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**[ G.R. No. 103959, August 21, 1997 ]**

**SPOUSES REGALADO SANTIAGO AND ROSITA PALABYAB,  
JOSEFINA ARCEGA, PETITIONERS, VS. THE HON. COURT OF  
APPEALS; THE HON. CAMILO C. MONTESA, JR., PRESIDING  
JUDGE OF THE RTC OF MALOLOS, BULACAN, BRANCH 19, AND  
QUIRICO ARCEGA, RESPONDENTS.**

**D E C I S I O N**

**HERMOSISIMA, JR., J.:**

Assailed in this petition for review under Rule 45 is the November 8, 1991 Decision of respondent Court of Appeals in CA-G.R. CV No. 25069. It affirmed in toto the judgment of Branch 19, Regional Trial Court of Malolos, Bulacan, in Civil Case No. 8470-M. The action therein sought to declare null and void the "Kasulatan ng Bilihang Tuluyan ng Lupa" executed on July 18, 1971 by the late Paula Arcega, sister of private respondent, in favor of herein petitioners over a parcel of land consisting of 927 square meters, situated in Barangay Tabing Ilog, Marilao, Bulacan.

Paula Arcega was the registered owner of that certain parcel of land covered by Transfer Certificate of Title No. T-115510. Her residential house stood there until 1970 when it was destroyed by a strong typhoon.

On December 9, 1970, Paula Arcega executed what purported to be a deed of conditional sale over the land in favor of Josefina Arcega and the spouses Regalado Santiago and Rosita Palabyab, the petitioners herein, for and in consideration of P20,000.00. The vendees were supposed to pay P7,000.00 as downpayment. It was expressly provided that the vendor would execute and deliver to the vendees an absolute deed of sale upon full payment by the vendees of the unpaid balance of the purchase price of P13,000.00.

Subsequently, on July 18, 1971, supposedly upon payment of the remaining balance, Paula Arcega executed a deed of absolute sale of the same parcel of land in favor of petitioners. Thereupon, on July 20, 1971, TCT No. T-115510, in the name of Paula Arcega, was cancelled and a new title, TCT No. T-148989 was issued in the name of petitioners.

On April 10, 1985, Paula Arcega died single and without issue, leaving as heirs her two brothers, Narciso Arcega<sup>[1]</sup> and private respondent Quirico Arcega.

Incidentally, before Paula Arcega died, a house of four bedrooms with a total floor area of 225 square meters was built over the parcel of land in question. Significantly, the master's bedroom, with toilet and bath, was occupied by Paula Arcega until her death despite the execution of the alleged deed of absolute sale. The three other bedrooms, smaller than the master's bedroom, were occupied by

the petitioners who were the supposed vendees in the sale.

Private respondent Quirico Arcega, as heir of his deceased sister, filed on October 24, 1985 Civil Case No. 8470-M before the RTC of Malolos, Bulacan, seeking to declare null and void the deed of sale executed by his sister during her lifetime in favor of the petitioners on the ground that said deed was fictitious since the purported consideration therefor of P20,000.00 was not actually paid by the vendees to his sister.

Answering the complaint before the RTC, petitioner spouses averred that private respondent's cause of action was already barred by the statute of limitations considering that the disputed deed of absolute sale was executed in their favor on July 18, 1971, by which TCT No. 148989 was issued on July 20, 1971, while private respondent's complaint was filed in court only on October 24, 1985 or more than fourteen (14) years from the time the cause of action accrued. Petitioners also deny that the sale was fictitious. They maintain that the purchase price was actually paid to Paula Arcega and that said amount was spent by the deceased in the construction of her three-door apartment on the parcel of land in question.

Josefina Arcega, the other petitioner, was declared in default for failure to file her answer within the reglementary period.

After trial, the RTC rendered judgment in favor of private respondent Quirico Arcega, viz.:

"(a) Declaring as null and void and without legal force and effect the 'Kasulatan Ng Bilihang Tuluyan ng Lupa' dated July 18, 1971 executed by the deceased Paula Arcega covering a parcel of land embraced under TCT No. T-115510 in favor of the defendants;

(b) Declaring TCT No. T-148989 issued and registered in the names of defendants Josefina Arcega and spouses Regalado Santiago and Rosita Palabyab as null and void;

(c) Ordering the reconveyance of the property including all improvements thereon covered by TCT No. T-115510, now TCT No. T-148989, to the plaintiff, subject to real estate mortgage with the Social Security System; and

(d) To pay jointly and severally the amount of P10,000.00 as attorney's fees.

On the counterclaim, the same is hereby dismissed for lack of legal and/or factual basis (p. 6, decision, pp. 295-300, rec.)."<sup>[2]</sup>

In ruling for private respondent, the trial court, as affirmed in toto by the public respondent Court of Appeals, found that:

"On the basis of the evidence adduced, it appears that plaintiff Quirico Arcega and his brother Narciso Arcega are the only surviving heirs of the

deceased Paula Arcega who on April 10, 1985 died single and without issue. Sometime in 1970, a strong typhoon destroyed the house of Paula Arcega and the latter together with the defendants decided to construct a new house. All the defendants<sup>[3]</sup> being members of the SSS, Paula deemed it wise to lend her title to them for purposes of loan with the SSS. She executed a deed of sale to effect the transfer of the property in the name of the defendants and thereafter the latter mortgaged the same for P30,000.00 but the amount actually released was only P25,000.00. Paula Arcega spent the initial amount of P30,000.00 out of her savings for the construction of the house sometime in 1971 and after the same and the proceeds of the loan were exhausted, the same was not as yet completed. Paula Arcega and her brothers sold the property which they inherited for P45,000.00 and the same all went to the additional construction of the house, however, the said amount is not sufficient. Thereafter, Paula Arcega and her brothers sold another property which they inherited for P805,950.00 and one-third (1/3) thereof went to Paula Arcega which she spent a portion of which for the finishing touches of the house. The house as finally finished in 1983 is worth more than P100,000.00 with a floor area of 225 square meters consisting of four bedrooms . A big master's bedroom complete with a bath and toilet was occupied by Paula Arcega up to the time of her death on April 10, 1985 and the other three smaller bedrooms are occupied by spouses, defendants Regalado Santiago and Rosita Palabyab, and Josefina Arcega. After the death of Paula Arcega defendant Josefina Arcega and Narciso Arcega constructed their own house at back portion of the lot in question.

There is clear indication that the deed of sale, which is unconscionably low for 937 square meters in favor of the defendants sometime on July 18, 1971 who are all members of SSS, is merely designed as an accommodation for purposes of loan with the SSS. Paula Arcega cognizant of the shortage of funds in her possession in the amount of P30,000.00, deemed it wise to augment her funds for construction purposes by way of a mortgage with the SSS which only defendants could possibly effect they being members of the SSS. Since the SSS requires the collateral to be in the name of the mortgagors, Paula Arcega executed a simulated deed of sale (Kasulatan ng Bilihang Tuluyan ng Lupa) for P20,000.00 dated July 18, 1971 in favor of the defendants and the same was notarized by Atty. Luis Cuvín who emphatically claimed that no money was involved in the transaction as the parties have other agreement. The allegations of the defendants that the property was given to them (Kaloob) by the deceased has no evidentiary value. While it is true that Rosita Palabyab stayed with the deceased since childhood, the same cannot be said with respect to defendant Josefina Arcega, distant relative and a niece of the wife of Narciso Arcega, who stayed with deceased sometime in 1966 at the age of 19 years and already working as a saleslady in Manila. Did the deceased indeed give defendant Josefina Arcega half of her property out of love and gratitude? Such circumstance appears illogical if not highly improbable. As a matter of fact defendant Josefina Arcega in her unguarded moment unwittingly told the truth that couple (Regalado Santiago and Rosita Palabyab) had indeed borrowed the title and then mortgaged the same with the SSS as shown in her direct

testimony which reads:

'Atty Villanueva:

Q- Why did you say that the house is owned by spouses Santiago but the lot is bought by you and Rosita?

A- Because at that time, the couple<sup>[4]</sup> borrowed the title and then mortgaged the property with the SSS. There is only one title but both of us owned it. (TSN dtd. 19 Oct. '88, p. 5)"<sup>[5]</sup>

On appeal, the public respondent Court of Appeals dismissed the same, affirming in all respects the RTC judgment.

Hence, this petition.

The petition is unmeritorious.

Verily, this case is on all fours with *Suntay v. Court of Appeals*.<sup>[6]</sup> There, a certain Federico Suntay was the registered owner of a parcel of land in Sto. Nino, Hagonoy, Bulacan. A rice miller, Federico applied on September 30, 1960 as a miller-contractor of the then National Rice and Corn Corporation (NARIC), but his application was disapproved because he was tied up with several unpaid loans. For purposes of circumvention, he thought of allowing his nephew-lawyer, Rafael Suntay, to make the application for him. To achieve this Rafael prepared a notarized Absolute Deed of Sale whereby Federico, for and in consideration of P20,000.00, conveyed to Rafael said parcel of land with all its existing structures. Upon the execution and registration of said deed, Certificate of Title No. 0-2015 in the name of Federico was cancelled and, in lieu thereof, TCT No. T-36714 was issued in the name of Rafael. Sometime in the months of June to August, 1969,<sup>[7]</sup> Federico requested Rafael to deliver back to him the owner's duplicate of the transfer certificate of title over the properties in question for he intended to use the property as collateral in securing a bank loan to finance the expansion of his rice mill. Rafael, however, without just cause, refused to deliver the title insisting that said property was "absolutely sold and conveyed [to him] xxx for a consideration of P20,000.00, Philippine currency, and for other valuable consideration." We therein ruled in favor of Federico Suntay and found that the deed of sale in question was merely an absolutely simulated contract for the purpose of accommodation and therefore void. In retrospect, we observed in that case:

"Indeed the most protuberant index of simulation is the complete absence of an attempt in any manner on the part of the late Rafael to assert his rights of ownership over the land and rice mill in question. After the sale, he should have entered the land and occupied the premises thereof. He did not even attempt to. If he stood as owner, he would have collected rentals from Federico for the use and occupation of the land and its improvements. All that the late Rafael had was a title in his name.

xxx xxx

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xxx The fact that, notwithstanding the title transfer, Federico remained in

actual possession, cultivation and occupation of the disputed lot from the time the deed of sale was executed until the present, is a circumstance which is unmistakably added proof of the fictitiousness of the said transfer, the same being contrary to the principle of ownership." [8]

In the case before us, while petitioners were able to occupy the property in question, they were relegated to a small bedroom without bath and toilet,[9] while Paula Arcega remained virtually in full possession of the completed house and lot using the big master's bedroom with bath and toilet up to the time of her death on April 10, 1985.[10] If, indeed, the transaction entered into by the petitioner's and the late Paula Arcega on July 18, 1971 was a veritable deed of absolute sale, as it was purported to be, then Ms. Arcega had no business whatsoever remaining in the property and, worse, to still occupy the big master's bedroom with all its amenities until her death on April 10, 1985. Definitely, any legitimate vendee of real property who paid for the property with good money will not accede to an arrangement whereby the vendor continues occupying the most favored room in the house while he or she, as new owner, endures the disgrace and absurdity of having to sleep in a small bedroom without bath and toilet as if he or she is a guest or a tenant in the house. In any case, if petitioners really stood as legitimate owners of the property, they would have collected rentals from Paula Arcega for the use and occupation of the master's bedroom as she would then be a mere lessee of the property in question. However, not a single piece of evidence was presented to show that this was the case. All told, the failure of petitioners to take exclusive possession of the property allegedly sold to them, or in the alternative, to collect rentals from the alleged vendee Paula Arcega, is contrary to the principle of ownership and a clear badge of simulation that renders the whole transaction void and without force and effect, pursuant to Article 1409 of the New Civil Code:

"The following contracts are inexistent and void from the beginning:

xxx xxx

xxx

(2) Those which are absolutely simulated or fictitious;

xxx xxx

xxx."

The conceded fact that subject deed of absolute sale executed by Paula Arcega in favor of petitioners is a notarized document does not justify the petitioners' desired conclusion that said sale is undoubtedly a true conveyance to which the parties thereto are irrevocably and undeniably bound. To be considered with great significance is the fact that Atty. Luis Cuvin who notarized the deed disclaimed the truthfulness of the document when he testified that "NO MONEY WAS INVOLVED IN THE TRANSACTION." [11] Furthermore, though the notarization of the deed of sale in question vests in its favor the presumption of regularity, it is not the intention nor the function of the notary public to validate and make binding an instrument never, in the first place, intended to have any binding legal effect upon the parties thereto. The intention of the parties still is and always will be the primary consideration in determining the true nature of a contract. Here, the parties to the "Kasulatan ng Bilihang Tuluyan ng Lupa," as shown by the evidence and accompanying circumstances, never intended to convey the property thereto from one party to the other for valuable consideration. Rather, the transaction was merely used to