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SECOND DIVISION

[G.R. No. 132305. December 4, 2001]

IDA C. LABAGALA, *petitioner, vs.* **NICOLASA T. SANTIAGO, AMANDA T. SANTIAGO and HON. COURT OF APPEALS,** *respondents.*

SYNOPSIS

Private respondents were judicially declared as *pro-indiviso* owners of a parcel of land covered by TCT No. 64729 and their claim properly annotated on the title, registered only in the name of Jose. When Jose died intestate, private respondents, Jose's sisters sued for recovery of property against petitioner. Petitioner, claiming to be the daughter of Jose, alleged that her true surname is Santiago, and not Labagala, and that the deed of sale executed in her favor in March 1979 for ₱150,000 which was registered only on January 26, 1987 was really a donation, not having paid a centavo for the property. Private respondents impugned petitioner's legitimacy. Petitioner, though enjoined to present her birth certificate, presented only her baptismal certificate. Nonetheless, the trial court rendered judgment in favor of petitioner who was found to be the daughter of Jose and ruled that the donation was valid. On appeal, the Court of Appeals reversed the trial court, declared private respondents as *pro-indiviso* owners of the one-third share of Jose on the property and that petitioner failed to prove her filiation with Jose. The appellate court took note of several badges of simulation: that the deed was not signed by Jose who was a college graduate although a thumb print appeared thereon; that Jose who was already married was described as single; that petitioner, then 15 years of age, was made to appear to be of legal age; that the property was free of encumbrance; and the fact of its late registration. Hence, this recourse with petitioner asseverating that her legitimacy cannot be impugned in the action to recover title and possession under Article 262 of the Civil Code.

It was held that the one-year period under Article 263 of the Civil Code to impugn legitimacy does not apply to a situation where a child is alleged NOT to be the child at all of a particular couple; that a baptismal certificate is not conclusive proof of filiation; that petitioner's silence concerning the absence of her birth certificate

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raises doubts as to the existence thereof that would show petitioner to be the daughter of Jose Santiago and Esperanza Cabrigas, this raising the presumption that evidence willfully suppressed would be adverse if produced; that without consent, there can be no valid contract of sale; and that without acceptance of the donee, the purported deed of sale cannot be a valid deed of donation.

SYLLABUS

1. **CIVIL LAW; PATERNITY AND FILIATION; ONE-YEAR PERIOD TO IMPUGN LEGITIMACY; RULE DOES NOT APPLY TO A SITUATION WHERE A CHILD IS ALLEGED NOT TO BE THE CHILD AT ALL OF A PARTICULAR COUPLE.**— On the first issue, we find petitioner's reliance on Article 263 of the Civil Code to be misplaced. This article should be read in conjunction with the other articles in the same chapter on paternity and filiation in the Civil Code. A careful reading of said chapter would reveal that it contemplates situations where a doubt exists that a child is indeed a man's child by his wife, and the husband (or, in proper cases, his heirs) denies the child's filiation. It does not refer to situations where a child is alleged not to be the child at all of a particular couple.

2. **ID.; ID.; ID.; ID.; CASE AT BAR.**— Article 263 refers to an action to impugn the *legitimacy* of a child, to assert and prove that a person is not a man's child by his wife. However, the present case is not one impugning petitioner's legitimacy. Respondents are asserting not merely that petitioner is not a legitimate child of Jose, but that she is not a child of Jose at all. Moreover, the present action is one for recovery of title and possession, and thus outside the scope of Article 263 on prescriptive periods.

3. **ID.; ID.; DOCTRINE IN *SAYSON* CASE (G.R. NOS. 89224-25, 205 SCRA 321) ON ADOPTION, NOT APPLICABLE TO CASE AT BAR.**— Petitioner's reliance on *Sayson* is likewise improper. The factual milieu present in *Sayson* does not obtain in the instant case. What was being challenged by petitioners in *Sayson* was (1) the validity of the adoption of Delia and Edmundo by the deceased Teodoro and Isabel Sayson, and (2) the legitimate status of Doribel Sayson. While asserting that Delia and Edmundo could not have been validly adopted since Doribel had already been born to the Sayson couple at the time, petitioners at the same time made the conflicting claim that Doribel was not the child of the couple.

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The Court ruled in that case that it was too late to question the decree of adoption that became final years before. Besides, such a challenge to the validity of the adoption cannot be made collaterally but in a direct proceeding. In this case, respondents are not assailing petitioner's legitimate status but are, instead, asserting that she is not at all their brother's child. The birth certificate presented by respondents support this allegation.

4. **REMEDIAL LAW; EVIDENCE; BAPTISMAL CERTIFICATE, NOT CONCLUSIVE PROOF OF FILIATION.**— A baptismal certificate, a private document, is not conclusive proof of filiation. More so are the entries made in an income tax return, which only shows that income tax has been paid and the amount thereof.

5. **ID.; ID.; PRESUMPTIONS; EVIDENCE WILLFULLY SUPPRESSED WOULD BE ADVERSE IF PRODUCED; CASE AT BAR.**— We note that the trial court had asked petitioner to secure a copy of her birth certificate but petitioner, without advancing any reason therefor, failed to do so. Neither did petitioner obtain a certification that no record of her birth could be found in the civil registry, if such were the case. We find petitioner's silence concerning the absence of her birth certificate telling. It raises doubt as to the existence of a birth certificate that would show petitioner to be the daughter of Jose Santiago and Esperanza Cabrigas. Her failure to show her birth certificate would raise the presumption that if such evidence were presented, it would be adverse to her claim. Petitioner's counsel argued that petitioner had been using Santiago all her life. However, use of a family name certainly does not establish pedigree.

6. **ID.; ID.; FACTUAL FINDINGS OF THE COURT OF APPEALS, UPHELD ON APPEAL.**— Thus, we are constrained to agree with the factual finding of the Court of Appeals that petitioner is in reality the child of Leon Labagala and Cornelia Cabrigas, and contrary to her averment, not of Jose Santiago and Esperanza Cabrigas. Not being a child of Jose, it follows that petitioner can not inherit from him through intestate succession. It now remains to be seen whether the property in dispute was validly transferred to petitioner through sale or donation.

7. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; SALES; WITHOUT CONSENT, THERE CAN BE NO VALID CONTRACT.**— Jose did not have the right to transfer ownership of the entire property to petitioner since 2/3 thereof belonged to

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his sisters. Petitioner could not have given her consent to the contract, being a minor at the time. Consent of the contracting parties is among the essential requisites of a contract, including one of sale, absent which there can be no valid contract. Moreover, petitioner admittedly did not pay any centavo for the property, which makes the sale void.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Venancio B. Padilla for private respondents.

DECISION

QUISUMBING, *J.:*

This petition for review on *certiorari* seeks to annul the decision dated March 4, 1997,[1] of the Court of Appeals in CA-G.R. CV No. 32817, which reversed and set aside the judgment dated October 17, 1990,[2] of the Regional Trial Court of Manila, Branch 54, in Civil Case No. 87-41515, finding herein petitioner to be the owner of 1/3 *pro indiviso* share in a parcel of land.

The pertinent facts of the case, as borne by the records, are as follows:

Jose T. Santiago owned a parcel of land covered by TCT No. 64729, located in Rizal Avenue Extension, Sta. Cruz, Manila. Alleging that Jose had fraudulently registered it in his name alone, his sisters Nicolasa and Amanda (now respondents herein), sued Jose for recovery of 2/3 share of the property.[3] On April 20, 1981, the trial court in that case decided in favor of the sisters, recognizing their right of ownership over portions of the property covered by TCT No. 64729. The Register of Deeds of Manila was required to

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[1] *Rollo*, pp. 51-56.

[2] *Id.* at 23-33.

[3] Civil Case No. 56226, lodged before the then Court of First Instance of Manila, Branch 6 (Records, p. 9). In the TSN, the case no. is listed as 56626. See Exhibit G to G-11, records, pp. 165-176.

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include the names of Nicolasa and Amanda in the certificate of title to said property.[4]

Jose died intestate on February 6, 1984. On August 5, 1987, respondents filed a complaint for recovery of title, ownership, and possession against herein petitioner, Ida C. Labagala, before the Regional Trial Court of Manila, to recover from her the 1/3 portion of said property pertaining to Jose but which came into petitioner's sole possession upon Jose's death.

Respondents alleged that Jose's share in the property belongs to them by operation of law, because they are the only legal heirs of their brother, who died intestate and without issue. They claimed that the purported sale of the property made by their brother to petitioner sometime in March 1979[5] was executed through petitioner's machinations and with malicious intent, to enable her to secure the corresponding transfer certificate of title (TCT No. 172334[6]) in petitioner's name alone.[7]

Respondents insisted that the deed of sale was a forgery. The deed showed that Jose affixed his thumbmark thereon but respondents averred that, having been able to graduate from college, Jose never put his thumbmark on documents he executed but always signed his name in full. They claimed that Jose could not have sold the property belonging to his "poor and unschooled sisters who... sacrificed for his studies and personal welfare."[8] Respondents also pointed out that it is highly improbable for petitioner to have paid the supposed consideration of ₱150,000 for the sale of the subject property because petitioner was unemployed and without any visible means of livelihood at the time of the alleged sale. They also stressed that it was quite unusual and questionable that petitioner registered the deed of sale only

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[4] Records, p. 17.

[5] The purported deed of sale is dated "___ day of February, 1979" but was notarized on March 19, 1979. See records, pp. 147-148; TSN, June 29, 1989, p. 19.

[6] Records, p. 161.

[7] *Id.* at 3, 18.

[8] *Id.* at 4.

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on January 26, 1987, or almost eight years after the execution of the sale.[9]

On the other hand, petitioner claimed that her true name is not Ida C. Labagala as claimed by respondent but Ida C. Santiago. She claimed not to know any person by the name of Ida C. Labagala. She claimed to be the daughter of Jose and thus entitled to his share in the subject property. She maintained that she had always stayed on the property, ever since she was a child. She argued that the purported sale of the property was in fact a donation to her, and that nothing could have precluded Jose from putting his thumbmark on the deed of sale instead of his signature. She pointed out that during his lifetime, Jose never acknowledged respondents' claim over the property such that respondents had to sue to claim portions thereof. She lamented that respondents had to disclaim her in their desire to obtain ownership of the whole property.

Petitioner revealed that respondents had in 1985 filed two ejectment cases against her and other occupants of the property. The first was decided in her and the other defendants' favor, while the second was dismissed. Yet respondents persisted and resorted to the present action.

Petitioner recognized respondents' ownership of 2/3 of the property as decreed by the RTC. But she averred that she caused the issuance of a title in her name alone, allegedly after respondents refused to take steps that would prevent the property from being sold by public auction for their failure to pay realty taxes thereon. She added that with a title issued in her name she could avail of a realty tax amnesty.

On October 17, 1990, the trial court ruled in favor of petitioner, decreeing thus:

> WHEREFORE, judgment is hereby rendered recognizing the plaintiffs [herein respondents] as being entitled to the ownership and possession each of one-third (1/3) *pro indiviso* share of the property originally covered by Transfer Certificate of Title No. 64729, in the name of Jose

[9] *Id.* at 3-4, 18.

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T. Santiago and presently covered by Transfer Certificate of Title No. 172334, in the name of herein defendant [herein petitioner] and which is located at No. 3075-A Rizal Avenue Extension, Sta. Cruz, Manila, as per complaint, and the adjudication to plaintiffs per decision in Civil Case No. 56226 of this Court, Branch VI, and the remaining one-third (1/3) *pro indiviso* share adjudicated in said decision to defendant Jose T. Santiago in said case, is hereby adjudged and adjudicated to herein defendant as owner and entitled to possession of said share. The Court does not see fit to adjudge damages, attorney's fees and costs. Upon finality of this judgment, Transfer Certificate of Title No. 172334 is ordered cancelled and a new title issued in the names of the two (2) plaintiffs and the defendant as owners in equal shares, and the Register of Deeds of Manila is so directed to effect the same upon payment of the proper fees by the parties herein.

SO ORDERED.[10]

According to the trial court, while there was indeed no consideration for the deed of sale executed by Jose in favor of petitioner, said deed constitutes a valid donation. Even if it were not, petitioner would still be entitled to Jose's 1/3 portion of the property as Jose's daughter. The trial court ruled that the following evidence shows petitioner to be the daughter of Jose: (1) the decisions in the two ejectment cases filed by respondents which stated that petitioner is Jose's daughter, and (2) Jose's income tax return which listed petitioner as his daughter. It further said that respondents knew of petitioner's existence and her being the daughter of Jose, per records of the earlier ejectment cases they filed against petitioner. According to the court, respondents were not candid with the court in refusing to recognize petitioner as Ida C. Santiago and insisting that she was Ida C. Labagala, thus affecting their credibility.

Respondents appealed to the Court of Appeals, which reversed the decision of the trial court.

WHEREFORE, the appealed decision is REVERSED and one is entered declaring the appellants Nicolasa and Amanda Santiago the co-owners in equal shares of the one-third (1/3) *pro indiviso* share of the late Jose Santiago in the land and building covered by TCT No. 172334.

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[10] *Rollo*, pp. 32-33.

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Accordingly, the Register of Deeds of Manila is directed to cancel said title and issue in its place a new one reflecting this decision.

SO ORDERED.

Apart from respondents' testimonies, the appellate court noted that the birth certificate of Ida Labagala presented by respondents showed that Ida was born of different parents, not Jose and his wife. It also took into account the statement made by Jose in Civil Case No. 56226 that he did not have any child.

Hence, the present petition wherein the following issues are raised for consideration:

1. Whether or not petitioner has adduced preponderant evidence to prove that she is the daughter of the late Jose T. Santiago, and

2. Whether or not respondents could still impugn the filiation of the petitioner as the daughter of the late Jose T. Santiago.

Petitioner contends that the trial court was correct in ruling that she had adduced sufficient evidence to prove her filiation by Jose Santiago, making her his sole heir and thus entitled to inherit his 1/3 portion. She points out that respondents had, before the filing of the instant case, previously "considered"[11] her as the daughter of Jose who, during his lifetime, openly regarded her as his legitimate daughter. She asserts that her identification as Jose's daughter in his ITR outweighs the "strange" answers he gave when he testified in Civil Case No. 56226.

Petitioner asserts further that respondents cannot impugn her filiation collaterally, citing the case of *Sayson v. Court of Appeals*[12] in which we held that "(t)he legitimacy of (a) child can be impugned only in a direct action brought for that purpose, by the proper parties and within the period limited by law."[13] Petitioner also cites Article 263 of the Civil Code in support of this contention.[14]

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[11] *Id.* at 17.

[12] G.R. Nos. 89224-25, 205 SCRA 321 (1992).

[13] *Rollo*, p. 18. *Sayson v. Court of Appeals, supra,* at 328.

[14] The present controversy arose prior to the effectivity of the Family Code.

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For their part, respondents contend that petitioner is not the daughter of Jose, per her birth certificate that indicate her parents as Leo Labagala and Cornelia Cabrigas, instead of Jose Santiago and Esperanza Cabrigas.[15] They argue that the provisions of Article 263 of the Civil Code do not apply to the present case since this is not an action impugning a child's legitimacy but one for recovery of title, ownership, and possession of property.

The issues for resolution in this case, to our mind, are (1) whether or not respondents may impugn petitioner's filiation in this action for recovery of title and possession; and (2) whether or not petitioner is entitled to Jose's 1/3 portion of the property he co-owned with respondents, through succession, sale, or donation.

On the first issue, we find petitioner's reliance on Article 263 of the Civil Code to be misplaced. Said article provides:

> Art. 263. The action to impugn the legitimacy of the child shall be brought within one year from the recording of the birth in the Civil Register, if the husband should be in the same place, or in a proper case, any of his heirs.
>
> If he or his heirs are absent, the period shall be eighteen months if they should reside in the Philippines; and two years if abroad. If the birth of the child has been concealed, the term shall be counted from the discovery of the fraud.

This article should be read in conjunction with the other articles in the same chapter on paternity and filiation in the Civil Code. A careful reading of said chapter would reveal that it contemplates situations where a doubt exists that a child is indeed a man's child by his wife, and the husband (or, in proper cases, his heirs) denies the child's filiation. It does not refer to situations where a child is alleged not to be the child at all of a particular couple.[16]

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[15] Esperanza and Cornelia were sisters. See *rollo*, p. 16.

[16] See *Benitez-Badua v. Court of Appeals,* G.R. No. 105625, 229 SCRA 468, 473 (1994). This case deals with Articles 164, 166, 170, and 171 of the Family Code. Article 263 of the Civil Code is now Article 170 of the Family Code.

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Article 263 refers to an action to impugn the *legitimacy* of a child, to assert and prove that a person is not a man's child by his wife. However, the present case is not one impugning petitioner's legitimacy. Respondents are asserting not merely that petitioner is not a legitimate child of Jose, but that she is not a child of Jose at all.[17] Moreover, the present action is one for recovery of title and possession, and thus outside the scope of Article 263 on prescriptive periods.

Petitioner's reliance on *Sayson* is likewise improper. The factual milieu present in *Sayson* does not obtain in the instant case. What was being challenged by petitioners in *Sayson* was (1) the validity of the adoption of Delia and Edmundo by the deceased Teodoro and Isabel Sayson, and (2) the legitimate status of Doribel Sayson. While asserting that Delia and Edmundo could not have been validly adopted since Doribel had already been born to the Sayson couple at the time, petitioners at the same time made the conflicting claim that Doribel was not the child of the couple. The Court ruled in that case that it was too late to question the decree of adoption that became final years before. Besides, such a challenge to the validity of the adoption cannot be made collaterally but in a direct proceeding.[18]

In this case, respondents are not assailing petitioner's legitimate status but are, instead, asserting that she is not at all their brother's child. The birth certificate presented by respondents support this allegation.

We agree with the Court of Appeals that::

> The Certificate of Record of Birth (Exhibit H)[19] plainly states that... Ida was the child of the spouses Leon Labagala and [Cornelia] Cabrigas. This document states that it was Leon Labagala who made the report to the Local Civil Registrar and therefore the supplier of the entries in said Certificate. Therefore, this certificate is proof of the filiation of Ida.

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[17] *Cabatbat-Lim v. Intermediate Appellate Court*, No. L-69679, 166 SCRA 451, 457 (1988).

[18] *Sayson v. Court of Appeals*, *supra*, note 12, at 326-328.

[19] Records, p. 179.

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Appellee however denies that Exhibit H is her Birth Certificate. She insists that she is not Ida Labagala but Ida Santiago. If Exhibit H is not her birth certificate, then where is hers? She did not present any though it would have been the easiest thing to do considering that according to her baptismal certificate she was born in Manila in 1969. This court rejects such denials and holds that Exhibit H is the certificate of the record of birth of appellee Ida...

Against such evidence, the appellee Ida could only present her testimony and a baptismal certificate (Exhibit 12) stating that appellee's parents were Jose Santiago and Esperanza Cabrigas. But then, a decisional rule in evidence states that a baptismal certificate is not a proof of the parentage of the baptized person. This document can only prove the identity of the baptized, the date and place of her baptism, the identities of the baptismal sponsors and the priest who administered the sacrament — nothing more.[20] (Citations omitted.)

At the pre-trial conducted on August 11, 1988, petitioner's counsel admitted that petitioner did not have a birth certificate indicating that she is Ida Santiago, though she had been using this name all her life.[21]

Petitioner opted not to present her birth certificate to prove her relationship with Jose and instead offered in evidence her baptismal certificate.[22] However, as we held in *Heirs of Pedro Cabais v. Court of Appeals:*

...a baptismal certificate is evidence only to prove the administration of the sacrament on the dates therein specified, but not the veracity of the declarations therein stated with respect to [a person's] kinsfolk. The same is conclusive only of the baptism administered, according to the rites of the Catholic Church, by the priest who baptized subject child, but it does not prove the veracity of the declarations and statements contained in the certificate concerning the relationship of the person baptized.[23]

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[20] *Rollo*, pp. 52-53.

[21] TSN, August 11, 1988, p. 10.

[22] Exhibit 10.

[23] *Heirs of Pedro Cabais v. Court of Appeals*, G.R. Nos. 106314-15, 316 SCRA 338, 344 (1999), citing *Macadangdang v. Court of Appeals, et al.*, No. L-49542, 100 SCRA 73, 84 (1980).

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A baptismal certificate, a private document, is not conclusive proof of filiation.[24] More so are the entries made in an income tax return, which only shows that income tax has been paid and the amount thereof.[25]

We note that the trial court had asked petitioner to secure a copy of her birth certificate but petitioner, without advancing any reason therefor, failed to do so. Neither did petitioner obtain a certification that no record of her birth could be found in the civil registry, if such were the case. We find petitioner's silence concerning the absence of her birth certificate telling. It raises doubt as to the existence of a birth certificate that would show petitioner to be the daughter of Jose Santiago and Esperanza Cabrigas. Her failure to show her birth certificate would raise the presumption that if such evidence were presented, it would be adverse to her claim. Petitioner's counsel argued that petitioner had been using Santiago all her life. However, use of a family name certainly does not establish pedigree.

Further, we note that petitioner, who claims to be Ida Santiago, has the same birthdate as Ida Labagala.[26] The similarity is too uncanny to be a mere coincidence.

During her testimony before the trial court, petitioner denied knowing Cornelia Cabrigas, who was listed as the mother in the birth certificate of Ida Labagala. In her petition before this Court, however, she stated that Cornelia is the sister of her mother, Esperanza. It appears that petitioner made conflicting statements that affect her credibility and could cast a long shadow of doubt on her claims of filiation.

Thus, we are constrained to agree with the factual finding of the Court of Appeals that petitioner is in reality the child of Leon Labagala and Cornelia Cabrigas, and contrary to her averment, not of Jose Santiago and Esperanza Cabrigas. Not being a child of Jose, it follows that petitioner can not inherit from him through

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[24] *Id.* at 343.

[25] Exhibit 11.

[26] TSN, June 29, 1989, p. 3.

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intestate succession. It now remains to be seen whether the property in dispute was validly transferred to petitioner through sale or donation.

On the validity of the purported deed of sale, however, we agree with the Court of Appeals that:

> ...This deed is shot through and through with so many intrinsic defects that a reasonable mind is inevitably led to the conclusion that it is fake. The intrinsic defects are extractable from the following questions: a) If Jose Santiago intended to donate the properties in question to Ida, what was the big idea of hiding the nature of the contract in the facade of the sale? b) If the deed is a genuine document, how could it have happened that Jose Santiago who was of course fully aware that he owned only 1/3 *pro indiviso* of the properties covered by his title sold or donated the whole properties to Ida? c) Why in heaven's name did Jose Santiago, a college graduate, who always signed his name in documents requiring his signature (citation omitted) [affix] his thumbmark on this deed of sale? d) If Ida was [the] child of Jose Santiago, what was the sense of the latter donating his properties to her when she would inherit them anyway upon his death? e) Why did Jose Santiago affix his thumbmark to a deed which falsely stated that: he was single (for he was earlier married to Esperanza Cabrigas); Ida was of legal age (for [s]he was then just 15 years old); and the subject properties were free from liens and encumbrances (for Entry No. 27261, Notice of Adverse Claim and Entry No. 6388, Notice of Lis Pendens were already annotated in the title of said properties). If the deed was executed in 1979, how come it surfaced only in 1984 after the death of Jose Santiago and of all people, the one in possession was the baptismal sponsor of Ida?[27]

Clearly, there is no valid sale in this case. Jose did not have the right to transfer ownership of the entire property to petitioner since 2/3 thereof belonged to his sisters.[28] Petitioner could not have given her consent to the contract, being a minor at the time.[29] Consent of the contracting parties is among the essential requisites of a contract,[30] including one of sale, absent which there can be no

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[27] *Rollo*, pp. 54-55.

[28] CIVIL CODE OF THE PHILIPPINES, Article 1459.

[29] CIVIL CODE OF THE PHILIPPINES, Article 1327.

[30] CIVIL CODE OF THE PHILIPPINES, Article 1318.

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valid contract. Moreover, petitioner admittedly did not pay any centavo for the property,[31] which makes the sale void. Article 1471 of the Civil Code provides:

> Art. 1471. If the price is simulated, the sale is void, but the act may be shown to have been in reality a donation, or some other act or contract.

Neither may the purported deed of sale be a valid deed of donation. Again, as explained by the Court of Appeals:

> ...Even assuming that the deed is genuine, it cannot be a valid donation. It lacks the acceptance of the donee required by Art. 725 of the Civil Code. Being a minor in 1979, the acceptance of the donation should have been made by her father, Leon Labagala or [her] mother Cornelia Cabrigas or her legal representative pursuant to Art. 741 of the same Code. No one of those mentioned in the law — in fact no one at all — accepted the "donation" for Ida.[32]

In sum, we find no reversible error attributable to the assailed decision of the Court of Appeals, hence it must be upheld.

WHEREFORE, the petition is *DENIED,* and the decision of the Court of Appeals in CA-G.R. CV No. 32817 is *AFFIRMED.*

Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and *De Leon, Jr., JJ.,* concur.

Buena J., on official leave.

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[31] TSN, June 29, 1989, pp. 17, 25.

[32] *Rollo*, pp. 54-55. Article 725 and 741 of the Civil Code states:

> Art. 725. Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.
>
> Art. 741. Minors and others who cannot enter into a contract may become donees but acceptance shall be done through their parents or legal representatives.