

**LEONCIA T. ZAIDE AND PRIMITIVO ZAIDE, SUBSTITUTED BY
SIMEON TOLENTINO, GUARDIAN AD LITEM OF THE MINORS,
PACITA, ALEX, MARIA ZERLINA, ALL SURNAMED ZAIDE, ETC.,
PETITIONERS, VS. H...**

G.R. Nos. L-46715-16. July 29, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

Edita Zaide and her husband, Roberto de Leon, were the registered owners of a parcel of land situated in Makati, Rizal, with an area of 201 square meters, covered by TCT No. 69088 of the Register of Deeds of Rizal.

Sometime in the middle 'sixties, Primitivo Zaide, Edita's brother, gave to Edita and her husband, Roberto de Leon, P2,000.00 as a loan, which the latter used to redeem the land mortgaged by them to the Pasay Rural Bank. At about this time, too, Primitivo Zaide and his wife, Leoncia T. Zaide, transferred ownership of a jitney^[1] owned by them, valued at P7,000.00, to Roberto de Leon. It is the Zaide Spouses' claim that the vehicle was thus ceded as part of the purchase price of the de Leons' above described land, which they had agreed to buy. In any case, neither the loan nor the transfer of the vehicle is disputed.

On January 11, 1965, Edita Zaide executed a public instrument denominated "Deed of Sale" by which, in consideration of P5,000.00 paid to her, she sold the parcel of land covered by TCT No. 69088 to Leoncia T. Zaide.^[2] The deed described both the vendor, Edita Zaide, and the vendee, Leoncia T. Zaide, as "married," but named neither of their husbands. The document however did bear the signature of Edita's husband, Roberto de Leon, indicating his "marital consent."

The omission of the name of the vendee's husband in the deed of sale gave rise to a problem. Precisely because of it, the Register of Deeds refused to accept it for registration. A second deed of sale — couched in the same terms as the first, acknowledged before the same Notary Public, Judge Rafael Madrazo, and bearing exactly the same date (January 11, 1965) and document identification in Judge Madrazo's Notarial Registry (i.e., "Doc. No. 955, Page No. 92, Book No. 4, Series of 1965"), actually differing from the first only in that it set forth the names of the husbands of both the vender and the vendee^[3] — was shortly thereafter presented to, and was promptly accepted for registration, by the Register of Deeds. The latter then cancelled TCT No. 69088, and issued a new one, TCT No. 138606, in the name of "Leoncia T. Zaide, married to Primitivo Zaide."

With this lot as collateral, the Zaide Spouses thereafter obtained a loan from the Government Service Insurance System in the sum of P28,500.00. This was sometime in November, 1964. The proceeds were used to construct a two-story apartment building on the land.^[4]

On June 1, 1969, the house of the de Leons burned down. They moved to one of the doors of the apartment built by the Zaide Spouses. They were asked to pay rentals. They refused. Litigation ensued.

On July 4, 1969, the de Leon Spouses filed a complaint with the Court of First Instance of Rizal against the Zaide

Spouses.[5] The case was docketed as Civil Case No. 11977. Briefly, the de Leons alleged that in June, 1964 they discovered that their title to the land in question (TCT No. 69088) had been cancelled and another (TCT No. 138606) issued to the Zaides, on the strength of "a forged deed of sale supposedly executed in Tagaytay City on the 11th day of January, 1965," and that they "could not possibly have sold their lot for the measly sum of P5,000.00 appearing in the forged deed * * * considering that the market price of the land * * * cannot be less than P20,000.00." They thus prayed for the cancellation of TCT No. 138606 and the re-issuance of another "in the name of plaintiff, EDITA ZAIDE," as well as the payment to them of damages and attorney's fees. Because Primitivo Zaide and Leoncia T. Zaide "were both killed in Tagaytay City" on January 14, 1970, the complaint was amended to substitute in their stead their minor children: Pacita, Alexander and Maria Zerlina, represented by their guardian ad litem, Simeon Tolentino.[6]

On October 20, 1970, said Zaide children, through their guardian, Simeon Tolentino, in turn filed suit against the de Leon Spouses in the same Court of First Instance of Rizal, to recover the possession of the apartment unit occupied by the latter and pay rentals at the rate of P300.00 pursuant to a "verbal contract of lease." [7] The case, docketed as Civil Case No. 14044, was later transferred to the same branch to which the earlier one (No. 11977), had been assigned. The cases were then tried jointly.[8]

Judgment was rendered in favor of the Zaide Spouses on September 25, 1972,[9] the dispositive portion of which reads:[10]

"WHEREFORE, the Court renders judgment dismissing the complaint filed in Civil Case No. 11977 and declaring the sale of the lot covered by Transfer Certificate of Title No. 138606 issued in the names of the deceased spouses Leoncia T. Zaide and Primitivo Zaide legal and valid; ordering the plaintiffs as defendants in Civil Case No. 14044 to pay Pacita, Alexander and Maricar all surnamed Zaide, as plaintiffs in Civil Case No. 14044 the sum of P250.00 representing the rental of the use and occupancy of one of the doors of the apartment, beginning January 1, 1969 and every month thereafter until the said Edita Zaide and Roberto de Leon shall have finally vacated the premises; and ordering Edita Zaide and Roberto de Leon or any person claiming rights from them to immediately vacate the apartment they are now occupying situated on the land in question. With costs against Edita Zaide and Roberto de Leon as plaintiffs in Civil Case No. 11977 and defendants in Civil Case No. 14044."

This judgment was however reversed by another Judge by Order dated April 10, 1973,[11] upon a motion for reconsideration seasonably presented by the Spouses de Leon. In that Order, the Court declared that the "firm and unshakable" testimony of an NBI handwriting expert established that the signatures of both plaintiffs Edita Zaide and Roberto de Leon as appearing in the * * * (second deed of sale,) Exhibit 'A' (Exhibit 2 of the defendants) * * * were forgeries based on the sample signatures of the two appearing in the other documents furnished to the NBI * * *." The Court further stated that the defect in the admittedly genuine first deed of sale — consisting of the omission of the names of the husbands of the vendor and vendee — could not be corrected by a forged document which is considered inexistent before the law. It therefore ruled that TCT No. 138606 issued to the Zaide Spouses was null and void, being "the fruit of a forged deed of sale." The Order closed with the following dispositive paragraph:

"WHEREFORE, in view of the findings of this Court the motion for the reconsideration of the decision is hereby granted, and the decision insofar as the Court ruled the dismissal of the complaint in Civil Case No. 11977 and declared the sale of the lot covered by Transfer Certificate of Title No. 138606 issued in the names of the deceased spouses Leoncia T. Zaide and Primitivo Zaide legal and valid is set aside, and this Court declares that Transfer Certificate of Title No. 138606 issued in the name of defendant Leoncia T. Zaide as cancelled, it being found by the Court as proceeding from a forged Deed of Sale Exhibit 'A.' As a result of this, this Court orders the Register of Deeds of Rizal to reissue the Transfer Certificate of Title over the disputed

parcel of land in the name of the plaintiff. With respect to the other case, Civil Case No. 14044, this Court will not disturb the findings made by the Presiding Judge who rendered the decision sought to be reconsidered. The decision having been thus reconsidered insofar as Civil Case No. 11977 is concerned, costs of suit in this case are chargeable to the defendants."

There is, it will be observed, a curious ambivalence in the amending order: while it declares the de Leons to be the owner of the land (and orders the re-issuance of title to them), it did "not disturb the findings" in the original judgment "with respect to Civil Case No. 14044," to the effect that the Zaide children are entitled to receive rents for "the use and occupancy of one of the doors of the apartment" by the de Leons.[12] Be this as it may, the defendants in Civil Case No. 11977 — the children of the deceased Zaide Spouses — and the defendant in Civil Case No. 14044 — Roberto de Leon — appealed to the Court of Appeals.[13]

The Court of Appeals found that, contrary to the Zaides' claim, there had been no admission by the de Leons of the genuineness of the first deed of sale (Exh. 1), and their counsel's statement in the course of the trial that his clients were "not contesting" that deed, did "not amount to an outright admission of the genuineness thereof but * * * (was) rather an indication on their part to limit themselves within the issue of forgery of Exhibit 2 or the second deed of sale;" that the signatures on the latter deed were definitely forgeries, and since the Zaides invoked that deed as basis of their title to the land, they could not be deemed buyers in good faith; and the judgment in Civil Case No. 14044 decreeing the ejectment of the de Leons was incongruous to its findings of the spurious nature of the deed of sale and the Zaides' character as buyers in bad faith. The Court of Appeals thus AFFIRMED the Order of April 10, 1973 — which superseded the judgment of September 25, 1972 — in so far as it declared that, the sale of the land in favor of the Zaides was null and void and the land should therefore revert to the de Leons, but MODIFIED it by relieving Roberto de Leon of any obligation to pay rent for his occupancy of one door of the apartment building on the land, "which should not be vacated by him and his wife or any person claiming any right from them." The dispositive paragraph of the Court's decision[14] reads as follows:

"WHEREFORE, We hereby affirm the appealed Order, dated April 10, 1973, insofar as it relates to Civil Case No. 11977 of the Court of First Instance at Pasig, Rizal, and hereby modify that portion of the same order insofar as it relates to Civil Case No. 14044 of the same Court by (1) declaring the late spouses Primitivo Zaide and Leoncia T. Zaide, parents of the minors who are the plaintiffs-appellees in CA-G.R. No. 53880-R, as builders in bad faith of the apartment built on the contested lot in CA-G.R. No. 53879-R and (2) relieving appellant Roberto de Leon in CA-G.R. No. 53880-R (who is the defendant in Civil Case No. 14044) from paying rental in occupying one door of said apartment, which should not be vacated by him and his wife or any person claiming any right from them. In all other respects, the said portion relative to Civil Case No. 14044 is AFFIRMED, with costs in both instances to be taxed on the defendants-appellants, Simeon Tolentino, guardian ad litem of the Minors Pacita, Alexander, Maria Zerlina, all surnamed Zaide, who are the plaintiffs-appellees in CA-G.R. No. 53880-R."

The case is now before this Court on an appeal by certiorari of the Zaide children from the decision of the Appellate Court.

There are two (2) deeds of sale which, as already remarked, are exactly the same as to date, contents, and identification in the notarial registry, differing only in that the second contains the names of the spouses of the vendor and the vendee.[15] It is the Zaides' claim that the second, Exhibit 2, is a forgery, and the first, Exhibit 1, had not been admitted by them.

The record shows that the deed, Exhibit 1, was in fact admitted by the de Leons. Copies of both deeds, Exhibits 1 and 2, were pleaded by the Zaides in their amended answer as an "actionable document"[16] or as "a written instrument or document" on which "an action or defense is based" in accordance with Section 7, Rule 8 of the Rules of Court. The de Leons failed to specifically deny "the genuineness and due execution of the annexed

instrument(s) * * * under oath, * * * (and to set forth what they claim) to be the facts;" hence, under Section 8 of the same Rule, "the genuineness and due execution" of the deeds should "be deemed admitted."

The de Leons however insist that they should not be saddled with any such admission because the amended answer (in which the deeds had been pleaded) had never been admitted by the Court a quo. This is not correct. At least two (2) orders of the Trial Court made clear its admission of the amended answer. At one of the hearings, the Court categorically stated that "for purposes of record, the court admits the amended complaint as well as the amended answer." [17] In an earlier Order, dated January 6, 1971, lifting an order of default entered against the Zaides, the Court cited as reason therefore the fact that "defendants have filed not only an answer but also an amended answer to the original complaint." [18] It is not the ceremonial phrase of express admission of an amended pleading that should control, but the unequivocal acts of the Court in relation to the revised pleading.

Moreover, the de Leons' counsel, Atty. Mariano, explicitly manifested to the Court that they were not contesting Exhibit 1. This is made clear by the following recorded exchange [19] between the Court and counsel, following the observation of the Zaides' attorney, Mr. San Jose, that inter alia the de Leons had not objected to the genuineness of Exhibit 1 when formally offered, the only objection being "that it did not contain documentary stamps."

"ATTY. MARIANO:

The trouble is we are not contesting Exhibit 1, what we are contesting is Exhibit 2, as a forgery which Exh. 2 is the basis of the registration.

"COURT:

What has been attached to the answer?

"ATTY. SAN JOSE:

Both of them. May we have it on record that what they are contesting is Exhibit 2, and not Exhibit 1.

"COURT:

Put it on record. But (that) he is not so much objecting on the document Exhibit 1.

"ATTY. MARIANO:

We are not contesting Exhibit 1. We are contesting Exhibit 2.

"COURT:

Precisely, you are not Contesting Exhibit 1.

“ATTY. MARIANO:

Yes, Your Honor.”

It is difficult to imagine how an admission of a document could be made any more plain. Prescinding from this, no evidence whatever has been presented or proffered by the de Leons of the spuriousness of Exhibit 1. Their manifestations with respect to Exhibit 1 have been limited to an insistence on limiting the issue to the alleged falsity of the second deed, Exhibit 2. But, to repeat, they have made no effort whatever to prove Exhibit 1 to-be other than genuine. Under the circumstances, the genuineness and due execution of Exhibit 1, which had been formally offered and admitted by the Court, cannot but be conceded, not merely on the strength of the unrebutted presumptions of regularity of private transactions,[20] but also and particularly, the admissions by the de Leons just detailed.

However, although the first deed of sale (Exh. 1) was genuine, it was so far defective as to render it unregistrable in the Registry of Property. As already pointed out, it did not set forth the name of the vendee's husband and was for this reason refused registration by the Register of Deeds. The defect was unsubstantial. It did not invalidate the deed. The legal dispositions are clear. Though defective in form, the sale was valid; and the parties could compel each other to do what was needful to make the document of sale registrable. The law generally allows a contract of sale to be entered into in any form, whether "in writing, or by word of mouth, or partly in writing and partly by word or mouth, or (even) inferred from the conduct of the parties;" but if the agreement concerns "the sale of land or of an interest therein," the law requires not only that "the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged" in order that it may be enforceable by action,[21] but also that the writing be in the form of a "public document." [22] The law finally provides that "If the law requires a document or other special form, as in the acts and contracts enumerated in * * * (Article 1358), the contracting parties may compel each other to observe that form, once the contract has been perfected * * * (and such) right may be exercised simultaneously with the action upon the contract." [23]

In the case at bar, the Zaides thus had the right to compel the de Leons to observe the special form prescribed by law; i.e., revise the public document by inserting the name of the vendee's husband. Indeed, this was precisely what was done in the second deed of sale, Exhibit 2.

The de Leons however contend that Exhibit 2 is a nullity: they had never signed it; their purported signatures thereon had been forged. Assuming this to be so, for the sake of argument, it does not alter (1) the fact that the parties had voluntarily executed a sale in writing, 'Exhibit 1, which recites that the price of P5,000.00 had been paid, and the further fact that (a) the de Leons had received from the Zaides the sum of P2,000.00 as well as a vehicle valued at P7,000.00, and (b) they, the de Leons, knew that the Zaides had exercised an act of ownership over the property thereby acquired by mortgaging it as security for a loan; or (2) the legal consequence flowing therefrom: that in order to cure the defect in the first deed, in that it did not specify the name of the vendee's husband, the Zaides could legally compel the de Leons to execute another deed containing this omitted circumstance. Hence, even if the second document of sale be invalidated as a forgery, and the de Leons' title to the land restored to them, this would be inutile, an empty ceremony, since the de Leons could nevertheless still be compelled by the Zaides to execute another deed, in proper form, to carry into effect the sale originally entered into.

But it is not as indubitable as the Appellate Court and the Trial Court seem to believe that the second deed of sale, Exhibit 2, was in truth a forgery. The conclusion of forgery was founded on the testimony of a handwriting expert. There is in any case no satisfactory explanation why the expert did not see fit to use, for purposes of comparison, the document nearest in point of time to the questioned deed (Exhibit 2), namely, Exhibit 1; or why such expert's testimony should be accorded full faith and credit despite its (1) not having been subjected to cross-examination, and (2) being contradicted by the positive testimony of a subscribing witness, and of the judge who, as notary public ex officio, had notarized both deeds of sale, both of whom had affirmed that the vendors and vendees had actually signed the documents. There was simply a naked assertion that the expert's evidence proved the forgery without any discussion, much less refutation, of the facts militating against it. Obviously, such an unreasoned assertion cannot be sustained. It cannot be accorded that conclusiveness conceded as a rule to factual findings of the Court of Appeals. In this situation, it cannot rightfully be ruled that the second deed of sale, Exhibit 2, is indeed a forgery. The most that may perhaps be said about it is that its genuineness has been placed in doubt by the evidence given by the handwriting expert. But this is inconsequential, in view of the facts and legal considerations set out in the next preceding paragraph.

WHEREFORE, the judgment of the Court of Appeals in CA-G.R. No. 53879-R and CA-G.R. No. 53880-R dated July 24, 1977, and the Order of the Trial Court dated April 10, 1973 thereby affirmed with modification, are REVERSED AND SET ASIDE, and the decision of said Trial Court rendered on September 25, 1972, SUSTAINED AND AFFIRMED in toto. Costs against private respondents.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] A "Willy's jitney," over which Roberto de Leon subsequently obtained Registration Certificate No. GRC-271467 in his name (par. 10, Amended Answer in Civil Case No. 11977: Rollo, p. 37).

[2] Rollo., pp. 12-13.

[3] Id., pp. 13-14, 85-86.

[4] Thenceforth identified as No. 1388 Newton, Makati, Rizal.

[5] Id., pp. 29-31. An "Affidavit of Adverse Claim" dated June 4, 1969 also appears to have been filed by the de Leon Spouses with the Registry of Deeds.

[6] Id., pp. 45-47.

[7] Id., pp. 78-79.

[8] Id., pp. 79-82.

[9] By Hon. Benjamin H. Aquino, Rollo, pp. 62-65.

[10] Rollo, pp. 65, 81-82.

[11] Rendered by Hon. Nicanor S. Sison, who succeeded Judge Aquino.

[12] See footnote 5, p. 3, *supra*.

[13] The appeal of the heirs of the Spouses Zaide was docketed as CA-G.R. No. 53879-R; that of Roberto de Leon, as CA-G.R. No. 53880-R.

[14] Promulgated on July 26, 1977, Rollo, pp. 77, 96-97; Santiago, Jr., J., ponente; Reyes and Serrano, JJ., concurring.

[15] SEE footnote 2, p. 2, *supra*.

[16] The term used in the Rules of Court of 1940, which was not however adopted in the Rules of 1964.

[17] TSN, May 30, 1972, p. 9; petitioners' brief, p. 14.

[18] Rollo, pp. 49-50.

[19] TSN, July 11, 1972, p. 17-21; italics supplied.

[20] “(p) That private transactions have been fair and regular;” “(q) That the ordinary course of business has been followed;” (r) That there was a sufficient consideration for a written contract;” and as regards the notarization of Exhibit 1 by the Municipal Judge, “(m) That official duty has been regularly performed” (Sec. 5, Rule 131, Rules of Court).

[21] The statute of Frauds: ART. 1403 (2), Civil Code; italics supplied.

[22] ART. 1358, Civil Code, provides that among those which “must appear in a public document” are “contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property.” Italics supplied.

[23] ART. 1357, Civil Code.

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