

THE SPOUSES CAMILO K. MARTIJA AND CONCHITA ASIS-MARTIJA PETITIONERS, VS. THE SPOUSES RUBEN ASIS AND EMMA G. ASIS RESPONDENTS.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Challenged in this Petition for Review[1] is the Decision[2] dated 29 October 2012 of the Regional Trial Court, Branch 37, Caibiran, Naval, Biliran, and its Order[3] resolving the Motion for Reconsideration filed by the petitioners.

FACTS

Petitioners' version

The genesis of this Petition for Review is the Complaint[4] for recovery of real property, damages with prayer for preliminary injunction filed by Petitioners, the Spouses Camilo K. Martija and Conchita Asis-Martija (hereinafter "Spouses Martija") against the Spouses Ruben and Emma Asis (hereinafter "Spouses Asis").

According to petitioners, on 5 October 1990, they bought a parcel of land from Santos Apan for the sum of P23,000.00. The said parcel of land is described as follows:

"A residential land, declared in the name of Santos Apan, covered by ARP No. 04-012-00013 R11, survey no. 1533 & 1484-P located at Brgy. Palanay, Caibiran, Biliran, bounded on the North: (1484-P)-16; East: (1484-P)-16 (1534-23); South: Rizal Street and West (1532 & 1484)-21, containing an area of ONE HUNDRED EIGHTY SEVEN (187) SQUARE METERS, more or less, with assessed value of P5,140.00"[5]

The verbal agreement with Santos Apan was forged before 5 October 1990. Since Santos Apan was in a hurry to leave for Caibiran, Biliran, it was his children, Florentino Apan and Domingo Apan, whom he authorized to sign the receipt[6].

Since petitioner, Camilo Martija (hereinafter "Camilo"), was then working as an overseas seaman, he entrusted the original of the receipt to respondent, Ruben Asis (hereinafter "Ruben"), for the purpose of processing the transfer of the land. Ruben was the brother of Camilo Martija's wife.

Petitioners were surprised that when they visited the land in 2004, they saw that respondents instead erected their house on the said land.

The sale between Santos Apan and petitioners was formalized when an Extrajudicial Settlement of the Estate of the late Santos Apan with Deed of Absolute Sale[7] dated 27 May 2009 was executed by his heirs, namely: Osita Apan-Estares, Lolita Apan-de Vera, and Domingo Apan.

In order to reach an amicable settlement regarding the respondents' house situated in petitioners' land, a conference was held in the family, but it failed due to respondents' impossible demands. Conciliation also failed. During the confrontation, respondent Ruben admitted that the petitioners owned the land, but challenged the latter

to go to court.

Thus, on 13 July 2009, petitioners filed a complaint.

Respondents' version

In their Memorandum[8], respondents allege that the subject property in litigation was purchased by Ruben Asis in good faith and for value from Santos Apan. Their purchase of the lot was evidenced by a notarized Deed of Absolute Sale[9] dated 8 July 2003. Thereafter they possessed subject parcel of land openly, notoriously, peacefully and continuously through the construction of their residential house on the land. They also paid the corresponding realty taxes[10].

During Pre-trial[11], the petitioner admitted the identity of the land, while the respondent admitted the construction of a house on the lot. Trial then ensued.

After trial the MCTC rendered a decision dated 23 February 2012, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is rendered dismissing this case for lack of merit. The parcel of land covered by ARP No. 04-012-00013 R11 with survey no. 1533 and 1484-P located at Brgy. Palanay, Caibiran, Biliran is owned by the defendant, Ruben Asis by virtue of a Deed of Absolute Sale executed by the declared owner, Santos Apan on July 8, 2003 in his favor. Likewise, damages are hereby awarded to the defendants for their wounded feelings, mental anguish, humiliation and sleepless nights as follows: moral damages in the amount of Twenty Thousand Pesos (P20,000.00), attorney's fee of Ten Thousand Pesos (P10,000.00) and the cost of litigation in the amount of Ten Thousand Pesos (P10,000.00), Philippine Currency.

So ordered.[12]

Petitioners filed a Motion for Reconsideration, which was denied by the MCTC in an Order[13] dated 18 May 2012. Petitioners then appealed the case to the Regional Trial Court which rendered a Decision[14] dated 29 October 2012. The dispositive portion of which reads:

WHEREFORE, the assailed Decision of the 3rd Municipal Circuit Trial Court, Caibiran-Culaba, dated 23 February 2012 is hereby AFFIRMED, with the MODIFICATION that the award of Moral Damages is hereby Deleted.

SO ORDERED.[15]

Petitioners filed a Motion for Reconsideration, which was subsequently denied by the RTC in an Order[16] dated 27 December 2012. Hence this Petition for Review.

ISSUES

Petitioners raise the following errors for our consideration:

I. THE LOWER COURT ERRED IN UPHOLDING THE VALIDITY OF THE DEED OF ABSOLUTE SALE FROM SANTOS APAN TO DEFENDANTS (EXHIBIT "2") DESPITE THE PRESENCE OF MATERIAL ERASURES, ALTERATIONS, INTERCALATIONS AND INCONSISTENCIES IN ITS BOUNDARIES, WHICH DESTROY ITS PRESUMPTION OF VALIDITY AND RENDER IT A SPURIOUS DOCUMENT.

II. ASSUMING, ARGUENDO, THAT THERE WAS A SALE FROM SANTOS APAN TO DEFENDANTS, THE SALE COVERED ONLY SURVEY NO. 1533 WITH AN AREA OF ONLY 26.55 SQUARE METERS, AND NOT THE INTERCALATED SURVEY NO. 1484 WHICH INCLUSION BLOATED THE AREA TO

187.00 SQUARE METERS.

III. THE LOWER COURT ERRED IN THE AWARD OF MORAL DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES TO DEFENDANTS, PLAINTIFFS HAVING FILED THE CASE IN COURT IN GOOD FAITH THAT THEY HAVE A GOOD CAUSE ESPECIALLY THAT DEFENDANTS DID NOT SHOW THEIR DEED OF ABSOLUTE SALE DURING BARANGAY CONCILIATION PROCEEDINGS, ADMITTED THAT THE LAND IS OWNED BY PLAINTIFFS AND EVEN CHALLENGED PLAINTIFFS TO GO TO COURT.

OUR RULING

Since the issues are interrelated, we shall discuss them jointly.

Petitioners point out what they refer to as “badges of fraud” in the Deed of Absolute Sale[17] presented by the respondents, such as: the insertion of the number 1484 after the survey no. 1533, making it appear that survey no. 1484 was included in the sale; and the number after “with an area of ____” was erased and replaced with 187.

According to petitioners, the big question is whether Santos Apan sold two (2) parcels, survey no. 1533 and survey no. 1484, or whether what he sold was only survey no. 1533 and that survey no. 1484 was surreptitiously added only by respondents after the execution of the sale, without the knowledge and consent of Santos Apan, or any of his children.

For their part, respondents counter by saying that the Deed of Absolute Sale they possess is valid. They point out that the petitioners' claim of ownership over the property is anchored on the strength of a non-notarized, privately handwritten document dated 5 October 1990, allegedly executed by only two of the owner's children (Florentino and Domingo Apan). The said private document, referred to by petitioners as a receipt[18], does not state the description of the property as well as the place of execution.

Respondents also stress that the original and primitive owner of the subject residential land is Santos Apan, who was still alive on the 5[th] of October 1990, when the alleged sale made by his two (2) children took place. Said parcel of land cannot be sold by anybody, during the owner's lifetime. A Special Power of Attorney (SPA) is necessary for an agent to enter into a contract by which ownership of an immovable is transmitted or acquired, either gratuitously or for valuable consideration.

Respondents also point out that the petitioners failed to establish and provide sufficient proof of fraud in the execution of the deed of sale. According to them, the arguments advanced by the petitioners are speculative and the facts presented are devoid of any proof.

We agree.

The subject land belongs to the respondents, spouses Asis. There is a dearth of evidence to support petitioners' claim of fraud and ownership over the subject parcel of land.

The Deed of Absolute Sale[19] was executed by Santos Apan himself in favor of respondent Ruben Asis on the 8[th] of July 2003. The sale was executed with the conformity of Florentino Apan, Felicitas Apan, Ecita Apan, Lolita Apan, and Domingo Apan, as evidenced by their respective signatures. It was also signed in the presence of two (2) witnesses and notarized. We note that this sale was signed by Florentino and Domingo Apan, who the petitioners alleged are the signatories of Receipt for a sale of land that took place in 1990.

The insertions and erasures in the Deed of Absolute Sale complained of by the petitioners appear to have been signed with the initials of the notary public. As correctly found by both the MCTC and RTC, these dispel any insinuation of irregularity in the execution of the said instrument. This fact is also corroborated by the testimony

of respondent Ruben Asis, which according to the RTC, during his cross-examination testified that “it was the notary public who made the insertion of the survey number (lot) 1484 of the land because that is what appears in the tax declaration, and [sic] so with respect to the erasure of the area of the land, as it was a correction made by the notary public who made a mistake.”

There is therefore good reason to believe that the complained insertion and erasures were intended more of a correction in order to reflect the true intention and will of the contracting parties, which is to include survey lot no. 1484-P in the sale for a total area of 187 square meters. Thus, respondents were able to account and explain the insertion and the erasure that appear on the Deed of Absolute Sale.

Moreover, the notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its face.[20]

The Deed of Absolute Sale being impugned by petitioners is a public document having been notarized by Atty. Gonzales. As a public document, the deed has in its favor the presumption of regularity, and carries the evidentiary weight conferred upon it with respect to its due execution, i.e., it is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face.[21] To rebut the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise the document shall be upheld.[22]

As held in *Velooso vs. Court of Appeals*[23], “documents acknowledged before a notary public have the evidentiary weight with respect to their due execution. The questioned xxx deed of sale [was] notarized and therefore presumed to be valid and duly executed. Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved.[24] It is well-settled that a document acknowledged before a notary public is a public document that enjoys the presumption of regularity.[25]

In this case, all the petitioners could offer by way of evidence was their allegations of insertion and erasure, which according to the trial court, have been adequately explained by the respondents.

Fraud is never presumed but must be proved by clear and convincing evidence, mere preponderance of evidence not even being adequate. Contentions of fraud must be proved by competent evidence and reliance must be had on the strength of the party’s evidence and not upon the weakness of the opponent’s defense. Allegations of bad faith and fraud must be proved by clear and convincing evidence.[26] Mere allegations will not suffice to sustain the existence of fraud. The burden of evidence rests on the part of the plaintiff or the party alleging fraud.[27] Thus, petitioners cannot fault respondents for not presenting certain witnesses, for the burden of proving fraud rests on them and not on the respondent’s shoulders. In the words of the trial court:

“xxx the burden of proof to present the notary public, or witnesses to the Deed of Absolute Sale to establish the accusation that the intercalation/insertion was fraudulently entered into, rest on the plaintiffs [herein petitioner] as the asserting party, failing in which, is certainly fatal to their cause. If indeed plaintiffs insist that the subject deed of absolute sale is spurious, then why is it that no proof of fraud was ever adduced?”

As correctly found by the trial court, accusations of fraud in the execution of the Deed of Absolute Sale due to the mere presence of an intercalation and erasure, cannot overcome the presumption of validity, genuineness, and due execution of the respondents’ Deed of Absolute Sale. Especially in this case where the respondents were able to sufficiently explain the presence of the intercalation and erasure.

As observed by the trial court, if the Deed of Absolute Sale executed by Santos Apan in 2003 was fraudulently entered into, it appears surprising why Santos Apan's children, including Florentino and Domingo, affixed their signatures in conformity to the sale, when they could have conveniently refused to do so, in the light of petitioners' claimed earlier sale. Petitioners' position is even inconsistent. They argue that the sale to the respondents is valid with respect to survey no. 1533 only with an area of 26.55 square meters, making the Deed of Absolute Sale allegedly spurious with respect to the intercalated survey no. 1484. But is it not they assert that they are the owners of the disputed lot with a total area of 187 square meters?

We therefore agree that consistent with the real and true intentions of the parties, it is apparent that the sale covered not only survey no. 1533 with an area of 26.55 square meters, but as well as survey no. (lot) 1484 for a total area of 187.00 square meters.

The Receipt[28] dated 5 October 1990, which petitioners use as evidence that they purchased the land way back in 1990 fails to persuade since it is undisputed that at that time, the owner of the land, Santos Apan, was still alive. Sans any showing of a written authorization from their father, the purported sale is of no effect. This is clear from the provisions of Article 1874 of the Civil Code which provides that when a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

In this case, as found by the MCTC, the sons had no written authority from their father to sell the land as testified to by the [petitioner] because Santos Apan was in Caibiran, Biliran, and no such written authority to sell was even presented in court. Furthermore, since the owner of the subject land, Santos Apan, sold the same to respondent Ruben in 2003, while the former was still alive the Extrajudicial Settlement of the Estate of the late Santos Apan with Deed of Absolute Sale[29] executed in 2009, has no force and effect since the property was already sold to respondent Ruben Asis.

Time and again, the Court has upheld the rule that findings of fact of the trial court should not be disturbed on appeal unless the trial court has ignored or overlooked certain facts or circumstances of weight and significance which, if considered, would alter the result of the case, for trial judges are in the best position to weigh conflicting declarations of witnesses in the light of the court's opportunity to observe and examine the witnesses' conduct and attitude on the witness chair.[30] Here, we see no reason to depart from the trial court's findings of fact.

Attorney's fees and litigation expenses

As to the third assignment of error, petitioners' cry on the award of moral damages is already moot and academic since the RTC already deleted the same in its 29 October 2012 Decision. We however deem it wise to delete the award of attorney's fees and litigation expenses for we do not see any clear bad faith on the part of the petitioners in instituting this case. Petitioners had in their possession documents, which they believed were sources of their rights.

WHEREFORE, the instant petition is DENIED. The challenged Decision dated 29 October 2012 is AFFIRMED with MODIFICATION. The award of attorney's fees and litigation expenses is hereby DELETED.

SO ORDERED.

Delos Santos, E.L., Chairperson., and Lagura-Yap, M.B., JJ., concur.

[1] Rollo, pp. 20-29

[2] Rollo, pp. 6-32.

- [3] Rollo, p. 79.
- [4] Rollo, pp. 32-35.
- [5] Rollo, p.32
- [6] Rollo, p. 46
- [7] Rollo, pp. 47-48
- [8] Rollo, pp.107-117
- [9] Rollo, p. 65
- [10] Rollo, pp. 65-71.
- [11] Rollo, p.40
- [12] Rollo, p. 70
- [13] Rollo, pp. 71-72.
- [14] Rollo, p. 78
- [15] Rollo, p. 78
- [16] Rollo, pp.79-81
- [17] Rollo, p.64
- [18] Rollo, p.46
- [19] Rollo, p. 64
- [20] Dela Cruz v. Zabala, A.C. No. 6294, 14 November 2004; Gonzales vs. Ramos, A.C. No. 6649 June 21, 2005;
- [21] Mendezona v. Ozamiz, G.R. No. 143370. February 6, 2002; Spouses Cirelos vs. Spouses William Hernandez and Rosemarie Zafe, G.R. No. 146523, June 15, 2006.
- [22] Ladignon v. Court of Appeals, G.R. No. 122973. July 18, 2000. Spouses Cirelos vs. Spouses William Hernandez and Rosemarie Zafe, G.R. No. 146523, June 15, 2006.
- [23] G.R. No. 102737. August 21, 1996.
- [24] Sec. 30, Rule 132, Rules of Court.
- [25] Spouses Santos vs. Spouses Lumbao, G.R. No. 169129, March 28, 2007.
- [26] Spouses Palada vs. Solidbank, G.R. No. 172227, June 29, 2011.
- [27] Alejandro V. Tankeh vs. Development Bank of the Philippines, et al., G.R. No. 171428, November 11, 2013.
- [28] Rollo, p.46
- [29] Rollo, p.47
- [30] Far East Bank & Trust Company vs. Court of Appeals, G.R. No. 123569. April 1, 1996.

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