

FIFTH DIVISION

[CA-G.R. CV NO. 95988, March 13, 2015]

**CONSTANCIA A. BERNARDINO-ARGANA, IN HER PERSONAL
CAPACITY AND AS ATTORNEY-IN-FACT OF ANISETA A.
BERNARDINO-UNIRA, ANGELICA A. BERNARDINO-SUGAY,
CELEDONIO A. BERNARDINO, AND FERMINA A. BERNARDINO-
QUINONES, PLAINTIFFS-APPELLANTS, VS. VICTOR A.
BERNARDINO, GREGORIO M. BANLASAN, AND EUFEMIA A.
BANLASAN, DEFENDANTS-APPELLEES.**

DECISION

GARCIA-FERNANDEZ, J.:

This is an appeal interposed by plaintiffs-appellants from the order dated June 25, 2010^[1] issued by the Regional Trial Court of Muntinlupa City Br. 276 (RTC) in Civil Case No. 08-170.

The factual antecedents are as follows:

On December 23, 2008, plaintiffs-appellants filed a complaint^[2] for declaration of nullity of deed of donation inter vivos and deed of absolute sale, and cancellation of Transfer Certificates of Title No. 185367, 185368, 29586, 29587, 29588, 30950, and 185371 with prayer for reconveyance and damages against defendants-appellees. Plaintiffs-appellants allege that they, and defendant-appellee Victor A. Bernardino, are the children of Basilisa A. Bernardino; that during her lifetime, Basilisa A. Bernardino purchased a parcel of land located at Barangay Putatan, Muntinlupa City covered by Transfer Certificate of Title No. (43823) 114893; that Basilisa suffered a stroke that rendered her partially paralyzed in 1991; that taking due advantage of Basilisa's ill-health, defendant-appellee Victor Bernardino caused the execution of a "Pagkakaloob"^[3] on December 19, 1991 covering TCT No. (43823) 114893; that TCT No. (43823) 114893 was subsequently cancelled and five (5) titles were issued in the name of Victor A. Bernardino, namely: TCT Nos. 185367, 185368, 185369, 185371, and 185372.; that defendant-appellee Victor A. Bernardino caused the subdivision of TCT No. 185368 into three (3) lots, namely: TCT No. 29586, 29587, and 29588; and that defendant-appellee Victor A. Bernardino sold the land covered by TCT No. 29587 to defendants-appellees Spouses Gregorio and Eufemia Banlasan. Plaintiffs-appellants claim that the deed of donation is void ab initio for want of consent on the part of donor Basilisa Bernardino.

In his answer with compulsory counterclaim^[4], defendant-appellee Victor A. Bernardino claims that the complaint fails to state any cause of action; that plaintiffs-appellants failed to submit the case for barangay conciliation; that plaintiff-appellant Fermina Quinones is not duly represented in this case because her special power of attorney appointing plaintiff-appellee Constancia A. Bernardino-Argana has no force and effect under Philippine law as it was not properly authenticated by the

Philippine Embassy^[5]; that the complaint has prescribed as more than 17 years have passed since the deed of donation was registered on June 23, 1992; that the action is barred by laches; that the action is barred by res judicata; that plaintiff-appellants violated the rule against forum shopping; that the donation made by Basilisa in favor of defendant-appellee Victor A. Bernardino is valid; and that the complaint should be dismissed for failure to comply with Section 12, Rule II of the 2004 Rules of Notarial Practice.

Meanwhile, defendants-appellees Spouses Banlasan alleged in their answer with counterclaim⁶ that plaintiffs-appellants have no cause of action against them and if there is one, the action has already prescribed; that they are buyers in good faith and for value; and that the deed of donation is valid and regular.

The RTC previously set the case for pre-trial but defendant-appellee Victor A. Bernardino filed a motion for preliminary hearing on affirmative defenses of failure to comply with a condition precedent, prescription, res judicata, violation of the rules against forum shopping, and the rules of notarial practice^[7]. During the hearing on November 3, 2009, the RTC ordered that pre-trial will be held in abeyance pending resolution of the motion for preliminary hearing on affirmative defenses and ordered the parties to file their respective memoranda^[8]. On January 13, 2010, the RTC granted the motion for preliminary hearing on affirmative defenses in accordance with Section 6, Rule 16 of the 1997 Revised Rules on Civil Procedure^[9].

After hearing^[10] on defendant-appellee Victor A. Bernardino's affirmative defenses, the RTC issued the order dated June 25, 2010^[11] dismissing the case on the ground that a condition precedent has not been complied with. The RTC explained:

"It bears stressing that under Sec. 412(a) of Republic Act No. 7160, no complaint involving any matter within the authority of the Lupon shall be instituted or filed directly in Court for adjudication unless there has been a confrontation between the parties and no settlement was [reached].

Sec. 408, of the same law specifically provided that parties actually residing in the same city or municipality are the subject matter within the authority of the Lupon.

Clearly, under this law, resort to the barangay lupon is a condition precedent to the filing of a complaint between parties who are actually residing in the same city or municipality.

In this connection, under Sec. 1(j) of Rule 16 of the 1997 Revised Rules of Procedure, non-compliance of a condition precedent prescribed by law could affect the sufficiency of the plaintiff's cause of action and his complaint vulnerable to dismiss on ground of lack of cause of action or pre-maturity.

There is no dispute that except for plaintiff Fermina B. Quinones, all the parties are residents of Muntinlupa City. It was also not denied that plaintiffs did not first resort to barangay conciliation. This being so, this was filed in violation of the afore-cited law and thus, failed to comply

with a condition precedent pursuant to Sec. 1(j) of Rule 16 of the 1997 Revised Rules of Civil Procedure, which is effect makes the complaint prematurely instituted and should therefore be dismissed.

The Special Power of Attorney (Annex "B" of the Complaint) executed by Fermina Quinones in favor of co-plaintiff Constancia A. Bernardino-Argana, not having been duly certified and authenticated in accordance with Sec. 24 Rule 135 of the Rules of Court cannot be admitted in evidence before the Philippine Courts.

Thus, in a case, the Hon. Supreme Court ruled that non-compliance of the provision of Section 25 (now Section 25) of Rule 132 of the Rules of Court renders the Special Power of Attorney executed in a foreign country not admissible in evidence and the Court did not acquire jurisdiction over the person of the real party-in-interest. It further ruled that the failure to have the special power of attorney authenticated is not merely a technicality, it is a question of jurisdiction.

The submission on May 25, 2010 of a duly authenticated Special Power of Attorney issued by Fermina Quinones in favor of co-plaintiff Constancia B. Argana did not cure the defect of the complaint. It appears that the Special Power of Attorney was executed only on May 13, 2010 and authenticated by the Consul of the Philippine Embassy in New York, U.S.A. On the same day, thus, Constancia Argana was only duly authorized to represent Fermina Quinones on said date, May 13, 2010. Hence, when the complaint was filed on December 23, 2008, Constancia Argana was not yet authorized to file the same for and in behalf of Fermina Quinones. Fermina Quinones cannot therefore be considered as party-plaintiff when the case was filed on December 23, 2008. Ergo, considering that all the parties are residents of Muntinlupa City, the requirement of conciliation before the Lupon prior to the filing of the instant case as mandated under Sec. 412(a) of R.A. 7160 is indispensable. For failure to comply with a condition precedent in accordance with Sec. 1(j) of Rule 16 of the 1997 Revised Rules of Civil Procedure, this case should be dismissed." [Citations omitted.]

Plaintiffs-Appellants moved to reconsider^[12] the order dated June 25, 2010, but the RTC denied the same in the order dated September 15, 2010^[13] for lack of merit.

In this appeal, plaintiffs-appellants claim that the RTC erred: 1) in not considering the special power of attorney noted in the United States of America as valid; 2) in finding that the special power of attorney, not having been been duly authenticated in accordance with Section 24, Rule 132 of the Rules of Court cannot be admitted in evidence before Philippines courts; and 3) in dismissing the instant case based on Section 1(j), Rule 16 of the 1997 Revised Rules of Procedure on the ground that a condition precedent for the filing of the claims has not been complied with.

In *Heirs of Arcilla vs. Teodoro*^[14], the Supreme Court ruled as follows:

"The ruling of the Court in *Lopez v. Court of Appeals*, cited by petitioners, is inapplicable to the present case because the Rules of Evidence which were in effect at that time were the old Rules prior to their amendment in

1989. The rule applied in *Lopez*, which was decided prior to the effectivity of the amended Rules of Evidence, was Section 25, Rule 132, to wit:

Sec. 25. Proof of public or official record – **An official record or an entry therein**, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. **If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.** (Emphasis supplied)

When the Rules of Evidence were amended in 1989, Section 25, Rule 132 became Section 24, Rule 132; and the amendment consisted in the deletion of the introductory phrase "*An official record or an entry therein*," which was substituted by the phrase "*The record of public documents referred to in paragraph (a) of Section 19.*"

Thus, Section 24, Rule 132 of the Rules of Court now reads as follows:

Sec. 24. Proof of official record. - **The record of public documents referred to in paragraph (a) of Section 19**, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (Emphasis supplied)

Section 19(a) of the same Rule provides:

Sec. 19. Classes of documents. - For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required