LOURDES LUKBAN-ANG IN HER CAPACITY AS AN HEIR AND AS ADMINISTRATRIX OF THE INTESTATE ESTATES OF THE DECEASED CONCEPCION LUKBAN Y RILLES & RAFAELA LUKBAN Y RILLES, PETITIONER, VS...

G.R. No. L-40953. April 15, 1988

Ponente: FERNAN, J.

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FERNAN, J.:

This petition for review on certiorari focuses on the authenticity of a deed of donation and a deed of sale covering forty-six [46] hectares of land and shares in banks, executed by a childless woman in favor of her half-brother.

The alleged donor-vendor, Concepcion Lukban y Rilles, was one of the children of Agustin Lukban and Andrea Rilles. She had a sister, Rafaela, and three brothers named Vicente, Cayetano and Justo. The herein petitioner, Lourdes Lukban-Ang, is the daughter of Vicente. With his second wife, Agustin Lukban had another son, Miguel Lukban y Martinez.

On April 8, 1939, Concepcion Lukban allegedly executed a deed of donation conveying to her half-brother, Miguel Lukban, all her properties consisting of twenty-two [22] parcels of land located in several barrios in the provinces of Camarines Norte [Municipality of Labo] and Tayabas, [Municipality of Lukban] and two shares ["acciones"] in the Banco Español Filipino and Banco de las Islas Filipinas with a total value of P400.00.[1] The twenty-two [22] parcels of land were abaca, coconut, rice and forest lands with a total area of forty-six [46] hectares. The donor therein reserved her usufructuary rights over the properties.

The document was duly notarized and acknowledged by Manuel Moreno on April 22, 1939 or fourteen [14] days after its date of execution. It was witnessed by Arsenio C. Camino and Rosario Balce, wife of donee Miguel Lukban.

Six days later or on April 28, 1939, Concepcion Lukban executed an amended road right of way agreement involving two [2] parcels of land covered by OCT No. 917 and TCT No. 242 in favor of the Province of Camarines Norte represented by her half-brother, Miguel Lukban, who was then the governor of said province.[2] The two parcels mentioned were designated as parcels nos. 18 and 20 in the aforesaid deed of donation.

On June 3, 1939, Concepcion Lukban mortgaged to the Philippine National Bank two parcels of land identified in the deed of donation as parcels nos. 1 and 2.[3]

Two months later or on July 31, 1939, Concepcion Lukban allegedly executed a deed of sale conveying to Miguel Lukban the same properties subject of the donation, including the lots ceded to the Province of Camarines Norte and those mortgaged to the PNB, in consideration of the amount of P5,000.[4] This document was also duly notarized by and acknowledged before Manuel Moreno and witnessed by Arsenio C. Camino and Rosario Balce.

On October 20, 1940, Miguel Lukban died. He predeceased Concepcion by more than a year as the latter died on

December 11, 1941.

On November 2, 1967, Lourdes Lukban-Ang filed in the Court of First Instance of Camarines Norte intestate proceedings for the settlement and distribution of the estates of Concepcion and Rafaela Lukban. Interestingly enough, a month later, or on December 4, 1967, the heirs of Miguel Lukban sought the registration of the deed of absolute sale of July 31, 1939 before the Register of Deeds of Camarines Norte.

It was only on January 6, 1968, after she had been appointed administratrix of the estate of Concepcion Lukban,* that Lourdes Lukban-Ang learned about the deed of absolute sale when the heirs of Miguel Lukban sought to exclude from said estate the twenty-two [22] parcels of land subject of the said document. On February 9, 1968, said heirs finally effected the registration of the deed of absolute sale.

Hence, as an heir and administratrix of the intestate estate of Concepcion and Rafaela Lukban, Lourdes Lukban-Ang filed in the Court of First Instance of Camarines Norte a complaint against Rosario Balce-Lukban and the heirs of Miguel Lukban for the declaration of the nonexistence and/or nullity of the alleged deed of donation and absolute sale.

She alleged therein that, taking advantage of the “ill-health and frustrated condition of Concepcion Lukban y Rilles and in connivance” with his wife, Miguel Lukban succeeded in “forging the signature and/or caused the forging of the signature” of Concepcion Lukban thereby making it appear that she donated to Miguel Lukban all her personal and real properties in a document purportedly notarized by Manuel Moreno; that Miguel and Rosario Lukban forged a deed of sale three months later when they realized that the deed of donation would be “open to and susceptible of well-grounded doubts and suspicion” by the other heirs of Concepcion Lukban; that to avoid detection, Miguel and Rosario Lukban “kept silent about the existence” of the alleged deed of donation and sale by not registering them in the office of the register of deeds of Camarines Norte, despite the fact that the real properties involved were covered by certificates of title; that during that time the other heirs of Concepcion Lukban never knew of the existence of said documents until January 1968 when she filed the intestate proceedings for the settlement of the estates of Concepcion and Rafaela Lukban; that the two documents were nullities there being no consent or consideration; and that since the death of Concepcion Lukban, the heirs of Miguel Lukban had been appropriating unto themselves the fruits of the properties subject of the two documents without rendering an accounting thereof.

She prayed that the deed of donation and the deed of absolute sale be declared “non-existent and/or nullities”; that the defendants be ordered to render an accounting of all the fruits of the properties involved; and that defendants be ordered to pay her the sum of P10,000 as attorney’s fees.[5]

In their answer, defendants denied the allegations of the complaint and vouched for the genuineness of the documents involved. They contended that the lack of or delay in the registration of an instrument “does not argue a forgery because there is no law which requires such registration”; that the delay in registration was due to the “attendant expenses of cadastral costs, realty taxes, registration fees and the like which the defendants, particularly Rosario Vda. de Lukban, could hardly meet because of concomittant family expenses”, and that as early as 1956, plaintiff already knew of defendants’ right of ownership over the properties involved.

Defendants questioned plaintiff’s capacity to sue and the court’s jurisdiction “to entertain the action brought by the plaintiff in her capacity as administratrix as same is pending on appeal in the Court of Appeals”. They averred that they had acquired prescriptive ownership over the properties involved and that contrary to plaintiff’s allegation, no express trust was involved in the case, "but at most, a semblance of an implied trust" which, considering the length of time that had elapsed, had been barred by the statute of limitations. As counterclaim, defendants prayed that plaintiff be ordered to pay them moral damages and litigation expenses and attorney’s fees

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in the total amount of P7,000.

During the trial, the plaintiff relied solely on the expert testimony of Major Catalino Hernandez, who presented a lengthy and impressive curriculum vitae showing extensive training both in the Philippines and in the United States in subjects like finger print identification, handwriting identification, questioned documents, polytechnic and firearms. He had years of experience in the military using his fields of study and had testified as an expert in numerous court cases. He was no longer in active military service when he testified.

Using as standards the signatures of Concepcion Lukban in five [5] documents the authenticity of which was not questioned by the defendants as two [2] of them were deeds of sale of parcels of land in favor of Miguel Lukban and his wife, Rosario, Major Hernandez made a comparative examination of those signatures and the ones affixed to the herein questioned documents. Major Hernandez evaluated the signatures using as guidelines handwriting characteristics such as line quality, movement, pen pressure, speed, alignment, spacing, proportion, size, slant and design of letters. He arrived at the opinion that the signatures of Concepcion Lukban affixed to the deeds of donation and sale “were written by a different hand that wrote the standard signatures”.[6]

On the other hand, the expert witness presented by the defense, Fernando Maglaya, a government handwriting expert who testified only after the Customs Commissioner had so authorized him, found that “comparative examinations of the questioned and standard signatures (of) Concepcion Lukban y Rilles reveal significant similarities in handwriting characteristics existing between them”. Thus, he concluded that the “questioned signatures of Concepcion Lukban y Rilles were authentic.”[7]

The other defense witness was Arsenio C. Camino, one of the instrumental witnesses. In court, he testified that he knew about the “escritura de donacion” dated April 8, 1939. He identified the signatures of Concepcion Lukban on each and every page of the document which she allegedly signed in his presence.

In Camino’s deposition before the clerk of court on February 3, 1971, he stated that he was acquainted with Concepcion Lukban, Rosario Balce-Lukban and the notary public, Manuel Moreno. He identified the “escritura de venta absoluta de bienes personales y inmuebles” dated July 31, 1939, his signatures thereon and those of Concepcion Lukban, Rosario Balce-Lukban and the notary public. He affirmed that said persons signed the document in his presence in the house of Concepcion Lukban in Labo, Camarines Norte, with Miguel Lukban also present thereat. On cross-examination, Camino stated that he did not know Concepcion Lukban’s motive in executing the document.

Confronted with contradictory expert testimonies, the lower court sought enlightenment from the opinions of authors Albert S. Osborn in his book Questioned Documents, Second Edition; Ordway Hilton in his work, Scientific Examination of Questioned Documents, 1956 edition; and Wilson R. Harrison in his Suspect Document.

In the decision of December 29, 1971,** the lower court analyzed the blown-up pictures of the disputed signatures to find the usual earmarks of forgery as indicated by the aforesaid authors and arrived at the conclusion that the similarities between the standard signatures and the questioned signatures "are indicative that they were written by one and the same hand expressing or demonstrating one handwriting characteristic".[8]

On Major Hernandez's observation that in all the questioned signatures, the line quality seems to be following the dotted line whereas in the standard signatures, the line quality varies, the lower court ascribed the uniform line quality in the questioned signatures to the tendency of every writer to write his signature close to the line indicated and to the “universal habit of even the educated person that when a line is indicated for him to sign his signature, he usually follows that line wherewith to place his signature”.

Another basis of the lower court's conclusion that the questioned signatures are genuine is the fact that the letters therein are rounded. Moreover, it had not found any trace of retouching. It observed that "(w)hat appears to be a retouching in the capital letter 'C' and Q-4 and Q-16 indicated by arrows respectively; seems to the Court to be a hiatus created either due to a failure of ink in the pen which necessitated the writer to retrace the motion back into the said capital letter 'C' ".

On Major Hernandez's opinion that the forgery appears to be a "simulated forgery", the lower court opined: "In view of the extreme difficulty in committing this kind of forgery and the limited number of persons who have the capacity and the skill to make a convincing simulated forgery, for the reason that in this kind of forgery, the forger is not only trying to duplicate the characteristics of the signature of the person he is trying to copy but also in trying to suppress or eliminate all the characteristics of his own handwriting, which difficulty usually results in the failure to make a convincing forgery, and considering further the lack of evidence that in 1939 there was such a 'golden arm' in the town of Labo who could have perfected a simulates forgery, such as the questioned documents, the Court is not prepared to conclude that both questioned documents are the product of a master forger".[9]

Anent the failure of both Camino and the notary public to tell anybody of the transfer of ownership over the subject properties, the lower court said, "why should he really tell anybody of the fact of this disposition of Doña Concepcion of all her properties? He would just be peddling gossip by so doing." It added that if there was something suspicious, the notary public himself would be so concerned that "he would either decline to perform his task or would have breathed to someone of his confidence in Labo about this anomaly and this would necessarily spread the gossip in the town of Labo". It ascribed the notary public's silence to the absence of any forgery in the documents executed by Concepcion-Lukban.[10]

On the plaintiff's allegation that no certificates of title covering the-properties were delivered to Miguel Lukban, the lower court ventured the opinion that "it could be possible that the transfer certificates of title were given after the witness Camino had left for the fact remains that the said transfer certificates of title are now in the possession of the vendee's successor-in-interest". Hence, the lower court concluded that "these transfer certificates of title were in fact delivered to the vendee Miguel Lukban".[11]

As the questioned documents were more than thirty years old, the lower court classified them as ancient ones. It stated that "to overcome its recital", clear and convincing evidence more than mere preponderance of evidence should have been presented by the plaintiff. Thus, according to the lower court, the plaintiff should not have relied on the uncorroborated sole testimony of her expert witness whose testimony "deals largely with the hypothetical and the conjectural" not to mention the element of unreliability which besets it due to "human frailty, bias, loyalty to one's employer, pride of opinion, self-interest and others".[12]

The lower court branded as a mere suspicion plaintiff's-allegation that defendant's failure to immediately register the questioned documents was "indicative of their consciousness that they were forged". The lower court rationalized that apart from the fact that there is no time limit to register documents, their non-registration is not an indication of their spurious or genuine character. Hence, the lower court dismissed the complaint.

The plaintiff appealed to the Court of Appeals. In its decision of April 1, 1975***, the Court of Appeals quoted extensively the testimonies of both expert witnesses and the lower court's findings, and affirmed its decision. It ruled:

> "We have examined carefully the questioned signatures and compared the same with the admittedly genuine signatures in the standards used by both handwriting experts. We fail to see any fundamental dissimilarities between the admittedly genuine signatures and the questioned signatures to warrant the conclusion that they were not written by the same person. Both the deed of donation Exh. 'C' and the deed of sale, 'B' are notarial

> documents. There is a presumption that the Notary Public had performed his duties regularly. Moreover, one of the witnesses in the deed of sale, Arsenio C. Camino, categorically declared that Concepcion Lukban y Rilles signed the said document in his presence. The expert opinion of Major Catalino Hernandez cannot prevail over the legal presumption of regularity of the documents in question and the categorical testimony of one of the instrumental witnesses." (Decision, pp. 21-22)

Her motion for reconsideration of said decision having been denied, plaintiff filed the instant petition for review on certiorari. Petitioner charges the Court of Appeals with grave abuse of discretion in vaguely concluding that there are no “fundamental dissimilarities” in the questioned signatures and the admittedly genuine ones without resorting to specific reasons for such conclusion. She asserts that since the determination of whether or not a particular signature is a forgery involves a highly technical, specialized and scientific endeavor, the Court of Appeals should have taken into account the fifty [50] points of consideration enunciated by Albert Osborn in his book; Questioned Documents. She contends that the lower court erred in not annulling the deed of sale in question considering that even if it is indeed genuine, it deprives the other heirs of Concepcion Lukban of their successional rights.

The petition was denied by this Court "the question raised being factual and for insufficient showing that findings of fact by respondent court are unsupported by substantial evidence and for lack of merit".[13] On motion of petitioner, the Court considered its denial resolution and gave due course to the petition.

The general rule is that factual, findings of the trial courts and the Court of Appeals are binding on this Court provided they are borne out by the record or are based on substantial evidence.[14] However, this Court may review and rectify the findings of fact of the Court of Appeals when [1] the conclusion is a finding grounded entirely on speculation, surmises and conjectures; [2] when the inference made is manifestly mistaken, absurd or impossible; [3] where there is a grave abuse of discretion; [4] when the judgment is based on a misapprehension of facts, and [5] when the court, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both the appellant and the appellee.[15]

Moreover, factual findings of the lower court are unacceptable to this Court if there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted,[16] that, if considered, would affect the result of the case.[17] The authority of this Court is ample enough that We may, on appeal, consider a factual issue not raised in the trial court nor assigned as errors on appeal in arriving at a just decision.[18] We may even go beyond the pleadings when in the interest of justice and the promotion of public policy there is a need to make its own findings to support its conclusions.[19]

In the instant case, We find that both the trial court and the Court of Appeals gravely abused their discretion in overlooking facts extant in the record which, had they been duly considered, would have led them to a different conclusion.

While it is true that the principal issue in this case is the authenticity of the signatures in the deed of donation and the deed of sale, the trial court should not have merely compared the questioned signatures and the exemplars before it formulated its conclusion on the genuineness of the questioned signatures. Since the two expert witnesses had divergent views, the lower court should have proceeded with extreme caution by taking into account all the evidence and pleadings at hand. After all, the two documents were not executed in a vacuum that factors other than the questioned signatures may be bypassed.

A painstaking perusal of the records reveals several indicia of dubiousness of the deeds in question. Apparent in the documents themselves is the fact that the same persons are instrumental witnesses in both documents. One of them is even the wife of the donee-vendee. There is also the suspicious fact that the deed of donation was

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notarized two weeks later than its date of execution.

One’s curiosity may not be sufficiently aroused by these facts but then there is the fact that the alleged donor continued to exercise her proprietary right over the property by granting the Province of Camarines Norte a right of way* on two parcels of land barely a week after she had allegedly donated them to her half-brother. Contrary to normal human reaction, said half-brother, who represented the province in his capacity as governor thereof, did not register any objection which he should have done or donate the property himself if at that time he was truly the owner of said parcels. Added to this is the fact that less than two months later, Concepcion Lukban mortgaged two other parcels of the donated property. There is no evidence on record that Miguel Lukban or his wife objected to such exercise of a right of ownership.

When the deed of sale was executed some three months later, the properties subject therein were the same properties covered by the donation thereby creating the impression that whoever drafted the deed of sale merely copied verbatim the list of properties sold from the deed of donation. Thus, even the parcels of land ceded to the Province of Camarines Norte became objects of the sale.

On their part, Miguel Lukban and his heirs were rather reluctant to exercise proprietary rights over the subject properties. Thus, from 1939 to 1967, they did not even pay taxes thereon.[20] When said heirs did attempt to register the questioned deed of sale, it was in 1967 or twenty-eight [28] years after the supposed sale and only after the petitioner had began exercising her duties as administratrix of the intestate estate of Concepcion Lukban. As private respondents themselves admitted, they tried three times, oh December 4, 1967, on December 7, 1967 and on February 9, 1968, to present to the Register of Deeds the deed of sale for registration for "lack of the certificates of title covering the properties subject of the instrument".[21]

Earlier, We set out herein vital points in the lower court’s decision to emphasize the fact that it resorted to surmises and conjectures in arriving at said decision. Thus, it stated that it was "not prepared to conclude that both questioned documents are the products of a master forger" because of lack of evidence that there was a master forger in the town of Labo thereby discounting the availability of forgers from other places. It concluded that there was no forgery because both Camino and the notary public did not tell anyone about the conveyance of large tracts of land in favor of the then governor of Camarines Norte there-by ruling out the probability that said persons kept their silence for a long time for fear of implicating themselves in a forgery. And, the lower court hazarded the supposition that "it could be possible" that Concepcion Lukban handed to her half-brother the certificates of title of the properties." after the witness Camino [had] left" when there was actually no proof that the certificates of title were delivered by Concepcion to Miguel subsequent to the execution of the deed of sale.

In like manner, the Court of Appeals abused its discretion in overlooking matters which should have been considered in deciding this case. As it is, said court merely concluded that there are no "dissimilarities" between the questioned signatures and the standard ones without stating the basis for its conclusion.

Ownership of the subject properties has been in a state of suspension since the death of Concepcion Lukban in 1941. The delay in the vesting of ownership to the legally deserving heirs was, however, mainly due to the inaction of petitioner and the other heirs of Concepcion Lukban. They allowed twenty-six years to elapse before they decided to settle her estate. Hence, for obvious reasons, private respondents cannot really be blamed for holding on to what appeared as their inchoate right over the properties which could have ripened into full ownership through prescription had the petitioner and the other heirs of Concepcion Lukban persisted in their inaction. For such laches, equity demands that petitioner and the other heirs should not be allowed to benefit from the fruits of the properties before they filed the instant case.

WHEREFORE, the decision of the Court of Appeals is hereby set aside. Private respondents are ordered to render

an accounting of the fruits of the properties from November 2, 1967 until they are turned over to the petitioner, who, as administratrix of the intestate estate of Concepcion Lukban, shall immediately proceed with the distribution of the said properties in accordance with law among the legal heirs of said decedent.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

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[1] Exh. C; Record on Appeal, pp. 11-2

[2] Exh. 11

[3] Exh. 10

[4] Exh. B; Record on Appeal, pp. 27-45

* Petitioner's appointment as such administratrix was opposed by the heirs of Miguel Lukban. On appeal, the Court of Appeals affirmed the orders of the CFI of Camarines Norte appointing petitioner as administratrix of the estates of Concepcion and Rafaela Lukban. The decision of the Court of Appeals became final and executory on April 1, 1977. [CA-G.R. No. 41663-64-R]

[5] Civil Case No. 1988

[6] Record on Appeal, p.74

[7] Record on Appeal, pp. 88-89

* Penned by Judge Isidoro A. Vera

[8] Record on Appeal, p. 111

[9] Record on Appeal, pp. 115

[10] Record on Appeal, pp. 118-119

[11] Record on Appeal, p. 119

[12] Record on Appeal, p. 121

* Justice Ramon C. Fernandez penned the decision with Justices Efren I. Plana and Venicio Escolin, concurring

[13] Rollo, p. 85

[14] Alsua-Betts vs. Court of Appeals, L-46430-31, July 31, 1979, 92 SCRA 332

[15] Moran, Jr. vs. Court of Appeals, G.R. NO. 59956, October 31, 1984, 133 SCRA 88; Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc., et al., L-46908, May 17, 1980, 97 SCRA 734

[16] People vs. Padirayon, L-39207, September 25, 1975, 67 SCRA 135; People vs. Gonzaga, L-34418, May 26, 1977, 77 SCRA 140; People vs. Arciaga, L-38179, June 16, 1984, 98 SCRA 1

[17] People vs. Royeras, G.R. No. 64849 June 29, 1984, 130 SCRA 259

[18] Perez vs. Court of Appeals, G.R. No. 56101, February 20, 1984, 127 SCRA 636

[19] Maharlika Publishing Corporation vs. Tagle, G.R. No. 65594, July 9, 1986, 142 SCRA 553, 561

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* The signatures of Concepcion Lukban in the “Amended Road Right of Way” was used by private respondents as exemplars

[20] CA Appellants’ Brief, p. 57

[21] CA Appellees’ Brief, p. 4

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