

ELISEA AGUILAR- SALATANDRE, PLAINTIFF-APPELLANT, VS. SPOUSES RICARDO PIA AND LITA PIA, DEFENDANTS-APPELLEES.

Ponente: LOPEZ, J.

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LOPEZ, J.:

The Case

Before Us is an appeal filed under Rule 41 of the 1997 Rules of Civil Procedure which seeks to reverse and set aside the Decision[1] of the Regional Trial Court, Branch 24 of Maasin City, Southern Leyte, dated 5 November 2008, dismissing Plaintiff-Appellant's Complaint[2] for "Annulment and Revocation of a Deed of Donation, Deed of Sale and Advance Plan Covering the Property held in Usufruct and Damages".

FACTUAL ANTECEDENTS

This case arose out of a claim of ownership filed by Plaintiff-Appellant against Spouses Pia over a parcel of land denominated as Lot. No. 10332 of the Maasin Cadastre, with an area of 303 square meters, presently tax declared in the name of Defendant-Appellee Ricardo Pia. The subject property was part of a big tract of land owned by Pedro S. Aguilar.

Plaintiff-Appellant is the daughter of Pedro S. Aguilar, the original owner of the subject property. She seeks to recover the said property on the ground that the sale thereof to Defendants-Appellees was null and void since the seller does not have absolute title over the property. On the other hand, Defendants-Appellees are the present owners of the property having acquired the same from Jacinto Diores.

It appears that during the lifetime of the original owner Pedro S. Aguilar, the latter granted usufructuary rights over his property to several tenants thereof as evidenced by a document entitled "Handumanan"[3] dated 27 May 1948. The tenants were allowed to build their houses on the portion of the property that they were tilling subject to the condition that if the owner will use the property in the future, then they will remove their houses thereon. One of the beneficiaries was Camilo Diores, father of Jacinto Diores. On 17 July 1987, Camilo Diores executed a Deed of Donation[4] Mortis Causa covering the same property including the house erected thereon in favor of Jacinto Diores.

On the aforesaid Deed of Donation, the donor inserted a condition that upon the death of the donee, the property shall revert back to Pedro S. Aguilar or his legitimate heir.

Subsequently, on 12 September 2000, Jacinto Diores sold the subject property to Ricardo Pia for a consideration of P10,000.00 evidenced by a Deed of Absolute Sale[5]. Consequently, an Advance Plan was secured by the buyer from the Department of Environment and Natural Resources (DENR) for titling purposes.

Upon learning of the aforesaid sale, Plaintiff-Appellant filed a complaint with the trial court on 2 January 2002. She sought to annul the Deed of Donation executed by Camilo Diores in favor of his son Jacinto Diores and the Deed of Absolute Sale executed by the latter in favor of Defendant-Appellee Ricardo Pia. She contended that Camilo and Jacinto Diores do not have absolute title over the subject property, thus they cannot alienate the same either by donation or sale. Accordingly, Defendants-Appellees have not acquired a better title than their

predecessors.

On 5 March 2002, Defendants-Appellees filed their Answer with Counterclaim[6]. They claimed absolute ownership over the subject property having acquired the same from Jacinto Diores as evidenced by a Deed of Absolute Sale. They added that Jacinto Diores acquired the said property from his father Camilo Diores who, in turn, acquired the same from Pedro S. Aguilar by purchase. To bolster their claim, they presented a document written in Spanish language titled, “Escritura de Venta de un Terreno”[7] or Deed of Absolute Sale dated 23 February 1959.

Moreover, they alleged that the deed of donation executed by Camilo Diores in favor of his son does not expressly prohibit the disposition of the subject property by the donee. Furthermore, they averred that Plaintiff-Appellant has no personality to petition for the revocation of the aforesaid deed of donation on the ground that it is personal to the donor. Nonetheless, the said action had already prescribed.

Subsequently, trial on merits ensued. Plaintiff-Appellant presented three witnesses, namely: Pedro Capecenio, Emiliano Quirong and Jimmy A. Salatandre, son of Plaintiff-Appellant. Pedro Capecenio testified that he is one of the tenants of the subject property.[8] He added that sometime in the year 1948, Pedro Aguilar called the tenants of his property for a meeting in the house of Camilo Diores. During the course of the meeting, a document entitled “Handumanan” was signed by the tenants.[9] He identified said document as he was allegedly present during its signing.[10] Moreover, he stated that not all of the tenants signed the document but only the original tenants.

Emiliano Quirong testified that he is familiar with the subject property as he used to work in the rice mill owned by Camilo Diores.[11] He maintained that Plaintiff-Appellant owns the subject property where the said rice mill is located. He added that Camilo Diores asked for Pedro Aguilar’s permission to construct a rice mill on the subject land and that he was present when the agreement was made which was allegedly subject to the condition that if the latter will use the property, then the former will relocate his rice mill.[12]

Jimmy Salatandre testified that Camilo Diores was one of the tenants of his grandfather, Pedro Aguilar. He stated that the area tenanted by Camilo Diores is more or less one and a half (1 ½) hectares and the area in litigation is only a part thereof.[13] Moreover, he added that Camilo Diores allotted a part of the income of the land to Pedro Aguilar until the latter’s death.[14]

On the other hand, Defendants-Appellees presented two witnesses, namely: Ricardo Pia and Elsa Salvacion. Defendant-Appellee Ricardo Pia testified that he is the present owner of the subject property having acquired the same from Jacinto Diores.[15] He added that he knew Camilo Diores, father of Jacinto, as he used to stay in the latter’s house for almost 12 years.[16] According to him, he did not notice any indication that Camilo worked as a tenant in the subject property for and in behalf of Pedro Aguilar.[17] Moreover, he posited that the portion in litigation was declared for taxation purposes in the name of Camilo Diores and subsequently, he caused the transfer of the tax declaration in his name after he acquired the subject property.[18]

Elsa Salvacion merely corroborated Ricardo Pia’s testimony. She added that she knew Camilo Diores as the latter was her step grandfather. But she has no knowledge of whether Camilo was a tenant of Pedro Aguilar.[19]

On 5 November 2008, the trial court rendered the assailed decision dismissing Plaintiff-Appellant’s complaint. It ruled that Plaintiff-Appellant failed to establish her claim that Camilo Diores was merely a usufructuary of the subject property and thus, acquired no right to transfer the said property by way of donation. It, however, recognized that Defendants-Appellees also failed to establish that the subject property was acquired by Camilo Diores from Pedro Aguilar by way of sale.

Nonetheless, since the burden of proof lies on Plaintiff-Appellant, it is incumbent upon the latter to prove her

claim by competent evidence which she failed to do, according to the trial court. It added that where the evidence of both parties in an issue of fact is in equipoise, then the party having the burden of proof necessarily fails on that respect. Moreover, the trial court stressed that the document entitled “Handumanan” failed to identify the specific portions of the property to be tilled by each tenant, thus it is difficult to ascertain whether the property in litigation is the same property mentioned in the said document.

Aggrieved by the trial court’s decision, Plaintiff-Appellant filed a Notice of Appeal[20] on 8 December 2008. On 7 January 2009, the trial court issued an Order[21] giving due course to the notice of appeal and the records of the case were ordered elevated to this Court.

Subsequently, Plaintiff-Appellant filed her Appellant’s Brief[22] raising several assignments of error which can be summarized as follows:

I

WHETHER OR NOT THE LOWER COURT ERRED IN HOLDING THAT PLAINTIFF-APPELLANT HAS NOT SUFFICIENTLY ESTABLISHED HER CLAIM THAT CAMILO DIORES WAS MERELY A USUFRUCTUARY;

II

WHETHER OR NOT THE DEED OF DONATION OF JULY 17, 1987, DEED OF ABSOLUTE SALE OF SEPTEMBER 12, 2000 AND THE ADVANCE PLAN ARE NULL AND VOID;

III

WHETHER OR NOT THE LOWER COURT ERRED IN CONCLUDING THAT A USUFRUCT OF A REAL PROPERTY BEING A REAL RIGHT MUST BE DULY REGISTERED IN ORDER TO BIND INNOCENT THIRD PERSONS.

Considering that the above assigned errors are interrelated, these will be discussed jointly.

RULING

We GRANT the present appeal.

Plaintiff-Appellant argued in her brief that she has sufficiently proven that Camilo Diores was a tenant of her father as shown in the document entitled “Handumanan”. Moreover, she contended that said document should have been considered by the trial court as an “ancient” document, being more than 30 years old, found in the proper custody of Plaintiff-Appellant and unblemished by any alteration, hence, no other evidence of its authenticity need be given.

Plaintiff-Appellant reiterated that Camilo Diores did not acquire an absolute title over the subject property being only a usufructuary thereof. Thus, he cannot dispose of the same by way of donation. Consequently, his son Jacinto Diores, did not acquire a better title than his father, as such the former cannot transfer the subject property to Defendants-Appellees by way of sale. Clearly, the deed of donation, deed of sale and advance plan are null and void according to Plaintiff-Appellant.

Furthermore, Plaintiff-Appellant contended that the document entitled “Handumanan” need not be registered in order to bind third persons since Art. 709 of the Civil Code, cited by the trial court, applies only to donations of immovable property.

On the other hand, Defendants-Appellees countered that the claim of Plaintiff-Appellant that Camilo Diores was a tenant of Pedro Aguilar is not supported by evidence. For one, the area of the subject property, which is 303 square meters, is too small for agricultural purposes. They added that Plaintiff-Appellant’s evidence does not show what specific acts of tenancy did Camilo Diores performed for the owner. Moreover, they argued that the

document relied upon by Plaintiff-Appellant titled “Handumanan” cannot be considered as an “ancient” document since there was no proof that it was produced from a custody in which it would naturally be found if genuine.

Furthermore, they strongly assert that the subject property was purchased by Camilo Diores from Pedro Aguilar as shown by a document entitled “Escritura de Venta de Un Terreno”. Thus, the former can alienate the subject property as he was already the owner thereof.

This Court is convinced that Plaintiff-Appellant has sufficiently proven by preponderance of evidence that Camilo Diores was merely a usufructuary of the subject property, thus the latter cannot alienate the same.

USUFRUCT HAS BEEN ESTABLISHED

Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides.[23] In essence, it is nothing else but simply allowing one to enjoy another’s property.[24] It is also defined as the right to enjoy the property of another temporarily, including both the *jus utendi* and *jus fruendi*, [25] with the owner retaining the *jus disponendi* or the power to alienate the same.[26]

In the case at bar, there is no dispute that the original owner of the property was Pedro Aguilar, father of Plaintiff-Appellant. However, the trial court ruled that the latter failed to discharge her burden of proving her claim that Camilo Diores was merely a usufructuary of the subject property. This Court does not agree with the trial court’s ruling.

Plaintiff-Appellant presented a document entitled “Handumanan” [27], which is essentially a contract of usufruct entered into between the owner of the property and the tenants thereof, to prove her claim. In the said document, the owner expressly allowed the tenants to construct their houses thereon subject to the condition that they will remove the same if the owner will use the land in the future. The document was written in Visayan language, a language understood by the tenants thereof and was properly translated to English by Edna Mantilla, the court interpreter, during the trial of the case. One of the tenants and signatories of the said document was Camilo Diores. Being a usufructuary, only the *jus utendi* and *jus fruendi*, including the *jus possidendi*, are transferred to the former.[28] The right to dispose (*jus disponendi*) is retained by the owner.

Moreover, the contract evidencing the usufruct (“Handumanan”) appears in a private document. Under the Rules of Court [29], before a private document offered as authentic is received in evidence, its due execution and authenticity must first be proved either: (a) by anyone who saw the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker.

In the case at bar, the aforementioned document was offered to prove that it was really executed by the parties. Thus, there is a need to prove its due execution and authenticity. This Court is convinced that the due execution and authenticity of the said document has been amply proven. Pedro Capecenio, one of the tenants of the subject property, testified that he was present when the document was signed by the parties at the house of Camilo Diores.[30] He added that he was there as a substitute of his father, who was the original tenant.[31] Hence, he has personal knowledge on the due execution of the aforesaid document.

The trial court ruled that Pedro Capecenio’s testimony is doubtful considering that he was not the one who prepared the document neither was he a witness thereof. However, the rules does not require that the person who will testify on the due execution and authenticity of a private document must be the person who prepared the same or a witness thereof. A person who saw the document executed or written may authenticate the same.[32] He need not be the maker or witness thereof.

Likewise, the trial court ruled that the document entitled “Handumanan” is not sufficient to prove that Camilo Diores was a usufructuary of the aforesaid property because it does not specify the property subject matter of the usufruct. According to the trial court, the usufruct may have been granted over a different parcel of land. This Court does not agree.

In the first place, it does not appear from the records of the case that there were other properties belonging to Pedro Aguilar which were also tenanted. Moreover, the property under litigation pertains to that portion of Pedro Aguilar’s land where the house of Camilo Diores is situated, which portion was also the subject matter of the usufruct as shown in the document entitled “Handumanan”. Evidently, the property mentioned in the aforesaid document and the property under litigation are one and the same. Thus, the ruling of the trial court that the usufruct may refer to other parcels of land has no basis.

Defendants-Appellees anchored their defense mainly on the alleged sale of the subject property by Pedro Aguilar to Camilo Diores, evidenced by a document written in Spanish language entitled “Escritura de Venta de Un Terreno” dated 23 February 1959.

However, as observed by the trial court, the said document cannot be understood because it was written in Spanish language and the translation thereto was belatedly filed by Defendants-Appellees. Under the Rules of Court, a documentary evidence in an unofficial language must be accompanied by an English or Filipino translation, otherwise it will not be admitted in evidence.[33] Moreover, the rules direct the parties to submit the translation before trial to avoid interruption of proceedings.[34] Thus, the trial court was correct in not admitting such document as evidence pursuant to the above-mentioned rule.

Furthermore, the trial court noticed some irregularities in the aforesaid document which raised doubts as to its authenticity. Firstly, the person who translated the said document was not known, thus the trial court has no way of knowing whether the translation was correct. Secondly, the document does not bear the signatures of the seller, Pedro Aguilar, and the buyer, Camilo Diores. Consequently, the “Escritura de Venta de Un Terreno” and its translation are insufficient to establish that the subject land was acquired by Camilo Diores from Pedro Aguilar.

The only reasonable conclusion that may be derived therefrom is that Camilo Diores was merely a usufructuary of the subject property.

It is a hornbook doctrine that the party who asserts his or her right granted by law has the burden to prove his allegations by the quantum of evidence required by law, which in this case is preponderance of evidence. “Preponderance of evidence” is 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 credible evidence”.[35] It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[36] In the case at bar, this Court is convinced that Plaintiff-Appellant has sufficiently proven her claim by preponderance of evidence.

VALIDITY OF THE DEED OF DONATION, DEED OF SALE AND ADVANCE PLAN

Since donation and sale are considered as modes of acquiring ownership, then it presupposes that the donor or the seller must be the owner of the property donated or sold, respectively, otherwise the contract is void. This is in consonance with the rule that “no one can give what he 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.[37]

Therefore, Camilo Diores, being only a usufructuary, has no right to alienate the subject property by way of

donation because only the *jus utendi* and *jus fruendi* are transferred to the usufructuary in usufruct. It follows that the donation made by Camilo Diores in favor of his son, Jacinto Diores, on 17 July 1987 is void.

Likewise, the sale of the subject property by Jacinto Diores to Ricardo Pia, evidenced by a Deed of Absolute Sale executed on 12 September 2000, is also void because the former is not the absolute owner thereof. Jacinto did not acquire a right greater than what his father Camilo had. As the saying goes, the spring cannot rise higher than its source.[38]

Moreover, it has not escaped Our observation that in the aforesaid Deed of Donation executed by Camilo Diores in favor of his son Jacinto Diores, the former inserted a condition, to wit:

“xxx xxx xxx It is my desire that after the death of the donee, the ownership of the aforementioned property shall revert back to Pedro Aguilar or his legitimate heir, who donated the said property to the herein donor.”
(emphasis supplied)

The aforesaid deed does not mention any sale made by Pedro Aguilar to Camilo Diores. On the contrary, it mentioned of a donation made by the former to the latter although no evidence was adduced to prove the same. Nonetheless, the aforesaid condition bolsters the fact no sale occurred between the original owner, Pedro Aguilar and Camilo Diores with respect to the subject property.

It may not be amiss to add that Defendants-Appellees should have presented Jacinto Diores as one of their witnesses to help shed light on the present controversy as the latter was privy to the assailed deed of donation and deed of sale. But, they chose not to present him.

Considering the foregoing premises, this Court finds that there is no need to discuss Plaintiff-Appellant’s last assignment of error.

Moral Damages and Attorney’s Fees

Anent Plaintiff-Appellants claim for moral damages and attorney’s fees, this Court is convinced that she is not entitled thereto. To be recoverable, moral damages must be capable of proof and must be actually proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages.[39] In the case at bar, no evidence was presented by Plaintiff-Appellant to prove her claim for moral damages. She did not even testify in open court to prove the same. Her allegations in her complaint are not sufficient for it does not constitute proof of the facts alleged.

As regards attorney’s fees, Article 2208 of the Civil Code enumerates the instances when it may be granted. However, Plaintiff-Appellant failed to adduce evidence to prove any of the instances therein enumerated. Thus, her claim for attorney’s fees necessarily fails.

WHEREFORE, premises considered, the present appeal is GRANTED. The Decision of the trial court dated 5 November 2008 is hereby REVERSED and SET ASIDE. A new one is entered as follows:

- 1.) Declaring Plaintiff-Appellant as the lawful and legal owner of the subject property;
- 2.) Declaring the Deed of Donation dated 17 July 1987 and Deed of Absolute Sale dated 12 September 2000 and the Advance Plan of Lot No. 10332 as null and void and without any legal effect.
- 3.) Ordering Defendants-Appellees to respect and recognize Plaintiff-Appellant’s ownership and possession over the property.

SO ORDERED.

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

[1] Records, pp. 140-151.

[2] Ibid., pp. 2-6.

[3] Bill of Exhibits, p. 2.

[4] Ibid., pp. 7-8.

[5] Ibid., p. 9.

[6] Ibid., pp. 14-19.

[7] Ibid., p. 21.

[8] TSN dated February 13, 2004, p. 3.

[9] Ibid.

[10] Ibid., p. 7.

[11] TSN dated February 25, 2005, p. 4.

[12] Ibid., p. 9.

[13] TSN dated July 12, 2005, pp. 4-5.

[14] Ibid., p. 6.

[15] TSN dated May 23, 2007, p. 5.

[16] Ibid., p. 11.

[17] Ibid., p. 14.

[18] Ibid., p. 15.

[19] TSN dated November 21, 2007, p. 5.

[20] Records, p. 156.

[21] Ibid., p. 158.

[22] Rollo, pp. 14-42.

[23] Article 562, New Civil Code.

[24] Moralidad vs. Spouses Pernes, G.R. No. 152809, August 3, 2006 citing Hemedes vs. CA, G.R. No. 107132, October 8, 1999.

[25] Ibid.

[26] Article 582, Civil Code.

[27] *supra*. note 3.

[28] Hemedes vs. CA, G.R. No. 107132, October 8, 1999.

[29] Section 20, Rule 132, Revised Rules on Evidence.

[30] TSN dated February 13, 2004, pp. 3-4.

[31] Ibid., p. 5.

[32] supra. note 29.

[33] Section 33, Rule 132, Revised Rules on Evidence.

[34] Ibid.

[35] Amoroso vs. Alegre, G.R. No. 142766, June 15, 2007.

[36] Heirs of Jose Lim vs. Juliet Villa Lim, G.R. No. 172690, March 3, 2010.

[37] Rufloe vs. Burgos, G.R. No. 143573, January 30, 2009 citing Consolidated Rural Bank Inc. vs. CA, G.R. No. 132161, January 17, 2005.

[38] Republic vs. Mangotara, G.R. No. 170375, October 13, 2010 citing Sanchez vs. Quinio, G.R. No. 133545, July 15, 2005.

[39] Abobon vs. Abobon, G.R. No. 155830, August 15, 2012.

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