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FIRST DIVISION

[G.R. No. 171762, June 05, 2009]

LYNN MAAGAD AND THE DIRECTOR OF LANDS, PETITIONERS, VS. JUANITO MAAGAD, RESPONDENT.

D E C I S I O N

PUNO, C.J.:

This petition for review on certiorari[1] assails the Decision of the Court of Appeals (CA)[2] in CA-G.R. CV No. 56663. The CA reversed and set aside the Decision of the Regional Trial Court (RTC)[3] of Misamis Oriental, which dismissed for lack of evidence the Complaint for Annulment and/or Reconveyance of Title with Damages filed by herein respondent.

The parcel of land in dispute is Lot No. 6297, Cad-237, C-5 (Lot 6297) with an area of five thousand, one hundred thirty-four square meters (5,134 sq. m.) located in Bulua, Cagayan de Oro City. Lot 6297 formed part of the estate of Proceso Maagad. Upon his death sometime in 1963[4] or 1965,[5] he was survived by his children Amadeo, Adelo (father of petitioner Lynn), Loreto and Juanito (respondent), all surnamed Maagad.

On 20 June 1972, the heirs of Proceso executed an Extrajudicial Partition of Real Estate (Partition)[6] dividing among themselves their father's properties. In the Partition, Lot 6297 was conveyed to Adelo while Lot No. 6270[7] was allotted to respondent Juanito.

Respondent Juanito claimed that the Partition mistakenly adjudicated Lot 6297 to Adelo, and Lot No. 6270 to himself, when it should have been the reverse. He asserted that: (1) he had been in continuous possession of Lot 6297 even before the death of their father, Proceso; (2) the lot was given to him by their father when Juanito married in 1952; (3) he had been religiously paying the realty taxes due the land; and (4) Adelo, up to his death in 1989, recognized and respected Juanito's possession and ownership over Lot 6297 and, in turn, possessed and paid realty taxes for Lot No. 6270.

To rectify the alleged mistake, respondent Juanito and the children of Adelo, namely: Dina, Ely and petitioner Lynn, executed on 29 January 1990 a Memorandum of Exchange which stated in part:

> x x x
>
> 2. That the ownership of the parties over the said properties [is] not absolute considering the fact that there was a mistake in designating the owner of the respective properties. Lot No. 6270 should have been given

> to the Party of the Second Part and Lot No. 6297 should have been allotted to the Party of the First Part. This wrong designation was committed in the settlement and partition of the estate of the late Proceso Maagad.
>
> 3. That the parties herein in order to correct the foregoing error, do hereby covenanted and/or agreed to EXCHANGE THE SAID PROPERTIES in such a way that LOT NO. 6270 shall now belong or [be] exclusively owned by the Party of the Second Par[t], while LOT NO. 6297 shall be owned and belong to the Party of the First Part. That proper transfer of tax declarations shall be made in accordance with this agreement of exchange.[8]

However, an erroneous assignment of the "Party of the First Part" and the "Party of the Second Part" resulted in a repeat of the mistake attendant in the Partition which the parties had intended to correct. Thus, once again, Lot 6297 was allotted to the heirs of the now deceased Adelo while Lot No. 6270 was partitioned to respondent Juanito. The latter only discovered the error later on in the year when petitioner Lynn caused the publication of the Partition in a local newspaper.

Unbeknownst to respondent Juanito, on 15 October 1992, petitioner Lynn, representing his siblings, applied for a free patent over Lot 6297 with the Bureau of Lands, Cagayan de Oro City. On 6 January 1993, he wrote respondent demanding the surrender of the possession of Lot 6297 which the latter ignored, believing in good faith that the demand had no basis.

Subsequently, petitioner Lynn's free patent application was approved and Free Patent No. 104305-93-932 was issued on 4 August 1993. Pursuant thereto, OCT No. P-3614,[9] in the name of the Heirs of Adelo Maagad represented by Lynn V. Maagad, was issued and recorded in the Register of Deeds of Cagayan de Oro City on 10 August 1993.

Thus, on 21 February 1994, respondent Juanito filed a Complaint for Annulment of Title with Damages before the RTC, which was later amended to include a prayer for the alternative relief of reconveyance of title.

Trial ensued. After presentation of the plaintiff's evidence, then defendant and herein petitioner, Lynn Maagad, filed a demurrer to evidence alleging that based on the facts established and the laws applicable to the case, then plaintiff and herein respondent, Juanito Maagad, had not shown any right to the reliefs prayed for.

On 6 March 1997, the RTC granted the demurrer and dismissed the case for lack of evidence. It ratiocinated, *viz.*:

> When the heirs of Proceso Maagad executed the Extra-judicial Partition, all the four (4) heirs signed the document on the agreement that what was adjudicated to them should now belong to each of them. The allegation of the witnesses for plaintiff [now respondent] that Lot No. 6297 was only mistakenly adjudicated to Adelo Maagad as plaintiff's children were in possession of the property is belied by the fact that plaintiff signed the Extra-judicial Partition. Whatever right plaintiff may have had over the property had been waived by his signing the

document.

It is worthy to note that a Deed of Exchange was executed at the instance of plaintiff 18 years after the partition. But still, it is clear under the terms of the document that Lot No. 6297 belongs to Adelo Maagad and Lot No. 6270 belongs to Juanito. [The] [p]ertinent provision of law applicable to the aforestated issue is Section 9 of Rule 130 which states:

> "SECTION 9. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, i[t] i[s] considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other tha[n] the contents of the written agreement."

Plaintiff is not allowed to alter the contents of the extra-judicial partition by parol evidence. Parol evidence rule forbids any addition to or contradiction of the terms of a written instrument. x x x

Even granting arguendo that there was a mistake in the extra-judicial partition, plaintiff's evidence still fall[s] short of justifying the reformation of the instrument. The testimonies of its witnesses have not proved by clear and convincing evidence that the alleged mistake did not express the true intention of the parties.

x x x x

WHEREFORE, premises considered, judgment is hereby rendered dismissing the above-entitled case for lack of evidence.[10]

On appeal, the CA reversed and set aside the ruling of the RTC, *viz*.:

WHEREFORE, all the foregoing considered, the appeal is hereby **GRANTED** and the assailed decision is **REVERSED AND SET ASIDE**. OCT No. P-3614 issued to the Heirs of Adelo Maagad is hereby declared **NULL AND VOID** and plaintiff-appellant declared the rightful owner and possessor of Lot No. 6297, Cad 237, C-5.[11]

Hence, this petition for review on certiorari which calls upon the Court to resolve the following issues: (1) whether Juanito Maagad has a superior right over Lot 6297; (2) whether OCT No. P-3614, issued pursuant to the free patent application, should be declared null and void; and corollarily, (3) whether the title can be reconveyed to respondent.

On the question of whether respondent Juanito Maagad has a superior right over Lot 6297, the CA ruled in the affirmative, *viz*.:

> The records of the case indubitably show that the Deed of Extrajudicial Partition executed in 1972 between and among the heirs of Proce[s]o Maagad, namely Adelo, Juanito, Loreto and Amadeo, contained a patent mistake by the erroneous adjudication of Lot No. 6297 to Adelo, herein defendant-appellee's [now petitioner's] father, considering that the said lot had long been in the actual possession of plaintiff-appellant [now

respondent], through his father, and of the adjudication of Lot No. 6270 to plaintiff-appellant when the same had already been declared in Adelo's name.

Consequently, the necessity to rectify the error arose. Hence, on January 29, 1990, plaintiff-appellant together with Adelo's heirs, including herein defendant-appellee Lynn, executed a Memorandum of Exchange to conform to the real intention of the extra-judicial partition. The instrument intended to exchange [Lot Nos.] 6297 and 6270; specifically, to transfer Lot No. 6297 from the heirs of Adelo Maagad to plaintiff-appellant, and in turn, to effect the transfer of Lot No. 6270 from the latter to the former. But for reasons beyond the intervention of the parties, the Memorandum of Exchange reflected the same mistake, thus, no exchange of property was in reality effected.

We find, however, that notwithstanding the failure to effect the exchange of the properties, defendant-appellee's voluntary and active participation in the execution of the Memorandum of Exchange clearly demonstrated his recognition of the mistake in the instrument of partition. The intent to effect the exchange in order to correct the defect in the partition was strongly manifested when defendant-appellee voluntarily subscribed to the instrument. By his act, the latter is estopped from negating the existence of the mistake in the adjudication of the properties and of plaintiff-appellant's pre-existing rights over Lot No. 6297.

Hence, We find defendant-appellee's contention tenuous that Lot No. 6297 belonged to him and his siblings by way of inheritance from their father Adelo, who in turn obtained the same through the Extrajudicial Partition. It would be highly illogical and absurd for the parties to execute a Memorandum of Exchange in the first place if there was nothing to exchange at all, unless the purpose of said exchange was precisely to rectify and effect the correct adjudication of the two lots in question.[12] (emphasis added)

The parol evidence rule, [13] as relied on by the RTC to decide in favor of Lynn Maagad, proscribes any addition to or contradiction of the terms of a written agreement by testimony purporting to show that, at or before the signing of the document, other or different terms were orally agreed upon by the parties.[14] However, the rule is not absolute and admits of exceptions. Thus, among other grounds, a party may present evidence to modify, explain, or add to the terms of the written agreement if he puts in issue in his pleading a **mistake** in the written agreement. For the mistake to validly constitute an exception to the parol evidence rule, the following elements must concur: (1) the mistake should be of fact; (2) the mistake should be mutual or common to both parties to the instrument; and (3) the mistake should be alleged and proved by clear and convincing evidence.[15]

We find that all the elements are present in the case at bar and there was indeed a mistake in the terms of the Partition, thus exempting respondent Juanito from the general application of the parol evidence rule.

We agree with the CA that "[i]t would be highly illogical and absurd for the parties to

execute a Memorandum of Exchange in the first place if there was nothing to exchange at all, unless the purpose of said exchange was precisely to rectify and effect the correct adjudication of the two lots in question."[16] **The mere fact of execution of a Memorandum of Exchange itself indicates the existence of a mistake in the Partition which the parties sought to correct.** The existence of such mistake is further cemented with statements in the Memorandum of Exchange, *viz*.:

> x x x
>
> 2. That the ownership of the parties over the said properties [is] not absolute considering the fact that **there was a mistake in designating the owner of the respective properties**. x x x
>
> 3. That the parties herein **in order to correct the foregoing error**, do hereby covenanted and/or agreed to EXCHANGE THE SAID PROPERTIES x x x.[17] (emphases added)

The strongest evidence of mistake, however, is the admission by the petitioner himself. In his Petition for Review on Certiorari, petitioner admits that, because of mutual mistake, the Memorandum of Exchange failed to express the agreement of the parties to exchange the properties. Moreover, he quotes, and agrees with, the decision of the CA and even refers to the reformation of the original contract. Petitioner states:

> In the case at bar, it became apparent that there was failure of the Memorandum of Exchange to disclose the real agreement of the parties brought about by the mutual mistakes of the parties as reflected in the said instrument (Article 1361, Civil Code of the Philipp[in]es).[18]
>
> Thus[,] **by reason of the mutual mistake which did not express the true intent and agreement of the parties from a prior oral agreement to exchange the property** before they have attempted to reduce it in writing, which attempt fails by reason of such mistake, hence reformation enforces the original contract, if necessary.
>
> As aptly quoted from the basic decision, p. 15, thus:
>
> > "Hence, WE find defendant-appellee's contention tenuous that Lot No. 6297 belonged to him and his siblings by way of inheritance from their father, Adelo, who in turn obtained the same through Extra-judicial Partition. It would be highly illogical and absurd for the parties to execute a Memorandum of Exchange in the first place if there was nothing to exchange at all, unless the purpose of said exchange was precisely to rectify and effect the correct adjudication of the two lots in question.
>
> **Indeed there was an attempt to rectify and effect the correct adjudication of the two lots in question.**[19](emphases added)

It is well-settled that a judicial admission conclusively binds the party making it. He cannot thereafter take a position contradictory to, or inconsistent with his pleadings.