Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HEIRS OF DR. MARIANO FAVIS, SR., represented by their co-heirs and Attorneys-in-Fact MERCEDES A. FAVIS and NELLY FAVIS-VILLAFUERTE,
Petitioners,

-versus-

JUANA GONZALES, her son MARIANO G. FAVIS, MA. THERESA JOANA D. FAVIS, JAMES MARK D. FAVIS, all minors represented herein by their parents, SPS. MARIANO FAVIS and LARCELITA D. FAVIS,
Respondents.

G.R. No. 185922

Present:

CARPIO, *J.*
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JAN 15 2014

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DECISION

PEREZ, *J.*:

Before this Court is a petition for review assailing the 10 April 2008 Decision[1] and 7 January 2009 Resolution[2] of the Court of Appeals in CA-

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1 Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Rebecca De Guia-Salvador and Apolinario D. Bruselas, Jr., concurring. *Rollo*, pp. 87-102.

2 Id. at 103-106.

G.R. CV No. 86497 dismissing petitioners' complaint for annulment of the Deed of Donation for failure to exert earnest efforts towards a compromise.

Dr. Mariano Favis, Sr. (Dr. Favis) was married to Capitolina Aguilar (Capitolina) with whom he had seven children named Purita A. Favis, Reynaldo Favis, Consolacion Favis-Queliza, Mariano A. Favis, Jr., Esther F. Filart, Mercedes A. Favis, and Nelly Favis-Villafuerte. When Capitolina died in March 1944, Dr. Favis took Juana Gonzales (Juana) as his common-law wife with whom he sired one child, Mariano G. Favis (Mariano). When Dr. Favis and Juana got married in 1974, Dr. Favis executed an affidavit acknowledging Mariano as one of his legitimate children. Mariano is married to Larcelita D. Favis (Larcelita), with whom he has four children, named Ma. Theresa Joana D. Favis, Ma. Cristina D. Favis, James Mark D. Favis and Ma. Thea D. Favis.

Dr. Favis died intestate on 29 July 1995 leaving the following properties:

> 1. A parcel of residential land located at Bonifacio St. Brgy. 1, Vigan, Ilocos Sur, consisting an area of 898 square meters, more or less, bounded on the north by Salvador Rivero; on the East by Eleutera Pena; on the South by Bonifacio St., and on the West by Carmen Giron; x x x;
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> 2. A commercial building erected on the aforesaid parcel of land with an assessed value of ₱126,000.00; x x x;
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> 3. A parcel of residential land located in Brgy. VII, Vigan, Ilocos Sur, containing an area of 154 sq. ms., more or less, bounded on the North by the High School Site; on the East by Gomez St., on the South by Domingo [G]o; and on the West by Domingo Go; x x x;
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> 4. A house with an assessed value of ₱17,600.00 x x x;
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> 5. A parcel of orchard land located in Brgy. VI, Vigan, Ilocos Sur, containing an area of 2,257 sq. ma. (*sic*) more or less, bounded on the North by Lot 1208; on the East by Mestizo River; on the South by Lot 1217 and on the West by Lot 1211-B, 1212 and 1215 x x x.[3]

Beginning 1992 until his death in 1995, Dr. Favis was beset by various illnesses, such as kidney trouble, hiatal hernia, congestive heart failure, Parkinson's disease and pneumonia. He died of "cardiopulmonary

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[3] Id. at 123-124.

arrest secondary to multi-organ/system failure secondary to sepsis secondary to pneumonia."[4]

On 16 October 1994, he allegedly executed a Deed of Donation[5] transferring and conveying properties described in (1) and (2) in favor of his grandchildren with Juana.

Claiming that said donation prejudiced their legitime, Dr. Favis' children with Capitolina, petitioners herein, filed an action for annulment of the Deed of Donation, inventory, liquidation and partition of property before the Regional Trial Court (RTC) of Vigan, Ilocos Sur, Branch 20 against Juana, Spouses Mariano and Larcelita and their grandchildren as respondents.

In their Answer with Counterclaim, respondents assert that the properties donated do not form part of the estate of the late Dr. Favis because said donation was made *inter vivos*, hence petitioners have no stake over said properties.[6]

The RTC, in its Pre-Trial Order, limited the issues to the validity of the deed of donation and whether or not respondent Juana and Mariano are compulsory heirs of Dr. Favis.[7]

In a Decision dated 14 November 2005, the RTC nullified the Deed of Donation and cancelled the corresponding tax declarations. The trial court found that Dr. Favis, at the age of 92 and plagued with illnesses, could not have had full control of his mental capacities to execute a valid Deed of Donation. Holding that the subsequent marriage of Dr. Favis and Juana legitimated the status of Mariano, the trial court also declared Juana and Mariano as compulsory heirs of Dr. Favis. The dispositive portion reads:

> WHEREFORE, in view of all the foregoing considerations, the Deed of Donation dated October 16, 1994 is hereby annulled and the corresponding tax declarations issued on the basis thereof cancelled. Dr. Mariano Favis, Sr. having died without a will, his estate would result to intestacy. Consequently, plaintiffs Heirs of Dr. Mariano Favis, Sr., namely Purita A. Favis, Reynaldo A. Favis, Consolacion F. Queliza, Mariano A. Favis, Jr., Esther F. Filart, Mercedes A. Favis, Nelly F. Villafuerte and the

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4 Records, p. 338.
5 Id. at 339-340.
6 Id. at 34.
7 *Rollo*, p. 172.

> defendants Juana Gonzales now deceased and Mariano G. Favis, Jr. shall inherit in equal shares in the estate of the late Dr. Mariano Favis, Sr. which consists of the following:
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> 1. A parcel of residential land located at Bonifacio St. Brgy. 1, Vigan City, Ilocos Sur, consisting an area of 89 sq. meters more or less, bounded on the north by Salvador Rivero; on the East by Eleutera Pena; on the South by Bonifacio St., and on the West by Carmen Giron;
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> 2. A commercial building erected on the aforesaid parcel of land with an assessed value of P126,000.00;
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> 3. One-half (1/2) of the house located in Brgy. VI, Vigan City, Ilocos Sur[,] containing an area of 2,257 sq. meters more or less, bounded on the north by Lot 1208; on the east by Mestizo River; on the South by Lot 1217 and on the West by Lot 1211-B, 1212 and 1215.
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> 4. The accumulated rentals of the new Vigan Coliseum in the amount of One Hundred Thirty [Thousand] (P130,000.00) pesos per annum from the death of Dr. Mariano Favis, Sr.[8]

Respondents interposed an appeal before the Court of Appeals challenging the trial court's nullification, on the ground of vitiated consent, of the Deed of Donation in favor of herein respondents. The Court of Appeals ordered the dismissal of the petitioners' nullification case. However, it did so not on the grounds invoked by herein respondents as appellant.

The Court of Appeals *motu proprio* ordered the dismissal of the complaint for failure of petitioners to make an averment that earnest efforts toward a compromise have been made, as mandated by Article 151 of the Family Code. The appellate court justified its order of dismissal by invoking its authority to review rulings of the trial court even if they are not assigned as errors in the appeal.

Petitioners filed a motion for reconsideration contending that the case is not subject to compromise as it involves future legitime.

The Court of Appeals rejected petitioners' contention when it ruled that the prohibited compromise is that which is entered between the decedent while alive and compulsory heirs. In the instant case, the appellate court observed that while the present action is between members of the same family it does not involve a testator and a compulsory heir. Moreover, the appellate court pointed out that the subject properties cannot be considered

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[8] Id. at 208-209.

as "future legitime" but are in fact, legitime, as the instant complaint was filed after the death of the decedent.

Undaunted by this legal setback, petitioners filed the instant petition raising the following arguments:

> 1. The Honorable Court of Appeals GRAVELY and SERIOUSLY ERRED in DISMISSING the COMPLAINT.
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> 2. Contrary to the finding of the Honorable Court of Appeals, the verification of the complaint or petition is not a mandatory requirement.
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> 3. The Honorable Court of Appeals seriously failed to appreciate that the filing of an intervention by Edward Favis had placed the case beyond the scope of Article 151 of the Family Code.
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> 4. Even assuming arguendo without admitting that the filing of intervention by Edward Favis had no positive effect to the complaint filed by petitioners, it is still a serious error for the Honorable Court of Appeals to utterly disregard the fact that petitioners had substantially complied with the requirements of Article 151 of the Family Code.
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> 5. Assuming arguendo that petitioners cannot be construed as complying substantially with Article 151 of the Family Code, still, the same should be considered as a non-issue considering that private respondents are in estoppel.
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> 6. The dismissal of the complaint by the Honorable Court of Appeals amounts to grave abuse of discretion amounting to lack and excess of jurisdiction and a complete defiance of the doctrine of primacy of substantive justice over strict application of technical rules.
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> 7. The Honorable Court of Appeals gravely and seriuosly erred in not affirming the decision of the Court a quo that the Deed of Donation is void.[9]

In their Comment, respondents chose not to touch upon the merits of the case, which is the validity of the deed of donation. Instead, respondents defended the ruling the Court of Appeals that the complaint is dismissible for failure of petitioners to allege in their complaint that earnest efforts towards a compromise have been exerted.

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[9] Id. at 61-71.

The base issue is whether or not the appellate court may dismiss the order of dismissal of the complaint for failure to allege therein that earnest efforts towards a compromise have been made.

The appellate court committed egregious error in dismissing the complaint. The appellate courts' decision hinged on Article 151 of the Family Code, *viz*:

> Art. 151. No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.
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> This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

The appellate court correlated this provision with Section 1, par. (j), Rule 16 of the 1997 Rules of Civil Procedure, which provides:

> Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
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> x x x x
>
> (j) That a condition precedent for filing the claim has not been complied with.

The appellate court's reliance on this provision is misplaced. Rule 16 treats of the grounds for a motion to dismiss the complaint. It must be distinguished from the grounds provided under Section 1, Rule 9 which specifically deals with dismissal of the claim by the court *motu proprio*. Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides:

> Section 1. Defenses and objections not pleaded. − Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Section 1, Rule 9 provides for only four instances when the court may *motu proprio* dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription of action.[10] Specifically in *Gumabon v. Larin*,[11] cited in *Katon v. Palanca, Jr.*,[12] the Court held:

> x x x [T]he *motu proprio* dismissal of a case was traditionally limited to instances when the court clearly had no jurisdiction over the subject matter and when the plaintiff did not appear during trial, failed to prosecute his action for an unreasonable length of time or neglected to comply with the rules or with any order of the court. Outside of these instances, any *motu proprio* dismissal would amount to a violation of the right of the plaintiff to be heard. Except for qualifying and expanding Section 2, Rule 9, and Section 3, Rule 17, of the Revised Rules of Court, the amendatory 1997 Rules of Civil Procedure brought about no radical change. Under the new rules, a court may *motu proprio* dismiss a claim when it appears from the pleadings or evidence on record that it has no jurisdiction over the subject matter; when there is another cause of action pending between the same parties for the same cause, or where the action is barred by a prior judgment or by statute of limitations. x x x. [13]

The error of the Court of Appeals is evident even if the consideration of the issue is kept within the confines of the language of Section 1(j) of Rule 16 and Section 1 of Rule 9. That a condition precedent for filing the claim has not been complied with, a ground for a motion to dismiss emanating from the law that no suit between members from the same family shall prosper unless it should appear from the verified complaint that earnest efforts toward a compromise have been made but had failed, is, as the Rule so words, a ground for a motion to dismiss. Significantly, the Rule requires that such a motion should be filed "within the time for but before filing the answer to the complaint or pleading asserting a claim." The time frame indicates that thereafter, the motion to dismiss based on the absence of the condition precedent is barred. It is so inferable from the opening sentence of Section 1 of Rule 9 stating that defense and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. There are, as just noted, only four exceptions to this Rule, namely, lack of jurisdiction over the subject matter; *litis pendentia*; *res judicata*; and prescription of action. Failure to allege in the complaint that earnest efforts at a compromise has been made but had failed is not one of the exceptions. Upon such failure, the defense is deemed waived.

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10 *P.L. Uy Realty Corporation v. ALS Management and Development Corp.*, G.R. No. 166462, 24 October 2012, 684 SCRA 453, 464-465.

11 422 Phil. 222, 230 (2001).

12 481 Phil. 168, 180 (2004).

13 *Gumabon v. Larin*, supra note 11 at 230.

It was in *Heirs of Domingo Valientes v. Ramas*[14] cited in *P.L. Uy Realty Corporation v. ALS Management and Development Corporation*[15] where we noted that the second sentence of Section 1 of Rule 9 does not only supply exceptions to the rule that defenses not pleaded either in a motion to dismiss or in the answer are deemed waived, it also allows courts to dismiss cases *motu propio* on any of the enumerated grounds. The tenor of the second sentence of the Rule is that the allowance of a *motu propio* dismissal can proceed only from the exemption from the rule on waiver; which is but logical because there can be no ruling on a waived ground.

Why the objection of failure to allege a failed attempt at a compromise in a suit among members of the same family is waivable was earlier explained in the case of *Versoza v. Versoza*,[16] a case for future support which was dismissed by the trial court upon the ground that there was no such allegation of infringement of Article 222 of the Civil Code, the origin of Article 151 of the Family Code. While the Court ruled that a complaint for future support cannot be the subject of a compromise and as such the absence of the required allegation in the complaint cannot be a ground for objection against the suit, the decision went on to state thus:

> The alleged defect is that the present complaint does not state a cause of action. The proposed amendment seeks to complete it. An amendment to the effect that the requirements of Article 222 have been complied with does not confer jurisdiction upon the lower court. With or without this amendment, the subject-matter of the action remains as one for support, custody of children, and damages, cognizable by the court below.
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> To illustrate, *Tamayo v. San Miguel Brewery, Inc*.,[17] allowed an amendment which "*merely corrected a defect in the allegation of plaintiff-appellant's cause of action, because as it then stood, the original complaint stated no cause of action.*" We there ruled out as inapplicable the holding in *Campos Rueda Corporation v. Bautista,*[18] that an amendment cannot be made so as to confer jurisdiction on the court x x x. (Italics supplied).

Thus was it made clear that a failure to allege earnest but failed efforts at a compromise in a complaint among members of the same family, is not a jurisdictional defect but merely a defect in the statement of a cause of action. *Versoza* was cited in a later case as an instance analogous to one where the

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14 G.R. No. 157852, 15 December 2010, 638 SCRA 444, 451.
15 Supra note 10 at 465.
16 135 Phil. 84, 94 (1968).
17 119 Phil. 368 (1964).
18 116 Phil. 546 (1962).

conciliation process at the *barangay* level was not priorly resorted to. Both were described as a "condition precedent for the filing of a complaint in Court."[19] In such instances, the consequence is precisely what is stated in the present Rule. Thus:

> x x x The defect may however be waived by failing to make seasonable objection, in a motion to dismiss or answer, the defect being a mere procedural imperfection which does not affect the jurisdiction of the court.[20] (Underscoring supplied).

In the case at hand, the proceedings before the trial court ran the full course. The complaint of petitioners was answered by respondents without a prior motion to dismiss having been filed. The decision in favor of the petitioners was appealed by respondents on the basis of the alleged error in the ruling on the merits, no mention having been made about any defect in the statement of a cause of action. In other words, no motion to dismiss the complaint based on the failure to comply with a condition precedent was filed in the trial court; neither was such failure assigned as error in the appeal that respondent brought before the Court of Appeals.

Therefore, the rule on deemed waiver of the non-jurisdictional defense or objection is wholly applicable to respondent. If the respondents as parties-defendants could not, and did not, after filing their answer to petitioner's complaint, invoke the objection of absence of the required allegation on earnest efforts at a compromise, the appellate court unquestionably did not have any authority or basis to *motu propio* order the dismissal of petitioner's complaint.

Indeed, even if we go by the reason behind Article 151 of the Family Code, which provision as then Article 222 of the New Civil Code was described as "having been given more teeth"[21] by Section 1(j), Rule 16 of the Rule of Court, it is safe to say that the purpose of making sure that there is no longer any possibility of a compromise, has been served. As cited in commentaries on Article 151 of the Family Code –

> This rule is introduced because it is difficult to imagine a sudden and more tragic spectacle than a litigation between members of the same family. It is necessary that every effort should be made towards a compromise before a litigation is allowed to breed hate and passion in the

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19 *Peregrina v. Hon. Panis*, 218 Phil. 90, 92 (1984).

20 *Agbayani v. Hon. Belen*, 230 Phil. 39, 42 (1986) citing *Catorce v. Court of Appeals*, 214 Phil. 181 (1984).

21 *Verzosa v. Verzosa*, supra note 16 at 88.

> family. It is known that a lawsuit between close relatives generates deeper bitterness than between strangers.[22]

The facts of the case show that compromise was never an option insofar as the respondents were concerned. The impossibility of compromise instead of litigation was shown not alone by the absence of a motion to dismiss but on the respondents' insistence on the validity of the donation in their favor of the subject properties. Nor could it have been otherwise because the Pre-trial Order specifically limited the issues to the validity of the deed and whether or not respondent Juana and Mariano are compulsory heirs of Dr. Favis. Respondents not only confined their arguments within the pre-trial order; after losing their case, their appeal was based on the proposition that it was error for the trial court to have relied on the ground of vitiated consent on the part of Dr. Favis.

The Court of Appeals ignored the facts of the case that clearly demonstrated the refusal by the respondents to compromise. Instead it ordered the dismissal of petitioner's complaint on the ground that it did not allege what in fact was shown during the trial. The error of the Court of Appeals is patent.

Unfortunately for respondents, they relied completely on the erroneous ruling of the Court of Appeals even when petitioners came to us for review not just on the basis of such defective *motu propio* action but also on the proposition that the trial court correctly found that the donation in question is flawed because of vitiated consent. Respondents did not answer this argument.

The trial court stated that the facts are:

> x x x To determine the intrinsic validity of the deed of donation subject of the action for annulment, the mental state/condition of the donor Dr. Mariano Favis, Sr. at the time of its execution must be taken into account. Factors such as his age, health and environment among others should be considered. As testified to by Dr. Mercedes Favis, corroborated by Dr. Edgardo Alday and Dra. Ofelia Adapon, who were all presented as expert witnesses, Dr. Mariano Favis, Sr. had long been suffering from Hiatal Hernia and Parkinson's disease and had been taking medications for years. That a person with Parkinson's disease for a long time may not have a good functioning brain because in the later stage of the disease, 1/3 of death develop from this kind of disease, and or dementia. With respect to

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[22] Paras, *Report of the Code Commission, Code Commission of the Philippines Annotated*, 14th Ed., Vol. 1, p. 579.

Hiatal Hernia, this is a state wherein organs in the abdominal cavity would go up to the chest cavity, thereby occupying the space for the lungs causing the lungs to be compromised. Once the lungs are affected, there is less oxygenation to the brain. The Hernia would cause the heart not to pump enough oxygen to the brain and the effect would be chronic, meaning, longer lack of oxygenation to the brain will make a person not in full control of his faculties. Dr. Alday further testified that during his stay with the house of Dr. Mariano Favis, Sr. (1992-1994), he noticed that the latter when he goes up and down the stairs will stop after few seconds, and he called this pulmonary cripple – a very advanced stage wherein the lungs not only one lung, but both lungs are compromised. That at the time he operated on the deceased, the left and right lung were functioning but the left lung is practically not even five (5%) percent functioning since it was occupied by abdominal organ. x x x.

Dr. Mariano Favis, Sr. during the execution of the Deed of Donation was already 92 years old; living with the defendants and those years from 1993 to 1995 were the critical years when he was sick most of the time. In short, he's dependent on the care of his housemates particularly the members of his family. It is the contention of the defendants though that Dr. Mariano Favis, Sr. had full control of his mind during the execution of the Deed of Donation because at that time, he could go on with the regular way of life or could perform his daily routine without the aid of anybody like taking a bath, eating his meals, reading the newspaper, watching television, go to the church on Sundays, walking down the plaza to exercise and most importantly go to the cockpit arena and bet. Dr. Ofelia Adapon, a neurology expert however, testified that a person suffering from Parkinson's disease when he goes to the cockpit does not necessarily mean that such person has in full control of his mental faculties because anyone, even a retarded person, a person who has not studied and have no intellect can go to the cockpit and bet. One can do everything but do not have control of his mind. x x x That Hiatal Hernia creeps in very insidiously, one is not sure especially if the person has not complained and no examination was done. It could be there for the last time and no one will know. x x x.

The Deed of Donation in favor of the defendants Ma. Theresa, Joana D. Favis, Maria Cristina D. Favis, James Mark D. Favis and Maria Thea D. Favis, all of whom are the children of Mariano G. Favis, Jr. was executed on [16 October] 1994, seven (7) months after Dra. Mercedes Favis left the house of Dr. Favis, Sr. at Bonifacio St., Vigan City, Ilocos Sur, where she resided with the latter and the defendants.

Putting together the circumstances mentioned, that at the time of the execution of the Deed of Donation, Dr. Mariano Favis, Sr. was already at an advanced age of 92, afflicted with different illnesses like Hiatal hernia, Parkinsons' disease and pneumonia, to name few, which illnesses had the effects of impairing his brain or mental faculties and the deed being executed only when Dra. Me[r]cedes Favis had already left his father's residence when Dr. Mariano Favis, Sr. could have done so earlier or even in the presence of Dra. Mercedes Favis, at the time he executed the Deed of Donation was not in full control of his mental faculties. That

> although age of senility varies from one person to another, to reach the age of 92 with all those medications and treatment one have received for those illnesses, yet claim that his mind remains unimpaired, would be unusual. The fact that the Deed of Donation was only executed after Dra. Mercedes Favis left his father's house necessarily indicates that they don't want the same to be known by the first family, which is an indicia of bad faith on the part of the defendant, who at that time had influence over the donor. [23]

The correctness of the finding was not touched by the Court of Appeals. The respondents opted to rely only on what the appellate court considered, erroneously though, was a procedural infirmity. The trial court's factual finding, therefore, stands unreversed; and respondents did not provide us with any argument to have it reversed.

The issue of the validity of donation was fully litigated and discussed by the trial court. Indeed, the trial court's findings were placed at issue before the Court of Appeals but the appellate court chose to confine its review to the procedural aspect. The judgment of the Court of Appeals, even if it dealt only with procedure, is deemed to have covered all issues including the correctness of the factual findings of the trial court. Moreover, remanding the case to the Court of Appeals would only constitute unwarranted delay in the final disposition of the case.

WHEREFORE, the Decision of the Court of Appeals is **REVERSED** and **SET ASIDE** and the Judgment of the Regional Trial Court of Vigan, Ilocos Sur, Branch 20 is **AFFIRMED**.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

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23 *Rollo*, pp. 433-435.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice