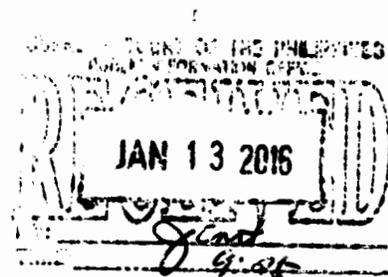




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

RENEE B. TANCHULING, and
the HEIRS OF VICENTE N. Y.
TANCHULING, namely
REBECCA TANCHULING-
TAN, RITA TANCHULING-
MAPA, ROSEMARIE
TANCHULING-SALINAS, and
VINCENT RAYMOND B.
TANCHULING,

Petitioners,

G.R. No. 209284

Present:

SERENO, C.J., Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

- versus -

SOTERO C. CANTELA,
Respondent.

Promulgated:

NOV 10 2015

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ is the Decision² dated August 30, 2013 of the Court of Appeals (CA) in CA G.R. CV No. 95196, which reversed the Decision³ dated March 23, 2010 of the Regional Trial Court of Legazpi City, Branch 5 (RTC) in Civil Case No. 10659 declaring the Deed of Absolute Sale⁴ dated March 17, 2005 (subject deed) between Spouses Dr. Vicente Y. Tanchuling⁵ (Vicente) and petitioner Renee B. Tanchuling (Sps. Tanchuling) and respondent Sotero C. Cantela (Cantela) null and void for being absolutely simulated.

¹ *Rollo*, pp. 8-25.

² *Id.* at 28-42. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Francisco P. Acosta and Myra V. Garcia-Fernandez concurring.

³ *Id.* at 43-45. Penned by Judge Pedro R. Soriano.

⁴ *Records*, pp. 55-57.

⁵ Died on September 28, 2013, two (2) days after the posting of the Motion for Extension to File Petition. See *rollo* pp. 3 and 10. See also Certificate of Death; *id.* at 46.

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The Facts

On March 17, 2005, Sps. Tanchuling and Cantela executed the subject deed covering two (2) parcels of land, both with areas of 192 square meters each, denominated as Lots 5 and 6 of Block 1, situated in Rawis, Legazpi City, covered by Transfer Certificate of Title (TCT) No. 41486 and TCT No. 41487, respectively.⁶ On the face of the subject deed, the sum of ₱400,000.00 appears as the consideration for Cantela's purported purchase of the properties.⁷ Sometime after the subject deed's execution, Vicente delivered the owner's copies of the aforementioned TCTs to Cantela, although it is undisputed that none of the parties are in actual physical possession of the properties.⁸

When Sps. Tanchuling tried to recover the TCTs from Cantela, the latter refused despite the former's earnest demands, prompting them to file on August 6, 2007 a Complaint⁹ for Annulment of Deed of Sale and Delivery of the [Owner's] Duplicate Copy of the [TCTs] with Preliminary Prohibitory and Mandatory Injunction before the RTC, docketed as Civil Case No. 10659. They alleged that the subject deed was absolutely simulated, hence, null and void, given that: (a) there was no actual consideration paid by Cantela to them; (b) the subject deed was executed to merely show to their neighbors that they are the true owners of the properties, considering that there are portions thereof being illegally sold by a certain John Mercado to unsuspecting and ignorant buyers; and (c) Cantela simultaneously executed an undated Deed of Absolute Sale¹⁰ (undated deed) reconveying the properties in their favor.¹¹

In his Answer with Compulsory Counterclaim¹² dated February 10, 2008, Cantela insisted that the sale of the properties to him was valid as he bought the same from Sps. Tanchuling for the price of ₱400,000.00. He further averred that the undated deed was surreptitiously inserted by Sps. Tanchuling in the copies of the subject deed presented to him for signing. Finally, he mentioned that when he attempted to secure a tax declaration over the properties, he discovered that they were posted as a property bond, and that he later went to the Bureau of Internal Revenue to have the capital gains tax computed.¹³

⁶ *Rollo*, pp. 10 and 29.

⁷ See records, p. 56.

⁸ *Rollo*, p. 30.

⁹ Records, pp. 51-54.

¹⁰ Id. at 58-60.

¹¹ Id. at 52.

¹² Id. at 75-80.

¹³ Id. at 75-77.

The RTC Ruling

In a Decision¹⁴ dated March 23, 2010, the RTC granted the complaint and consequently, nullified the subject deed for being absolutely simulated. It found that the parties never intended to be bound by the subject deed in view of the simultaneous execution of the undated deed selling back the properties to Sps. Tanchuling, both of which contain identical witnesses, signatures, community tax certificate details, and letter-composition, adding that Cantela himself admitted that the signatures appearing on the face of the undated deed was his.¹⁵ It likewise observed that a considerable length of time had elapsed before Cantela decided to transfer the titles to his name, *i.e.*, one (1) year, seven (7) months and 13 days, from the execution of the subject deed. Furthermore, it remarked that the parties knew that the sale could not be factually consummated since Cantela was aware that Sps. Tanchuling were not in actual physical possession of the properties at the time the subject deed was executed.¹⁶

Dissatisfied, Cantela appealed¹⁷ to the CA.

The CA Ruling

In a Decision¹⁸ dated August 30, 2013, the CA reversed the RTC ruling, finding that the contemporaneous and subsequent acts of the parties, particularly Cantela, who tried to assert his dominion over the properties, negate absolute simulation.¹⁹ It also found consideration for the sale when Sps. Tanchuling acknowledged receipt of the sum of ₱400,000.00 in the subject deed itself. Finally, it observed that the subject deed should prevail over the undated deed as the former was notarized while the latter was not.²⁰

Dissatisfied, Renee B. Tanchuling, and the heirs of Vicente, namely: Rebecca Tanchuling-Tan, Rita Tanchuling-Mapa, Rosemarie Tanchuling-Salinas, and Vincent Raymond B. Tanchuling (petitioners), filed the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the subject deed is simulated, hence, null and void.

¹⁴ *Rollo*, pp. 43-45.

¹⁵ *Id.* at 43-44.

¹⁶ *Id.* at 44.

¹⁷ See CA *rollo*, pp. 14-27.

¹⁸ *Rollo*, pp. 28-42.

¹⁹ *Id.* at 37.

²⁰ See *id.* at 40-41.

The Court's Ruling

The petition is meritorious.

At the outset, it is apt to point out that while the issue of simulation involves questions of fact, which are generally beyond the purview of a Rule 45 petition for review on *certiorari*, said rule admits of certain exceptions, such as when the factual findings of the trial court and the appellate court are at variance,²¹ as in this case.

“Simulation takes place when the parties do not really want the contract they have executed to produce the legal effects expressed by its wordings. Simulation or vices of declaration may be either absolute or relative.”²² Article 1345 of the Civil Code distinguishes an absolute simulation from a relative one; while Article 1346 discusses their effects, as follows:

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.

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 agreement.

In *Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberato M. Ureta*,²³ the Court explained that “[i]n 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.”²⁴

In this case, the Court agrees with the RTC that the subject deed was absolutely simulated. The parties never intended to be bound by any sale agreement. Instead, the subject deed was executed merely as a front to show the public that Sps. Tanchuling were the owners of the properties in order to deter the group of John Mercado from illegally selling the same.²⁵

²¹ See *Ramos v. Heirs of Honorio Ramos, Sr.*, 431 Phil. 338, 345 (2002).

²² *Cruz v. Bancom Finance Corporation*, 429 Phil. 224, 233 (2002).

²³ 673 Phil. 188, 211 (2011); citing *Valerio v. Refresca*, 520 Phil. 367, 374 (2006).

²⁴ *Id.* at 211; emphasis and underscoring supplied.

²⁵ TSN, April 28, 2008, pp. 17-21, 39, and 40.

In the case of *Cruz v. Bancom Finance Corporation (Cruz)*,²⁶ citing *Ocejo, Perez & Co. v. Flores*,²⁷ it was ruled that “a contract of purchase and sale is null and void and produces no effect whatsoever where it appears that [the] same is **without cause or consideration** which should have been the motive thereof, or the **purchase price which appears thereon as paid but which in fact has never been paid by the purchaser to the vendor.**”²⁸

Although the subject deed between Sps. Tanchuling and Cantela stipulated²⁹ a consideration of ₱400,000.00, there was actually no exchange of money between them. This was revealed in the testimony of Vicente:

ATTY. BAILEY (to the witness):

Q Now you mentioned a while ago that on this particular date March 17, 2005, you and as well as (*sic*) your wife and defendant executed this Deed of Sale and you said it was simulated. My question to you is this, how were you able to say and tell us why you considered the sale as simulated one?

x x x x

WITNESS

There was **no cash consideration** in that Deed of Sale and number 2 that same instance another Deed of Absolute Sale was executed from Sotero Cantela back to Vicente Tanchuling and Renee Tanchuling.

ATTY BAILEY (to the witness)

Q So in other words there is mentioned here a consideration of the sale of his land in the amount of ₱400,000.00, you mean to say that this ₱400,000.00 was not given to you?

x x x x

WITNESS

There was no consideration whatsoever, no cash involved.³⁰

Vicente’s testimony was even corroborated by the testimonies of witnesses Ma. Belleza Navarro (Navarro) and Jesus Botero (Botero), who were also present during the execution of the subject deed and the undated deed:

²⁶ Supra note 21.

²⁷ See 40 Phil. 921 (1920).

²⁸ Supra note 21, at 233; emphasis and underscoring supplied.

²⁹ “THAT FOR AND CONSIDERATION of the sum of Four Hundred Thousand Pesos (₱400,000.00), Philippine Currency, receipt of which in full is hereby acknowledged from the VENDEE, VENDOR hereby sell, transfer, convey unto and in favor of the VENDEE, his heirs, successors and assigns the above described properties free from any liens and encumbrances.”

x x x x (See records, p. 56; underscoring supplied.)

³⁰ TSN, April 28, 2008, pp. 15-16; emphases supplied.

Navarro's Testimony

Q Now, appearing in this Exhibit A is the amount of the consideration of the sale Four Hundred Thousand [Pesos] (₱400,000.00)[,] tell us at the time you were there witnessing the signing of this document and after the same was signed by the parties did you ever notice or see whether there was a delivery of the Four Hundred Thousand [Pesos] (₱400,000.00)[?]

x x x x

WITNESS [Navarro]

A **None, sir.**

x x x x

Q And, you said before that **nothing was given as a consideration** by the defendant Cantela to Dr. Tanchuling, is it correct?

A **Yes, sir.**

Q You said that because during the execution of these documents nothing was given by Mr. Cantela to Dr. Tanchuling at the time of the execution of these documents before signing of these documents, is that correct?

A Yes sir, because at the time of the signing of these documents, **there was no payment made.**³¹

Botero's Testimony

COURT:

But the question by this Court is while he was there what he can say to the testimony by this Cantela that he gave the amount of Four Hundred Thousand Pesos to Dr. Tanchuling while he was there. Let him answer.

x x x x

WITNESS [Botero]

It is all a lie not even one peso was given.³²

On the other hand, Cantela never submitted any evidence to convincingly refute these assertions.

Also, Cantela's persisting failure to secure a title in his name likewise indicates simulation. In *Rufloe v. Burgos*,³³ the Court held:

A true vendee would not brook any delay in registering the sale in his favor. Not only because registration is the operative act that effects

³¹ TSN, May 5, 2008, pp. 11-12 and 17-18; emphases supplied.

³² TSN, October 12, 2009, pp. 21-22; emphasis supplied.

³³ 597 Phil. 261 (2009).

property covered by the Torrens System, but also because registration and issuance of new title to the transferee, enable this transferee to assume domiciliary and possessory rights over the property. These benefits of ownership shall be denied him if the titles of the property shall remain in the name of the vendor. **Therefore, it is inconceivable as contrary to behavioral pattern of a true buyer and the empirical knowledge of man to assume that a buyer who invested on the property he bought would be uninvolved and not endeavor to register the property he bought. x x x.**³⁴ (Emphasis supplied)

While Cantela attributes the delay in the registration of titles of the properties under his name to the fact that Sps. Tanchuling had posted the properties as a bond in another case,³⁵ records do not sufficiently indicate the subsequent steps taken by him to release the properties from this impediment, which altogether negates the interest exhibited by a conscientious buyer of real estate.

In fact, Cantela failed to take possession of the properties, which, according to *Cruz*, is a clear indication of simulation:

The failure of Sulit to take possession of the property purportedly sold to her was a clear badge of simulation that rendered the whole transaction void and without force and effect, pursuant to Article 1409 of the Civil Code. The fact that she was able to secure a Certificate of Title to the subject property in her name did not vest her with ownership over it. A simulated deed of sale has no legal effect; consequently any transfer certificate of title (TCT) issued in consequence thereof should be cancelled. A simulated contract is not a recognized mode of acquiring ownership.³⁶ (Emphasis supplied)

And finally, the undated deed, which serves as a counter-agreement to, and which was simultaneously executed with, the subject deed, unmistakably evinces absolute simulation. While Cantela posits that he was tricked into signing the undated deed as it was supposedly surreptitiously inserted by Sps. Tanchuling into the copies of the subject deed at the time of their signing, nothing, aside from his self-serving assertions, support his account. It is well-settled that fraud is never presumed but must be proven by clear and convincing evidence by the same party who alleges it.³⁷ Besides, Navarro and Botero, who equally witnessed the signing of the undated deed, never testified on any irregularity. Notably, the fact that the undated deed was not notarized is rendered irrelevant by Cantela's own admission of the document's execution, which, unless proven to be fraudulent, must be presumed to be fair and regular, as in all private transactions.³⁸

³⁴ Id. at 273.

³⁵ See *rollo*, p. 37.

³⁶ *Supra* note 21, at 236-237; citations omitted.

³⁷ See *Spouses Ramos v. Obispo*, G.R. No. 193804, February 27, 2013, 692 SCRA 240, 249-250.

³⁸ RULES OF COURT, Rule 131, Section 3, Paragraph, (p). See *Loyola v. CA*, 383 Phil. 171, 183 (2000).

In view of the foregoing, the Court thus concludes that Sps. Tanchuling never intended to transfer the properties to Cantela; hence, the subject deed was absolutely simulated and in consequence, null and void.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 30, 2013 of the Court of Appeals in CA G.R. CV No. 95196 is hereby **REVERSED** and **SET ASIDE**. The Decision dated March 23, 2010 of the Regional Trial Court of Legazpi City, Branch 5 in Civil Case No. 10659 is **REINSTATED**.

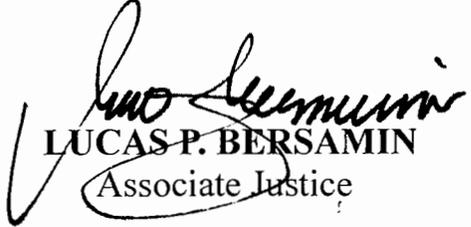
SO ORDERED.

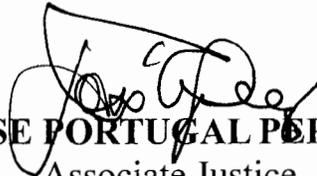

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice

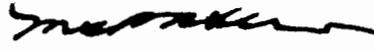

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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