SPECIAL TWENTIETH DIVISION

[CA-G.R. CEB-CV NO. 02740*, August 12, 2014]

JUAN REPOLLO JOINED BY HIS WIFE BEATRIZ CALUMPANG, FLORENTINA REPOLLO JOINED BY HER HUSBAND VALERIO ABO, MARIA REPOLLO JOINED BY HER HUSBAND FELIX TORRES, REMEDIOS TORRES VDA. DE REPOLLO, PATRICIA REPOLLO JOINED BY HER HUSBAND DANILO ROSALES, ZOSIMA REPOLLO JOINED BY HER HUSBAND RODULFO RODRIGUEZ, DANILA REPOLLO JOINED BY HER HUSBAND JOSE ROY AC-AC, DIOLO REPOLLO, HENRY REPOLLO, CECILIA CORSIGA VDA. DE REPOLLO, JOVELITO REPOLLO JOINED BY HIS WIFE NUMERIANA CATACUTAN, NOEL CORSIGA AND MARITES REPOLLO, PLAINTIFFS-APPELLEES, VS. VITALIANA LISONDRA VDA. DE REPOLLO, PERSEVERANDA REPOLLO JOINED BY HER HUSBAND APOLO GIRASOL, TITA REPOLLO JOINED BY HER HUSBAND ANACLETO MALAYO, JR., NESTOR REPOLLO, FILEMON REPOLLO JOINED BY HIS WIFE JOSEFA BATIANCILA AND ROY LOZANO JOINED BY HIS WIFE FAMELA CATACUTAN, DEFENDANTS-APPELLANTS.

D E C I S I O N

HERNANDO, J.:

Before this Court is an appeal seeking review of the Decision[1] dated June 27, 2008 of the Regional Trial Court (RTC), Branch 44, of Dumaguete City in Civil Case No. 10665, an action for Declaration of Nullity of Documents of Sale, Accounting, Partition and Damages.

The Antecedents:

On October 26, 1926, Hospicio Repollo married Victoria Labe. Out of their union, they begot five children namely: Juan, Florentina, Jovito, Maria and Genaro Repollo. However, appellants aver that the union did not last long as Victoria abandoned Hospicio in the year 1932 or 1933. Appellants assert that Hospicio admitted his estranged relationship with Victoria in a document denominated as a Deed of Heirship and Sale.[2]

During the couple's *de facto* separation, Hospicio found comfort in the arms of Vitaliana Lisondra. Sometime around 1958, Hospicio and Vitaliana entered into a common law relationship. As a result of their cohabitation, appellants Perseveranda, Tita and Nestor Repollo were born. On November 14, 1981, Victoria Labe died, which paved the way for Hospicio and Vitaliana to finally formalize their relationship. On March 6, 1982, the couple were joined together in the Holy Matrimony of marriage[3] after having lived together as common law husband and wife.

Appellants claim that Hospicio and Vitaliana were able to purchase several properties during their cohabitation. They contend that Hospicio never owned any real property prior to said cohabitation. On April 14, 1993, Hospicio executed a Deed of Absolute Sale[4] involving one of his properties, covered by Transfer Certificate of Title No. T-9908, in favor of his wife Vitaliana and their children Perseveranda, Tita and Nestor. Subsequently, on April 17, 1993, Hospicio executed another Deed of Absolute Sale[5] also in favor of appellants Vitaliana, Perseveranda, Tita and Nestor.

Appellees now maintain that Hospicio could not have executed the assailed documents owing to his frail health. They assert that at the beginning of January 1993, Hospicio grew seriously ill, became inarticulate and already bed-ridden. Appellees contend that Hospicio no longer possessed a well and disposing mind when the documents of sale were allegedly executed. Consequently, appellees filed a Complaint before the court *a quo* against appellants[6] for the declaration of nullity of the foregoing deeds of sale. Furthermore, they prayed for an accounting of the properties owned by Hospicio, to partition the same among his legal heirs and for appellants to pay damages.

On June 27, 2008, the trial court rendered a Decision insinuating the nullity of the assailed deeds of sale and assigning Hospicio's properties to his heirs, the dispositive portion of which reads:

> **WHEREFORE**, it is hereby ordered that all the *legitimate children* of Hospicio Repollo and Victoria Repollo including their *heirs and successors* shall be assigned *one (1) share each* of one (1) part of all the properties owned by Hospicio Repollo, while the *three (3) illegitimate children* of Hospicio Repollo and Vitaliana Repollo shall be assigned *one-half (1/2) of the share* of each legitimate child. *Vitaliana Repollo* shall *inherit nothing*.

Hence, the current appeal before Us.

The Issue:

The main issue here is whether or not the trial court erred in its disposition of the properties owned by Hospicio Repollo.

The Court's Ruling

The appeal is partly impressed with merit.

Although the trial court did not categorically rule on the nullity of the April 14, 1993 and April 17, 1993 Deeds of Absolute Sale executed by Hospicio Repollo in the *fallo* of its Decision, it is evident from the body thereof that it found the deeds to be void, to wit:[7]

> It has been established and admitted by the defendants that the questioned Deeds of Sale (Exhs. "16" and "17") were executed in the year 1993, whether it happened before the death of Hospicio Repollo is immaterial because this was executed after the death of the first wife, Victoria who died on November 14, 1981 (Exh. "A"). Clearly, the deed is void per provision of Art. 130 of the New Civil Code [Family Code] which states:
>
> > "Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.
> >
> > If no conjugal settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extra-judicially within one year from the death of the deceased spouse. If upon the lapse of the six month period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void.
> >
> > Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage."

While the abovementioned provision of the law renders void any disposition of conjugal partnership property prior to its liquidation, this is not absolute. In *The Heirs of Protacio Go, Sr. v. Ester Servacio and Rito Go*,[8] the Supreme Court was emphatic:

> The disposition by sale of a portion of the conjugal property by the surviving spouse without the prior liquidation mandated by Article 130 of the Family Code is not necessarily void if said portion has not yet been allocated by judicial or extrajudicial partition to another heir of the deceased spouse. At any rate, the requirement of prior liquidation does not prejudice vested rights.

Here, the records are bereft of the fact that the lands subject of the deeds of sale were allocated by judicial or extrajudicial partition to any of the heirs. Thus, the disposition of the properties even without prior liquidation is not necessarily rendered void. Hence, the trial court erred in hastily ruling that the deeds of sale executed by Hospicio was void pursuant to Article 130 of the Family Code.

Moreover, it bears stressing that the April 14, 1993 and April 17, 1993 Deeds of Absolute Sale, which were notarized by Notary Public Roy Lozano, had effectively conveyed the subject properties to the appellant heirs. Thus, the requirement of prior liquidation would unduly prejudice the vested rights already acquired by

appellant heirs over the properties sold to them by Hospicio.

Parenthetically, having been duly notarized, said deeds are public documents which carry the evidentiary weight conferred upon them with respect to their due execution.[9] The fact of their notarization would be regarded as evidence of the facts therein expressed in a clear and unequivocal manner.[10] While appellees fervently assert that the deeds of sale were products of fraud and chicanery, they utterly failed to discharge the burden of overturning the presumption of regularity attached to the assailed deeds. Public documents enjoy a presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity.[11] Here, aside from appellees' bare allegations of fraud, there is no other compelling evidence proving the same. Neither is there any adequate proof that Hospicio's signatures were indeed forged. Furthermore, appellees' aver that Hospicio was already seriously ill, inarticulate and bed-ridden at the time the deeds were executed. Nevertheless, it was not substantiated by competent evidence. It is an age-old rule in civil cases that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[12]

To reiterate, the burden of proof to overcome the presumption of regularity lies with the party contesting the notarial document. Unfortunately, appellees failed to discharge said onus. Absent clear and convincing evidence to contradict the same, We find that the assailed deeds of sale are valid and binding. However, this extends only in so far as appellant heirs Perseveranda, Tita and Nestor are concerned. With respect to Hospicio's wife, Vitaliana, the sale cannot be enforced since husband and wife cannot sell property to each other.[13] Hence, the sale in favor of Perseveranda, Tita and Nestor remains valid while the sale to Vitaliana is rendered void. Under Article 1420 of the Civil Code,[14] if the stipulations in a contract can be separated from each other, those that are void will not have any effect, but those which are valid will be enforced.[15] In case of doubt, the contract must be considered as divisible or separable.[16]

All told, the properties sold by Hospicio to Perseveranda, Tita and Nestor shall pertain to them. As for the remaining properties, it shall be partitioned in accordance with the trial court's Decision that the legitimate children of Hospicio and Victoria, including their heirs and successors, shall be assigned one share each of one part of said properties. On the other hand, the three illegitimate children of Hospicio Repollo and Vitaliana shall be assigned one-half of the share of each legitimate child.

Along the same vein, the court *a quo* was correct in ruling that Vitaliana is not entitled to any of the properties. At first glance, the dispositive portion of the trial court's Decision that "Vitaliana Repollo shall inherit nothing" would seem to conflict with its finding that she "will only share as heir of her deceased husband", *viz*:[17]

> Although, Art. 130 of the Civil Law says the second marriage shall be governed by mandatory regime of complete separation of property, there is no showing that Vitaliana has contributed anything to the acquisition of all these properties in questioned, thus, Vitaliana, will only share as heir