

**ELIZABETH CASTRO AND ALFONSO BORILLA, JR. REPRESENTED BY
DOLORES BORILLA, PLAINTIFFS-APPELLANTS, VS. ELESIO
VALERIANO, ARMANDO BOTALON, DOMINGO BIRON, VICTOR
BRILLANTES, ALFREDO...**

Ponente: LOPEZ, J.

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LOPEZ, J.:

This resolves the motion for reconsideration filed by defendants-appellees assailing the October 10, 2013 Decision issued by this Court, to wit:

FOR THESE REASONS, the appeal is GRANTED. The Decision dated June 1, 2010, including the award of attorney's fees in favor of the appellees, is SET ASIDE. The deed of sale dated August 27, 1982 is declared VOID.

SO ORDERED.[1]

In resolving this case for the plaintiffs-appellants, the Court ratiocinated as follows:

The petition hinges on whether the signatures of Alfonso Borilla, Jr., Juana Borilla Bueno, Nelly Borilla Barcelá, Roy Borilla, Natividad Vargas Borilla and Emily Borilla Busing, as vendors in the deed of sale dated August 27, 1982, were forged. In resolving the issue, the trial court relied on the presumption of regularity of a notarized document and ruled that the deed of sale dated August 27, 1982 covering Lot No. 52-B-2 is genuine. Thus, the subsequent sales to Herminio Botalon and Armando Botalon were held valid.

Indeed, it is a rule of evidence that a notarized document carries an evidentiary weight with respect to its due execution and enjoys a prima facie presumption of regularity. But, this presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary. In this case, Emily Borilla Busing, Nelly Borilla Barcelá, and Roy Borilla, the vendors appearing in the alleged deed of sale, credibly denied that they signed the document, or that they appeared before a notary public. xxx

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Alfonso Borilla, Jr. also denied that he signed the deed of sale, and that he appeared before a notary public to acknowledge it. He claimed that it was improbable for him to have signed the document because he was still a minor when the alleged deed of sale was executed. Moreover, Alfonso denied the authenticity of the signature of his mother, Natividad Vargas Borilla, appearing in the deed because he is familiar with her signature. Xxx

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Aside from these testimonies, there are corroborating evidence to show that the deed of sale is spurious. For one, the title to the lot and the tax declaration are still in the name of the original owner, Dorotea Miralo. The alleged deed of sale, which was executed in 1982, remains unregistered up to present. Also, Elesio did not pay realty taxes except only in the year 2009.

Moreover, Our own visual examination of the genuine signatures against that of the alleged forged signatures

confirmed the falsity of the deed of sale.

Here, Alfonso Borilla, Jr. presented a copy of Natividad's and his own Voter's Affidavit. His signature in the Voter's Affidavit is clearly legible upon first glance with the letters vividly written and round as opposed to that in the subject deed wherein the letters are narrow, thin and almost illegible. The letter "A" in Alfonso in the Voter's Affidavit is written in the lower case while that in the deed is written in the upper case. Moreover, the letter "B" in Borilla in the Voter's Affidavit appears to be written in two (2) separate hand movements: by making a straight vertical line, then, a figure which resembles that of a "3" attached to the straight vertical line. In the deed, however, the letter "B" appears to be written in a single unbroken hand movement that begins with writing a straight vertical line from below with the hand moving upward and creating a figure resembling a narrow "3". In the case of Natividad's signatures in the deed and in her Voter's Affidavit, the Court also noted some differences. Thus, the letters in Natividad's signature in her Voter's Affidavit appear bigger and rounder while in the deed, the letters appear smaller and flat. Also, Natividad's middle initial, "V", in her Voter's Affidavit, was linked with the letter "B" of Borilla in such a way that they formed a single word. Meanwhile, the letter "V" in the deed was distinctly written, separate from Borilla and followed by a period.

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Accordingly, given that the signatures of the vendors were forged, no rights were transferred from them to the vendees, Eliseo Valeriano and Job Bea. No one can give what one does not have. A person can sell only what he owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally. Job Bea could not have conveyed ownership of the 590-square meter portion to Herminio Botalon, and the consequent sale to Armando Botalon also transferred no right.

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[Annotations omitted.]

In their motion for reconsideration, defendants-appellees insist that the August 27, 1982 Deed of Absolute Sale is valid. They stressed that during trial, the plaintiffs-appellants admitted that they sold a portion of Lot No. 52-B-2. Moreover, defendants-appellees have been in possession of the property since 1982 without opposition from the plaintiffs-appellants. The complaint was filed only in 2006, or after 23 years. Hence, the action should be barred by prescription and laches.[2]

Plaintiffs-appellants counter that the issues raised for reconsideration are mere repetitions of the arguments in the Appellee's Brief and that prescription and laches cannot be invoked because an action for declaration of nullity of contract is imprescriptible.[3]

Keeping in mind that the function of a motion for reconsideration is to give the court a chance to correct itself,[4] We find that after reviewing the records and evidence submitted, the motion for reconsideration must be granted.

We recall that Lot 52-B-2 is a 2,597-square meter parcel of land located at Salvacion, Tabaco City and covered by Transfer Certificate of Title No. T-40701 in the name of Dorotea Miralo.[5] Dorotea had two children, namely Juana Miralo-Borilla and Alfonso Borilla, Sr. Plaintiff-appellant Elizabeth Castro is the daughter of Juana. On the other hand, Alfonso, Sr. was married to Natividad Vargas Borilla and their children are Nelly Borilla Barcela, Emily Borilla Busing, plaintiff-appellant Alfonso Borilla, Jr. and Roy Borilla. Alfonso, Sr. predeceased Dorotea.

Worthy to note, when Dorotea died intestate on April 18, 1977,[6] her daughter Juana inherited one-half of Lot 52-B-2 by her own right; while the other half was inherited by Dorotea's grandchildren Nelly, Emily, Alfonso, Jr. and Roy by right of representation.[7] They became co-owners of the property at Dorotea's death[8] and remained so when the Deed of Absolute Sale was executed on August 27, 1982.[9]

The August 27, 1982 Deed of Absolute Sale is a notarized document, stating that Juana, Nelly, Emily, Roy,

Alfonso, Jr. and Natividad were selling a 1,300-square meter portion of Lot 52-B-2 to Elesio Valeriano and another 290-square meter portion to Job Bea.[10] Plaintiffs-appellants Elizabeth Castro and Alfonso Borilla, Jr. are now claiming that the signatures of the vendors were forged; hence, the Deed of Absolute Sale is void.

It is basic that a contract or conduct apparently honest and lawful must be treated as such until it is shown to be otherwise by either positive or circumstantial evidence.[11] Specifically, as a public document, the Deed of Absolute Sale had in its favor the presumption of regularity, and to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise the document should be upheld.[12] Also basic is 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.[13]

After careful re-evaluation of the evidence on record, We reconsider Our findings that the signatures of Juana, Nelly, Emily and Roy were forged. Juana had died when the case went on trial. Alfonso, Jr. then testified, in her behalf, that the signature in the Deed of Absolute was not hers.[14] Nelly, Emily and Roy also testified that they did not sign the Deed of Absolute Sale.[15] However, apart from these denials, no other evidence were presented to prove that the four signatures were forged. Not even an accurate examination of the signatures was made. Mere denial will not suffice to overcome the positive value of a notarized document.[16]

Regarding Alfonso, Jr., the fact that he was a minor, or that his signature might be forged, will still not negate the validity of the sale. We reiterate that Lot 52-B-2 has an area of 2,597 square meters. Juana, Nelly, Emily, Roy and Alfonso, Jr. became co-owners of the land upon Dorotea's death. Juana thus inherited 1,298.5 square meters by her own right while Nelly, Emily, Roy and Alfonso, Jr. each got 324.62 square meters by right of representation. Thus, We stress that every co-heir has the absolute ownership of his share in the community property and may alienate, assign or mortgage the same, except as to purely personal rights, but the effect of any such transfer is limited to the portion which may be awarded to him upon the partition of the property.[17] Considering that only 1,590 square meters was sold through the Deed of Absolute Sale, We can conclude that Alfonso, Jr.'s portion remained untouched. Indeed, by his own admission, he is currently residing within Lot 52-B-2 and has retained possession of the unsold portion.[18] Consequently, although Alfonso, Jr. might not have participated in the sale, he cannot demand its nullification.[19]

As to Natividad's signature, suffice it to say that her consent was not needed to validate the sale. Natividad is not a co-owner of Lot 52-B-2 since she cannot inherit from Dorotea.[20] Thus, the Deed of Absolute Sale remains valid whether her signature was forged or not.

We digress from plaintiffs-appellants' argument that the sale is void because the tax declarations and title over the property remain in Dorotea's name. A tax declaration is not a conclusive evidence of ownership.[21] Besides, Elesio's explanation that Juana and Natividad collected their shares and paid the taxes in Dorotea's name, since the title remained in her name, was undisputed.[22] Regarding the certificate of title, We emphasize that when the deed of absolute sale is signed by the parties and notarized, then delivery of the real property is deemed made by the seller to the buyer.[23] The transfer of the certificate of title in the name of the buyer is not necessary to confer ownership upon him.[24] In other words, defendants-appellees became the owners of the 1,590-square meter portion of Lot 52-B-2 when the Deed of Absolute Sale was executed and notarized on August 27, 1982.

We retain, however, the previous ruling setting aside the trial court's award of attorney's fees. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees

may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[25]

FOR THESE REASONS, the October 10, 2013 Decision of this Court is SET ASIDE. The June 1, 2010 Decision of the Regional Trial Court of Tabaco City, Branch 18, is AFFIRMED WITH MODIFICATION by deleting the award of attorney's fees.

SO ORDERED.

Reyes, Jr., (Chairperson) and Inting, JJ., concur.

[1] Rollo, p. 81.

[2] Id., pp. 87-90.

[3] Id., pp. 96-97.

[4] cf. Lopez Dela Rosa Development Corporation v. Court of Appeals, G.R. No. 148470, April 29, 2005 citing PAL Employees Savings and Loan Association, Inc. v. NLRC, G.R. No. 105963, 22 August 1996, 260 SCRA 758, 768-769, citing Zapata v. NLRC, G.R. No. 77827, 05 July 1989, 175 SCRA 56, 60.

[5] Exhibit B, Records, p. 10.

[6] Exhibit E, Extrajudicial Settlement of Estate and Partition, Records, p. 13.

[7] Civil Code, Article 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

Civil Code, Art. 981. Should children of the deceased and descendants of other children who are dead, survive, the former shall inherit in their own right, and the latter by right of representation. N.B. Natividad cannot inherit from Dorotea. A widow whose husband predeceased his mother cannot inherit from the latter, her mother-in-law. See Intestate Estate of Petra V. Rosales, Irene C. Rosales v. Fortunato Rosales, et al., G.R. No. L-40789, February 27, 1987.

[8] Civil Code, Article 777. The rights to the succession are transmitted from the moment of the death of the decedent.

cf. Angela M. Butte v. Manuel Uy and Sons, Inc., G.R. No. L-15499, February 28, 1962.

[9] N.B. Subsequently, on July 14, 2005, Juana executed a Deed of Absolute Sale transferring her 1,298.5 square meter share in Lot 52-B-2 to her daughter plaintiff-appellant Elizabeth Castro. On August 25, 2006, Nellie, Emily and Roy executed an Affidavit of Quitclaim and Waiver of Right, transferring their shares over the remaining 1,298.5 portion of Lot 52-B-2 in favor of plaintiff-appellant Alfonso, Jr. [Exhibits F and G, Records, pp. 15-17.]

[10] Exhibit 1, Records, p. 202.

N.B. On October 8, 1987, Elesio Valeriano executed an Affidavit, stating that he has transferred 300 square meters to Job Bea. Job then became the owner of a 590-square meter portion of Lot 52-B-2. Subsequently, Job sold his portion to Herminio Botalon, who next sold it to Armando Botalon. [Exhibits 1, 2 and 3. Records, pp. 204-206.]

[11] Felipa Delfin, et al. v. Presentacion D. Billones, et al., G.R. No. 146550, March 17, 2006 citing Archipelago Management and Marketing Corp. v. Court of Appeals, 359 Phil. 363, 382 (1998) citing De Roda v. W. A. Lalk

and E. Michael & Co., Inc., 48 Phil. 107-108 (1925).

[12] Dionisio C. Ladignon v. Court of Appeals, G.R. No. 122973, July 18, 2000 citing Bernardo v. Court of Appeals, G.R. No. 107791, 12 May 2000, citing Spouses Caoili v. Court of Appeals, G.R. No. 128325, 14 September 1999.

[13] Id., citing Heirs of Gregorio v. Court of Appeals, 300 SCRA 565, 574 (1998).

[14] TSN, December 11, 2007, p. 16.

[15] TSN, June 17, 2008, pp. 7-8; July 9, 2008, pp. 8-9; August 14, 2008, pp. 8-10.

[16] Dionisio C. Ladignon v. Court of Appeals, supra.

[17] Felipe Segura, et al. v. Nicolas Segura, et al., G.R. No. L-29320, September 19, 1988 citing Ramirez v. Bautista, et al., 14 Phil. 528. Also, Article 493, Civil Code.

[18] TSN, December 11, 2007, pp. 31, 36.

[19] None of the other co-heirs who did not participate in the sale can demand the nullification of the same, inasmuch as every co-owner may alienate, transfer, or mortgage his share in the common thing, and even substitute another person in the enjoyment thereof, unless personal rights are in question; although the effect of the alienation or mortgage, in relation to the co-owners shall be limited to the portion that may be adjudicated to him when the community ceased. [Felipe Segura, et al. v. Nicolas Segura, et al., supra, citing Mainit v. Bandy, 14 Phil. 730.]

See also Spouses Manuel and Salvacion del Ocampo v. Court of Appeals, G.R. No. 108228, February 1, 2001, where the Supreme Court held:

Applying this principle to the instant case, there can be no doubt that the transaction entered into by Salome and Soledad could be legally recognized in its entirety since the object of the sale did not even exceed the ideal shares held by the former in the co-ownership. As a matter of fact, the deed of sale executed between the parties expressly stipulated that the portion of Lot 162 sold to Soledad would be taken from Salome's 4/16 undivided interest in said lot, which the latter could validly transfer in whole or in part even without the consent of the other co-owners. Salome's right to sell part of her undivided interest in the co-owned property is absolute in accordance with the well-settled doctrine that a co-owner has full ownership of his pro-indiviso share and has the right to alienate, assign or mortgage it, and substitute another person in its enjoyment. Since Salome's clear intention was to sell merely part of her aliquot share in Lot 162, in our view no valid objection can be made against it and the sale can be given effect to the full extent. [Annotations omitted.]

[20] Supra at note 7.

[21] cf. Republic of the Philippines v. Heirs of Doroteo Montoya, G.R. No. 195137, June 13, 2012 citing Republic of the Phils. v. CA, 328 Phil. 238

[22] TSN, June 15, 2009, pp. 23-24, 35.

[23] Civil Code, Article 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract. If from the deed the contrary does not appear or cannot clearly be inferred.

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cf. Estelita Villamar v. Balbino Mangaoil, G.R. No. 188661, April 11, 2012 citing Chua v. Court of Appeals, 449

Phil. 25 (2003).

[24] cf. *Estelita Villamar v. Balbino Mangaoil*, *supra*.

[25] cf. *Development Bank of the Philippines v. Traverse Development Corporation, et al.*, G.R. No. 169293, October 5, 2011 quoting *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 361 Phil. 499, 528 (1999).

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