgment is based on misapprehension of facts, which we find in the case at bar.

Preliminarily, petitioners' claim that Marsal is not a close corporation deserves scant consideration as they had already admitted that it is. In his Affidavit[16] filed in this case, petitioner Rogelio alleged, among others:

> 10. That MARSAL & CO., INC. is a close family corporation, the stockholder of which are now three, since Teresita Menchavez is already dead, and so is our father Marcelino Florete, Sr. x x x.

and in his Answer with Compulsory Counterclaim, [17] he stated:

> 2. That answering defendant admits the allegations set forth in paragraphs 5, 6, 7, 8, 9, 10, 11,12, 13, 14, 15 of the complaint; [18]
>
> xxxx
>
> 16. That MARSAL & CO., INC., being a close family corporation, the presence of the said provision of pre-emptive right did not invalidate the acquisition by one stockholder of the share of another stockholder who exercised his pre-emptive right in view of the knowledge of the same by the other stockholders and their inaction which is equivalent to consent and acquiescence to the said acquisition.[19]

The allegations under paragraph 6 of the complaint which petitioner Rogelio admitted stated:

> 6. MARSAL is a close corporation duly organized and registered with the Securities and Exchange Commission (SEC) on 07 October 1966 with the authorized capital stock of Five Hundred Thousand Pesos (P500,000.00). x x x.
>
> 7. As close corporation, all stocks issued by MARSAL are subject to restrictions on transfer. x x x[20]

Petitioners judicially admitted that Marsal is a close corporation. Section 4, Rule 129 of the Revised Rules of Court provides:

> Sec. 4. *Judicial admissions*. An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding.[21] In *Alfelor v. Halasan*,[22] we held that:

> A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from