

CONCHITA JUACHON, IN HER CAPACITY AS GUARDIAN OF THE PERSONS AND ESTATE OF THE MINORS, RICARDO AND EDGARDO OCAMPO, PLAINTIFF-APPELLANT, VS. FELIX MANALO, DEFENDANT-APPELLEE.

G.R. No. L-42. January 20, 1947

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal to reverse a judgment rendered by the Court of First Instance of Manila which holds the evidence insufficient to pronounce invalid a deed of sale (Exhibit E) dated January 14, 1945, acknowledged before a notary public four days later, purporting to convey to the defendant, for and in consideration of P400,000, a lot together with the improvements erected there on, located at No. 79. Calle San Rafael, City of Manila (Lot No. 7, Block No. 2535, Cadastral Survey of the City of Manila) , and dismisses the complaint with costs against the plaintiff.

The complaint prays for the annulment of the deed of sale. The deed appears to have been signed by Soledad Tinio who died on February 17, 1945 (pp. 2, 5, 19, t.s.n.). Alejandro D. Regala, who gave his marital consent to the sale, died also on that day (p. 10, t. s. n.).

Plaintiff, who brought this action in her capacity as guardian of the persons and estate of her minor wards, Ricardo and Edgardo surnamed Juachon (should be Ocampo), children of the late Soledad Tinio (Exhibit A; p. 2, t.s.n.), alleges and testifies that on January 14, 1945, Soledad Tinio was not in Manila because she went to Marikina (P. 24, t.s.n.), and that in the later part of January 1945 she asked her sister Soledad whether she was selling- the house on Calle San Rafael and she answered that she was not and will never sell it (p. 26, t.s.n.). A handwriting expert testifies that, upon comparison between the admittedly genuine signatures of Soledad Tinio written on Exhibits "B," "MC," and "F," and those appearing on the deed of sale (Exhibit E), as enlarged in the photostatic copies, Exhibits "I" and "H," respectively, he noticed marked differences between the genuine and questioned signatures, to wit: in the genuine signatures the upper loops in "l" and "d" tend to form angle or to be angular; there is a smooth, flowing and rapid movement of strokes; the edges of the strokes are smooth; and the one who wrote them used the combined strength of his arm and fingers; whereas in the questioned, signatures the same loops in said letters tend to be round; there is a strong, heavy and forceful movement of strokes; the edges of the strokes are rough or scratchy; and the one who wrote them used the strength of his fingers. According to the expert, the ink stain in the capital letter "S" the capital letter "T," and the last letter "o" in the first questioned signature, and a similar stain in the capital letter "S" of the second questioned signature, show heavy movement of the strokes. Upon these differences, he concludes that the one who wrote the signatures appearing on Exhibits "B," "C" and "F" admittedly the genuine signatures of Soledad Tinio, was not the same who wrote the signatures appearing on Exhibit E, the deed of sale.

In addition to those mentioned by the hand-writing expert, other differences may be noticed, to wit: in the

genuine signatures the upper stroke of the capital letter “T” is from left to right and crosses the trunk; whereas in the questioned signatures, said stroke begins with an upward stroke and ends with a crescent-shaped horizontal stroke from left to right and does not cross the trunk. The slant of the genuine signatures is to the right, while the position of the Questioned signatures is vertical.

Though agreeing with the handwriting expert on the differences between the genuine signatures and those appearing on the deed of sale (Exhibit E), the trial court, nevertheless, is of the opinion that the evidence is insufficient to make a pronouncement that the deed of sale is a forgery, in view of the testimony of the notary public and of one of the instrumental witnesses.

The notary testifies that on January 18, 1945, four persons went to his law office and acknowledged the deed of sale which was already signed. Although the notary public testifies that before January 18, 1945, he met Soledad Tinio for the first time in the office of Antonio Garcia in connection with a real estate transaction of Alejandro D. Regala (p. 62, t. s.n.), yet that chance meeting could not have impressed or fixed in the mind of the notary public the person of Soledad Tinio to enable him to identify her as the same person who on January 18, 1945, appeared before him and acknowledged to him the execution of the deed of sale.

Jose Lukban, one of the instrumental witnesses, testifies that he was asked by Jose Regala, a brother of Alejandro, to look for a buyer of a property worth P1,000,000 or more; that Emiliano Arenas, the other instrumental witness, put him in contact with Felix Manalo, the defendant, who, without losing time, went to see the property and told Regala to prepare the necessary deed of sale (p. 64, t.s.n.); that the deed was signed by Soledad Tinio on the sidewalk of Arias Building on Calle Carriedo as she sat on a small stool, had a bolt of cloth on her lap, and took the portfolio of Alejandro D. Regala, on which she placed the deed she signed (p. 65, t.s.n.); that after she and the two witnesses signed the deed, they repaired to the office of the notary public (pp. 66, 70, t.s.n.), but as they did not find him there, they returned four days later when it was acknowledged (pp. 66, 69, 70, t.s.n.). This testimony cannot be true, because if the plan or intention was to go to a notary public to acknowledge the deed of sale on January 14, they would not have signed the document on the sidewalk of Arias Building on Calle Carriedo, but would have signed it in the presence of the notary public before whom it was to be acknowledged. There is no explanation for the delay in the acknowledgment of the deed of sale, for there were many other notaries public, and Soledad Tinio used to execute and acknowledge deeds in the office of attorney Revilla. The witness also testifies that he knew Soledad Tinio before this transaction took place (p. 68, t.s.n.), but later on he swears that he first met Soledad Tinio on January 14, when she signed the deed of sale (p. 70, t.s.n.). Furthermore, he testifies that to sign his name on the deed of sale he used the same fountain pen which Soledad Tinio used to write her name on the deed (p. 71, t.s.n.). An examination, however, of the signatures of “Soledad Tinio” and “Jose Lukban” on Exhibits “E” and “7” reveals that the signatures of Soledad Tinio and Jose Lukban were not written with the Same fountain pen.

Aside from the foregoing facts, it should be borne in mind that Soledad Tinio, who was engaged not only in real estate but also in the purchase and sale of clothing, did not need to sell the property in question, for she had three houses including the San Rafael property which she acquired from Fausto Austria on September, 1943 (p. 81, t.s.n.), for P400,000, and her total indebtedness was P85,000 (Exhibits F and G), an insignificant amount as compared to the value of the San Rafael property alone. And if it is true, as admitted in the appellee's brief, that she was also engaged in the jewelry business, she must have had enough money to take care of her and family daily expenses. The fact that on July 10, 1944, she was intending to sell the San Rafael property, as shown by Exhibit C, is no proof that she sold it on January 14, 1945, when everybody was trying to dispose of his Japanese war notes. It should also be noted that the initiative to sell the property did not come from Soledad Tinio but from Alejandro D. Regala. The vendor did not receive the huge purchase price or part thereof and did not part with her

Torrens transfer certificate of title No. 75505 issued on September 10, 1943, in her exclusive name (pp. 81-82, t.s.n.) on the day either of execution or of acknowledgment of the deed of sale, as may be seen from a memorandum written by the Register of Deeds of Manila on the original deed of sale (Exhibit E) presented for registration by one Tereso Clemente on May 18, 1945, to the effect that the Torrens title was not presented (p. 28, t.s.n.).

Such being the case, and taking into consideration the role played by Alejandro D. Regala in the execution of the questioned deed of Sale and the receipt by him of the purchase price (Exhibit 8), it is not improbable that Alejandro D. Regala, who had no share in the properties of Soledad Tinio, engineered the sale to derive benefit therefrom. It was he who, through his brother, asked Jose Lukban to look for a buyer. It was he who signed the receipt for P1,500,000, where he stated that he had sold the property to the defendant (Exhibit 8). We are convinced that the deed of sale is a forgery.

Appellant contends that the complaint should have been dismissed for she is not the real party in interest. A guardian may bring an action in her name on behalf of her wards (sec. 3, Rule 3).

Reversing the judgment under review, we hold that the deed of sale Exhibit "E" was not executed by Soledad Tinio and for that reason it has no validity and effect. No costs shall be taxed in both instances.

Paras, Feria, Pablo, Hilado, Bengzon, Briones, and Tuason, JJ., concur.

Perfecto, J., no part.

DISSENTING OPINION

MORAN, J.:

The decision of the court below presided over by Judge Arsenio Dizon is as follows:

"Conchita Juachon, in her capacity as guardian of the estate of Soledad Tinio, deceased, commenced this action against Felix Manalo for the annulment of a certain deed of sale dated January 14, 1945 executed by said Soledad Tinio, with the marital consent of her husband, Alejandro D. Regala, in favor of the said Manalo, upon the ground that the same was not and could not have been executed by the former and that the signatures claimed to be hers and appearing on the deed of sale are not genuine and authentic.

"The defendant alleges, in turn, that the deed of sale referred to represents a duly consummated and valid transaction for valuable consideration and that the same has been registered in the office of the Register of Deeds of Manila on May 18, 1945.

"Plaintiff's main evidence to support the allegation that the deed of sale Exhibit E is a forgery insofar as the alleged signatures of the vendor Soledad Tinio are concerned consists in the testimony of Jose G. Villanueva, a handwriting expert who, after studying the characteristics and appearance of the questioned signatures and comparing them with some unquestioned signatures of Soledad Tinio, arrived at the conclusion that the questioned ones are imitated signatures and were not written by the alleged vendor.

"An examination of the photographic enlargement of the questioned signatures (Exhibit H) and a comparison thereof with the photographic enlargement of unquestioned standard signatures of the same party (Exhibit I) really give ground for drawing the conclusion that the questioned signatures are quite different from the authentic ones. There are as between the signatures appearing on Exhibit H and those appearing on Exhibit I pronounced differences noticeable even by one who is not an expert in handwriting, sufficient to make one doubt the authenticity of the questioned signatures. Under ordinary circumstances and with this evidence alone, there would have been sufficient proof to sustain plaintiff's contention and to throw on the defendant the burden of proving otherwise, but in this particular case, the plaintiff, not satisfied with the testimony of the handwriting expert, called to the witness stand the notary public before whom the questioned document was alleged to have been acknowledged and one of the subscribing witnesses, and the testimony of both was completely favorable to the defendant in the sense that, according to the subscribing witness Jose Lucban, the questioned signatures are authentic and were written by Soledad Tinio herself in his presence, and that he was precisely the agent who, upon authority given by the Regala spouses, had worked out and consummated the sale that culminated in the execution of the questioned deed of sale. The notary, Simeon Ramos, likewise testified that although the questioned signatures were not written in his presence on January 14, 1945, the Regala spouses and their witnesses personally appeared before him on January 18 of the same year to acknowledge and ratify that the signatures appearing in the deed of sale were theirs and asked him to ratify the same. It is, therefore, obvious that whatever weight is carried by the testimony of expert Villanueva is entirely wiped out by that of these two witnesses of plaintiff herself. If it is true that the Regala spouses personally appeared before the notary public and acknowledged the signatures appearing on the deed of sale in question as theirs, and if it is true that the questioned signatures are not the same as the regular standard signatures of Soledad Tinio, the only conclusion possible is that, for her own ends and purposes, she had made said signatures different in certain respects from her usual signature. This fact, for obvious reasons, cannot invalidate the transaction.

"Upon the other hand, an examination of the unquestioned signatures of Soledad Tinio appearing in public documents Exhibits "1", "3", "4" and "7" show that they are not exactly the same as those appearing on Exhibit I. It is true, of course, that the signatures compared were not written all at the same time, but nevertheless the difference noticeable amongst them tends to show that Soledad Tinio's signature had changed considerably from time to time.

"The ground invoked to secure the annulment of the deed of sale in question is forgery. The alleged forgery must be supported by clear and convincing proof that this Court may be justified in overthrowing a public instrument duly acknowledged before a notary public. In this particular case, plaintiff's evidence is utterly insufficient for the purpose.

"IN VIEW OF ALL THE FOREGOING, the Court hereby renders judgment dismissing the complaint, with costs against the plaintiff."

The facts and considerations stated in this decision are fully supported by the evidence and law. I, therefore, vote to affirm the decision.

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