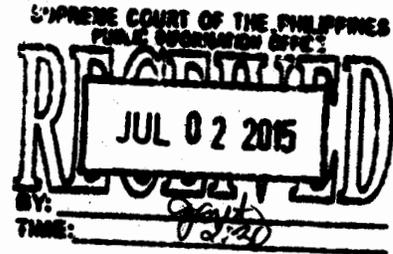




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **17 June 2015** which reads as follows:

¹G.R. No. 212000 – The Substituted Heirs of Manuel Cabuenas and of Agapito Cinco (Namely: Concepcion C. Bendanillo, Editha B. Cabuenas, Danilo B. Cabuenas, Cirilo B. Cabuenas, Anastacia G. Cabuenas, Lilibeth S. Cabuenas, Annalyn C. Rizalon and Dolores C. Amil) v. Felisa Codilla Vda. De Ardiente and her children and substituted heirs, namely: Laureta Ardiente, Jayson Ardiente, Joseph Ardiente, Janeth Ardiente and Jillian Ardiente.

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the January 28, 2013 Decision¹ and the February 6, 2014 Resolution² of the Court of Appeals, Cebu City (CA), in CA-G.R. CEB CV No. 02376, which reversed and set aside the September 14, 2006 Decision³ of the Regional Trial Court, Branch 5, Cebu City (RTC), in an action for reconveyance and/or partition of parcel of land under Cadastral Lot 16304-CAD-12 Ext., with an area of 5.27320 square meters, located in Pong-ol, Malubog, Cebu City.⁴

On December 20, 2000, respondents Felisa Codilla Vda. De Ardiente (*Felisa*) and her eight (8) children, Cherry, Ricardo Jr., Rosalina, Eduardo, Bienvenida, Juanito, Avelino, and Narcisa, filed a complaint for reconveyance and partition.⁵ They alleged that the subject land was a conjugal property of Felisa and her husband Ricardo Ardiente, who died in 1961; that the said property was bought from Icoy Daclan; that they had been in possession of it since the end of the Second World War; that the said property was covered by Tax Declaration No. 120150 in the name of Felisa; that on or about August 10, 2000, Felisa discovered that Tax Declaration No. 120150 was cancelled and a new one was issued in the name of petitioners Manuel Cabuenas and Agapito Cinco (*petitioners*); that upon inquiry, the respondents learned that the transfer of the tax declaration in the name of petitioners was by virtue of a deed of sale purportedly executed by Felisa on March 26, 1962 in favor of petitioners; and that Tax Declaration No. 120150 was cancelled and was replaced by Tax Declaration No. GR-2K-01-009-00116 in the name of Manuel Cabuenas.⁶

¹ *Rollo*, pp. 70-83. Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justice Ramon Paul L. Hernando and Carmelita Salandanan Manahan, concurring.

² *Id.* at 99-102.

³ *Id.* at 103-108.

⁴ *Id.* at 116-117.

⁵ *Id.* at 116-120.

⁶ *Id.* at 117.

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 In the alternative, the respondents prayed that assuming the thumbmark of Felisa in the deed of sale was genuine, the fact would remain that she did not intend a sale but possibly a mortgage only; and that assuming the sale was valid, the sale did not include the share of Felisa's husband considering that the subject property was conjugal.

In their Answer with Counterclaim,⁷ petitioners averred that the property was bought from Felisa on March 26, 1962, as evidenced by the notarized Deed of Absolute Sale⁸ where Felisa affixed her thumbmark. From that time on, they had been in continuous, peaceful, and adverse possession of the property. Petitioners further alleged that Manuel Cabuenas acquired the portion pertaining to Agapito Cinco by virtue of the Deed of Absolute Sale, dated June 5, 1967.

RTC Ruling

On September 14, 2006, the RTC dismissed the complaint "for want of a valid cause of action." It concluded that the deed of sale executed on March 26, 1962 was valid and, being a notarized document, its due execution was presumed. It further ruled that Felisa was estopped from claiming that the subject property was conjugal because she made petitioners believe in the deed of sale that the subject property was her paraphernal property.⁹

CA Ruling

On appeal, the CA *reversed* and *set aside* the RTC decision. It ruled that the Deed of Absolute Sale, dated March 26, 1962, was a voidable contract. Felisa never intended to sell the subject property to petitioners as she believed that the transaction was one of mortgage. The CA found that petitioners did not fully explain the contents of the deed of sale to Felisa who was unschooled and could neither read nor write, citing Article 1332. It also found that there was no misrepresentation on the part of Felisa that the subject property was a paraphernal property since the Tax Declaration was declared in Felisa's husband, Ricardo Ardiente.¹⁰ The dispositive portion reads:

WHEREFORE, the instant appeal is partly GRANTED. The RTC Decision dated September 14, 2006 is hereby REVERSED and SET ASIDE and a new one entered:

⁷ Id. at 126-132.

⁸ Id. at 124.

⁹ Id. at 107.

¹⁰ Id. at 77-81.

1. ANNULING the Deed of Absolute Sale dated March 26, 1962 and considering it instead as real estate mortgage over Cadastral Lot 16304-CAD-12 entered into to secure the payment of ₱775.00. Plaintiffs-appellants are given one (1) year from the finality of this Decision within which to pay said amount to defendants-appellees Agapito Cinco and Manuel Cabuenas, at 12% interest per annum computed from the filing of the complaint until its full payment;
2. Ordering the City Assessor of Cebu City to CANCEL Tax Declaration No. 120150 in the name of Felisa Codilla Vda. De Ardiente and its derivatives, Tax Declaration No. 120151 in the names of defendants-appellees Agapito Cinco and Manuel Cabuenas, and Tax Declaration No. GR-2K-01-009-00 in the name of defendant-appellee Manuel Cabuenas.
3. Ordering the City Assessor of Cebu City to ISSUE a new tax declaration in the name of the Heirs of Ricardo Ardiente.

SO ORDERED.¹¹

Petitioners filed a motion for reconsideration but the same was denied in the CA Resolution, dated February 6, 2014. The CA also noted the Notice of Death of Felisa and Ricardo Ardiente Jr. and the Notice of Substitution of Heirs of Manuel Cabuenas. Accordingly, Felisa was substituted by her children; Ricardo Jr. was substituted by his spouse Laureta Ardiente and his children of legal age; and petitioner Cabuenas was substituted by his surviving heirs.

Hence, this petition.

ASSIGNMENT OF ERRORS

1. The CA erred when it refused to uphold the validity and due execution of the Deed of Absolute Sale considering that the respondents failed to prove the forgery they consistently adopted during the trial and even during the appeal; and
2. The CA erred when it invoked Article 1332 of the New Civil Code in favor of Felisa despite the respondents' theory that her thumbmark was forged; and despite the evidence that since 1962, petitioners have been exercising open, public, notorious and continuous acts of dominion over the property.

¹¹ Id. at 82.

Petitioners argue that respondents did not present an expert witness to corroborate their allegation that the supposed thumbmark of Felisa was a forgery.¹² Thus, the respondents failed to overthrow the presumption of regularity in the execution of notarized documents.¹³ Petitioners claimed that they had taken adverse, open, public, and exclusive possession in the concept of owners of the entire property since March 26, 1962, thus, acquired the same by acquisitive prescription.

On September 4, 2014, the respondents filed their Comment.¹⁴ They argued that the CA did not commit any reversible error when it considered the March 26, 1962 Deed of Absolute Sale as an equitable mortgage because no sale transaction took place between Felisa and petitioners. The CA also properly applied Article 1332¹⁵ in favor of Felisa for want of proof by petitioners in overcoming the presumption of mistake.

On December 8, 2014, petitioners filed their Reply¹⁶ where they reiterated their arguments in the petition. In addition, they averred that Article 1332 was inapplicable in this case for failure of Felisa to allege in her complaint “fraud” or “mistake” and the fact that she did not know how to read English was belied by the fact that she certified under oath and in English that she caused the preparation of her complaint. They further stated that the CA did not merely reform a contract but forcibly created a contract for the parties.

The petition is bereft of merit.

A cursory reading of the March 26, 1962 Deed of Sale would reveal that it was entirely written in English, and instead of the usual mode of placing a signature as a sign of assent, there appears to be a thumbmark on top of Felisa’s name. The claim of Felisa that she was “unschooled” and could neither read nor write was sufficiently supported by the evidence on record.

The CA did not commit an error in its application of Article 1332 in favor of the respondents. The said law provides that if one of the parties cannot read, and fraud and mistake is alleged, the other party must show that the terms of the contract was fully explained to the illiterate party. Petitioners failed to present any proof that Felisa was made to understand the tenor of the document that she signed on March 26, 1962, which was in the

¹² Id. at 42.

¹³ Id. at 51.

¹⁴ Id. at 168-183.

¹⁵ Article 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the term thereof have been fully explained to the former.

¹⁶ Id. at 190-278.

English language. For their failure to do that, the presumption of mistake under Article 1332 stands. The purpose of the law is to protect a party to a contract disadvantaged by illiteracy, ignorance, mental weakness, or some other handicap.¹⁷

Another important requisite for the presumption of mistake to arise is the allegation of fraud or mistake. In Felisa's complaint,¹⁸ she stated that even assuming that her thumbmark on the deed of sale was genuine, she never intended a sale but was "made to believe that the contract was only a mortgage." The statement that she was deceived to think that the contract was only a mortgage suffices as an allegation of mistake.

Moreover, as correctly ruled by the CA, the fact that Felisa denied affixing her thumbmark on the deed of sale does not make her contentions inconsistent with each other. It is clear upon reading Felisa's testimony in its entirety that she admitted transacting with petitioners but it was not one of sale. The transaction she consented to pertained only to a mortgage. Thus, the thumbmark of Felisa was indeed misused by petitioners to perpetrate the voidable sale.

As held in *Zamora v. CA*,¹⁹ in determining the nature of a contract, courts are not bound by the title or name given by the parties, the decisive factor being the intention of the parties, as shown not necessarily by the terminology used in the contract but by their conduct, words, actions, and deeds prior to, during, and immediately after executing the agreement.

In light of the circumstances presented, where consent is given by mistake, the contract is considered voidable. Thus, it was proper for the CA to annul the deed of sale on the ground of vitiated consent.

WHEREFORE, the petition is **DENIED**. The January 28, 2013 Decision and the February 6, 2014 Resolution of the Court of Appeals are **AFFIRMED**. (*Leonen, J., on official leave, Jardeleza, J., designated Acting Member, per Special Order No. 2056, dated June 10, 2015*)

SO ORDERED. "

Very truly yours,

MA. LOURDES C. PERFECTO
 MA. LOURDES C. PERFECTO
 Division Clerk of Court *17/130*

¹⁷ *Restituta Leonardo v. CA*, 481 Phil. 520, 531 (2004).

¹⁸ *Id.* at 118.

¹⁹ 328 Phil. 1106, 1115 (1996).

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Cebu City
CA-G.R. CEB CV No. 02376

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 5
Cebu City
Civil Case No. CEB-25963

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