

**VICTORIA LECHUGAS, PETITIONER, VS. HON. COURT OF APPEALS,
MARINA LOZA, SALVADOR LOZA, ISIDRO LOZA, CARMELITA LOZA,
DAVID LOZA, AMPARO LOZA, ERLINDA LOZA AND ALEJANDRA
LOZA, RESP...**

G.R. Nos. L-39972 & L-40300. August 06, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review invokes the parol evidence rule as it imputes grave abuse of discretion on the part of the appellate court for admitting and giving credence to the testimony of the vendor regarding the sale of the disputed lot. The testimony is contrary to the contents of the deed of sale executed by the vendor in favor of the petitioner.

The petitioner filed a complaint for forcible entry with damages against the private respondents, alleging that the latter by means of force, intimidation, strategy and stealth, unlawfully entered lots A and B, corresponding to the middle and northern portion of the property owned by the petitioner known as Lot No. 5456. She alleged that they appropriated the produce thereof for themselves, and refused to surrender the possession of the same despite demands made by the petitioner. The complaint was dismissed. Petitioner appealed to the then Court of First Instance (CFI) of Iloilo where the case was docketed as Civil Case No. 5055.

While the above appeal was pending, the petitioner instituted another action before the CFI of Iloilo for recovery and possession of the same property against the private respondents. This case was docketed as Civil Case No. 5303.

The two cases were tried jointly. After trial, the court rendered judgment. The dispositive portion of the decision states:

"Wherefore, premises considered, judgment is rendered, to wit:

- a. dismissing the complaints in two cases;
- b. declaring defendants except Salvador Anona and Jose Lozada as owners and lawful possessors of the land in question together with all the improvements thereon;
- c. dismissing the claim for damages of all defendants except that of Jose Lozada;
- d. ordering plaintiff to pay defendant Jose Lozada the sum of P500.00 as attorney's fees and the amount of P300.00 as litigation expenses; and
- e. ordering plaintiff to pay the costs of both proceedings."

The petitioner appealed to the Court of Appeals but the latter sustained the dismissal of the cases. Hence, this petition with the petitioner making the following assignments of errors:

I

THAT THE RESPONDENT COURT ERRED IN CONSIDERING PAROL EVIDENCE OVER THE OBJECTION OF THE PETITIONER IN ORDER TO VARY THE SUBJECT MATTER OF THE DEED OF DEFINITE SALE (EXHIBIT A) ALTHO THE LAND THEREIN IS DESCRIBED AND DELIMITED BY METES AND BOUNDS AND IDENTIFIED AS LOT NO. 5456 OF LAMBUNAO CADASTRE.

II

THAT THE RESPONDENT COURT ERRED IN CONSIDERING THE THEORY OF THE DEFENDANTS-APPELLEES FOR THE FIRST TIME ON APPEAL THAT THE LAND DESCRIBED IN THE DEED OF SALE (EXHIBIT A) IS LOT NO. 5522 INSTEAD OF LOT NO. 5456 OF THE LAMBUNAO CADASTRE, THEIR ORIGINAL THEORY BEING THAT THE DEED OF SALE (EXHIBIT A) IS NULL AND VOID AB INITIO BECAUSE LEONCIA LASANGUE CAN NOT SELL THE LAND IN QUESTION IN 1950 SINCE IT WAS ALLEGEDLY SOLD IN 1941 BY HER FATHER EMETERIO LASANGUE.

III

THAT THE RESPONDENT COURT CANNOT REFORM THE DEED OF DEFINITE SALE BY CHANGING ITS SUBJECT MATTER IN THE ABSENCE OF STRONG, CLEAR AND CONVINCING EVIDENCE AND ON THE STRENGTH OF LONG TESTIMONY OF THE VENDOR AND ALTHO NO DIRECT ACTION FOR REFORMATION WAS FILED IN THE COURT OF ORIGIN.

A summary of the facts which brought about the controversy is contained in the findings of the appellate court:

Plaintiff (petitioner) Victoria Lechugas testified that she bought the land now subject of this litigation from Leoncia Lasangue as evidenced by a public "Deed of Absolute Sale" which plaintiff had caused to be registered in the Office of the Register of Deeds; preparatory to the execution of the deed Exhibit "A", plaintiff had the land segregated from the bigger portion of 12 hectares owned by Leoncia Lasangue by contracting a private land surveyor, the Sirilan Surveying Office, to survey the land on December 3, 1950 and establish its boundaries, shape, form and area in accordance with the said plan which was attached to exhibit A as Annex A thereof. She also states that she caused the declaration of the said portion of six hectares subject of Exhibit A in her name beginning the year 1951 under tax declaration No. 7912, paid taxes on the same land, and has taken possession of the land through her tenants Jesus Leoncio, Roberta Losarita and Simeon Guinta, who shared one-half of the produce of the riceland with her, while she shouldered some of the expenses in cultivation and seeds, and one-third share in other crops, like coffee beans, bamboos, coconuts, corn and the like.

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Plaintiff's declaration is corroborated by her tenant Simeon Guinta who testifies that the land subject of the complaint was worked on by him beginning 1954 when its former tenant, Roberto Lazarita, now deceased, left the land. As tenant thereof, he planted rice, corn peanuts, coffee, and other minor products, sharing the same with the owner, plaintiff Victoria Lechugas; that on June 14, 1958, while witness was plowing Lot A preparatory to rice planting, defendants entered the land and forced him to stop his work. Salvador Anona and Carmelita Losa, particularly, told witness that if he (witness) would sign an affidavit recognizing them as his landlords, they would allow him to continue plowing the land. On that occasion, Salvador Anona, David Loza and Jose Lozada were carrying unsheathed bolos, which made this witness very afraid, so much so that he left the land and reported the matter to Victoria Lechugas who reportedly went to the Chief of Police of Lambunao to ask the latter to intervene. The advise however of the chief of police, who responded to the call of plaintiff, was not heeded by the defendants who stayed adamantly on Lot A and refused to surrender the possession thereof to plaintiff appropriating the harvest to themselves. This witness further declares that on June 24, 1958, defendants entered Lot B of the land in question, situated on the northern portion, and cut the bamboo poles growing thereon, counted

by plaintiffs brother and overseer in the land, Bienvenido Laranja, to be 620 bamboo poles all in all. Despite the warning of the overseer Laranja, defendants did not stop cutting the bamboos, and they remained on the land, refusing to leave the same. To top it all, in June of 1959, defendants, not contented with just occupying the middle and northern portions of the land (Lots A and B), grabbed the whole parcel containing six hectares to the damage and prejudice of herein plaintiff, so that plaintiff was left with no other recourse but to file Civil Case No. 5303 for ownership, recovery of possession and damages.

Defendants, on the other hand, maintain that the land which plaintiff bought from Leoncia Lasangue in 1950 as evidenced by the deed exhibit A, is different from the land now subject of this action, and described in paragraph 2 of plaintiff's complaint. To prove this point, defendants called as their first witness plaintiff herself (pp. 61-67, t.s.n., Tube), to elicit from her the reason why it was that although her vendor Leoncia Lasangue was also residing at the municipality of Lambunao, Iloilo, plaintiff did not care to call her to the witness stand to testify regarding the identity of the land which she (plaintiff) bought from said vendor Leoncia Lasangue; to which query witness Lechugas countered that she had tried to call her vendor, but the latter refused, saying that she (Lasangue) had already testified in plaintiff's favor in the forcible entry case in the Justice of the Peace Court. In connection with her testimony regarding the true identity of the land plaintiff, as witness of defendants, stated that before the execution of Exhibit "A" on December 8, 1950 the lot in question was surveyed (on December 3, 1950) by the Sirilan Surveyor Company after due notice to the boundary owners including Leoncia Lasangue.

Defendant's evidence in chief, as testified to by Carmelita Loza (pp.100-130, t.s.n., Trespeces; pp. 131-192, t.s.n., Tube) shows that on April 6, 1931 Hugo Loza, father of Carmelita Loza and predecessor-in-interest of the rest of the heirs of herein, defendants, (with the exception of Jose Lozada and Salvador Anona) purchased a parcel of land from one Victorina Limor as evidenced by the deed "Venta Definitiva" (exhibit 3, pp. 49-50, folder of exhibits). This land, containing 53,327 square meters is bounded on the north by Ramon Lasangue, on the south by Emeterio Lasangue and covered by tax declaration No. 7346 (exhibit 3-9, p. 67 id.) in vendor's name; that immediately after the sale, Hugo Loza took possession of the said parcel of land and declared the same in his name (exhibit 3-10, p. 67, folder of exhibits) starting the year 1935. On March 17, 1941, Hugo Loza bought from Emeterio Lasangue a parcel of land with an area of four hectares more or less, adjoining the land he (Loza) had earlier bought from Victorina Limor, and which sale was duly evidenced by a public instrument (exhibit 2, pp. 35-36, folder of exhibits). This property had the following boundaries, to wit: on the north by Eladio Luño, on the south, by Simeon Lasangue, on the west, by Gregorio Militar and Emeterio Lasangue and on the east, by Maximo Lasangue and Hipolito Lastica (exhibit 2, exhibit 2-B, p. 37, id). After the execution of the deed of sale, Exhibit 2, Hugo Loza caused the transfer of the declaration in his own name (tax declaration No. 8832, exh. 2-C, p. 38, id.) beginning 1945, and started paying the taxes on the land (exhibits 2-d to 2-i, pp. 39-44, id.). These two parcels of land (that purchased by Hugo Loza in 1941 from Emeterio Lasangue, and a portion of that bought by him from Victorina Limor sometime in 1931) were consolidated and designated, during the cadastral survey of Lambunao, Iloilo in 1959 as Lot No. 5456; while the remaining portion of the lot bought from Victorina Limor, adjoining Lot 5456 on the east, was designated as Lot No. 5515 in the name of the Heirs of Hugo Loza. Defendants claim that the lot bought by plaintiff from Leoncia Lasangue as evidenced by exhibit A, is situated south of the land now subject of this action and designated during cadastral survey Lambunao as Lot No. 5522, in the name of Victoria Lechugas.

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Leoncia Lasangue, plaintiff's vendor in exhibit A, testifying for defendants (pp. 182-115, t.s.n., Tambagan; pp. 69-88, t.s.n., Tube) declared that during his lifetime her father, Emeterio Lasangue, owned a parcel of land in Lambunao, Iloilo, containing an area of 36 hectares; that said Emeterio Lasangue sold a slice of 4 hectares of this property to Hugo Loza, evidenced by a deed of sale (Exh. 2) dated March 17, 1941; that other sales were made to

other persons, leaving only some twelve hectares out of the original 36; that these 12 hectares were transferred by her parents in her (witness) name, being the only child and heir; that on December 8, 1950, she (Leoncia Lasangue) sold six hectares of her inherited property to Victoria Lechugas under a public instrument (exhibit A) which was prepared at the instance of Victoria Lechugas and thumbmarked by herself (the vendor).

Refuting plaintiff's contention that the land sold to her is the very land under question, vendor Leoncia Lasangue testifies that:

Q.

But Victoria Lechugas declared here that, by means of this document, exhibit 'A', you sold to her this very land in litigation; while you declared here now that this land in litigation was not included in the sale you made of another parcel of land in her favor. What do you say about that?

A.

I only sold six (6) hectares to her.

Q.

And that was included in this land in litigation?

A.

No.

xxx xxx xxx

Q.

Did you tell her where that land you were selling to her was situated?

xxx xxx xxx

A.

On the South.

Q.

South side of what land, of the land in litigation?

A.

The land I sold to her is south of the land in litigation.

xxx xxx xxx

Q.

What portion of these thirty-six (36) hectares of land did you sell actually, according to your agreement with Victoria Lechugas, and was it inside the thirty-six (36) hectares of land or a portion on one of the sides of thirty-six (36) hectares?

A.

It is on the edge of the whole land.

Q.

Where is that edge? on the north, east, west or south?

A.

This edge. (witness indicating the lower edge of the piece of paper shown into her)

Q.

Do you know what is east, that is, the direction where the sun rises?

A.

I know what is east.

Q.

Do you know where the sun sets?

A.

The sun sets on the west.

Q.

If you are standing in the middle of your land containing thirty-six (36) hectares and facing the east, that is, the direction where the sun rises, where is that portion of land sold to Victoria Lechugas, on your left, on your right, front of you or behind you?

A.

On my right side. (Witness indicating south). (Testimony of Leoncia Lasangue, pp. 209-211, rollo) (underscoring supplied).

On the basis of the above findings and the testimony of vendor Leoncia Lasangue herself, who although illiterate was able to specifically point out the land which she sold to the petitioner, the appellate court upheld the trial court's decision except that the deed of sale (Exhibit A) was declared as not null and void ab initio insofar as Leoncia Lasangue was concerned because it could pass ownership of the lot in the south known as Lot No. 5522 of the Lambunao Cadastre which Leoncia Lasangue intended to sell and actually sold to her vendee, petitioner Victoria Lechugas.

In her first assignment of error, the petitioner contends that the respondent Court had no legal justification when it subjected the true intent and agreement to parol evidence over the objection of petitioner and that to impugn a written agreement, the evidence must be conclusive. Petitioner maintains, moreover, that the respondent Court relied so much on the testimony of the vendor who did not even file a case for the reformation of Exhibit A.

The contentions are without merit.

The appellate court acted correctly in upholding the trial court's action in admitting the testimony of Leoncia Lasangue. The petitioner claims that Leoncia Lasangue was the vendor of the disputed land. The petitioner denies that Leoncia Lasangue sold Lot No. 5522, to her. She alleges that this lot was sold to her by one Leonora Lasangue, who, however, was never presented as witness in any of the proceedings below by herein petitioner.

As explained by a leading commentator on our Rules of Court, the parol evidence rule does not apply, and may not properly be invoked by either party to the litigation against the other, where at least one of the parties to the suit is not party or a privy of a party to the written instrument in question and does not base a claim on the instrument or assert a right originating in the instrument or the relation established thereby. (Francisco on Evidence, Vol. VII, part I of the Rules of Court, p. 155 citing 32 C.J.S. 79.)

In *Horn v. Hansen* (57 N.W. 315), the court ruled:

"xxx and the rule therefore applies, that as between parties to a written agreement, or their privies, parol evidence cannot be received to contradict or vary its terms. Strangers to a contract are, of course, not bound by it, and the rule excluding extrinsic evidence in the construction of writings is inapplicable in such cases; and it is relaxed where either one of the parties between whom the question arises is a stranger to the written agreement, and does not claim under or through one who is party to it. In such case the rule is binding upon neither. x x x"

In the case of *Camacho v. Municipality of Baliuag*, 28 Phil. 466, this Court held that parol evidence which was introduced by the municipality was competent to defeat the terms of the plaintiff's deed which the latter executed with the Insular Government. In his concurring opinion, Justice Moreland stated:

"It should be noted in the first place, that there is no written instrument between the plaintiff and the municipality, that is, between the parties to the action; and there is, therefore, no possibility of the question arising as to the admissibility of parol evidence to vary or contradict the terms of an instrument. The written instrument that is, the conveyance on which plaintiff bases his action was between the Insular Government and the plaintiff, and not between the municipality and the plaintiff; and therefore, there can arise, as between the plaintiff and defendant no question relative to the varying or contradicting the terms of a written instrument between them xxx".

The petitioner's reliance on the parol evidence rule is misplaced. The rule is not applicable where the controversy is between one of the parties to the document and third persons. The deed of sale was executed by Leoncia Lasangue in favor of Victoria Lechugas. The dispute over what was actually sold is between petitioner and the private respondents. In the case at bar, through the testimony of Leoncia Lasangue, it was shown that what she really intended to sell and to be the subject of Exhibit A was Lot No. 5522 but not being able to read and write and fully relying on the good faith of her first cousin, the petitioner, she just placed her thumbmark on a piece of paper which petitioner told her was the document evidencing the sale of land. The deed of sale described the disputed lot instead.

This fact was clearly shown in Lasangue's testimony:

Q.

And how did you know that that was the description of the land that you wanted to sell to Victoria Lechugas?

A.

I know that because that land came from me.

Q.

But how were you able to read the description or do you know the description?

A.

Because, since I do not know how to read and write and after the document was prepared, she made me sign it. So I just signed because I do not know how to read.

xxx xxx xxx

Q.

What explanation did she make to you?

A.

She said to me, 'Manang, let us have a document prepared for you to sign on the land you sold to me.' So, after the document was prepared, I signed.

Q.

Did you tell her where that land you were selling to her was situated?

xxx xxx xxx

A.

On the South.

Q.

South side of what land, of the land in litigation?

A.

The land I sold to her is south of the land in litigation.

Q.

Did you tell her that before preparing the document you signed?

Q.

South side of what land, of the land in litigation?

A.

Yes, I told her so because I had confidence in her because she is my first cousin. (pp. 198-207, rollo)

From the foregoing, there can be no other conclusion but that Lasangue did not intend to sell, as she could not have sold, a piece of land already sold by her father to the predecessor-in-interest of the respondents.

The fact that vendor Lasangue did not bring an action for the reformation of Exhibit "A" is of no moment. The

undisputed fact is that the respondents have timely questioned the validity of the instrument and have proven that, indeed Exhibit "A" does not reflect the true intention of the vendor.

There is likewise no merit in the contention of the petitioner that the respondents changed their theory on appeal.

Respondents, from the very start, had questioned and denied Leoncia Lasangue's capacity to sell the disputed lot to petitioner. It was their contention that the lot was sold by Leoncia's father Emeterio Lasangue to their father, Hugo Loza wayback in 1941 while the alleged sale by Leoncia to the petitioner took place only in 1950. In essence, therefore, the respondents were already attacking the validity of Exhibit "A". Moreover, although the prior sale of the lot to their father may have been emphasized in their defenses in the civil cases filed against them by the petitioner in the lower court, nevertheless in their affirmative defense, the respondents already raised doubt on the true intention of Leoncia Lasangue in signing Exhibit "A" when they alleged that "x x x Leoncia Lasangue, publicly, and in writing repudiated said allegation and pretension of the plaintiff, to the effect that the parcel of land now in litigation in the present case "WAS NOT INCLUDED in the sale she executed in favor of the plaintiff x x x."

Consequently, petitioner cannot impute grave abuse on the part of the appellate court and state that it allowed a change of theory by the respondents for the first time on appeal for in reality, there was no such change.

The third issue raised by the petitioner has no merit. There is strong, clear, and convincing evidence as to which lot was actually sold to her. We see no reason to reverse the factual findings of both the Court of First Instance and the Court of Appeals on this point. The "reformation" which the petitioner questions was, in fact, intended to favor her. Instead of declaring the deed of sale null and void for all purposes, the Court upheld its having passed ownership of Lot No. 5522 to the petitioner.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED for lack of merit with costs against the petitioner.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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