

THIRD DIVISION

[CA-G.R. CV No. 97918, June 03, 2014]

**DR. JOSE MELVIN M. SIBULO, PLAINTIFF-APPELLEE, VS.
ISABELITA SIBULO VDA. DE LAHOM, DEFENDANT-APPELLANT.**

DECISION

BUESER, J.:

This is an appeal filed by Isabelita Sibulo Vda. De Lahom ("appellant") from the Decision dated April 27, 2011 of the Regional Trial Court, Branch 25, of Naga City, and its Order dated September 6, 2011, denying appellant's motion for reconsideration.

The Facts

Jose Melvin M. Sibulo ("appellee") was legally adopted by the Spouses Diosdado and Isabelita Lahom, in 1972, when the former was 19 years old. Although legally adopted, appellee had never used the family name Lahom.

On February 10, 1977, Dr. Diosdado P. Lahom, passed away without a will and appellee and appellant are the only compulsory heirs. In November of 1999, appellee was surprised to discover that appellant had been alienating and disposing the undivided real properties of the estate. Thus, appellee as compulsory heir, filed a civil case for partition with accounting of the thirty (30) parcels of land left behind by his father.

Meanwhile, appellant filed a criminal case against the appellee for the alleged illegal use of the appellee of the alias "Jose Melvin Sibulo" instead of his real name "Jose Melvin Lahom." The appellee likewise filed an action for revocation of the legal adoption of appellee. Both cases were dismissed by the trial court. The first one on the ground that there is no factual basis to sustain the same and the second one on the ground that the adopter cannot revoke an adoption.

Appellant, on the other hand, countered that appellee had already renounced and waived his hereditary share of the estate in favor of the appellant. She narrated that appellee was then a medical intern at the Veteran's Memorial Medical Center. Appellant begged to have a car as he was having a difficult time commuting daily from Manila to Quezon City. Appellant told appellee she did not have any money. Appellee insisted and assured appellant that if he would be given the money he would not have anything more to do with the lands and properties left by his late father after all, he was already a doctor and could fend for himself. Appellee even suggested they put everything in writing. Thereafter, appellee and appellant went to a notarial office. When the notarial act and acknowledgment was over, appellant gave appellee P30,000.00 in exchange for the waiver embodied in the deed of extra-judicial settlement of the estate of the late Diosdado P. Lahom ("deed").

Appellee belied having knowingly and consciously executed and affixed his signature on the deed of extra-judicial settlement. He asserted that he was duped and tricked by his adoptive mother, the appellant into signing a document he thought pertained to the administration of the estate of Dr. Diosdado Lahom. He was then a medical intern at the Veterans Memorial Hospital when the appellant came to visit and asked him to sign the said document. He had no time to check the contents because he was attending to a patient and appellant hurriedly turned over the pages, anyway, appellant assured him that the document would just give her more elbow room to manage the estate. He had never seen a copy of the document purportedly called deed of extrajudicial settlement of the estate of the late Disodado P. Lahom.

Trial Court's Ruling

After due proceedings, the trial court rendered the assailed Decision^[1] dated April 11, 2011 in favor of the appellee. The trial court found traces of irregularity in the deed and held that appellee's consent is vitiated because he was clearly tricked into signing the deed. Hence, the deed is null and void. With regard to the settlement of the estate the trial court ruled -

"As regards the shares which the plaintiff and defendant shall receive, it must be noted that the listed properties in the complaint are conjugal properties of spouses Disodado and Isabelita. Thus, one half ($\frac{1}{2}$) of the aforesaid properties belongs to the estate of the late Diosdado P; Lahom, while the remaining ($\frac{1}{2}$) belongs to defendant Isabelita Sibulo vda. De Lahom. Being the only compulsory heirs of the late Diosdado P. Lahom, plaintiff and defendant shall divide Dr. Diosdado P. Lahom's estate equally. Xxx

Furthermore, the amount of Php 30,000.00 given by defendant to plaintiff shall be considered as advance of his legitime, and the same must be deducted from his share making as basis the dollar-peso equivalent in 1977. This is so because of the extraordinary inflation of the Philippine Peso that supervened since 1977 to present. Its purchasing power before is much less than it is now.

Whatever sales, donations, dispositions or encumbrances made by the defendant from the aforementioned conjugal properties after the demise of her husband, the same must be correspondingly charged or deducted from her share.

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and ordering the partition of all the properties described in the amended complaint and shall be partitioned between the plaintiff and the defendant, in the proportion of three-fourth ($\frac{3}{4}$) share to defendant Isabelita S. Lahom, and one-fourth ($\frac{1}{4}$) share to plaintiff Jose Melvin M. Sibulo less the dollar-peso equivalent of Php 30,000.00 in 1977."^[2]

Aggrieved, appellant filed a motion for reconsideration. It was denied in the second assailed Order^[3] dated September 6, 2011.

Hence, this appeal.

Assignment of error

The trial court seriously erred when it declared and ruled that the deed of extrajudicial settlement of the estate of Diosdado P. Lahom is null and void.

This Court's Ruling

Appellant contends that the trial court has tilted the evidential scales in favor of suppositions, extrapolations and appellee's self-serving denials. The deed having been duly executed in accordance with the formalities of law as public document is valid and binding between the contracting parties. A notarial document has in its favor the presumption of regularity and to contradict its contents there must be evidence that is clear, convincing and more than merely preponderant.

The appeal fails.

The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. We cannot ascribe that conclusion at bar to the deed. Appellee was not personally present before the notary public on August 20, 1977, the date the said deed was notarized in Naga City. Presence of the contracting parties before the notary public is a requirement under Public Act No. 2103, to wit -

Section 1 of Public Act No. 2103 provides:

(a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.

This fact is proven by evidence on record. A certification was issued by the Veterans Memorial Hospital attesting that appellee was in the hospital and on duty the whole day, at Veterans Memorial Hospital in Quezon City, on August 20, 1977. The deed was notarized before Atty. Antonio Gerona in Naga City on August 20, 1977. There is physical impossibility for the appellee to be at two (2) places at the same time.

Since the deed was not duly notarized, the presumption of due execution of the said document is dispensed with and it cannot be considered as a public document. Hence, the trial court correctly applied preponderance of evidence as the measure to test the validity of the deed.

Appellee vehemently denies having renounced his hereditary share. He claims he was tricked into signing the deed and was made to believe that what he was signing that day, on August 20, 1977, pertained only to administration and management of the estate of the late Disodado Lahom. He never had a chance to read the contents of the deed as he signed it hurriedly because he was attending to a patient and the appellant kept on flipping the pages.

It is now upon this Court to ascertain whether the genuineness and due execution of the deed have been duly proven, there being no presumption that it was. In doing so, we are aware that it remains incumbent on the appellee to prove his allegation that the deed was not voluntarily and knowingly executed.

We begin with appellee's testimony -

"Q- Now, you said that on August 20, 1977, you were on duty at the Veterans Memorial Hospital, where is that?

A - It is in Quezon City, sir.

Q - And at the time that you were paged, what were you doing?

A - I was attending to a patient, sir. So, I asked permission from my patient to be excused to attend to whatever that was, it seemed very urgent because I was paged, sir.

Q - And after asking permission from your patient, what did you do?

A - I immediately went to the lobby of the Veterans Memorial Medical Center, sir.

Q - And what happened there?

A - I saw my adoptive mother Mrs, Isabelita Lahom in the lobby, sir.

Q - And after you have seen your adoptive mother at the lobby of the said hospital, what happened next?

A - She told me to sign it immediately because it is something urgent which needs to be signed, sir.

Q - And what happened after that?

A - She told me to sign it immediately because it is something urgent which needs to be signed, sir.

Q - What else did she tell you?

A - She told me, sir, that it is the same document that I signed previously, only that it just gives her more elbowroom to administer the properties of my late adoptive father.

Q - Now, apart from explaining to you the nature of the said document and the urgency with which the same have to be signed, what else did she tell you, if any?

A - She specifically mentioned, sir, that I should sign my name as Dr. Melvin Lahom, sir.

Q - And did she explain to you the reason why she gave you that specific instruction?

A - She said that the first document that I signed, sir, she said that I should sign it as Lahom. So that it will be in the right form, sir.

Q - xxx By the way, what else did she instruct you regarding the document?