

ROMEO FALCON, EMILY FALCON, EDUARDO FALCON, ZENAIDA FALCON, FRANCO FALCON, RICARDO FALCON AND GRACIA FALCON, PLAINTIFFS-APPELLANTS, VS. BELLA TOMARONG VDA. DE SERRANO, DEFENDANT...

Ponente: BALTAZAR-PADILLA, J.

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BALTAZAR-PADILLA, J.:

Challenged before US in this appeal is the Decision[1] dated September 26, 2012 of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63 (hereinafter, “RTC”) in Civil Case No. RTC'05-199.

In an action instituted in the RTC, herein appellants sought the reconveyance of title over the land situated at San Pablo Street, Calabanga, Camarines Sur with an area of 489 square meters. The complaint alleged that the said land was originally owned by Rosario Malanyaon Falcon who during her lifetime in 1971 sold it to her son Amancio Falcon, father of herein appellants; that upon the death of Amancio Falcon, appellants entrusted the care and administration of the subject land to herein appellee who is their first cousin and holds an important position in the Bureau of Lands in Naga City; that through fraud, misrepresentation and breach of trust, appellee succeeded in obtaining the corresponding title thereto under her name without the knowledge and consent of appellants; that since appellee refused to pay appellants the value of the property, appellants incurred expenses and damages in instituting the instant action against appellee. Upon the foregoing allegations, the complaint concluded with the following prayer:

“WHEREFORE, it is respectfully prayed, that the defendant [herein appellee] be ordered to convey the land in question and to transfer the same to the plaintiffs [herein appellants] together with the aforesaid expenses, damages and costs set forth herein.”[2]

In her Answer, appellee averred that the complaint should be dismissed because it was prematurely filed. Not only did appellants fail to exert effort towards a settlement, they likewise did not resort to Katarungang Pambarangay conciliation proceeding. Appellee insisted that she owns the land in question as evidenced by the original title covering the same which was issued by the Department of Environment and Natural Resources (DENR) in her name; that at the time that appellants requested appellee and her family to occupy a portion of the land in controversy, appellants knew that appellee and her predecessor-in-interest have been in the possession of the property in the manner that is open, peaceful and in concept of an owner since time immemorial; and that assuming that appellants have a cause of action against her, the same is barred by estoppel and laches.

As counterclaim, appellee prayed for an award of moral and exemplary damages as well as attorney's fees; and for the trial court to order appellants, their heirs and their assigns to vacate and surrender the portion of the subject land they are occupying which is owned by appellee.

In support of their claim of ownership over the lot in question, appellants presented Romeo Falcon, Leopoldo Capal and Franco Falcon as witnesses and formally offered the following documentary evidence, to wit: Special Power of Attorney (Exhibit “A”), Certificate to File Action (Exhibit “B”), Free Patent Title No. 15202 (Exhibit

“C”), Deed of Absolute Sale of Residential Land (Exhibit “D”), Tax Declaration (Exhibit “E”), Certificate of Tax Payment (Exhibit “F”) and Tax Receipt (Exhibit “G”).

Appellant Romeo Falcon testified that they are claiming the 336 square meter portion of the subject realty; that they resorted to conciliation proceeding before the Katarungang Pambarangay before filing suit against appellee; that the subject parcel of land was originally owned by their grandmother Rosario Malanyaon Falcon (hereinafter, “Rosario”); that he had been residing in the said land since his birth in 1942; that in 1971, Rosario sold the said property to her son Amancio Falcon (hereinafter, “Amancio”), who is their father as evidenced by the Deed of Absolute Sale of the Residential Land prepared by Amancio; that upon the death of Amancio, appellants immediately took possession of the land; that appellee, who is their cousin connected with the Bureau of lands or DENR, told him that she would administer the land in question; that he did not allow her to administer the property but because of trust, he later impliedly consented thereto; that he is paying the real estate taxes since 1980; and that without their knowledge, appellee was able to obtain title over the property.

Another witness for appellants is Leopoldo Capal, who is a former Barangay Captain of San Francisco, Calabanga, Camarines Sur. He testified that he knew that Rosario was the previous owner of the land who sold the same to one of her children, Amancio; that the land was occupied by the children of Amancio after the latter's death; and that although appellant Romeo Falcon is in possession of the subject property, Romeo entrusted the administration of the same to appellee who secured a title over said land in her name.

The last witness is appellant Franco Falcon who testified that the land in controversy was previously owned by his grandparents; that his grandmother Rosario executed a deed of sale for the 336-square meter lot in favor of their father Amancio; that after the latter's death, they inherited the property; that while they were in possession of the land, the sister of his father named Josefina Falcon, mother of herein appellee, arrived from Manila and stayed in the house of their grandmother erected on the land they own; that he was not aware of any arrangement between their father and Josefina as to the latter's stay in the property; and that he only learned that the land was already titled under the name of appellee when one of appellee's children refused to pay rent on the ground that they already own the property.

On May 7, 2009, the trial court issued an Order^[3] denying the admission of Exhibits “A” to “E” of appellants as part of their evidence for being mere photo copies.

Appellee, on the other hand, presented Antonio Falcon, Jr., Edwin Falcon Tomarong and herself to refute the claims of appellants.

Antonio Falcon, Jr. testified that he resides at Barangay San Francisco, Calabanga and knows appellee because the latter is his first cousin who resides in the same barangay; that the subject lot was acquired by the mother of appellee, Josefina, from Rosario Malanyaon; that Josefina had resided on the land in question since he was in the elementary grade; that Josefina lived in the house of Rosario which was damaged by typhoon; that Josefina caused the repair of Rosario's house destroyed by typhoon; that there were no other houses erected on the subject land at the time Josefina was residing at Rosario's house; and that Rosario gave the controversial lot to Josefina who later gave the same to appellee.

Appellee's next witness is her eldest brother, Edwin Falcon Tomarong. He testified that he has four (4) siblings and their parents are Gregorio and Josefina Falcon Tomarong; that he has been residing on the lot in question since his birth on March 20, 1945; that he knew the land in question because they own the said land; that the subject land where his family resides is more or less 100 square meters; that at the time that he was growing up, their 2-storey house was the only structure in that place; that before his uncle Amancio Falcon moved in to their lot, Amancio rented a house of certain Juaning Malanyaon at the town of Calabanga for a long time, transferred at

the place of Bordado and then at Barangay San Isidro owned by a certain Buenafe; that Amancio sought permission from his parents and grandmother to stay in their house; that later, their parents and grandmother allowed Amancio to construct the latter's house beside their own; that Amancio and his family made some improvements on the land and were able to occupy almost half portion of the land in question registered in the name of his sister; and that his sister/appellee is the one paying the real property tax.

Meanwhile, appellee testified that her parents Josefina Tomarong and Gregorio Tamarong are both deceased; that she knows the subject lot because she is the registered owner thereof and pays its realty tax; that she was born on the said land; that prior to her possession of the land in 1981, it was her mother Josefina Tomarong who possessed the same since 1930; that while her parents were still alive, their house was the only structure in that area; that her parents' house was reconstructed because it was destroyed by typhoon and by fire; that at present, there are two (2) houses on the subject land, one belonging to her family while the other belongs to her mother's brother named Amancio; that Amancio was permitted by her parents to construct a house on the lot in 1960; that before Amancio was allowed by her parents to build his house on the property, he was residing at the town proper of Calabanga; that she obtained title of the property after submitting Affidavit of Ownership, Waiver of Rights and Tax Declaration with the Bureau of Lands; that before she became the owner of the land, her mother Josefina Tomarong was its owner having inherited the same from Rosario Falcon; that at present, she and her siblings Job Tomarong and Edwin Tomarong are staying with her.

The documentary evidence offered by appellee consisting of Katibayan ng Orihinal naTitulo Blg. 15202 (Exhibit 1), Tax Declaration No. 8809 (Exhibit 2), Tax Declaration No. 12295 (Exhibit 3), Affidavit of Ownership of Real Property (Exhibit 4), Certificate of Tax Payment (Exhibit 5), Official Receipt of Tax Payment (Exhibit 6), Certificate of Tax Payment (Exhibit 7) and Assessment of Real Property (ARP) No. 97-030-0038 (Exhibit 8), were all admitted by the trial court.[4]

On September 26, 2012,[5] the RTC rendered its decision, dismissing the complaint and ordering herein appellants to immediately vacate the premises of the property subject of the case.

Hence, this appeal with the following assignment of errors:

“I.

THE LOWER COURT A QUO ERRED IT (SIC) DENYING THE ADMISSION OF EXHIBITS A TO E FORMALLY OFFERED IN EVIDENCE BY THE PLAINTIFFS-APPELLANTS, DESPITE THE FACT THAT IT (SIC) WAS ALREADY ADMITTED BY THE DEFENDANT DURING THE PRE-TRIAL CONFERENCE;

II.

THE LOWER COURT A QUO ERRED IN ORDERING THE DISMISSAL OF THE COMPLAINT DESPITE THE PREPONDERANCE OF EVIDENCES PRESENTED BY THE PLAINTIFFS-APPELLANTS PROVING THEIR CLAIM OF OWNERSHIP OF THE LAND; [AND]

III.

THE LOWER COURT A QUO ERRED IN FAILING TO CONSIDER THE FACT THAT THE PLAINTIFFS- APPELLANTS ARE IN ACTUAL POSSESSION OF THE PROPERTY IN QUESTION,

THUS, THE FINDINGS OF THE LOWER COURT A QUO THAT THE DEFENDANT-APPELLEE IS ENTITLED TO THE POSSESSION OF THE LAND IN QUESTION IN ACCORDANCE WITH ART. (SIC) 428, 429 AND 430 OF THE NCC IS NOT CORRECT.”[6]

Appellants maintain that the trial court should have admitted in evidence their Exhibits “A” to “E” which they formally offered because although said exhibits were mere xerox copies and have not been certified as true copies of the original, their genuineness and due execution were already admitted by appellee during the preliminary conference. A reading of the transcripts of stenographic notes will show that the counsel of appellee, Atty. Antonio Rivero, admitted that the photo copy of the title (Exhibit “C”) covering the subject property is a faithful reproduction of the original. He likewise admitted the due execution of the Special Power of Attorney (Exhibit “A”) executed in favor of appellant Romeo Falcon authorizing the latter to represent appellants in all cases concerning the property in controversy. Section 4, Rule 129 of the Rules of Court which provides that “[a]n admission, verbal or written made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.”

Appellants also insist that the copy of the Deed of Sale of Residential Land which they offered in evidence should have been considered by the trial court as the same enjoys the prima facie presumption of due execution that is extended to notarized documents even though the said deed of sale is not registered with the Registry of Deeds of Camarines Sur. Their claim of ownership over the property cannot be disputed since they were able to present the Deed of Absolute Sale executed by their grandmother, Rosario M. Falcon, in favor of their father, Amancio Falcon. Considering that they were able to prove by preponderance of evidence their actual and physical possession of the property, title to the same should be adjudicated in their favor.

Moreover, appellants posit that the Tax Declaration (Exhibit “E”) and the Certificate of Tax Payments (Exhibit “F”) should have also been appreciated by the trial court. Although they are not conclusive proofs of ownership, they gave rise to the prima facie presumption that the land in controversy is in their possession.

The trial court should have admitted the documents they formally offered since they had testified on the said exhibits.

The affidavit of ownership of real property (Exhibit “4”) executed by herein appellee as well as the testimony of her witness Antonio Falcon, Sr. were self-serving and have no probative value, according to appellants. Appellee who was an employee of the Bureau of Lands-DENR was able to secure a certificate of title of the subject property through fraud and misrepresentations which she alleged in her affidavit of ownership of real property.

The trial court erred in declaring that they cannot collaterally attack the Torrens title of appellee and that the same may only be challenged in a direct proceeding. Since they have been in actual possession of the 330 square meter portion of the land covered by the questioned title, the action for reconveyance of title obtained through fraud and misrepresentation filed by them is valid and is converted into an action for quieting of title which is imprescriptible.

To support this argument, appellants cited the case of Yared, et al. vs. Tiongco, et al.,[7] where it was held that :

“The Court reiterated such rule in the case of Vda. de Cabrera v. Court of Appeals, wherein we ruled that the imprescriptibility of an action for reconveyance based on implied or constructive trust applies only when the plaintiff or the person enforcing the trust is not [sic] in possession of the property. In effect, the action for reconveyance is an action to quiet the property title, which does not prescribe.

Similarly, in the case of David v. Malay the Court held that there was no doubt about the fact that an action for reconveyance based on an implied trust ordinarily prescribes in ten (10) years. This rule assumes, however,

that there is an actual need to initiate that action, for when the right of the true and real owner is recognized, expressly or implicitly such as when he remains undisturbed in his possession, the statute of limitation would yet be irrelevant. An action for reconveyance, if nonetheless brought, would be in the nature of a suit for quieting of title, or its equivalent, an action that is imprescriptible. In that case, the Court reiterated the ruling in *Faja v. Court of Appeals* which we quote:

x x x There is settled jurisprudence that one who is in actual possession of a piece of land claiming to be owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession. No better situation can be conceived at the moment for Us to apply this rule on equity than that of herein petitioners whose mother, Felipa Faja, was in possession of the litigated property for no less than 30 years and was suddenly confronted with a claim that the land she had been occupying and cultivating all these years, was titled in the name of a third person. We hold that in such a situation the right to quiet title to the property, to seek its reconveyance and annul any certificate of title covering it, accrued only from the time the one in possession was made aware of a claim adverse to his own, and it is only then that the statutory period of prescription commences to run against such possessor.”

The trial court should have considered the testimony of their witness Leopoldo Capal, a former Barangay Captain in San Francisco, Calabanga, Camarines Sur, who testified that the former owner of the subject land was Rosario Malanyaon; that the latter sold the said lot to her son Amancio Malanyaon Falcon who is the father of appellants; and that appellee was only designated by appellants as administrator of the subject property. It is clear, therefore, from the testimony of Capal that an implied trust between appellants and appellee had been created. The trial court must have given credence as well to the testimony of their other witness Franco Falcon.

Appellants contend that the trial court failed to note the discrepancy between the allegation in the Affidavit of Ownership of Real Property of appellee and her testimony during trial as to how she acquired the subject property. In appellee's testimony, she said that her mother Josefina Falcon inherited the subject land from Rosario Falcon while in her Affidavit of Ownership of Real Property, she alleged that the subject land was purchased by her late parents from spouses Justiniano Falcon and Rosario Malanyaon.

Appellants refute the testimony of appellee that the latter's mother, Josefina Falcon, inherited the subject land from Rosario Falcon. Appellee cannot consider her mother as the sole heir of Rosario Falcon because Josefina is not the only legitimate child who survived Rosario Falcon. Appellants' father, Amancio Falcon, is also a child and therefore, an heir of Justiniano and Rosario.

Appellee's allegation in her Affidavit of Ownership of Real Property that her parents bought the property from Justiniano and Rosario should not be believed as no documentary evidence was presented to substantiate said allegation.

The arguments fail to convince this Court.

The issues in this case boil down to the following: (1) whether appellee committed fraud and misrepresentation in registering the subject lot in her name; and (2) whether appellants were able to sufficiently prove that they are the rightful owners of the property in controversy.

Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein.[8] Thus, notwithstanding the indefeasibility of the Torrens title, the registered owner may still be compelled to reconvey the registered property to its true owners. The rationale for the rule is that reconveyance

does not set aside or re-subject to review the findings of fact of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property or its title which has been wrongfully or erroneously registered in another person's name, to its rightful or legal owner, or to the one with a better right.[9]

An action for annulment of title or reconveyance based on fraud is imprescriptible where the plaintiff is in possession of the property subject of the acts.[10] As disclosed by the record, appellants who are plaintiffs in this case as well as appellee are in actual possession of the subject property. However, for an action for reconveyance based on fraud to prosper, the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud.[11]

Notably, all of the documents presented by appellants to prove their supposed title, such as the deed of sale and tax declaration, are mere photo copies and not certified true copies of the original. The best evidence rule requires that the highest available degree of proof must be produced.[12] For documentary evidence, the contents of a document are best proved by the production of the document itself to the exclusion of secondary or substitutionary evidence, pursuant to Rule 130, Section 3.[13]

Secondary evidence is admissible when the original documents were actually lost or destroyed. But prior to the introduction of such secondary evidence, the proponent must establish the former existence of the instrument. The correct order of proof is as follows: Existence; execution; loss; contents although this order may be changed if necessary in the discretion of the court.[14]

Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence.[15]

In this case, appellants failed to prove the due execution of the original of the deed of sale as well as its subsequent loss. In establishing the execution of a document, the same may be established by the person or persons who executed it, by the person before whom its execution was acknowledged, or by any person who was present and saw it executed or who, after its execution, saw it and recognized the signatures; or by a person to whom the parties to the instrument had previously confessed the execution thereof.[16] In the extant case, the execution of the original copy of the deed of sale was not established. The parties who purportedly executed the same were already dead so could no longer testify thereon. No person who personally saw the execution of said document was also presented to testify as to its due execution. Neither was the notary public before whom the purported deed of sale was acknowledged, presented to testify on the execution of the document.

In addition, appellants failed to prove that the original of the deed of sale had been lost or destroyed. No witness was presented to testify on the fact of loss or destruction of the document to justify the presentation of secondary evidence.

The fraud allegedly perpetrated by appellee in securing the title in her name, was clearly not proven. Appellant Romeo Falcon merely testified that appellee who was connected with the Bureau of Lands or DENR, administered their property and thereafter secured title over the property under her name. No evidence was adduced to show what particular fraudulent acts had been committed by appellee for the titling of the property under her name.

WE likewise reject appellants' assertion that the trial court should have ruled in their favor since there was a variance between the allegation made by appellee in her Affidavit of Ownership of Real Property submitted before the Bureau of Land and her subsequent testimony made in open court as to how she obtained the property in question. This issue was not raised before the trial court. The record of this case reveals that appellants never

confronted appellee about said inconsistency during trial. Consequently, this issue cannot be raised for the first time on appeal. It is an old-aged rule that issues, arguments and errors not adequately and seriously brought below cannot be raised for the first time on appeal.[17] Basic considerations of due process impel this rule.[18]

Basic is the rule that the party making an allegation in a civil case has the burden of proving it by a preponderance of evidence.[19] The concept of “preponderance of evidence” refers to evidence which is of greater weight, or more convincing, than that which is offered in opposition to it; at bottom, it means probability of truth.[20] Having filed an action involving property, appellants should have relied on the strength of their own claim to title and not on the alleged weakness of appellee’s evidence to prove her title.[21]

The photo copies of deed of sale and tax declaration presented by appellants to prove ownership of the property cannot prevail over the original certificate of title presented by appellee which enjoys a legal presumption of regularity as to its issuance.

WHEREFORE, premises considered, the Decision under review is hereby AFFIRMED.

Accordingly, the appeal is DISMISSED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Tijam, N.G., Chairperson and [*]Sorongon, E. D., JJ., concur.

[*] Vice J. Agnes Reyes Carpio, per Office Order No. 200-14-ABR, dated May 9, 2014.

[1] Rollo, pp. 34-37.

[2] Record, p.5.

[3] Record, p.140.

[4] Id.,p..200.

[5] Rollo, pp.34-37.

[6] Rollo, pp.23-24.

[7] G.R. No. 161360, October 19, 2011.

[8] Naval vs. Court of Appeals, G.R. No. 167412, February 22, 2006, 483 SCRA 102, 113, citing Heirs of Clemente Ermac vs. Heirs of Vicente Ermac, 451 Phil. 368, 377 (2003).

[9] Id., citing Heirs of Pomposa Saldares vs. Court of Appeals, G.R. No. 128254, January 16, 2004, 420 SCRA 51, 56.

[10] Lemos vs. Lemos, G.R. No. 150162, January 26, 2007, 513 SCRA 128, 134, citing Occeña vs. Esponilla, G.R. No. 156973, June 4, 2004, 431 SCRA 116, 126 and Delfin vs. Billones, G.R. No. 146550, March 17, 2006,

485 SCRA 38, 47-48.

[11] Antonio vs. Santos, G.R. No. 149238, November 22, 2007, 538 SCRA 1, 9, citing Barrera vs. Court of Appeals, G.R. No. 123935, December 14, 2001, 372 SCRA 312, 316.

[12] Dantis vs. Maghinang, Jr., G.R. No. 191696, April 10, 2013.

[13] Id.; Sec. 3. Original document must be produced; exceptions. – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, x x x.

[14] Lazatin vs. Campos, 92 SCRA 250, 262 (1979)

[15] Santos vs. Court of Appeals, 420 Phil. 110, 120 (2001).

[16] Michael & Co. vs. Enriquez, 33 Phil. 87, 89-90 (1915).c

[17] See Magellan Capital Management Corporation vs. Zosa, 355 SCRA 157, March 26, 2001; Magnolia Dairy Products Corp. vs. NLRC, 252 SCRA 483, January 29, 1996.

[18] Tolentino, et al. vs. Laurel, et al., G.R. No. 181368, February 22, 2012

[19] Catapusan vs. CA, 332 Phil. 586, November 21, 1996; See Section 1 of Rule 133 of the Revised Rules on Evidence.

[20] Jison vs. Court of Appeals, 350 Phil. 138 (1998).

[21] See Catapusan vs. CA, 332 Phil. 586, November 21, 1996.

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