HEIRS OF PABLO ABELLA, NAMELY: GEORGE, VIRGIE, ELIZABETH, JOY, ANNABEL, JOSEPH, BERNADETH, BOBBY, ROLAND, ALL SURNAMED ABELLA, AND ALL REPRESENTED BY THE LATTER, PLAINTIFFS-APPE...

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before Us is an appeal from the Decision[1] dated May 2, 2006 of the Regional Trial Court, Branch 22, Pagadian City, in Civil Case No. 3888 for Reconveyance, Damages and Attorney's Fees.[2]

The pertinent facts are as follows:

The subject property in this case involves a parcel of land known as Lot No. 253, Ts-259 with an area of 183 square meters located at Pagadian City and covered by Transfer Certificate of Title (TCT for brevity) No. T-15,893[3] registered in the name of Hermogenes[4] Banay, the husband of appellee Estelita Banay.

On December 5, 1996, appellants Heirs of Pablo Abella (Heirs of Pablo for brevity) filed a Complaint[5] for Reconveyance, Damages and Attorney's Fees against appellees Estelita Banay (Estelita for brevity) and Spouses Enriquito and Asuncion Banay-Diaz (Spouses Diaz for brevity). The Heirs of Pablo claimed that their late father Pablo Abella (Pablo for brevity) occupied the subject property since the 1950s and had been in peaceful and notorious possession thereof until his death. During Pablo's lifetime, he filed a Miscellaneous Sales Application[6] covering the subject property before the Bureau of Lands on February 15, 1958. Pablo also declared the subject property for taxation purposes the earliest of which is for the years 1970-1972 as shown by Tax Receipt No. 4864862 dated April 13, 1977.[7] Upon Pablo's death, his Heirs continued to possess the subject property until the present time.

The foregoing is the reason why the Heirs of Pablo were surprised when Estelita informed them that she now owns the subject property by virtue of a Deed of Sale she entered into with Spouses Diaz, the original owners of the property. The Heirs of Pablo contended that Spouses Diaz employed fraud in registering the subject property to their names since they were fully aware that Pablo and his family were their neighbors and were in actual physical possession of the property. The Heirs of Pablo therefore prayed that Estelita and Spouses Diaz be ordered to, among others, reconvey the subject property to them.[8]

Estelita and Spouses Diaz on the other hand denied the material allegations in the Complaint. They claimed that Spouses Diaz had been in possession of the subject property as early as the 1940s. They subsequently applied for the issuance of a certificate of title before the Cadastral Court of the Province of Zamboanga del Sur. On February 3, 1970, Original Certificate of Title (OCT for brevity) No. 264[9] was issued in their favor.[10]

Sometime in 1971, Spouses Diaz left for the United States of America and entrusted the subject property to Estelita and her husband Hermogenes Banay (Spouses Banay for brevity); Asuncion Banay-Diaz and Hermogenes Banay being siblings. In 1976, Spouses Banay left for Africa and stayed there for more than ten years.[11] They

entrusted the subject property to Bernardo and Cristita Banay, the parents of Asuncion and Hermogenes. However, when Bernardo and Cristita passed away in the 1980s, Spouses Banay returned to the Philippines but stayed in Manila while Spouses Diaz remained in the United States of America until the present.[12]

In 1996, Spouses Diaz agreed to sell the subject property to Spouses Banay. The latter paid the realty taxes of the subject property and on October 14, 1996, Spouses Diaz executed an Absolute Deed of Sale[13] in favor of Spouses Banay. Consequently, Transfer Certificate of Title (TCT for brevity) No. T-15,893[14] was issued in Spouses Banay's favor on October 29, 1996. Thereafter, Spouses Banay went to Pagadian City to check on the subject property but was surprised to find out that a house of light materials owned by the Heirs of Pablo was already constructed therein. In view hereof, Estelita and Spouses Diaz prayed for the dismissal of the Heirs of Pablo's Complaint against them and, as counterclaim, the latter prayed that the latter be directed to pay damages and attorney's fees in their favor.[15]

After the parties presented their respective pieces of evidence, on May 2, 2008, the lower court rendered the assailed Decision[16] which found that the Heirs of Pablo failed to prove, by preponderance of evidence, their cause of action for reconveyance. The lower court concluded that as plaintiffs, the Heirs of Pablo failed to establish that Spouses Diaz employed fraud in obtaining a certificate a title over the subject land. For Estelita's and Spouses Diaz's part, they failed to sufficiently prove their counterclaim for damages. The dispositive portion of the assailed Decision reads:

> "WHEREFORE, finding no merit in the instant case, the same is hereby DISMISSED. The Counterclaim is likewise dismissed.
>
> SO ORDERED."[17]

Aggrieved, the Heirs of Pablo are now before Us raising their sole assignment of error:

> "THE COURT A QUO ERRED IN DISMISSING THE COMPLAINT ON THE GROUND THAT RECONVEYANCE IS NOT THE PROPER REMEDY CONSIDERING (THAT) THE PROPERTY HAS PASSED TO THIRD PERSON AND FOR VALUE DESPITE PROOF OF PREPONDERANCE OF EVIDENCE."[18]

Per Resolution[19] dated October 15, 2012, Estelita and Spouses Diaz failed to file an Appellees' Brief to address the issues raised by the Heirs of Pablo. Thus, they were deemed to have waived the filing of the same.

An action for reconveyance is "a legal and equitable remedy granted to the rightful owner of a land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him. The action does not seek to reopen the registration proceedings and to set aside the decree of registration but only purports to show that the person who secured the registration of the property in controversy is not the real owner thereof."[20]

In the main, the Heirs of Pablo contend that the lower court erred in dismissing their Complaint for Reconveyance because the issuance of Spouses Diaz's OCT No. 264[21] was attended by fraud. This is because Spouses Diaz applied for the issuance of a certificate of title covering the subject property despite knowledge that Pablo and his Heirs are the actual possessors thereof.[22]

We do not agree.

To sustain an action for reconveyance, all the following requisites must concur:

> "1) the action must be brought in the name of a person claiming ownership or dominical right over the land registered in the name of the defendant;

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> 2) the registration of the land in the name of the defendant was procured through fraud or other illegal means;
>
> 3) the property has not yet passed to an innocent purchaser for value; and
>
> 4) the action is filed after the certificate of title had already become final and incontrovertible but within four years from the discovery of the fraud, or not later than 10 years in the case of an implied trust."[23] (Emphasis Supplied)

The Heirs of Pablo failed to establish the second requisite.

The rule is basic that he who alleges fraud must substantiate his allegation because mere allegation is definitely not evidence.[24] Allegation of fraud is a question of fact that must be proven by clear and convincing evidence. It is never presumed.[25]

Regrettably for the Heirs of Pablo however, the pieces of evidence they presented, both documentary and otherwise, are bereft of any showing of fraud. As shown in their Complaint, the Heirs of Pablo stated no narration of facts as to how the purported fraud was committed by Spouses Diaz against them, in violation of Section 5, Rule 8 of the Rules of Court which states:

> "Section 5. Fraud, mistake, condition of the mind.—In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge or other condition of the mind of a person may be averred generally." (Emphasis Supplied)

Indeed, the Heirs of Pablo failed to allege much less prove how they were deprived of due process in the cadastral proceedings below which led to the issuance of OCT No. 264 in favor of Spouses Diaz. Furthermore, a reading of the testimonies of their witnesses would show that they did not attribute any semblance of fraud on the part of Spouses Diaz. What they merely claimed is that Spouses Diaz employed fraud in obtaining OCT No. 264 because they had the property titled even if they are in possession therein and nothing more. By no stretch of imagination can this be enough to sustain their cause of action for reconveyance.

On this score, the following observation of the lower court is apt:

> "The doctrine 'He who alleges must prove' should be adhered to.
>
> Xxx xxx xxx
>
> Going further, in the interest of justice, there has not been any proofs that the Spouses Enriquito and Asuncion Diaz fraudulently obtained the title to the property under OCT No. 264 issued to them after the Cadastral Proceedings on February 2, 1970.
>
> There was no showing that plaintiffs (referring to the Heirs of Pablo) were prejudiced, deprived or outwitted in the Cadastral Proceedings if the same could still be reopened. There is likewise no proof that the Original Certificate of Title is defective, irregularly issued or any claim of fraud had intervened in the issuance of said title. There was no proof that the defendants were mere trustees to make reconveyance available without prescription.
>
> Such being the facts, the plaintiffs' Original Certificate of Title No. 264 has already become indispensable under Section 38 of Act No. 496 as amended by Act No. 3630, now under Section 32 of PD No. 1529." (Emphasis Supplied)

Indeed, the rule is settled that the findings of the lower courts deserve respect, sometimes even finality as they had the distinct opportunity not available to reviewing courts, to hear the testimonies of the witnesses and to observe their conduct and demeanor on the stand.[26]

In any event, the Heirs of Pablo failed to prove that they were actually in possession of the subject property since the 1950s. Save from the testimony Isnani Solani who used to be a worker at the machine shop of Pablo in 1947,[27] no other evidence was introduced to show that indeed Pablo was in possession of the subject property as early as the 1950s. Even the testimonies of Guadalupe Tumanda and Morena Crausos who were allegedly neighbors of Pablo fell short in proving this. Guadalupe Tumanda merely testified that Pablo was in possession of the subject property in 1973[28] while Morena Carusos testified that Pablo was there in 1976[29] only. Neither can the testimony of Pablo's son, Bob Rolan Abella, was of any help for because he was not yet born when his father allegedly occupied the subject property.[30]

The Miscellaneous Sales Application[31] covering the subject property filed before the Bureau of Lands on February15, 1958 also does not prove ownership or better right to possession in favor of the Heirs of Pablo because certainly, a person can file a Miscellaneous Sales Application over a parcel of land without possessing the same. Moreover, the filing of such application operates as an express acknowledgment that the State is the owner of the subject property. The filing of such application is inconsistent with the Heirs of Pablo's protestation that they owned the subject property.[32]

Neither do the tax receipts presented below aid Heirs of Pablo's cause of action because a perusal of the same would show that the earliest year the subject property was declared for taxation purposes was for the years 1970-1972 paid on April 13, 1977.[33] As the lower court noted:

> "The plaintiffs have presented a (Miscellaneous) Sales Application over the said lot but just the same, this Miscellaneous Sales Application does not prove ownership nor can it be construed as title to the property. It remains as the title of the document itself shows, a mere application. The long years of habitation by the same plaintiffs in the lot occupied by a Tax Declaration and Realty Taxes thereto cannot ripen into ownership especially so that the lot subject of the Declaration and Realty Taxes has long been titled in the name of the Spouses Diaz. These Tax Declarations and Receipts for Realty Taxes are incompetent proofs of ownership as could be gleaned in a long line of Supreme Court decisions."

All of these lay more credence to the claim of Estelita that it was after she and her husband left for Africa in 1976 that Pablo and his Heirs occupied the subject property. This fact was proven by Andrea Bambao and Maylinda Corpuz who were neighbors of Spouses Diaz in 1964 and 1965, respectively and who testified that Pablo constructed their house in the mid-1970's after a tidal wave that hit the area.[34] Such fact was all the more corroborated by the witnesses of the Heirs of Pablo themselves, Guadalupe Tumanda[35] and Morena Crausos.[36] These are also the reasons why sometime in 1997 when Estelita visited the subject property, she was surprised to know that the Heirs of Pablo were already occupying the land she bought.[37]

The Heirs of Pablo next asseverate that the lower court erred in ruling that Estelita is an innocent purchaser for value. This is because Estelita is their neighbor and she has knowledge of the Heirs of Pablo's actual possession of the subject property. Thus, when Estelita bought the subject property from Spouses Diaz, she had notice of the flaw in the latter's title. This being the case, the rule on "the person dealing with registered land has the right to rely on the torrens title" does not apply to Estelita.[38]

It bears to note that as claimed by Estelita, she and her husband Hermogenes left for Africa in 1976 and stayed there for more than ten years.[39] It was only in 1987 that they returned to the Philippines but stayed only in Manila.[40] In 1997, they went home to Pagadian City and saw the improvements on the subject property introduced by the Heirs of Pablo.[41] This being the case, Estelita indeed had no knowledge of the actual status of the subject property before purchasing the same. While this may be construed as negligence on the part of Estelita where she was remiss of her duty to investigate the status of the subject property, yet, still, the fact remains that as pointed out earlier, the Heirs of Pablo nonetheless failed to prove fraud on the part of Spouses Diaz in obtaining a

certificate of title over the subject property. Hence, the action for reconveyance will still not prosper because to reiterate, not all the requisites to sustain an action for reconveyance are attendant here.

In view of the foregoing, the lower court did not commit a reversible error in ruling in favor of Estelita and Spouses Diaz and dismissing the Heirs of Pablo's Complaint.

WHEREFORE, the appeal is DISMISSED. The assailed Decision dated May 2, 2006 of the Regional Trial Court, Branch 22, Pagadian City is AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

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[1] Records, pp. 148-157

[2] Records, p. 3

[3] Records, p. 17

[4] Spelled as "Germogenes" in some parts of the records

[5] Records, pp. 1-3

[6] Records, p. 80

[7] Records, pp. 82-110

[8] Records, pp. 2-3

[9] Records, p. 18

[10] Records, p. 11

[11] TSN, September 24, 1999, pp. 7-8

[12] Records, p. 13

[13] Records, p. 19

[14] Records, p. 17

[15] Records, pp. 13-15

[16] Records, pp. 148-157

[17] Records, p. 157

[18] Rollo, P. 68

[19] Rollo, p. 71

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[20] Spouses Lopez v. Spouses Lopez, G.R. No. 161925, November 25, 2009

[21] Records, p. 18

[22] Rollo, p. 68

[23] New Regent Sources, Inc. v. Tanjuatco, Jr., G.R. No. 168800, April 16, 2009

[24] Spouses Ramos v. Obispo, G.R. No. 193804, February 27, 2013

[25] Spouses Galang v. Spouses Reyes, G.R. No. 184746, August 8, 2012

[26] Jimenez v. Commission on Ecumenical and Relations of the United Presbyterian Church of the United Stated of America, G.R. No. 140472, June 10, 2002

[27] TSN, November 1, 1997, p. 4

[28] TSN, January 22, 1998, p. 5

[29] TSN, July 9, 1998, p. 4

[30] Bob Rolan Abella testified that he was 36 years old on April 17, 1998, the date he testified before the lower court. From this, it can be concluded that he was born sometime in 1962. See TSN, April 17, 1998, p. 3

[31] Records, p. 80

[32] Republic v. AFP Retirement and Separation Benefits System, G.R. No. 180463, January 16, 2013

[33] Records, pp. 82-110

[34] TSN, November 12, 1998, pp. 7-9; TSN, July 15, 1999, pp. 5-8

[35] TSN, January 22, 1998, p. 17

[36] TSN, July 9, 1998, p. 5

[37] Records, p. 13; TSN, September 24, 1999, p. 12

[38] Rollo, p. 69

[39] TSN, September 24, 1999, pp. 7-8

[40] TSN, September 24, 1999, p. 10

[41] TSN, September 24, 1999, p. 12

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