

**ERNESTO PALERMO AND MERLY N. PALERMO, PETITIONERS, VS.
BENITO SALAMANQUE, EUSEBIO SALAMANQUE, FRANCISCO
SALAMANQUE, HEIRS OF CELIA S. MORAN, BENITO FABRIGA, HEIRS
OF ARISTON SAL...**

Ponente: SABIO, JR., J.

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SABIO, JR., J.:

This is a Petition for Review under Rule 42 of the 1997 Revised Rules of Civil Procedure assailing the Decision,[1] dated November 30, 2004, of the Regional Trial Court (RTC) of Iriga City, Branch 36, in Civil Case No. IR-3463.

The records disclose the following antecedent facts, which are pertinent in the present petition for review, to wit:

Respondents, as plaintiffs in the case before the court ad quem, allege that they are co-owners and legal possessors of a residential land, subject of this case, situated in Sta. Elena, Buhi, Camarines Sur. They had inherited from their deceased parents and grandparents, Fausto Salamanque and Juliana San Antonio, the aforementioned land, but they have yet to subdivide the same among themselves.

They claimed that they allowed spouses Francisco Salamanque and Leonor P. Salamanque to occupy and construct their house on a portion of the subject land. Later on, however, petitioners Ernesto Palermo and Merly Palermo occupied the house constructed by spouses Francisco and Leonor until the institution of the case against the latter.

On March 30, 1991, petitioners Ernesto and Merly, with connivance and direct participation of respondent Leonor Salamanque and with intent to defraud the private respondents, executed a Deed of Sale[2] of the whole area of the subject land, together with the concrete house erected thereon, by forging and falsifying the signature of respondent Francisco Salamanque, as vendor, making it appear that the signature was that of Francisco's when in truth and fact, the latter could only affix his right thumb mark. Respondent Francisco claims that he never received any of the sale consideration as stated in the assailed deed of sale.

As a result thereof, respondent demanded that petitioners vacate the premises, but to no avail.

Upon the other hand, petitioners, in their answer to the complaint, aver that they had been in actual, physical, open and continuous possession of the property in the concept of owners by reason of the Deed of Sale executed in their favor on March 30, 1991 by Francisco Salamanque, with the consent of Leonor P. Salamanque.

Respondent Leonor, in her answer, denied her connivance and participation in the falsification of signature of her husband, but admitted having received the Php 70,000.00 out of the Php 150,000.00 total consideration.

On March 2, 1995, private respondents, through, their counsel, filed a case for the annulment of the deed of sale, recovery of ownership, and recovery of possession, docketed as Civil Case No. Ir-2698 of the Regional Trial Court in Iriga City.

On April 25, 1996, however, then Hon. Orland L. Espinas, Presiding Judge of Branch 36 issued an Order^[3] transferring the case to the Municipal Trial Court (MTC) of Buhi, Camarines Sur because it had no jurisdiction over the case having been found that the assessed value of the subject property is only Php 2,360.00. In due course, the MTC rendered its Decision,^[4] dated May 26, 2004, the dispositive portion of which reads:

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

- Dismissing the plaintiffs’ complaint for lack of merit;
- Declaring the Deed of Sale of Residential Land (Exhibit A and 2) as void and annulled and instead the court hereby declares the transaction as an equitable mortgage between Leonor Salamanque and Sps. Ernesto and Merly Palermo;
- Directing defendant Leonor Salamanque to redeem or to repurchase the house and lot in question from the spouses Ernesto and Merly Palermo and for the latter to also allow such repurchase or redemption within the time provided for under Article 1606 of the New Civil Code in the amount of P70,000.00; and
- Directing defendant Leonor Salamanque to reimburse the Sps. Ernesto and Merly Palermo the value of the useful improvements the latter have introduced on the house subject of this litigation in such amount as may fairly be agreed upon by them.

Costs against the plaintiffs.

SO ORDERED.”

On appeal, the RTC promulgated its Decision, dated November 30, 2004, affirming with modification the decision of the MTC. The dispositive portion reads as follows: “In the light of the foregoing, the decision appealed from is hereby **AFFIRMED** with **MODIFICATION** as follows:

- Declaring the transaction between defendant Leonor Palermo-Salamanque and the Spouses Ernesto and Merly Palermo under Exhibit A and 2 as one of sale and not an equitable mortgage;
- Directing defendant Leonor Palermo-Salamanque to return or refund the amount of P70,000.00 to the defendants/appellants Palermos and for the latter to vacate and surrender the possession of the property to the heirs of Francisco Salamanque upon receipt of the aforesaid amount from defendant Leonor Salamanque;
- The order directing defendant Leonor Salamanque to reimburse the defendants/appellants Palermos the value of the improvements made on the property is hereby deleted.

SO ORDERED.”

Unperturbed, petitioners, on June 9, 2005, filed with this court a Petition for Review^[5] assailing the Decision, dated November 30, 2005, rendered by the court a quo, with the following submissions, to wit:

I

WHETHER OR NOT THE APPELLATE COURT WAS CORRECT IN DENYING THE PETITIONERS’ MOTION FOR RECONSIDERATION JUST BECAUSE THE SAID MOTION DID NOT CONTAIN A NOTICE OF HEARING.

II

WHETHER OR NOT THE SUBJECT MOTION FOR RECONSIDERATION, WHICH IS WITHOUT A NOTICE OF HEARING, WILL NOT TOLL THE RUNNING OF THE PERIOD TO ASSAIL THE DECISION ON PETITION FOR REVIEW

III

WHETHER OR NOT THE APPELLATE COURT WAS CORRECT IN DECLARING THE PETITIONERS' MOTION FOR RECONSIDERATION AS PRO-FORMA.

IV

WHETHER OR NOT THE APPELLATE COURT WAS CORRECT IN DECLARING THE SALE BETWEEN THE PETITIONERS HEREIN AND THE RESPONDENT LEONOR SALAMANQUE AND HER HUSBAND FRANCISCO SALAMANQUE VOID.

V

WHETHER OR NOT THE APPELLATE COURT WAS CORRECT IN ORDERING THE HEREIN PETITIONERS TO RETURN TO, OR REFUND LEONOR SALAMANQUE, OF THE P70,000.00

VI

WHETHER OR NOT THE APPELLATE COURT WAS CORRECT IN ORDERING THE HEREIN PETITIONERS TO SURRENDER AND VACATE POSSESSION OF THE PROPERTY TO THE HEIRS OF FRANCISCO SALAMANQUE

VII

WHETHER OR NOT THE APPELLATE COURT WAS CORRECT IN DECLARING THE HEREIN PETITIONERS BUILDERS/PLANTERS/SOWERS IN BAD FAITH

VIII

WHETHER OR NOT THE APPELLATE COURT MADE A FINDINGS [sic] OF THE ULTIMATE FACTS AS FOUND AND ESSENTIAL TO SUPPORT THE DECISION AND JUDGMENT RENDERED THEREON AS IT BECOMES IMPOSSIBLE TO ADMINISTER JUSTICE, TO APPLY THE LAW TO THE POINTS ARGUED, OR TO UPHOLD THE RIGHTS OF THE LITIGANT WHO HAS THE LAW ON HIS SIDE.

We shall discuss the first three assigned errors jointly as they pertain to procedural issues.

Petitioners asseverate that the court a quo committed error when it denied their motion for reconsideration as being pro forma due to the absence of the required notice of hearing. They submit that the RTC decided the assailed decision, in its appellate jurisdiction and as such, it was based solely on the pleadings and documents available. Petitioners, then, would want to impress this court that since no hearing was conducted before the RTC, it would be highly irregular and improper that a mere motion for reconsideration of a decision arrived at, without hearing, should now be scheduled for hearing. Petitioners, thus, question the denial of their motion.

Petitioners' submission deserves scant consideration. They erroneously assume that since no hearing was conducted before the RTC, a notice of hearing, which should have been appended in their motion for reconsideration, was no longer necessary.

Section 2, Rule 37 of the Rules of Court provides that a motion for reconsideration or a motion for new trial shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party. Such written notice is that prescribed in Sections 4 and 5, Rule 15 of the Rules of Court.

Under Section 4, paragraph 2 of the said rule, a notice of hearing on a motion shall be served by the movant to all the parties concerned at least three days before the date of hearing. Section 5 of the same rule requires that the notice of hearing shall be directed to the parties concerned and shall state the time and place of the hearing of the

motion. The requirements, far from being merely technical and procedural as claimed by the petitioners, are vital elements of procedural due process.[6] Thus, the requirement of notice under Sections 4 and 5 of Rule 15 in connection with Section 2, Rule 37 of the Revised Rules of Court, is mandatory.

Petitioners, then, argue that not all motions for reconsideration must undergo a “trial-type hearing”, especially in the appellate courts, it being a horn-like doctrine that a formal or trial type is not at all times and in all instances essential to due process.

The rules are clear and do not distinguish as to whether notice of hearing in motions for reconsideration is necessary only in orders or decisions originally tried by the courts or not. Undeniably, when section 1 of Rule 37 provides that within the period for taking an “appeal”, the aggrieved party may move for the reconsideration of the court’s decision, the aforementioned appeal does not pertain only to appealed cases decided by the courts in their original jurisdiction. The law having failed to specifically limit the cases to those decided by the courts in their original jurisdiction, appeals under Rule 40, Rule 41, or Rule 42, as the case may be, are covered by the appeal provided in Section 1 of Rule 37. It was, therefore, error on the part of the petitioner to have submitted otherwise in as much as the rules do not distinguish. A motion without notice of hearing is pro forma, hence, a mere scrap of paper. It presents no question, which the court could decide. Consequently, the absence of a notice of hearing is fatal and, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency.[7]

Now, having been considered a pro forma, did the petitioners file the instant petition within the reglementary period?

The records would bear that petitioners received the decision, dated November 30, 2004, of the RTC on December 17, 2004. The petitioners, on January 3, 2005, filed their motion for reconsideration. On May 3, 2005, however, the court a quo resolved to deny the motion stating that it was pro forma, hence, did not effectively toll the running of the reglementary period to appeal. From the foregoing alone, it can be readily seen that the petition for review before this court was filed out of time, thus, dismissible. However, we are inclined to gloss over this procedural infirmity in the interest of justice and fair play.

The purpose of a notice of hearing to the adverse party is to afford him an opportunity to resist the motion, i.e., the petitioner’s motion for reconsideration. Be that as it may, the purpose of the law in requiring a movant to set his motion for hearing appears to have been fully served in the case at bar. The respondents were given ample opportunity to read and study the petitioners’ motion, and had, in fact, filed their opposition.

An appeal is an essential part of our judicial system. The High Court had advised courts to proceed with caution so as not to deprive a party of the right to appeal,[8] and had instructed us that every party-litigant should be afforded the amplest opportunity for the just disposition of his cause, freed from the constraints of technicalities.[9] Hence, the instant petition is given due course.

Having resolved the procedural issues, we, now, go to the substantive aspect of the case and we shall discuss the issues jointly.

First, we determine the nature of transaction entered into on March 30, 1991 between the petitioners and respondent spouses Francisco and Leonor Salamanque to fully settle the respective rights and obligations of the parties thereon.

The MTC construed the transaction as one of equitable mortgage in so far as Leonor Salamanque is concerned whom, according to the court, had benefited from the transaction. Upon the other hand, the RTC considers the facts and evidence in holding the transaction as one of sale.

Upon careful perusal of the facts and circumstances of the case, as well as the documentary records, we agree with the court a quo that the transaction was one of sale and not equitable mortgage earlier ruled upon by the MTC.

Under Article 1602 of the New Civil Code, a contract shall be presumed to be an equitable mortgage in the cases provided therefor. The provision of the aforementioned article shall also apply to a contract purporting to be an absolute sale.

In the case at bench, we are in full accord with the findings of the RTC in reaching the conclusion that the real intention of the parties to the transaction was one of sale and not equitable mortgage. The trial court held, thus:

“This court considers the following facts and evidence in holding that the transaction was one of sale, to wit;

- A reading of the responsive pleading filed by defendant Leonor Salamanque, indicates that “she received from the defendant spouses (Ernesto and Merly Palermo) the sum of P70,000.00 only out of the total SALE consideration of P150,000.00 as stated in the falsified Deed of Sale and answering defendant that defendant ceased or stopped demanding payment of the balance from the defendant spouses from the time she discovered that the signature of her husband was falsified by defendant-spouses from the time she discovered that the signature of her husband was falsified by defendant spouses, hence there was no full payment of the SALE consideration made by defendant-spouses”(italics supplied for emphasis);

- The object of the Deed of Sale of Residential Land (Exh. A and 2) was a piece of land (lot 256) consisting of 157 sq. meters costing P150,000. This price of P150,000. in 1991 for a measly 157 sq. meter lot, is to be [sic] mind of the court, not any more unusually inadequate;

There is also no un rebutted evidence, that from the exception of Exhibit A, defendants/appellants as vendees therein, took possession of the property, and in fact, thereafter started to introduce improvements on the concrete house erected thereon by Sps. Francisco and Leonor Salamanque;

- The ancient documents namely, Extrajudicial Settlement of Estate and Sale (Exhibit 6) and the Deed of Sale of Portion of Real Property (Exhibit 3) were found in the possession of the defendants/appellants Palermos because, per un rebutted testimony of defendant/appellant Ernesto Palermo, the said document were given to him by co-defendant Leonor Salamanque after the execution of the questioned Exhibit A.

If indeed the intention of defendant Leonor Salamanque was just to mortgage the subject property, there was no need for her to surrender the said muniments of title to the vendees in Exhibit A.”[10]

Since we had settled the transaction as one of sale and not equitable mortgage, we next, discuss the validity of the said sale.

The deed of sale bears considerable importance in the case at bench. The respondents, in filing their complaint, allege that petitioners defrauded them by forging and falsifying the signature of Francisco Salamanque, making it appear that Francisco signed the deed of sale, when in truth and in fact, the latter could only affix his right thumb mark and has never affixed a signature on any document, or paper. The determination, therefore, as to whether the signature of the late Francisco Salamanque was forged or not is a matter of evidence that the lower courts had already passed upon. However, for this court’s determination, we shall painstakingly peruse the records once more.

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden for which lies on the party alleging it. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.[11] Thus, as a rule, also, a forged deed is void and conveys no title.

Going over the records, there exist circumstances in the case at bench that are pertinent in determining if, indeed, Francisco's signature was forged or not. First, Francisco did not directly repudiate his signature, but his heirs. Second, no specimen signatures were presented by those alleging forgery. Third, in the absence of an expert testimony, no opinion had been formed as to the genuineness of Francisco's signature. Lastly, only witnesses Benjamin and Baltazar Salamanque, sons of the late Francisco, and Leonor Salamanque, wife of the deceased and Salvacion Salamanque testified as to the fact of forgery.

Direct repudiation by one whose signature was alleged to have been forged is necessary, but in case of his death, a handwriting expert's testimony, in lieu of direct repudiation, is necessary in determining forgery. In the case at bench, direct repudiation of Francisco's signature was not established because even before the scheduled pre-trial, respondent Francisco, as substituted by his children, died due to degenerative health.

Nonetheless, while the aforementioned may be true, at times, the court may allow other persons, not being expert witnesses, but who are in the best position to know whether or not the signature was a forgery, to testify concerning such matter and their testimonies may be properly appreciated in evidence.

Under Section 50, Rule 130 of the Rules of Court,[12] an ordinary witness may give his opinion regarding the handwriting of a person, with which he has sufficient familiarity. This subject is properly covered by Rule 132, Section 22 of the Rules of Court, which provides that, "The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen the writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge."

Thus, in order that an ordinary witness may be permitted to state his opinion as to the genuineness of a particular writing, it must be proved that the witness is acquainted with the handwriting of the supposed writer of the document in question.

We note, however, that the 1991 Deed of Sale was notarized. As such, it had in its favor the presumption of regularity, and to contradict the same, as in this case forgery, there must be evidence that is clear, convincing and more than merely preponderant, otherwise, the document should be upheld.[13]

In the case at bench, both the lower courts had ruled that the signatures (presented as Exhibits A and 2) are not the true and genuine signatures of Francisco Salamanque. The lower courts properly appreciated the testimonies of Benjamin and Baltazar Salamanque and Leonor Salamanque, sons and wife respectively of the late Francisco. We quote, with approval, the findings of the court a quo, to wit:

"In line with this provision, plaintiffs were able to substantially proved that the signature of Francisco Salamanque on the questioned document was a forgery by the testimony of Benjamin Salamanque, Baltazar Salamanque who are the sons of Francisco Salamanque, together with the testimony of Salvacion Salamanque, a niece of the former who were one in declaring that the signature over the typewritten name of Francisco Salamanque in Exhibits A and 2 could not have been the signature of their father, the late Francisco Salamanque because in 1991 and several years before that, the latter could no longer write his name on any document that needed his signature. Instead, all he can do was to affix his thumb mark, because their father suffered a stroke that caused paralysis of his body, just what he did in Exhibit B, which was executed in 1990.

It follows therefore that if Francisco Salamanque could no longer affix his signature in Exhibit B in 1990, the logical inference was that he could not have possibly write or affix his name on Exhibits A and 2 in 1991. In fact, according to the testimony of Francisco Salamanque's own wife, Leonor Salamanque, at the time of the

execution of the document in question, her husband Francisco Salamanque was bedridden at the other side of the lake that he could not even get up from bed. (tsn p. 15, March 12, 2003.)”[14]

The respondents’ witnesses had presented convincing proof, through testimonial evidence, to override the evidentiary value of the notarized deed of sale. Their testimonies are more than enough to establish the signature as a forgery.

It bears stressing that conveyances by virtue of a forged signature are void ab initio. The absence of the essential requisite of consent in this case rendered the contract inexistent. True, Francisco’s wife signed the deed of sale, as she in fact admitted having signed the same, but the law requires the consent of the other spouse to produce a valid conveyance. Verily, the court a quo committed no error in ruling that the sale was void.

We next resolve the issue of possession. Ruling that the sale was void, it necessarily follows, then, that the petitioners had no right to occupy the subject lot. As previously discussed, the deed of sale was sham and had no evidentiary value under the law upon which petitioners may anchor their claim of ownership over the subject property. Not being owners thereof, their continued possession of the same will not validate what, otherwise, was a void sale. It is concluded, then, that the ownership of the land in question rests with respondent Francisco.

However, by virtue of Francisco’s demise, it should be held and we do, hereby, hold that the ownership of the land claimed appertains to Francisco Salamanque’s heirs. Consequently, the petitioners are ordered to deliver the land to Francisco’s heirs.

Lastly, are petitioners entitled to the just compensation in relation to the house they built on the property on the basis of their alleged status as builders in good faith?

We rule in the negative.

A builder in good faith is one who is unaware of any flaw in his title to the land at the time he builds on it.[15] In the case at bench, the petitioners cannot claim that they were not aware of any flaw in their title or were under the belief that they were the owners of the subject property. It must be noted that the petitioners knew from the onset that Francisco could no longer affix his signature to the deed of sale. They had personal knowledge of the circumstances as to how the signature of Francisco was secured. Hence, they cannot be considered builders in good faith.

Under Article 449 of the Civil Code, he who builds, plants, sows in bad faith on the land of another loses what is built, planted or sown without right to indemnity. Based on the foregoing provision, petitioners do not have the right to demand, though not actually sought for, that they be paid therefor. We cannot order the reimbursement for whatever expenses had been incurred by the petitioners.

However, in view of the fact that petitioners paid Leonor Salamanque the amount of Php 70,000.00, the latter is directed to return the aforementioned amount to the former.

Verily, unless there are strong and compelling reasons to disturb the trial court’s findings of facts, which must, as a matter of judicial policy, be accorded with the highest respect, this court finds no cogent reason to rule otherwise. Petitioners have not proffered any reason warranting the disturbance of the trial court’s findings of facts.

WHEREFORE, premises considered, the decision of the Regional Trial Court of Iriga City, Branch 36, is hereby, **AFFIRMED** in toto.

SO ORDERED.

Asuncion-Vicente and Villon, JJ., concur.

[1] Rollo, pp. 22-31.

[2] Exhibits “A” and “2”, Records, pp. 188 and 267.

[3] Records, p. 60.

[4] Rollo, pp. 68-90.

[5] Ibid., pp. 9-19.

[6] Republic v. Peralta, 404 SCRA 360, 368, citing Ibasan v. Republic of the Philippines, 97 SCRA 100.

[7] National Commercial Banking of Saudi Arabia v. CA, 396 SCRA 541.

[8] National Waterworks and Sewerage Authority v. Municipality of Libmanan, 97 SCRA 138.

[9] A-One Feeds, Inc. v. Court of Appeals, 100 SCRA 590.

[10] RTC Decision, pp. 8-9; Rollo, pp. 29-30.

[11] Gregorio v. Court of Appeals, 300 SCRA 565.

[12] “Sec. 50. Opinion of ordinary witnesses. – The opinion of a witness for which proper basis is given, may be received in evidence regarding –

xxx

(b) A handwriting with which he has sufficient familiarity; and

xxx”

[13] Bernardo vs. Court of Appeals, G.R. No. 107791, May 12, 2000.

[14] Decision, pp. 6-7; Rollo, pp. 27-28.

[15] Bishop v. Court of Appeals, 208 SCRA 636.

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