

FRANCISCO BUNAG, PETITIONER, VS. COURT OF APPEALS, ESTRUDES BAUTISTA VDA. DE BITUIN AND BRUNO BAUTISTA, RESPONDENTS.

G.R. No. L-39013. February 29, 1988

Ponente: CORTES, J.

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CORTES, J.:

The core of the controversy in this case is a thumbmarked, non-notarized and non-witnessed deed of sale of a parcel of unregistered land, which on its face cannot but cause a prudent man to doubt its due execution and authenticity.

The facts are briefly summarized in the decision of the Court of Appeals:

The evidence of the plaintiff consisting of the sole testimony of said plaintiff is to the effect that the property in question was originally owned by his father Apolonio Bunag Aguas as shown by Tax Declaration Nos. 546 for 1941 and 320 for 1960 (Exhs. B & E), located at San Nicolas, Betis, Pampanga; that he had been living in their house thereon with his father until 1920 when they transferred their residence to Tarlac; that in 1925 their house thereon was demolished as it was old; that they planted bamboos on the land; that Jose Bautista Santiago, a nephew-in-law, erected a house on said lot and lived therein for sometime until he became a widower when he transferred to another house: that said Jose Bautista Santiago one day accompanied his sister Estrudes Bautista to stay in that house; and that Santiago was allowed by his father to build a house on said lot on condition that he would pay for the land taxes as compensation for the use of the land. He admitted, however, that he only learned about this agreement from his father. On September 15, 1962, and September 24, 1962 he sent written demands to defendant Bruno Bautista, thru his lawyer, to vacate the lot and remove the houses thereon. (Exhs. A & B). The testimony of the other witness Juan Bunag was stricken from the records as he failed to return to court for cross-examination.

On the other hand, the evidence for the defendant consist of the testimony of defendant Bruno Bautista who testified that he is the owner of the land in question by virtue of a deed of sale of January 3, 1941, signed by Apolonio Bunag with his thembmark: that Bunag first offered it for sale to his brother Jose Bautista, but as the latter had no money, he referred the matter to his father; that after he was contacted in Baguio by his father, he sent the P100.00 as consideration of the sale and so the sale was consummated between his father and Bunag; that he came down from Baguio and had the house repaired and he stayed there with his family until liberation when they left the house and allowed his sister Estrudes Bautista to live therein: that he planted bananas, chicos, trees, calamansi, eggplants, thereon: that he had been paying the land taxes thereon (Exhs. 5 to 5-M); that the property is declared in his name (Exh. 6): and he denies that her sister Estrudes requested Apolonio Bunag to allow her to stay on the property as her sister had a house of her own then.

Brigida Bautista testified that her brother bought the said property from Apolonio Bunag and that she was present when Bunag affixed his thumbmark on the document (Exh. 1); that aside from this deed, there were other documents supporting the sale as the note (Exh. 2) containing the consideration and the parties, Assessor's Field Sheet of the property (Exh. 3) and the letter of the assessor to Bunag in 1941 informing him of

the revision of the assessment. (Rollo, pp. 15-18).

The trial court decided in favor of petitioner, the dispositive portion of the decision reading as follows:

IN VIEW OF THE FOREGOING, judgment is rendered in favor of the plaintiff. The defendants, Bruno Bautista and Estrudes Bautista vda. de Bituin, are hereby ordered to vacate the property herein described and to deliver possession thereof to the plaintiff, Francisco Bunag; ordering the said defendants, jointly and severally, to pay the land taxes of the property up to and including the year 1968; and to pay the plaintiff the sum of P15.00 per month as reasonable rentals thereof from the date of this judgment until the property is delivered to the plaintiff; to pay the plaintiff the sum of P200.00 as expenses of litigation and costs. For lack of merit, the counterclaim of the defendants are dismissed. (Rollo, pp. 14-15).

The Court of Appeals, finding the deed of sale (Exhibit 1) to have been validly executed and, thus, concluding that "the preponderance of evidence leans heavily in favor of the claim of the ownership of defendant Bruno Bautista" [Rollo, p. 18], set aside the decision of the trial court and dismissed the complaint. The motion for reconsideration was subsequently denied by the Court of Appeals in a minute resolution for lack of merit.

Consequently, resolution of the instant petition primarily revolves around the issue of the due execution and authenticity of the deed of sale (Exhibit 1). The petitioner assigned the following errors:

I

THE COURT OF APPEALS ERRED IN HOLDING THAT THE DEED OF SALE (EXHIBIT "1") WAS DULY EXECUTED AND AUTHENTICATED.

II

THE COURT OF APPEALS ERRED IN MAKING CONCLUSION (SIC) NOT IN ACCORDANCE WITH THE EVIDENCE ON RECORD.

At the outset, it must be emphasized that the deed of sale (Exhibit 1) was not acknowledged before a notary public and neither are there any signatures in the blank spaces for the signatures of attesting witnesses. The document is typewritten in English and over the similarly typewritten words "APOLONIO BUNIAG" is a thumbprint.

The deed of sale (Exhibit 1) is not notarized and is, therefore, a private writing [U.S. v. Orera, 11 Phil. 596 (1908)], whose due execution and authenticity must be proved before it can be received in evidence [Nolan v. Sales, 7 Phil. 1 (1906); U.S. v. Evangelista, 29 Phil. 215 (1915); Antillon v. Barcelon, 37 Phil. 148 (1917)].

Proof of the due execution and authenticity of private writings is required under Section 21, Rule 132 of the the Revised Rules of Court, to wit:

Sec. 21. Private writing, its execution and authenticity, how proved.-- Before any private writing may be received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the writing executed;

(b) By evidence of the genuineness of the handwriting of the maker; or

(c) By a subscribing witness.

To support its conclusion as to the due execution and authenticity of the deed of sale (Exhibit 1), the Court of Appeals relied on the testimony of Brigida Bautista, a sister of private respondents. She testified as follows:

Q. Who is the owner of the property?

A. My brother Bruno Bautista.

Q. Do you know how your brother, Bruno Bautista, came to own the same property?

A. Yes, sir. He bought it from Apolonio Bunag.

Q. Do you know if there is any document evidencing the purchase of the said property from Apolonio Bunag?

A. Yes, sir.

Q. Showing to you this document already marked as Exhibit 1, do you recognize this?

A. Yes, sir, this is the document showing the purchase and sale of the lot in litigation.

Q. At the bottom portion thereof, appears a thumbmark above the typewritten name Apolonio Bunag, do you know whose thumbmark this is?

A. That is the thumbmark of Apolonio Bunag, sir, and I know that is his because I saw him affixed (sic) his thumbmark. (TSN, March 25, 1967, pp. 1-2).

However, the trial court found proof of the due execution and authenticity of the deed of sale (Exhibit 1) wanting, reasoning that:

The testimony of this witness (Brigida Bautista) has to be received with caution, coming as it does from a sister of the defendants. The circumstances of her alleged presence during the "execution" of the deed of sale was not related. Neither does she give any light as to whether Apolonio Bunag understood the document. It should be noted that Exhibit "1" was written in English. Since it appears that said document was merely thumb-marked, it could reasonably be inferred that Apolonio Bunag, the supposed vendor, was illiterate. Under the circumstances, the minimum proof necessary to establish due authenticity should, in the least, include evidence that the document (Exhibit "1") was duly read, explained and translated to Apolonio Bunag. Unfortunately, no such evidence was presented. Another fact which compels this Court to proceed with caution is the fact that there are no instrumental witnesses in the document. The mischief that lurks behind accepting at face value a document that is merely thumb-marked, without any witnesses to it, and not acknowledged before a notary public could be one of the reasons behind the requirement of the rules on evidence that a private writing must be shown to be duly executed and authenticated. The probative value of the testimony of Brigida Bautista, who

did not furnish us with any details surrounding the execution of Exhibit "1", coming as it does from a person whose partisanship can not, and should not, be overlook (sic), falls short from (sic) the minimum requirements of credibility. Indeed it has been said that the testimony of an eye-witness as to the execution of a private document must be positive. He must state that the document was actually executed by the person whose name is subscribed thereto. It is not sufficient if he states in a general manner that such person made the writing (Nolan vs. Sales, 7 Phil. 1). More so if the document was merely thumb-marked.

Regretably, this Court can not accept, for failure of proof as to its due execution and authenticity, the probative value of Exhibit "1". (Record on Appeal, pp. 38-39).

The Court sustains and adopts the trial court's findings and its conclusion that private respondents have failed to prove the due execution and authenticity of the deed of sale (Exhibit 1).

The due execution and authenticity of the deed of sale (Exhibit 1) not having been satisfactorily proven, such private document should be excluded [Paz v. Santiago, 47 Phil. 334 (1925); Alejandrino v. Reyes, 53 Phil. 973 (1929); Chapman v. Garcia, 64 Phil. 618 (1937); General Enterprises v. Lianga Bay Logging Co., G.R. No. L-18487, August 31, 1964, 11 SCRA 733].

- Petitioner contends that the Court of Appeals erred in arriving at a conclusion not supported by the record, when it said:

The pretension of the plaintiff that the defendant bound himself to pay the taxes for the use of the land is belied by the fact that the defendant paid the taxes in his own name and not in the name of Bunag, and the defendant kept the receipts of payment and did not deliver even one of those receipts to Bunag. (Rollo, p. 19.)

Petitioner argues that this finding is grossly erroneous, considering that in the stipulation of facts submitted by both parties before the trial court, it is expressly provided:

- That the parties hereto hereby stipulate and agree that the defendant, Bruno Bautista, has been paying the land taxes due on the aforesaid property, personally or thru his wife, Consolacion Capati, for the period from 1940 to 1964, as shown by the corresponding official land tax receipts duly issued by the Municipal Treasurer of Guagua, Pampanga: however, under the column NAME OF DECLARED OWNER thereof, the name Bunag Aguas Apolonio is written.

As this fact was stipulated by the parties, it need not be proven, it cannot be contradicted by evidence to the contrary, and it is conclusive upon the parties, unless it is shown that the admission was made through a palpable mistake [Irlanda v. Pitargue, 22 Phil. 383 (1912); Board of Administrators, Philippine Veterans Administration v. Agcaoili, G.R. No. L-38129, July 23, 1974, 58 SCRA 72].

There being no allegation of a palpable mistake that would relieve private respondents from the stipulation of facts, the stipulated fact above-quoted is conclusive upon the parties.

The Court of Appeals cannot arbitrarily disregard the statement of facts agreed upon by the parties [Siping v. Cacob, 10 Phil. 717 (1908)]. It is duty bound to render judgment strictly in accordance with the stipulation of facts [Cabrera v. Lacson, 71 Phil. 182 (1940)].

It may also be added that, indeed, in the Real Estate Tax Receipts (Exhibits 5 - 5-M) covering the years 1947 to 1964 presented by private respondents as their evidence, under the column entitled "NAME OF DECLARED OWNER", the name "Bunag Aguas Apolonio" is written. This assumes greater significance considering that the payors in these receipts were either private respondent Bruno Bautista, his wife Consolacion Capati or Ambrosio Bautista.

Thus, this Court finds merit in petitioner's contention that the Court of Appeals's conclusion is not supported by

the record, for said conclusion is contrary to the stipulated fact and the evidence offered by private respondents, which support petitioner's contention that his father did not sell the disputed property to private respondents' father, but merely allowed their brother to build a house on the land on the condition that the latter would pay for the realty taxes due.

With the exclusion of the deed of sale (Exhibit 1), the conclusiveness of the stipulation regarding the payment of realty taxes and the declaration of Apolonio Bunag Aguas as the owner in the Real Estate Tax Receipts (Exhibits 5 - 5-M), it becomes apparent that petitioner's father never ceased to own the disputed property.

At this juncture, it would be opportune to address private respondent's submission that the questions raised in petitioner's petition for review are questions of fact and not of law and, therefore, this Court should not disturb the findings of fact of the Court of Appeals. While the Court agrees with private respondents that, ordinarily, the Supreme Court should not review questions of fact in appeals of this nature, the Court finds, however that an exception obtains in the instant case, for clearly evident is a misapprehension of facts [De la Cruz v. Sosing, 94 Phil. 26 (1953); Castillo v. Court of Appeals, G.R. No. L-48290, September 29, 1983, 124 SCRA 808]. As summarized by the Court in a recent decision:

The jurisdiction of this Court in cases brought to us from the Court of Appeals (now Intermediate Appellate Court) is limited to the review of errors of law, said appellate court's findings of fact being conclusive upon us except (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly absurd, mistaken or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the judgment is premised on a misapprehension of facts; (5) when the findings of fact are conflicting; and (6) when the Court of Appeals, in making its findings went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee. ... [Rizal Cement Co., Inc. v. Villareal, G.R. No. L-30272, February 28, 1985, 135 SCRA 15].

WHEREFORE, the petition is hereby GRANTED, the decision of the Court of Appeals is set aside and the decision of the trial court is affirmed in toto. This Decision is immediately executory.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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