

**LUCIO PALANCA CHILIANCHIN, PLAINTIFF AND APPELLANT, VS.
EUSEBIO COQUINCO, DEFENDANT AND APPELLEE.***G.R. No. L-1355. October 12, 1949*

Ponente: FERIA, J.

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The plaintiff mortgaged on July 30, 1941, the property he seeks to recover in the present case, to secure the payment of the sum of P22,000 Philippine currency he borrowed from Bartolome E. San Diego, within three years "with interest of ten percent per annum payable monthly in advance within the first ten days of every month, plus 10 per cent on the said P22,000 as penalty in case of default of payment of said interest as stipulated, together with an additional ten percent of the total sum due, owing and unpaid at the time any legal action is brought in the proper court for collection thereof * * *."

On June 8, 1942, the mortgagee Bartolome E. San Diego filed an action of foreclosure of mortgage against the plaintiff in this case on the ground that the latter failed and refused to pay the mortgagee the monthly interests due on the said sum of P22,000 for the period from the first of December, 1941, up to the date of the filing of the complaint, plus the penalty of 10 per cent of the sum due and the additional 10 per cent as attorney's fees. Because the plaintiff was in Negros Occidental during the Japanese invasion and occupation, the summon was served upon Carlos Palanca the son of the plaintiff, and Atty. Zosimo Rivas who testified as the first witness for the plaintiff in this case was the attorney for the defendant in that case who was sentenced to pay the mortgaged debt and given six months time to pay it, after which the property mortgaged was to be sold at public auction to satisfy the judgment. The defendant appealed from the judgment to this Court. During the pendency of the appeal, in order to prevent the property mortgaged from being sold at public auction, Carlos Palanca, as attorney in fact of his father Lucio Palanca Chilianchin, and with the intervention of said Atty. Zosimo Rivas, sold the property mortgaged on September 15, 1943, for the sum of P69,000 to Eusebio Coquinto the defendant in this case, and paid the judgment in favor of Bartolome E. San Diego out of the proceeds of the sale.

After the death of Carlos Palanca and of the notary public Atty. Celino O. Molina before whom the power of attorney Exhibit A executed in favor of Carlos Palanca appears to have been acknowledged by the plaintiff Lucio Palanca Chilianchin, the latter filed on January 30, 1946, the complaint in the present case against Eusebio Coquinto to recover the property sold to the latter by Carlos Palanca as attorney in fact of said Lucio Palanca, on the ground that, since the war with Japan broke out on December 8, 1941, the plaintiff had never been in Manila and the late Carlos Palanca forged and used said power of attorney Exhibit A to be forged and acknowledged before a notary public, and that the plaintiff has never executed and ratified said power of attorney of September 2, 1941, and therefore the deed of sale of the property in question Exhibit executed by Carlos Palanca in favor of said defendant is null and void.

After the trial of the case, in which only the plaintiff introduced evidence from, which the foregoing facts appear, and the defendant did not, because the attorney in fact Palanca who sold the property and the Notary Public Celso O. Molina before whom said power of attorney was acknowledged were already dead, the lower court rendered a

judgment in favor of the defendant which reads in part as follows:

"La cuestion principal a resolver en esta causa es la de si la firma del demandante en la escritura de poder de que se valio Carlso A. Palanca para vender las propiedades en cuestion al demandado es falsificada o no. Consiquio la parte actora demostrar la afirmativa? A nuestro juicio no. Sus pruebas dejan mucho que desear. En primer lugar, no ha estblecido que la firma del demandante en el documento original de poder presentado al Registrador de la Propiedad es falsificada. Tampoco ha acreditado que el documento, Exhibit 'A', sea copia al carbon o duplicado original del poder que obra en la oficina de Registrador de Titulos. En el supuesto de que lo sea, las pruebas orales aportadas por el demandante no son suficientes, a juicio del Juzgado, para establecer la alegada falsedad de dicho documento. Contra la asercion de los testigos Almario Palanca y Armando Arcas de que cuano firmaron en el Exhibit A no estaba present el demandante y que no le vieron firmar dicho documento y la manifestacion del demandante de que no es firma suya la que aparece en dicho documento, esta la certificacion del notario publico Sr. Celso O. Molina de que comparecio ante el el otorgante Lucio Palanca Chilianchin, una persona a quien el conocia personalmente como el otorgante de la escritura y quien ratifico ante al ser dicha escritura un acto de su libre voluntad y otorgamiento, la cual certificacion lleva la firma del citado notario y el timbre de su cargo. El demandante se contento con decir que no es la firma que aparece el citado Exhibit A y no exhibio al Juzgado muestras de su firma autentica. Es mas, su propio hijo y testigo, o sea Almario Palanca aseguro que firmo en dicho exhibitito bajo la creencia de que la firma de su padre, en el estampada, era genuina, porque dicha firma era semejante al a genuina de sup padre, pues para el se parecian iguales puesto que habia visto a las anteriores firmas de su citado padre y que antes de estampar su propia firma se fijo en la firma de Lucio Palanca Chilianchin y le parecio la genuina de este (p. 11 t.n.t. y pp. 28-29 de Junio 5, de 1946). La alegacion del demandante de que el no estaba en esta ciudad el mes de septiembre de 1941 puesto que se hallaba en Negros Occidental atendiendo un asunto de su esposa, sobre ser de character negativo y, por tanto no debe prevalecer sobre el acta notarial ya mencionada, no esta corroborada. Teniendo en cuenta que antes de la guerra habia frecuentes viajes de aviones de Manila a Negros, y vuelta, y que el demandante tenia negocios en esta ciudad, no esta fuera de la posibilidad el que el haya volado de Negros a Manila para atender a sus negocios aqui en 2 de septiembre de 1941 y otorgar el poder cuestionado. El viaje en avion de Negros a Manila entonces duraba dos horas escasas. No hav pruebas en autos que excluya dicha posibilidad.

"Por todas las consideraciones expuestas, el Juzgado falla el asunto, absolviendo al demandado de la demanda de autos con las costas a cargo de la parte demandante."

The question for us to determine in this appeal is whether the presumption established by law that the power of attorney Exhibit A executed acknowledged before the notary public the late Celso O. Molina is authentic, has been rebutted by evidence to the contrary produced by the plaintiff who pretends that he has not executed saicl general power of attorney Exhibit A in favor of his late son Carlos Palanca. If said power of attorney is a forgery, the sale of the property in question to the defendant-appellee Eusebio Coquinco is null and void, and the latter has to return to the plaintiff the property sold to him by Carlos Palanca in order to prevent its sale ordered by the court to pay the judgment creditor San Diego in the foreclosure proceeding case G. R. No. 48982 instituted against the said plaintiff. (Record of Appeal presented as evidence Exhibit E by the appellant.)

In the case of Robinson vs. Villafuerte, 18 Phil. 171, 172, we held the following:

"In order to prove the falsity of two powers of attorney, executed on different dates before two different notaries, it is not enough to show, by the testimony of several witnesses of doubtful capacity, and by unauthenticated documents, that, on the dates of their respective execution, the principal was absent from the place where it is supposed that the said instruments were drawn up and authenticated; it is necessary that clear, strong, and irrefutable evidence be produoed showing that the notaries could not have certified that the said person was aotually in their presence, that they heard him ratify the contents of the respective documents, and that they could not have certified to the number of his cedula, the only one exhibited to both notaries, without

manifestly perverting the truth.

"* * * a notarial document, guaranteed by public attestation in accordance with the law, must be sustained in full force and effect so long as he who impugns it does not present strong, complete, and conclusive proof of its falsity or nullity on account of some flaw or defect provided against by law."

In the present case the evidence for the plaintiff far from proving the falsity tends to support or confirm the authenticity of the power of attorney Exhibit A.

The assertion of the plaintiff that he has not executed said Exhibit A, for the reason that his son Carlos was "vicioso" because he had abducted a girl; that he was in Negros on September 2, 1941, the date when it was signed and acknowledged, and that the signature of Lucio Palanca appearing therein is not his signature "no es parecido a mi firma", is refuted by the very evidence presented by him in this case. As the lower court correctly said, the plaintiff did not even present a sample of his authentic signature to support his contention that it is not his the signature appearing in said document. He did not call a handwriting expert to prove his assertion. His attorney, at the beginning of the trial, made it of record that if the defendant present an expert in handwriting to show that the signature in question is genuine, the plaintiff will also present an expert to show the contrary, as if it were incumbent upon the defendant to show that the signature of the plaintiff in Exhibit A is genuine; and at the close of the hearing the said attorney asked the court to give the plaintiff three days within which to present a handwriting expert, but when the motion was about to be granted he withdrew his petition.

"JUZGADO:

"Se admiten todos por lo que puedan valer.

"Cierra usted ya sus pruebas?

"SR. SEVA:

"Quisiera cerrarlo, pero con esa reserva. La reserva es que nos de tres dias para presentar al experto caligrafo.

"JUZGADO:

"Que va a declarar ese experto?

"SR. SEVA:

"Sobre si es o no realmente genuina la supuesta firma que aparece en el Exhibit A. Retiro ya la reserva."
(Evidence of plaintiff, pp. 28, 29.)

And it was also contradicted in part by his son Almerio Palanca who testified that he signed the power of attorney Exhibit A, because the signature appearing therein is similar to the genuine signature of his father and he had no doubt of the honesty and integrity of his deceased brother Carlos and that the latter was not capable of falsifying his father's signature.

The plaintiff testified that he was in Occidental Negros on September 2, 1941, because he was appointed guardian of his minor sister-in-law and administrator of the hacienda and had to make all the transactions with the Bank and the Central, and in support of this assertion he presented as evidence the document Exhibit F which is a copy of a motion filed with the court by the wife of the plaintiff Andrea Acuña, as guardian of the minor children of her deceased sister Claudia Acuña and administratrix of the latter's estate. Although said Exhibit F is dated September 5, 1941, it does not support the plaintiff's contention that he could not have been in Manila on September 2, 1941, because it appears from said Exhibit F that it is not the plaintiff but his wife Andrea Acuña who was the guardian of the minor children and the administratrix of the estate of her late sister and who signed as such said Exhibit F, and that the plaintiff had no intervention whatever in the preparation and signing of said motion. Besides, the lower court rightly held that "Teniendo en cuenta que antes de la guerra habia frecuentes viajes de aviones de Manila a Negros, y vuelta, y que el demandante tenia negocios en esta ciudad, no esta fuera de la posibilidad el

que el haya volado de Negros a Manila para atender a sus negocios aqui en 2 de septiembre de 1941 y otorgar el poder cuestionado."

One of the instrumental witness of the power of attorney Exhibit A Almerio Palanca, a son of the plaintiff, testified that he subscribed the power of attorney Exhibit A about the middle of the year 1943 although his father the plaintiff was then in Negros Occidental and the power of attorney is dated September 2, 1941, because his father's signature is similar to that appearing in said draft and he had no doubt of the honesty and integrity of his brother Carlos who, he believed, was not capable of falsifying his father's signature. The testimony of this witness interested in annulling the power of attorney and, consequently, the sale of his father's property to the defendant is unbelievable. He ought to know, as he was then a second year student of medicine, that he would become a party to the falsification of said document if he had signed as instrumental witness of the Exhibit A under the circumstances by him stated. And as one of the forced heirs of his father and therefore interested in protecting the latter's property, if his testimony were true he would have taken steps to notify his father of the execution of the said power of attorney and sale of the property mortgaged, if not during the occupation, immediately after the liberation or during the year 1945, and would not have waited for about one year until his father came here to Manila in January, 1946.

The testimony of the other subscribing witness Armando Arcas does not deserve any credit. This witness who was living during the year 1941 and 1942 together with Carlos Palanca and Almario Palanca in the same house of the Palancas at 2581 Lico, Manila, where he was still living at the time he testified as a witness for the plaintiff testified that upon the request of the late Carlos Palanca, he subscribed as instrumental witness the power of attorney Exhibit A in September, 1943, and not September 2, 1941, which appears as the date of the instrument, and he did not make him any question about the discrepancy as to the year because, when Carlos Palanca was asked about it by his brother Almario Palanca, the other instrumental witness, the latter gave good reasons which were very satisfactory to him (the witness did not state the reasons given by Carlos Palanca), and so he put his signature thereon and did not question Carlos Palanca any more, although he knew that he was committing falsification by signing the document.

Moreover, the lower court's conclusion that Carlos Palanca was an attorney in fact of his father and the power of attorney Exhibit A is authentic is corroborated by the fact not denied by the evasive answer of Atty. Zosimo Rivas, a witness for the plaintiff that said Rivas, who appeared as attorney for the plaintiff that was the defendant in the action of foreclosure of mortgage of the property located here in Manila instituted by Bartolome E. San Diego in June, 1942, in the Court of First Instance of this city, did not set up the defense that the summons served personally upon Carlos Palanca did not confer jurisdiction upon the court over the defendant Lucio Palanca Chilianchin, because the latter was not then residing in Manila but in Occidental Negros and Carlos Palanca was not an attorney in fact of his father Lucio Palanca the plaintiff in the present case.

And, furthermore, knowing as the plaintiff knew that he had the obligation to pay his mortgage debt of P22,000 to Bartolome E. San Diego in three years, as well as the monthly interest at the rate of 10 percent per annum on the said debt due since July 31, 1941, and that according to the terms of the mortgage deed, the property mortgaged was to be foreclosed upon failure to pay the monthly interest, it would be inconceivable that the plaintiff had not come to Manila or inquire by letter about his property mortgaged, until he came up to Manila in January, 1946, that is about one year after the liberation of the Philippines from the Japanese occupation and the transportation facilities between Negros Occidental and Manila had been resumed, had he not executed the power of attorney Exhibit A in favor of his son the late Carlos Palanca, authorizing the latter to administer his properties in Manila and specially to pay the interests and mortgage debt due to San Diego.

In view of all the foregoing, the judgment of the lower court is affirmed, with costs against the appellant. So

ordered.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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