

## SECOND DIVISION

[ G.R. NO. 165088, March 17, 2006 ]

**POTENCIANO RAMIREZ, PETITIONER, VS. MA. CECILIA RAMIREZ, RESPONDENT.**

### DECISION

**AZCUNA, J.:**

Petitioner Potenciano Ramirez filed this petition for review on certiorari under Rule 45 of the Rules of Court against the decision of the Court of Appeals (CA) in CA-G.R. No. 69401.

On October 8, 1996, petitioner filed a complaint against respondent Ma. Cecilia Ramirez before the Regional Trial Court of Olongapo City (RTC) for annulment of: 1) a Deed of Donation; 2) Waiver of Possessory Rights; and 3) Transfer Certificates of Title (TCT) Nos. T-5618 and T-5617. [1] Petitioner claimed that respondent caused the execution of the Deed of Donation and Waiver of Possessory Rights to acquire ownership over the land and improvements then covered by TCT Nos. T-4575 and T-4576. Using the Deed of Donation, respondent allegedly succeeded in having TCT Nos. T-4575 and T-4576 cancelled and TCT Nos. T-5618 and T-5617 issued in her name. Furthermore, petitioner alleged that with the Waiver of Possessory Rights, respondent was able to cause the Office of the City Assessor to transfer to her name the tax declarations on the improvements in the land. [2]

The Deed of Donation and Waiver of Possessory Rights were allegedly executed by petitioner and his wife, Dolores Ramirez, on January 29, 1993 and October 24, 1995, respectively. However, the death certificate presented showed that Dolores died on April 5, 1991 and, consequently, could not have executed the assailed documents. Petitioner repudiated the other signatures appearing on the two documents that were purportedly his and insisted that he did not intend to transfer the properties to respondent.

In her Answer, respondent alleged that her father, petitioner, would not have filed the case were it not for the fact that he remarried despite his age of 84 years. She further claimed that it was her father's idea to cause the preparation of the Deed of Donation and Waiver of Possessory Rights to save on expenses for publication and inheritance taxes.

After trial, the RTC ruled that the signature of Dolores on the Deed of Donation was a forgery while her signature on the Waiver of Possessory Rights was genuine. It also found petitioner's signatures on both documents to be genuine. It then held petitioner and respondent in *pari delicto*, as participants to the forgery, and ruled that they must bear the consequences of their acts without cause of action against each other in accordance with Article 1412 of the Civil Code. The RTC dismissed the complaint. [3]

Petitioner went to the CA, which held that Dolores's signature on the Deed of Donation as well as her alleged signature appearing in the Waiver of Possessory Rights were forgeries. The petition was denied and the CA likewise held both parties in *pari delicto*. [4]

The issue is simple: whether petitioner and respondent are in *pari delicto*.

As one of the modes of acquiring ownership, donations are governed by Title 3, Book III, of the Civil Code. Donations *inter vivos* are additionally governed by the general provisions on obligations and contracts in all that is not determined by the title governing donations. [5] Hence, the rule on *pari delicto* under the general provisions of contracts is applicable to the present case.

The Court agrees with the rulings of the CA and the RTC that petitioner and respondent are in *pari delicto*. Nevertheless, both courts erred on the applicable law. Article 1412 of the Civil Code, which they applied, refers to a situation where the cause of the contract is unlawful or forbidden but does not constitute a violation of the criminal laws, thus:

ARTICLE 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

On the other hand, where the act involved constitutes a criminal offense, the applicable provision is Article 1411:

ARTICLE 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

Petitioner alleged that the signatures of Dolores on the Deed of Donation and on the Waiver of Possessory Rights are a forgery. Respondent does not deny this allegation. Forging a person's signature corresponds to the felony of falsification under Section 4, Title IV of the Revised Penal Code. Hence, the act of forging Dolores's signature