ROSALIO PEPITO, ANDRONICA PEPITO, ANGELITA P. ROSELL, CELERINA P. CARIN, LOURDES P. SANTOSIDAD; HEIRS OF ROBERTO PEPITO, SR., NAMELY: ROBERTO PEPITO JR., AND ANTONIO PEPITO; HEI...

Ponente: LOPEZ, J.

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LOPEZ, J.:

The Case

Before this Court 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 61 of Bogo, Cebu, dated 19 July 2007, dismissing Plaintiffs-Appellants' Complaint[2] for lack of merit, the dispositive portion of which states:

> "WHEREFORE, premises considered, the instant complaint is hereby ORDERED DISMISSED, for lack of merit, with no award , however of defendants' counterclaim.
>
> SO ORDERED."

FACTUAL ANTECEDENTS

Plaintiffs-Appellants are the surviving heirs of the late Spouses Susana Doble and Doroteo Pepito. During their lifetime, they owned a parcel of land known as Lot No. 5701 with an area of 1,647 square meters and situated at Paypay, Daanbantayan, Cebu. The said lot is now the subject matter of the present controversy.

On the other hand, Defendants-Appellees Spouses Jesus and Rosa Rosell (herein referred as "Spouses Rosell") are close relatives of Plaintiffs-Appellants. Rosa Rosell is the daughter of Celerina Pepito-Carin, one of the Plaintiffs-Appellants and the grand-daughter of the late Susana and Doroteo Pepito. The Spouses Rosell allegedly acquired the subject lot by purchase from Plaintiffs-Appellants as evidenced by a deed of absolute sale. Thereafter, they sold the subject lot to the Spouses Valiente.

Their co-defendants, Spouses Aniceto and Nicanora Valiente (herein referred as "Spouses Valiente"), claim to be the true and lawful owners of the subject property having acquired the same from the Spouses Rosell by means of purchase and evidenced by a deed of sale.

Upon the death of Susana Doble, Plaintiffs-Appellants sought the settlement of their parent's estate and have it partitioned. Allegedly, when they were searching for pertinent documents to be used in the settlement of the estate of their parents, they came across a document, dated 16 July 1991, captioned as Deed of Absolute Sale of Unregistered Land[3]. To their surprise, the said deed showed that they sold the subject parcel of land to the Spouses Rosell which, according to Plaintiffs-Appellants, is not true as they made no such conveyance in the past. They also discovered that the Spouses Rosell had already sold the subject property on 30 September 1992 to the Spouses Valiente.

On 12 March 1999, Plaintiffs-Appellants filed a Complaint[4] with the trial court for Annulment of Deed of Sale and other documents, Reconveyance, Damages and Attorney's fees. They alleged that the Deed of Absolute Sale

dated 16 July 1991 is fictitious. They added that their signatures appearing in the said deed were forged and falsified.[5] Moreover, they contended that the conveyance made by the Spouses Rosell in favor of the Spouses Valiente is void as the former never acquired ownership over the subject property by virtue of a fictitious sale. Hence, the theory that the spring cannot rise above its source squarely applies, according to Plaintiffs-Appellants.[6]

On the other hand, the Spouses Rosell filed their Answer[7] on 16 April 1999. They alleged that when Susana Doble died, her children were faced with a problem of where to get the money to defray the burial expenses.[8] Subsequently, her children decided to sell the subject property to them in order to raise the needed funds.[9] They added that after the sale, they possessed, occupied and enjoyed the fruits thereof without any objections from the heirs of Susana Doble.[10] Moreover, they contended that Plaintiffs-Appellants cannot feign ignorance over the sale as the improvements introduced by them on the subject property were too conspicuous to remain unnoticed considering also that the parties are living within the same barangay where the property is located.[11]

Furthermore, they maintained that Plaintiffs-Appellants' action is barred by laches and prescription.[12] Lastly, the Deed of Sale dated 16 July 1991 is genuine and authentic, they added.[13]

Their co-defendants, Spouses Valiente, filed their Answer[14] on 15 April 1999. They argued that they are buyers in good faith and for value since they had no knowledge of any infirmity in the title of the vendors, Spouses Rosell, at the time of the purchase.[15] They added that from the time they took actual possession of the subject property, they introduced valuable improvements thereon without anybody molesting their possession or claiming any adverse interest on the property not until the filing of the present complaint.[16]

Thereafter, trial on the merits ensued. On 19 July 2007, the trial court rendered the assailed decision dismissing Plaintiffs-Appellants' complaint for lack of merit. It ruled that Plaintiffs-Appellants failed to prove their allegations in their complaint by the required quantum of evidence in civil cases which is preponderance of evidence.[17] Their claim that their signatures were forged and falsified was not duly establish since their testimonies failed to categorically deny the genuineness of their signatures in the said deed, according to the trial court.

Furthermore, the trial court added that there is a substantial similarity in the signature of Plaintiff-Appellant Rosalio Pepito as appearing in the deed of sale and in the verification portion of the complaint and concluded that his signature in the assailed deed is genuine. The trial court also gave more credence to the unrebutted testimony of Defendant-Appellee Rosa Rosell.

Aggrieved, Plaintiffs-Appellants filed a Notice of Appeal[18] on 9 August 2007. In an Order[19] dated 30 August 2007, the trial court gave due course to the notice of appeal and the records of the case were ordered elevated to this Court.

On 13 November 2012, Plaintiffs-Appellants filed their Appellants Brief[20] raising the lone assignment of error, to wit:

THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE A MACHINE COPY OF THE DEED OF SALE WITHOUT PROOF OF LOSS.

RULING
We DENY the present appeal for lack of merit.

Pending resolution of their appeal filed with this Court, Plaintiffs-Appellants Rosalio D. Pepito and Angelita P. Rosell died on 3 January 2004 and 19 September 2012, respectively. They were properly substituted by their

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nephew, Mr. Renato P. Osabel.

In their Brief, Plaintiffs-Appellants argued that the deed of absolute sale presented by the Spouses Rosell is a mere machine copy and not certified.[21] They added that no further evidence was presented to prove the loss of the original copy of the deed and that Defendants-Appellees could have presented the witnesses to the said deed to prove its due execution.[22] They maintained that they did not sign any document conveying the subject property to the Spouses Rosell. Moreover, they claim that their signatures appear to have been inscribed by only one person.[23]

On the other hand, Defendants-Appellees countered in their Brief[24] that the presentation of a machine copy is allowed if the original document is unavailable in accordance with Section 5, Rule 130 of the Rules of Court.[25] They added that the lost of the original copy of the deed had been duly established by the testimony of Defendant-Appellee Rosa Rosell.[26] They also reiterated that Plaintiffs-Appellants failed to prove their claim that their signatures appearing in the deed of absolute sale were falsified. A stale denial and unsupported allegations of forgery cannot overcome the legal presumption of regularity of a duly notarized document, they added.

Upon a careful consideration of all the evidence and the testimonies of both parties, We are convinced that Plaintiffs-Appellants' contentions do not hold water.

Best Evidence Rule; Exceptions

Section 3, Rule 130 of the Rules of Court embodies the Best Evidence Rule, to wit:

> Section 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
>
> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
>
> (b) When the original is in the custody or under control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
>
> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
>
> (d) When the original is a public record in the custody of a public officer or is recorded in a public office. (Emphasis supplied.)

The aforementioned provision, indeed, provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself. This is especially true in case of forgery.[27] This rule, however, admits of exceptions and one of which is when the original document is unavailable. Section 5, Rule 130 of the Rules of Court further states:

Sec. 5. When original document is unavailable.

> "When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated."

The admission of secondary evidence in case of the loss or unavailability of the original document is thus

warranted upon satisfactory proof of the following: (1) execution or existence of the original; (2) loss and destruction of the original or its non-production in court; and (3) unavailability of the original is not due to bad faith on the part of the offeror.[28] Proof of the due execution of the document and its subsequent loss would constitute the foundation for the introduction of secondary evidence.[29]

Admittedly, in this case, the original document of the Deed of Absolute Sale dated 16 July 1991 was not presented during trial. However, the Defendants-Appellees presented a photocopy thereof, as well as testimonial evidence to prove its due execution and the loss or unavailability of the original document. Specifically, the existence and due execution of the questioned deed was established by Rosa Rosell, one of the Defendants-Appellees, who testified as to circumstances leading to the execution of the deed of absolute sale, thus:

> Direct Examination by Atty. Quijano:
>
> "Q: Now, who was the original owner of this land before you bought it?
> A: Susana Doble.
> Q: Who is this Susana Doble?
> A: My Grandmother.
> Q: Is she still alive?
> A: No, she's already dead.
> Q: When did she died?
> A: She died last July 5, 1991.
> Q: Why did the children of Susana Doble sell this land to you and your husband?
> A: Because they used the money for the burial of my grandmother.
> xxx xxx xxx
> Q: Did not Susana Doble have any money after her death to defray her expenses of the burial?
> A: None.
> Q: How much was spent for the funeral expenses of Susana Doble?
> A: About P10,000.00 more or less.
> Q: You bought this land for P10,000.00 according to the Deed of Sale, Exhibit 1, were all these money used for the expenses of the funeral of Susana Doble?
> A: Yes, it was spent all for the burial.
> Q: To whom did you deliver the money P10,000 as purchase price of the land which was used for the funeral expenses of Susana Doble? A: To the eldest daughter, Andronica Osabel.
> xxx xxx xxx
> Q: Now, but Rosalio Pepito testified that he had money at that time because he was working overseas, what can you say to that?
> xxx xxx xxx A: That's not true because he has been staying here in the Philippines for quite a long time.
> Atty. Quijano:
> Q: What about the children of the deceased, Susana Doble?
> A: They were all called.
> Q: What happened to the rights of Roberto, Elias and Antonio?
> A: They agreed to sell the land because it will be used for the burial of their mother."[30]
>
> On Cross-examination by Atty. Mata:
>
> "Q: When this five brothers and sisters signed, were you present when they signed the document?
> A: Yes, I was present and in fact, there was even my aunt and my cousin and also my brothers and sisters.
> Q: Now, where was this document signed by the parties?
> A: At the house of my aunt because we were gathered and there was an agreement and they signed the document one after the other starting from the eldest to the youngest.

Q: So other than these persons you mentioned, there were no other persons present at that time?
A: Yes, and also Crisologo Arsolon who prepared the document."[31]

In addition, evidence of the authenticity and due execution of the subject deed is the fact that it was notarized. The notarization of a private document converts it into a public document.[32] Moreover, a notarized instrument is admissible in evidence without further proof of its due execution, is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity.[33] This presumption is affirmed if it is beyond dispute that the notarization was regular.[34] To assail the authenticity and due execution of a notarized document, the evidence must be clear, convincing and more than merely preponderant.[35]

In the present case, Plaintiffs-Appellants failed to present convincing evidence to prove that the notarization of the subject deed was irregular as to strip it of its public character.

Furthermore, the unavailability of the original document was also duly established by Defendant-Appellee Rosa Rosell. During her cross-examination, she testified viz:

Cross Examination by Atty. Mata:

"Q: In support of that acquisition you presented a document marked as Exhibit "1", now, Exhibit "1" is only a Xerox copy, do you have the original of this?
A: The original was already destroyed by the typhoon.
Q: Who took the xerox copy?
A: We were able to xerox that one and notarized by Judge Jaca.
Q: When was this xerox?
A: 1991.
Q: Now, you said the original of this was destroyed, how was this original destroyed?
A: It was washed out by the rain during the typhoon and put in the carton and the roof of our house is made of coconut leaves.
Q: Did you not try to salvage the said document?
A: I gathered the destroyed but it cannot be recovered since it was torn."[36]

In a nutshell, since there was proof of the due execution of the Deed of Absolute Sale, and that, despite earnest efforts on Defendant-Appellee Rosa Rosell's part, they could not produce the original thereof, the presentation of secondary evidence to prove the contents of the said document was justified. Moreover, Defendants-Appellees had sufficiently laid down the basis for the introduction of secondary evidence.

The rule on the admission of secondary evidence provides that the contents of the original document may be proved (1) by a copy; (2) by a recital of its contents in some authentic document; or (3) by the recollection of the witnesses, in the order stated.[37] Hence, the trial court did not err in admitting the machine copy of the questioned deed of absolute sale in lieu of the original copy.

Forgery; Not Established

Even on the merits, Plaintiffs-Appellants' case still falls. As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence.[38] The burden of proof rests on the party alleging forgery.[39] Mere allegation of forgery is not evidence.[40]

Far from being clear and convincing, Plaintiffs-Appellants did not offer any evidence to prove the alleged forgery. All they had to offer was their mere denial that they had signed the questioned deed of sale. Such denial will not suffice to overcome the positive value of the subject deed, a notarized document. Indeed, even in cases where the alleged forged signature was compared to samples of genuine signatures to show its variance therefrom, still the same is insufficient.[41]

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Plaintiffs-Appellants relied heavily on their bare denial and at the same time taking sanctuary behind other circumstances which supposedly cast doubt on the authenticity of the documents. They did not even bother to present corroborating witnesses much less an independent expert witness who could declare with authority and objectivity that the challenged signatures are forged. In fact, they did not even present a sample of their authentic signatures to support their contention that the signatures appearing in aforesaid deed are not theirs.

It befuddles the Court why Plaintiffs-Appellants did not present a sample of their signatures in order for the trial court to make a comparison of their signatures or even present an expert witness to prove their assertion. Thus, We cannot accept the claim of forgery where no comparison of Plaintiffs-Appellants' signatures was made, no witness (save for Plaintiffs-Appellants) was presented to testify on the same, much less an expert witness called, and all that was presented were their testimonies that their signatures on the questioned Deed were forged.

Moreover, settled is the rule that the execution of a document that has been ratified before a notary public cannot be disproved by the mere denial of the alleged signer.[42] Deeply embedded in our jurisprudence is the rule that notarial documents celebrated with all the legal requisites under the safeguard of a notarial certificate is evidence of a high character and to overcome its recitals, it is incumbent upon the party challenging it to prove his claim with clear, convincing and more than merely preponderant evidence.[43]

Corollarily, since Plaintiffs-Appellants failed to discharge their burden of demonstrating that their signatures were forged, then, the validity of the subject deed of absolute sale should be sustained. It follows that the conveyance of the subject property by the Spouses Rosell in favor of their co-defendants, Spouses Valiente, is valid as the former acquired ownership over the subject property by purchase from Plaintiffs-Appellants. As owners of the subject property, they (Spouses Rosell) have the absolute right to alienate or dispose of the same free from any interference coming from third persons.

Finally, it is a hornbook doctrine that the findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of the witnesses while testifying.[44] We do not see any reason to disturb the trial court's findings.

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision of the Regional Trial Court, Branch 61 of Bogo, Cebu dated 19 July 2007 in Civil Case No. Bogo-00409 is hereby AFFIRMED.

SO ORDERED.

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

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[1] Records, pp. 203-215.

[2] Ibid., pp. 1-6.

[3] Ibid., p. 8.

[4] supra., note 2.

[5] Plaintiffs-Appellants' Complaint, p. 3; Records, p. 3.

[6] Ibid.

[7] Records, pp. 23-25.

[8] Spouses Rosell's Answer, p. 1; Records, p. 23.

[9] Ibid.

[10] Ibid., p. 2; Records, p. 24.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Records, pp. 17-20.

[15] Spouses Valiente's Answer, p. 2; Records, p. 18.

[16] Ibid.

[17] Trial Court's Decision, p. 8; Records, p. 210.

[18] Records, p. 217.

[19] Ibid., p. 222.

[20] Rollo, pp. 46-53.

[21] Appellants' Brief, p. 4; Rollo, p. 49.

[22] Ibid.

[23] Ibid., p. 5; Rollo, p. 50.

[24] Rollo, pp. 85-99.

[25] Appellees' Brief, p. 9; Rollo, p. 95.

[26] Ibid.

[27] Heirs of Gregorio, et. al., vs. Court of Appeals, et. al., G.R. No. 117609, December 29, 1998.

[28] Spouses Dioso vs. Spouses Cardeno, G.R. No. 150155, September 1, 2004 citing Santos vs. Court of Appeals, G.R. No. 126359, October 25, 2001.

[29] Ibid.

[30] TSN dated April 3, 2000, pp. 23-31.

[31] TSN dated June 23, 2000, pp. 10-11.

[32] SKUNAC Corp. and Enriquez vs. Sylianteng, G.R. No. 205879, April 23, 2014 citing Gaw vs. Chua, G.R. No. 160855, April 16, 2008.

[33] Ibid., citing Chua vs. Westmont Bank, G.R. No. 182650, February 27, 2012.

[34] Ibid., citing Meneses vs. Venturozo, G.R. No. 172196, October 19, 2011.

[35] Ibid., citing Manongsong vs. Estimo, G.R. No. 136733, June 25, 2003.

[36] TSN dated June 23, 2000, pp. 5-7.

[37] Section 5, Rule 130 of the Rules of Court. (Underscoring Ours.)

[38] Bangayan vs. RCBC and Saria, G.R. No. 149193, April 4, 2011 citing Libres vs. Spouses Delos Santos, G.R. No. 176358, 17 June 2008.

[39] Ibid.

[40] St. Mary's Farm, Inc., vs. Prima Real Properties, Inc., G.R. No. 158144, 31 July 2008.

[41] Ladignon vs. Court of Appeals and Dimaun, G.R. No. 122973, July 18, 2000.

[42] Pan Pacific Industrial Sales Co., Inc., vs. Court of Appeals and Capistrano, G.R. No. 125283, February 10, 2006 citing Sy Tiangco vs. Pablo and Apao, G.R. No. L-38709, December 14, 1933.

[43] Ibid.

[44] Riosa vs. Tabaco La Suerte Corp., G.R. No. 203786, October 23, 2013 citing Tayco vs. Heirs of Concepcion Tayco-Flores , G.R. No. 168692, December 13, 2010.

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