

THY WILL BE DONE by Atty. Angelo M. Cabrera

SIMULATED SALE II

In my last article, I defined a simulated sale as a fictitious transaction in which no price or other consideration is paid or intended to be paid by the supposed buyer. I also discussed the possibility of compulsory heirs losing their rightful share in the inheritance by virtue of a simulated sale entered into by their parents.

The following case illustrates this possibility.

Isidro, who was married to Zoraida, owned a piece of property in Quezon City, which he purchased in 1954. He had two children, Jocelyn and Maria. Zoraida was their stepmother. When he was still alive, Isidro, also took care of his niece, Angelica, since she was three years old until she got married to Martin.

In 1977, with the consent of Zoraida, Isidro executed a deed of absolute sale of the Quezon City property in favor of Angelica and her husband. The intention was for Angelica and Martin to present the property as a collateral for a loan with a bank. Being a doctor, Angelica wanted to build a small hospital in Sta. Cruz, Laguna.

Despite the sale, Isidro and his family, including the two children, Jocelyn and Maria, continued to occupy the premises and pay the realty taxes on said property. And even after Isidro died in 1982, followed later by Zoraida in 1993, the children continued to maintain their residence there, paying the real estate taxes thereon, leasing out portions of the property, and collecting rentals from tenants.

The problem arose when, after the death of their step mother in 1993, Jocelyn and Maria discovered, to their surprise, that the title of their father to the property had been cancelled as early as 1977 by virtue of the deed of absolute sale executed by Isidro in favor of spouses Angelica and Martin, and as a result, a new title was issued in the names of the latter.

Jocelyn and Maritess lost no time in filing for an action for cancellation of transfer certificate of title and reconveyance of property contending among others that the subsequent title was null and void because the deed of absolute sale was a fictitious or simulated document considering that Ireneo and Salvacion had no intention of selling the subject property because they had heirs who would inherit the same; that no money actually changed hands; and that they had been in possession of the subject property in the concept of an owner during Isidro's lifetime up to the present.

Angelica and Martin, on the other hand, averred that that the property had been transferred to them based on a valid deed of absolute sale and for a valuable consideration. They claimed that Isidro and Zoraida validly gave their consent to the sale because they affixed their signatures on the questioned deed and never

brought any action to invalidate it during their lifetime. They posited that ordinary human experience dictates that a party would not affix his or her signature on any written instrument which would result in deprivation of one's property right if there was really no intention to be bound by it. A party would not keep silent for several years regarding the validity and due execution of a document if there was an issue on the real intention of the vendors. The signatures of Isidro and Zoraida meant that they had knowingly and willfully entered into such agreement and that they were prepared for the consequences of their act.

As between the two, who is correct?

The Supreme Court ruled in favor of Jocelyn and Maritess.

It held that no valid sale of the subject property actually took place between the alleged vendors, Isidro and Zoraida; and the alleged vendees, Angelica and Martin because there was simply no consideration and no intent to sell it.

Angelica and Martin failed to adduce proof, even by circumstantial evidence, that they had in fact paid the consideration stated in the contract. Their failure to prove their payment only strengthened a witness' story that there was no payment made because Isidro had no intention to sell the subject property. Well entrenched is the rule that where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration.

The Court also agreed with the lower courts' findings that the questioned contract of sale was only for the purpose of lending the title of the property to Angelica and Martin to enable them to secure a loan. Their arrangement was only temporary and could not give rise to a valid sale.

More importantly, the Supreme Court gave weight to the fact that Isidro and his family continued to be in physical possession of the subject property after the sale in 1977 and up to the present. They even went as far as leasing the same and collecting rentals. If Angelica and Martin really purchased the subject property and claimed to be its true owners, why did they not assert their ownership immediately after the alleged sale took place? Why did they have to assert their ownership of it only after the death of Isidro and Zoraida? One of the most striking badges of absolute simulation is the complete absence of any attempt on the part of a vendee to assert his right of dominion over the property. (based on G.R. 173211, October 11, 2012).