

GENESIS UDANG, PLAINTIFF-APPELLEE, VS. WILMA CUARTEROS COLIGADO, DEFENDANT-APPELLANT.

Ponente: BORJA, J.

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BORJA, J.:

This treats of defendant-appellant's motion[1] seeking reconsideration of this Court's July 30, 2013 Decision dismissing the appeal and affirming in toto the RTC's August 16, 2010 Judgment in Civil Case No. 03-474.[2]

In her motion, movant advances the following grounds for the consideration of this Court –

a)

Misappreciation of facts;

b)

The decision is contrary to applicable law and existing jurisprudence.

Movant claims that this Court's pronouncement which states that "The Court takes judicial notice of the practice of notaries in drafting deeds of sale in which full payment is acknowledged by the vendor despite the fact that a balance of the price may still be due. This is true especially when the deeds are drafted straight from a form book," would only create a dangerous precedent for the reasons that –

a-1) This would encourage persons to commit fraud, and would give premium to notaries to simulate a deed of sale, for while, in the deed of sale it was stipulated that the full amount of the purchase price has been "acknowledged to have been received", when in truth and in fact, the same is not. This, would in effect, allow notaries to make untruthful statements in a narration of facts in the document of sale, an act proscribes in his oath as a lawyer.

a-2) This may result also to confusion and chaos, especially so if the buyer would insist that he has already paid in full the purchase price as stated in the deed of sale, and would not pay the remaining balance? Under these circumstances, this may open a floodgate of numerous cases in court. A contrary would find it easy for notaries to escape responsibility under the guise of a simulated deed of sale by invoking "judicial notice";

a-3) The alleged "judicial notice" is not one of those enumerated under Section 1, Rule 129 of the Revised Rules of Court;

a-4) And more importantly, if the notaries could draft a deed of sale with ease and facility, why he could not do with the ease and facility on a contract to sell or deed of conditional sale? Why simulate?

Movant further claims that this Court may have misappreciated the facts in so ruling that the transaction between the parties was a contract of sale and not a contract to sell, considering that the full amount has not been paid and the document is simulated.

Movant's claim is without merit.

It must be recalled that in her appellant's brief, movant ascribed as error the lower court's findings that the questioned document of sale was authentic and that the transaction between the parties was a contract of sale. She argued that by appellee's own evidence, the subject deed of sale, albeit notarized, was procured by means of fraud.

This Court, however, ruled that movant's claim of fraud and forgery was, at best, specious. After all, said document was notarized. A notarized document carries the evidentiary weight conferred upon it with respect to its due execution and has in its favor the presumption of regularity. Moreover, movant did not present any proof other than hearsay to establish her claim that the signature appearing in the document of sale did not belong to her.

Regarding the contention that the Decision is contrary to applicable law and existing jurisprudence, movant contends that this Court committed grave and reversible error when it ordered the reformation of the instrument, considering that it is contrary to Articles 1367 and 1368 of the New Civil Code.

This issue has already been discussed and passed upon in the assailed Decision where the Court held that –

The trial court cannot be faulted for relying on evidence aliunde in arriving at the conclusion that the deed of sale was reformable. In *Atilano v. Atilano*,^[3] the High Court said –

X X X When one sells or buys real property – a piece of land, for example – one sells or buys the property as he sees it, in its actual setting and by its physical metes and bounds, and not by the mere lot number assigned to it in the certificate of title. In the particular case before us, the portion correctly referred to as lot No. 535-A was already in the possession of the vendee, Eulogio Atilano II, who had constructed his residence therein, even before the sale in his favor; indeed, even before the subdivision of the entire lot No. 535 at the instance of its owner, Eulogio Atilano II. In like manner the latter had his house on the portion correctly identified, after the subdivision, as lot No. 535-E, even adding to the area thereof by purchasing a portion of an adjoining property belonging to a different owner. The two brothers continued in possession of the respective portions for the rest of their lives, obviously ignorant of the initial mistake in the designation of the lot subject of the 1920 sale until 1959, when the mistake was discovered for the first time.

The real issue here is not adverse possession, but the real intention of the parties to that sale. From all the facts and circumstances we are convinced that the object thereof, as intended and understood by the parties, was that specific portion where the vendee was then already residing, where he reconstructed his house at the end of the war, and where his heirs, the plaintiffs herein, continued to reside thereafter: namely, lot No. 535-A; and that its designation as lot No. 535-E in the deed of sale was a simple mistake in the drafting of the document. The mistake did not vitiate the consent of the parties, or affect the validity and binding effect of the contract between them. The new Civil Code provides a remedy for such a situation by means of reformation of the instrument. This remedy is available when, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement by reason of mistake, fraud, inequitable conduct or accident (Art. 1359, et seq.). In this case, the deed of sale executed in 1920 need no longer be reformed. The parties have retained possession of their respective properties conformably to the real intention of the parties to that sale, and all they should do is to execute mutual deed of conveyance.

The Supreme Court in the cited case, as did the lower court in the case at bench, did not hesitate to determine the specific portion intended by the parties from “all the facts and circumstances” obtaining in the case. Thus, this Court holds that the lower court was eminently correct in relying on evidence aliunde in ordering a reformation of the deed of sale.

In fine, there is no cogent reason for this Court to disturb the July 30, 2013 Decision.

ACCORDINGLY, defendant-appellant's Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.

Badelles and Contreras, JJ., concur.

[1] Rollo, pp. 103-110.

[2] Rollo, pp. 83-99.

[3] G.R. No. L-22487, May 21, 1969.

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