

**RUFINO B. REQUINA, SR., AND ALLAN EREÑO, DULY REPRESENTED
BY LENY B. EREÑO, AS ATTORNEY-IN-FACT, PLAINTIFFS-APPELLEES,
VS. ELEUTERIA ERASMO, DEFENDANT-APPELLANT.**

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before the Court is the Appeal[1] assailing the Decision[2] dated June 17, 2009 of Branch 9, Regional Trial Court of Cebu City (hereafter, the “court a quo”) in Civil Case No. CEB-26877. The dispositive portion reads:

WHEREFORE, by reason of preponderance, judgment is hereby rendered in favor of Plaintiffs and against Defendant. Along this line, this court declares that:

- a. The deeds of sale in favor or (sic) Defendant Erasmo conveying 245 square meters of the lot subject of this case is declared void;
- b. The Affidavit of Adjudication of Sole heir executed by Rosalita Bagano Nevado is hereby declared valid and binding;
- c. The plaintiffs are hereby declared the true co-owners in fee simple over the portion of residential land on the basis of the Adjudication By Sole Heir of the Estate of the Deceased Person with Sale over a Portion Thereof dated March 15, 1994.

Furnish copy of this decision to the parties and their respective counsels.

SO ORDERED.

The facts of the case are as follows:

Rufina B. Requina, Sr. and Allan Ereño (hereafter, “plaintiffs-appellees”) filed the Complaint,[3] for Declaration of Nullity of Deed of Sale, with Prayer for a Better Right of Possession and Ownership over a Portion of Real Property, and Preliminary Injunction, before the court a quo. Named defendant was Eleuteria Erasmo (hereafter, “defendant-appellant”).

The Complaint alleged that Florentino Bagano owned a residential lot along Urgello Street, Barangay Sambag I, Cebu City, which, upon his death, was inherited by the sole heir Rosalita Bagano Nevado (hereafter, “Rosalita”). Plaintiffs-appellees are owners of a house erected over a 102 square meter portion of the residential lot which they bought from a certain Dr. Enrique Hipolito, Sr. Plaintiffs-appellees then was able to acquire the 102 square meter lot (hereafter, “subject lot”) from Rosalita through an Affidavit of Adjudication By Sole Heir of the Estate of the Deceased Person with Sale Over a Portion Thereof (hereafter, “Affidavit of Adjudication”) dated March 15, 1994. After the big fire in Urgello Street, which also razed the house, defendant-appellant caused the preparation of a Deed of Sale Over a Portion of Residential Land (hereafter, “Deed of Sale”) purportedly executed by Florentino Bagano and was dated November 17, 1989. Defendant-appellant then filed an ejectment case before the Office of the Lupong Tagapamayapa of Barangay Sambag I and no conciliation between the parties was reached.

The Complaint prayed for declaration of nullity of the Deed of Sale, for declaration that they are the true owners of the subject lot, for the issuance of a writ of preliminary injunction, and payment of damages and litigation expenses.

The Answer[4] of defendant-appellant averred that the complaint does not state a cause of action. She claimed that as early as November 17, 1989, she already acquired the subject lot from Spouses Florentino and Aurelia Bagano (hereafter, “Spouses Bagano”) through the Deed of Sale executed by the latter in her favor and which was even witnessed by Rosalita.

On June 17, 2009, the court a quo issued the assailed Decision[5] in favor of plaintiffs-appellees.

Unfazed, defendant-appellant filed a Motion for Reconsideration,[6] but the same was denied in an Order date June 17, 2009.[7]

A Notice of Appeal,[8] was then filed by defendant-appellant, which was given due course on October 27, 2009.[9]

Hence, this Appeal[10] with the following assignment of errors:

I

THE LOWER COURT ERRED IN RENDERING A DECISION IN FAVOR OF THE PLAINTIFFS-APPELLEES BY DECLARING THE DEED OF ABSOLUTE SALE OF DEFENDANT-APPELLANT NULL AND VOID;

II

THE LOWER COURT ERRED IN DECLARING PLAINTIFFS-APPELLEES AS THE CO-OWNERS OF LOT 1442-Q-1.

The pivotal issue is whether or not the Deed of Absolute Sale executed by Spouses Bagano in favor of defendant-appellant is spurious.

Defendant-appellant argues that she is the valid owner of the subject lot as she purchased the same for value and in good faith from Spouses Bagano on November 17, 1989. And she had been religiously paying the realty taxes of the property including the tax arrears of the spouses since 1980. Defendant-appellant asserts that the Affidavit of Adjudication of Rosalita is the one that is fictitious considering that Rosalita was a witness to the sale made by her parents and even signed the said Deed of Sale executed by her parents in favor of defendant-appellant. Hence, there is nothing to be adjudicated by Rosalita because the subject lot was already sold to her. It is posited by defendant-appellant that plaintiffs-appellees failed to present any strong basis for their claim of ownership and did not effect any transfer of rights over the property.

Plaintiffs-appellees, on the other hand, insist that the court a quo did not err in rendering the assailed decision in their favor as the court carefully considered the evidence of both sides. They agree with the findings of the court a quo that the execution of two (2) deeds of sale on the same year as dubious; that there was impossibility on the notarial book of the notary public which consumed thirty-three (33) notarial books for a period of eight (8) months; that defendant-appellant did not exert effort as the alleged owner upon her purchase of the subject lot and did not immediately cause the registration of the deed of sale; that the deed of sale was not among the documents submitted by the Regional Trial Court to the Regional Archives; and that the expert witness found forgery on the signature of Florentino Bagano in the deed of sale as against his standard signature.

The Ruling of the Court

We grant the appeal.

In the instant case, the identity of the subject land was not an issue. Both parties are claiming ownership over a 102 square meter portion of Lot 1442-Q-1[11] on which the house of the late Dr. Enrique Hipolito, Sr. stood. Hence, the streamlined issue now before the Court is the determination of who has better right to the subject land.

With respect to plaintiffs-appellees, they lean their ownership thereof on the basis of the Affidavit of Adjudication executed by the sole heir Rosalita in their favor in 1994, as well as the tax receipts evidencing payment. Plaintiffs-appellees assert that nobody disturbed their ownership and possession of the subject lot from the time that they occupy the house of Dr. Hipolito in 1993.

On the other hand, defendant-appellant based her ownership on a 245 square meter portion of Lot 1442-Q-1 (including the subject lot) on the Deed of Sale executed by Spouses Bagano in her favor allegedly in 1989, tax declaration in her name, and tax receipts. This Deed of Sale is being claimed by plaintiffs-appellees as fictitious.

Notably, in civil cases, the burden of proof is on plaintiff to establish his/her case by preponderance of evidence. Although the evidence adduced by plaintiff is stronger than that presented by the defendant, a judgment cannot be entered in favor of the former, if his/her evidence is not sufficient to sustain his/her cause of action.[12]

By preponderance of evidence is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence". It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[13]

It is the opinion of the Court that the evidence presented by plaintiffs-appellees is not sufficient to sustain their cause of action.

There was a valid sale between
Spouses Bagano and defendant-
appellant.

First. The claim that the subject Deed of Sale executed by Spouses Bagano in favor of defendant-appellant for a 195-square meter lot was fake as there was a finding made by Mr. Romeo Varona, Document Examiner of the PNP Crime Laboratory on its spurious nature does not hold water.

Suffice to state that the authenticity of a questioned signature cannot be determined solely upon its general characteristics, similarities or dissimilarities with the genuine signature. Dissimilarities as regards spontaneity, rhythm, presence of the pen, loops in the strokes, signs of stops, shades, etc., that may be found between the questioned signature and the genuine one are not decisive on the question of the former's authenticity. The result of examination of questioned handwriting, even with the benefit of aid of experts and scientific instruments, is, at best, inconclusive. There are other factors that must be taken into consideration. The position of the writer, the condition of the surface on which the paper where the questioned signature is written is placed, his state of mind, feelings and nerves, and the kind of pen and/or paper used, played an important role on the general appearance of the signature. Unless, therefore, there is, in a given case, absolute absence, or manifest dearth, or direct or circumstantial competent evidence of the character of a questioned handwriting, much weight should not be given to characteristic similarities, or dissimilarities, between the questioned handwriting and an authentic one.[14]

Likewise, a perusal of the May 1989 Deed of Sale for 50 square meters (submitted by plaintiffs-appellees as the true signature of Florentino Bagano), reveals that it is the same as that of Florentino Bagano's signatures in several documents where he signed acknowledging receipt of installment payments from defendant-appellant for the 195 square meter portion, and in the Partition Agreement between his siblings. And even in the questioned Deed of

Sale, this same signature appears in the said deed.

Also, it is visible to the naked eye that the signature of Rosalita, appearing in the questioned Deed of Sale as witness thereof, is identical compared to her signatures in the acknowledgment receipts of the installment payments and to her Affidavit of Adjudication executed in favor of plaintiffs-appellees.

Time and again, it has been ruled that forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.[15] Unfortunately for plaintiffs-appellees, they failed to prove forgery of the subject Deed of Sale.

Second. The fact that the Records Management and Archives Office issued a Certification that the Deed of Sale was not among the documents transferred to it by the Regional Trial Court[16] does not affect the validity of the sale made by Spouses Bagano.

The case of *Valencia v. Locquiao*[17] is informative:

The certification is not sufficient to prove the alleged inexistence or spuriousness of the challenged document. The appellate court is correct in pointing out that the mere absence of the notarial record does not prove that the notary public does not have a valid notarial commission and neither does the absence of a file copy of the document with the archives effect evidence of the falsification of the document. This Court ruled that the failure of the notary public to furnish a copy of the deed to the appropriate office is a ground for disciplining him, but certainly not for invalidating the document or for setting aside the transaction therein involved.

Third. A notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and it has in its favor the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate. Absent such, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies on the one contesting the same. Furthermore, an allegation of forgery must be proved by clear and convincing evidence, and whoever alleges it has the burden of proving the same.[18]

Fourth. The plain and unambiguous stipulations in the deed of sale cannot be superseded by unsupported allegation. Article 1370 of the New Civil Code mandates that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. Once the terms of an agreement have been reduced to writing, it is deemed to contain all the terms agreed upon by the parties and no evidence of such terms other than the contents of the written agreement shall be admissible.[19]

Here, the terms of the deeds of sale are very clear and unequivocal that ownership of the subject property was transferred and conveyed to defendant-appellant from Spouses Bagano; there is left no room for contrary interpretation.

Fifth. Defendant-appellant has been paying the taxes on the property from 1980 or even the tax arrears taxes of Spouses Bagano on the property.[20] Although payment of these taxes is not proof of ownership,[21] it is a usual burden attached to ownership.[22] What is more, nothing in the records shows that plaintiffs-appellees tried to oppose these payments made by defendant-appellant. The payment of real property taxes made by defendant-appellant, coupled with the findings of the valid execution of the contract of sale confirms ownership of defendant-appellant over the property in question.

Sixth. Nothing appears questionable with the sale of the 195- square meter portion when there was a previous sale of 50 square meters on the same year. It only shows that the first sale made by Spouses Bagano to defendant-appellant on May 8, 1989 was for a 50-square meter area of Lot 1442-Q-1, while the second sale executed on November 17, 1989 was for another 195-square meter portion, which make the total sold portion of

Lot 1442-Q-1 to defendant-appellant to 245 square meters.

Article 1544 of Civil Code does
not apply

We do not agree with the findings of the court a quo that Article 1544 of the Civil Code[23] on double sale is applicable in the present case. According to the Decision of the court a quo, since plaintiffs-appellees were the one who registered the sale with the Register of Deeds, they shall be considered as the owner.

In the first place, Article 1544 applies where the same thing is sold to different vendees by the same vendor. It does not apply where the same thing is sold to different vendees by different vendors,[24] as in this case.

The said provision contemplates a case of double or multiple sales by a single vendor. More specifically, it covers a situation where a single vendor sold one and the same immovable property to two or more buyers. According to a noted civil law author, it is necessary that the conveyance must have been made by a party who has an existing right in the thing and the power to dispose of it. It cannot be invoked where the two different contracts of sale are made by two different persons, one of them not being the owner of the property sold. And even if the sale was made by the same person, if the second sale was made when such person was no longer the owner of the property, because it had been acquired by the first purchaser in full dominion, the second purchaser cannot acquire any right.[25]

More importantly, Article 1544 of the Civil Code does not apply to sales involving unregistered land.[26]

What applies in this case is Act No. 3344 as amended,[27] which provides for the system of recording of transactions over unregistered real estate. Act No. 3344 expressly declares that any registration made shall be without prejudice to a third party with a better right.[28]

Hence, the fact that plaintiffs-appellees had registered with the Register of Deeds the transfer of the subject lot made by Rosalita in their favor does not confer ownership of the land to them.

With the valid sale made by Spouses Bagano to defendant-appellant, Rosalita could not possibly sell the same subject lot to plaintiffs-appellees. No one can give what one does not have, *nemo dat quod non habet*. One can sell only what one owns or is authorized to sell, and the buyer can acquire no more right than what the seller can transfer legally.[29] Thus, the subsequent sale made by Rosalita in favor of plaintiffs-appellees is null and void.

WHEREFORE, the instant appeal is GRANTED. The Decision dated June 17, 2009 of Branch 9, Regional Trial Court of Cebu City is REVERSED and SET ASIDE. The Complaint is DISMISSED for lack of merit.

SO ORDERED.

Ingles, Chairperson, and Lagura-Yap, JJ., concur.

[*] Substituted by his heirs and granted by the Court per Resolution dated February 25, 2013, Rollo, p. 234.

[1] Rollo, p. 29.

[2] Records, p. 401.

[3] Ibid., p.1.

[4] Ibid., p. 34.

[5] Supra, Note 2.

[6] Ibid., p. 419.

[7] Ibid., p. 429.

[8] Ibid, p. 434.

[9] Ibid., p. 435.

[10] Rollo, p. 31.

[11] Also referred to in the records as Lot. No. 1442; Lot 1442-Q.

[12] Ong v. Yap, G.R. No. 146797, February 18, 2005, citing Heirs of Anastacio Fabela v. Court of Appeals, G.R. No. 142546, August 9, 2001; United Airlines, Inc. v. Court of Appeals, G.R. No. 124110, April 20, 2001.

[13] Raymundo v. Lunaria, G.R. No. 171036, October 17, 2008, citing Floralde v. Court of Appeals, G.R. No. 123048, August 8, 2000; Ong v. Yap, *supra*.

[14] Punzalan v. COMELEC, G.R. No. 126669, G.R. No. 127900, April 27, 1998, citing Francisco on Evidence, Vol. VII, Part 1, 1997 Edition, p. 674, citing Lorenzo v. Diaz, 53 O.G. 4110-4111.

[15] Javier v. Fly Ace Corporation, G.R. No. 192558, February 15, 2012, citing Ladignon v. Court of Appeals and Luzviminda C. Dimaun, G.R. No. 122973, July 18, 2000.

[16] Records, p. 238 (Exhibit “L”).

[17] G.R. No. 122134, October 3, 2003, citing Spouses Santiago v. Court of Appeals, G.R. No. 117014, August 14, 1995.

[18] Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals, G.R. No. 125283, February 10, 2006.

[19] Section 9, Rule 130 of the Rules of Court.

[20] Although these were paid only in 2000 per Certification by the City Treasurer, Records, p. 338, Exhibit “4”.

[21] Abing v. Waeyan, G.R. No. 146294, July 31, 2006.

[22] Go v. Bacaron, G.R. No. 159048, October 11, 2005.

[23] ART. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

[24] Spouses Ong v. Spouses Olasiman, G.R. No. 162045, March 28, 2006, G.R. No. 162045, March 28, 2006, citing Cheng v. Genato, G.R. No. 129760 December 29, 1998.

[25] Consolidated Rural Bank (Cagayan Valley) Inc. v. Court of Appeals, G.R. No. 132161, January 17, 2005, citing C. Villanueva, Philippine Law on Sales 100 (1995); A. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume V 96 (1999).

[26] Sabitsana v. Muertegui, G.R. No. 181359, August 5, 2013.

[27] AN ACT TO AMEND SECTION ONE HUNDRED AND NINETY-FOUR OF THE ADMINISTRATIVE CODE, AS AMENDED BY ACT NUMBERED TWO THOUSAND EIGHT HUNDRED AND THIRTY-SEVEN, CONCERNING THE RECORDING OF INSTRUMENTS RELATING TO LAND NOT REGISTERED UNDER ACT NUMBERED FOUR HUNDRED AND NINETY-SIX, ENTITLED “THE LAND REGISTRATION ACT”, AND FIXING THE FEES TO BE COLLECTED BY THE REGISTER OF DEEDS FOR INSTRUMENTS RECORDED UNDER SAID ACT. Approved December 8, 1926.

[28] *Sabitsana v. Muertegui*, Supra Note 25.

[29] *Rufloe v. Burgos*, G.R. No. 143573, January 30, 2009, citing *Consolidated Rural Bank, Inc. v. Court of Appeals*, G.R. No. 132161, January 17, 2005.

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