



Republic of the Philippines  
**Supreme Court**  
 Manila

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*Welford*  
 WILFORD...  
 Division of the Court  
 Third Division  
 MAR 22 2016

**THIRD DIVISION**

**JOEY R. PEÑA,**

Petitioner,

**G.R. No. 202223**

Present:

VELASCO, JR., J.,  
*Chairperson,*

PERALTA,  
 PEREZ,  
 REYES, and  
 JARDELEZA, JJ.

- versus -

**JESUS DELOS SANTOS AND  
 THE HEIRS OF ROSITA DELOS  
 SANTOS FLORES,**

Respondents.

Promulgated:

**March 2, 2016**

X-----*Welford*-----X

**RESOLUTION**

**REYES, J.:**

This resolves the Motion for Reconsideration<sup>1</sup> of petitioner Joey R. Peña (Peña) of the Court's Resolution<sup>2</sup> dated September 9, 2013 which denied his Petition for Review<sup>3</sup> on the ground of lack of reversible error in the assailed Decision<sup>4</sup> dated February 20, 2012 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 03886.

**The Facts**

Jesus Delos Santos (Jesus) and Rosita Delos Santos Flores (Rosita) were the judgment awardees of the two-thirds portion or 9,915 square meters of four adjoining lots designated as Lots 393-A, 393-B, 394-D and 394-E,

<sup>1</sup> Rollo, pp. 808-857.

<sup>2</sup> Id. at 807.

<sup>3</sup> Id. at 3-49.

<sup>4</sup> Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Nina G. Antonio-Valenzuela and Abraham B. Borreta concurring; id. at 51-65.

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measuring 14,771 sq m, located in Boracay Island, Malay, Aklan.<sup>5</sup> The award was embodied in the Decision dated April 29, 1996 of the Regional Trial Court (RTC) of Kalibo, Aklan in the herein Civil Case No. 3683, the *fallo* of which reads:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered as follows:

(1.) Dismissing the complaint filed by the plaintiffs [Vicente Delos Santos, et al.] as well [as] the complaint in intervention filed by the second set of intervenors Casimeros, *et al.* for lack of merit;

(2.) Declaring the two deeds of sale (Exhibits 29 and 30) as null and void insofar as they affect the two-thirds (2/3) share of intervenors Jesus and [Rosita];

**(3.) Declaring intervenors Jesus and [Rosita] as the lawful owners of the two-thirds portion of the land in question or 9,915 square meters on the northwest portion, representing as their shares in the intestate estate of Leonardo delos Santos;**

(4.) Declaring defendant Fred Elizalde as the rightful owner of one-third of the land in question or 4,957 square meters on the southeast portion, segregated by a boundary line running from the seashore to the inland or from the southwest to northeast;

(5.) Ordering the cancellation or revision of Tax Declaration No. 4422 in the name of Fred Elizalde (Exhibit 26) and all tax declarations issued subsequent thereto to conform to paragraphs 3 and 4 hereof as well as the issuance of a new tax declaration to intervenors Jesus and [Rosita] covering their two-thirds (2/3) share;

(6.) Ordering the plaintiffs or any persons claiming interest therein to deliver complete possession of the land to [Fred and Joan Elizalde] and Jesus and [Rosita].

No pronouncement as to costs.

SO ORDERED.<sup>6</sup> (Citation omitted and emphasis ours)

The losing parties in the case, Vicente Delos Santos, et al. (plaintiffs) and Spouses Fred and Joan Elizalde (appellants), appealed the foregoing judgment to the CA thru petitions separately docketed as CA-G.R. CV No. 54136 and CA-G.R. SP No. 48475, respectively. Both appeals were dismissed and considered withdrawn in the CA Resolution dated May 11, 1999 upon the appellants' motion to withdraw appeal. In the subsequent CA Resolution dated January 31, 2000, the motion for reconsideration and motion to reinstate appeal filed by the plaintiffs were denied for being

<sup>5</sup> See *Delos Santos v. Elizalde*, 543 Phil. 12, 18 (2007).

<sup>6</sup> *Id.* at 19.

time-barred as it was filed nine days late.<sup>7</sup>

The plaintiffs sought recourse with the Court *via* a petition for review on *certiorari* docketed as G.R. Nos. 141810 and 141812.<sup>8</sup> In a Decision dated February 2, 2007, the Court denied the petition on the ground that the plaintiffs already lost their right of appeal to the CA when they failed to file an appellant's brief during the more than 180-day extension.<sup>9</sup> The Court reiterated its ruling in a Resolution dated April 23, 2007, which denied reconsideration. An Entry of Judgment in the case was forthwith issued.<sup>10</sup>

The case was then remanded to the RTC of Kalibo, Aklan for the execution proceedings during which a *Motion for Substitution with a Motion for a Writ of Execution and Demolition*<sup>11</sup> dated March 14, 2008 was filed by Peña.

Peña averred that he is the transferee of Jesus and Rosita's adjudged allotments over the subject lots. He claimed that he bought the same from Atty. Romeo Robiso (Atty. Robiso) who in turn, acquired the properties from Jesus and Rosita through assignment and sale as evidenced by the following documents, *viz*:

- a. Deed of Transfer or Conveyance dated May 4, 2005 transferring 2,000 sq m of Lots No. 394-PT and 393-A to Atty. Robiso;<sup>12</sup>
- b. Deed of Absolute Sale dated May 4, 2005 over the 2,000 sq m of Lots No. 394-PT and 393-A in favor of Atty. Robiso;<sup>13</sup>
- c. Confirmation of Sale and Transfer dated December 5, 2006 affirming the two foregoing instruments executed by Jesus and Rosita in favor of Atty. Robiso.<sup>14</sup>

Atty. Robiso later on sold Lots No. 393-A and 394-D to Peña on December 15, 2006 thru a Deed of Absolute Sale.<sup>15</sup> The tax declarations over the said portions were subsequently registered in Peña's name.<sup>16</sup>

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<sup>7</sup> Id. at 19-23.

<sup>8</sup> Id. at 12, 17.

<sup>9</sup> Id. at 31-34.

<sup>10</sup> *Rollo*, p. 53.

<sup>11</sup> Id. at 107-114.

<sup>12</sup> Id. at 92-94.

<sup>13</sup> Id. at 95-98.

<sup>14</sup> Id. at 101-102.

<sup>15</sup> Id. at 103-104.

<sup>16</sup> Id. at 105-106.

The plaintiffs opposed Peña's motion claiming that the conveyance made by Jesus and Rosita in favor of Atty. Robiso was null and void for being a prohibited transaction because the latter was their counsel in the case.

Apparently, Atty. Robiso was engaged by Jesus and Rosita to be their counsel in Civil Case No. 3683 by virtue of an *Attorney's Agreement and Undertaking* dated July 11, 1998.<sup>17</sup> Under the agreement, Atty. Robiso bound himself to render his legal services in connection with Jesus and Rosita's involvement as party-litigants in Civil Case No. 3683 and to any proceedings that may arise in connection therewith before the CA and this Court. Atty. Robiso undertook to advance his own funds for all expenses and costs he may incur in relation to the case. In consideration thereof, Jesus and Rosita obliged themselves to give or pay to him as contingent professional fees, 2,000 sq m of any and all lands that the courts will award to them in the case.

### Ruling of the RTC

In an Order<sup>18</sup> dated June 11, 2008, the RTC partially granted Peña's motion and ruled that Jesus and Rosita lost their standing in the case upon the conveyance of their adjudged 2,000 sq m portion in favor of Atty. Robiso whose ownership rights were afterwards acquired by Peña.

The RTC upheld that the conveyance made by Jesus and Rosita in favor of Atty. Robiso is valid since it was not made during the pendency of litigation but after judgment has been rendered. The RTC disposed as follows:

WHEREFORE, premises considered, the instant **Motion for Substitution and the Motion for a Writ of Execution and Demolition is partially granted**. Accordingly, it is hereby directed that:

1. Movant Joey Peña is joined with the original party in the First Set of Intervenors (Jesus and Rosita) in accordance with Section 19, Rule 3 of the Rules of Court; and

2. A Writ of Execution be issued to implement the Decision dated April 29, 1996.

SO ORDERED.<sup>19</sup> (Emphasis in the original)

<sup>17</sup> Id. at 99-100.

<sup>18</sup> Issued by Acting Judge Elmo F. Del Rosario; id. at 226-241.

<sup>19</sup> Id. at 241.

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The writ of execution was issued on July 10, 2008.<sup>20</sup> The RTC denied reconsideration in an Order dated September 8, 2008.<sup>21</sup>

### **Ruling of the CA**

Jesus, together with the heirs of Rosita, elevated the matter to the CA thru a special civil action for *certiorari* docketed as CA-G.R. CEB SP No. 03886.

In its Decision<sup>22</sup> dated February 20, 2012, the CA reversed the RTC and ruled that the conveyance made by Jesus and Rosita in favor of Atty. Robiso was null and void because it is a prohibited transaction under Article 1491(5) of the Civil Code. When the two Deeds of Sale in favor of Atty. Robiso were executed on May 4, 2005 and December 5, 2005 and the Confirmation of Sale on December 15, 2006, the case was still pending with the Supreme Court, before which Jesus and Rosita were still represented by Atty. Robiso. Accordingly, the CA decision disposed as follows:

**WHEREFORE**, the Order dated June 11, 2008, Order dated September 8, 2008, and the Alias Writ of Execution dated July 10, 2008 in Civil Case No. 3683 are hereby ANNULLED and SET ASIDE. The trial court is directed to cause the execution of the final judgment in favor of [Jesus and the heirs of Rosita] in this case with dispatch.

**SO ORDERED.**<sup>23</sup>

The CA reiterated the foregoing ruling when it denied Peña's motion for reconsideration in a Resolution<sup>24</sup> dated May 24, 2012. Aggrieved, Peña filed a petition for review on *certiorari* before the Court. In a Minute Resolution<sup>25</sup> dated September 9, 2013, the Court denied the petition for lack of reversible error in the assailed CA judgment.

On December 23, 2013, Peña filed a Motion for Reconsideration<sup>26</sup> insisting that the deeds of conveyance between Atty. Robiso and Jesus and Rosita were executed long after the decision in Civil Case No. 3683 became final and executory. Even assuming *arguendo* that the deeds were void, a separate action for declaration of their inexistence is necessary because their terms have already been fulfilled.

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<sup>20</sup> Id. at 608-610.

<sup>21</sup> Id. at 264.

<sup>22</sup> Id. at 51-65.

<sup>23</sup> Id. at 64.

<sup>24</sup> Id. at 68-71.

<sup>25</sup> Id. at 807.

<sup>26</sup> Id. at 808-857.

### Ruling of the Court

The Court denies reconsideration.

The basis of Peña's motion for substitution is infirm because the lots were transferred to his predecessor-in-interest, Atty. Robiso, through a prohibited sale transaction. Article 1491(5) of the Civil Code expressly prohibits lawyers from acquiring property or rights that may be the object of any litigation in which they may take part by virtue of their profession, thus:

Art. 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

x x x x

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

x x x x

A complementary prohibition is also provided in Rule 10 of the Canons of Professional Ethics which states:

10. Acquiring interest in litigation.

The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

A property is in litigation if there is a contest or litigation over it in court or when it is subject of a judicial action.<sup>27</sup> Records show that the judicial action over the subject lots was still in the appellate proceedings stage when they were conveyed to Jesus and Rosita's counsel, Atty. Robiso. The Deed of Transfer or Conveyance and the Deed of Absolute Sale both dated May 4, 2005 as well as the Confirmation of Sale and Transfer dated December 5, 2006 were all executed long before the termination of the appellate proceedings before this Court in G.R. Nos. 141810 and 141812 on February 2, 2007.

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<sup>27</sup> *The Conjugal Partnership of the Spouses Vicente Cadavedo and Benita Arcoy-Cadavedo v. Lacaya*, G.R. No. 173188, January 15, 2014, 713 SCRA 397, 420.

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Clearly then, since the property conveyed to Atty. Robiso by Jesus and Rosita was still the object of litigation, the deeds of conveyance executed by the latter are deemed inexistent. Under Article 1409 of the Code, contracts which are expressly prohibited or declared void by law are considered inexistent and void from the beginning.<sup>28</sup> This being so, Atty. Robiso could not have transferred a valid title in favor of Peña over the lots awarded to Jesus and Rosita in Civil Case No. 3683. Consequently, Peña has no legal standing to be substituted in the stead of or joined with Jesus and Rosita as the first set of intervenors and to move for issuance of a writ of execution in Civil Case No. 3683.

There is no need to bring a separate action for the declaration of the subject deeds of conveyance as void. A void or inexistent contract is one which has no force and effect from the very beginning. Hence, it is as if it has never been entered into and cannot be validated either by the passage of time or by ratification.<sup>29</sup>

The need to bring a separate action for declaration of nullity applies only if the void contract is no longer fully executory. Contrary to Peña's stance, the deeds of conveyance made in favor of Atty. Robiso in 2005 cannot be considered as executory because at that time the judgment award ceding the subject lots to Jesus and Rosita was not yet implemented. A writ of execution<sup>30</sup> was issued only on July 10, 2008. "If the void contract is still fully executory, no party need bring an action to declare its nullity; but if any party should bring an action to enforce it, the other party can simply set up the nullity as a defense."<sup>31</sup>

This is notwithstanding the fact that the sale to Atty. Robiso was made pursuant to a contingency fee contract. It is true that contingent fee agreements are recognized in this jurisdiction as a valid exception to the prohibitions under Article 1491(5) of the Civil Code.<sup>32</sup> The Court cannot extend a similar recognition to the present case, however, since the payment to Atty. Robiso of his contingency fees was made during the pendency of litigation. "A contingent fee contract is an agreement in writing where the fee, often a fixed percentage of what may be recovered in the action, is made to depend upon the success of the litigation. The payment of the contingent fee is not made during the pendency of the litigation involving the client's property but only after the judgment has been rendered in the case handled by the lawyer."<sup>33</sup>

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<sup>28</sup> *Vda. de Guerra v. Suplico*, 522 Phil. 295, 310 (2006).

<sup>29</sup> *Francisco v. Herrera*, 440 Phil. 841, 849 (2002).

<sup>30</sup> *Rollo*, pp. 608-610.

<sup>31</sup> *Rubias v. Batiller*, 151-A Phil. 584, 602 (1973).

<sup>32</sup> *The Conjugal Partnership of the Spouses Vicente Cadavedo and Benita Arcoy-Cadavedo v. Lacaya*, supra note 27, at 421.

<sup>33</sup> *Id.* at 421-422.



Peña cannot rely on Article 1437<sup>34</sup> by claiming that Jesus and Rosita are already estopped from questioning the validity of their deeds of conveyance with Atty. Robiso. Estoppel is a principle in equity and pursuant to Article 1432 it is adopted insofar as it is not in conflict with the provisions of the Civil Code and other laws. Otherwise speaking, estoppel cannot supplant and contravene the provision of law clearly applicable to a case.<sup>35</sup> Conversely, it cannot give validity to an act that is prohibited by law or one that is against public policy.<sup>36</sup>

The rationale advanced for the prohibition in Article 1491(5) is that public policy disallows the transactions in view of the fiduciary relationship involved, *i.e.*, the relation of trust and confidence and the peculiar control exercised by these persons. It is founded on public policy because, by virtue of his office, an attorney may easily take advantage of the credulity and ignorance of his client and unduly enrich himself at the expense of his client.<sup>37</sup> The principle of estoppel runs counter to this policy and to apply it in this case will be tantamount to sanctioning a prohibited and void transaction.

The other issues raised by Peña are merely procedural in nature and are too inconsequential to override the fundamental considerations of public policy underlying the prohibition set forth in Article 1491(5) of the Civil Code.

**WHEREFORE**, foregoing considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
Associate Justice

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<sup>34</sup> Art. 1437. When in a contract between third persons concerning immovable property, one of them is misled by a person with respect to the ownership or real right over the real estate, the latter is precluded from asserting his legal title or interest therein, provided all these requisites are present:

- (1) There must be fraudulent representation or wrongful concealment of facts known to the party estopped;
- (2) The party precluded must intend that the other should act upon the facts as misrepresented;
- (3) The party misled must have been unaware of the true facts; and
- (4) The party defrauded must have acted in accordance with the representation.

<sup>35</sup> *Valdevieso v. Damalerio*, 492 Phil. 51, 59 (2005).

<sup>36</sup> *Ouano v. Court of Appeals*, 446 Phil. 690, 708 (2003).

<sup>37</sup> *Ramos v. Atty. Ngaseo*, 487 Phil. 40, 47 (2004).

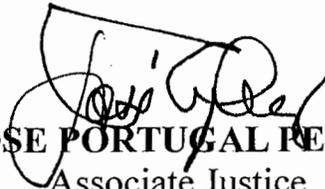
**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

**ATTESTATION**

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

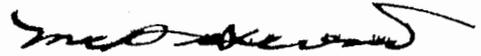


**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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

**CERTIFIED TRUE COPY**



**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

MAR 22 2016

