

**FRANCISCO A. VELOSO, PETITIONER, VS. COURT OF APPEALS,
AGLALOMA B. ESCARIO, ASSISTED BY HER HUSBAND GREGORIO L.
ESCARIO, THE REGISTER OF DEEDS FOR THE CITY OF MANILA,
RESPONDENTS.**

G.R. No. 102737. August 21, 1996

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

This petition for review assails the decision of the Court of Appeals, dated July 29, 1991, the dispositive portion of which reads:

"WHEREFORE, the decision appealed from is hereby AFFIRMED IN TOTO. Costs against appellant."[1]

The following are the antecedent facts:

Petitioner Francisco Veloso was the owner of a parcel of land situated in the district of Tondo, Manila, with an area of one hundred seventy seven (177) square meters and covered by Transfer Certificate of Title No. 49138 issued by the Registry of Deeds of Manila.[2] The title was registered in the name of Francisco A. Veloso, single,[3] on October 4, 1957.[4] The said title was subsequently canceled and a new one, Transfer Certificate of Title No. 180685, was issued in the name of Aglaloma B. Escario, married to Gregorio L. Escario, on May 24, 1988.[5]

On August 24, 1988, petitioner Veloso filed an action for annulment of documents, reconveyance of property with damages and preliminary injunction and/or restraining order. The complaint, docketed as Civil Case No. 88-45926, was raffled to the Regional Trial Court, Branch 45, Manila. Petitioner alleged therein that he was the absolute owner of the subject property and he never authorized anybody, not even his wife, to sell it. He alleged that he was in possession of the title but when his wife, Irma, left for abroad, he found out that his copy was missing. He then verified with the Registry of Deeds of Manila and there he discovered that his title was already canceled in favor of defendant Aglaloma Escario. The transfer of property was supported by a General Power of Attorney[6] dated November 29, 1985 and Deed of Absolute Sale, dated November 2, 1987, executed by Irma Veloso, wife of the petitioner and appearing as his attorney-in-fact, and defendant Aglaloma Escario.[7] Petitioner Veloso, however, denied having executed the power of attorney and alleged that his signature was falsified. He also denied having seen or even known Rosemarie Reyes and Imelda Santos, the supposed witnesses in the execution of the power of attorney. He vehemently denied having met or transacted with the defendant. Thus, he contended that the sale of the property, and the subsequent transfer thereof, were null and void. Petitioner Veloso, therefore, prayed that a temporary restraining order be issued to prevent the transfer of the subject property; that the General Power of Attorney, the Deed of Absolute Sale and the Transfer Certificate of Title No. 180685 be annulled; and the subject property be reconveyed to him.

Defendant Aglaloma Escario in her answer alleged that she was a buyer in good faith and denied any knowledge

of the alleged irregularity. She allegedly relied on the general power of attorney of Irma Veloso which was sufficient in form and substance and was duly notarized. She contended that plaintiff (herein petitioner), had no cause of action against her. In seeking for the declaration of nullity of the documents, the real party in interest was Irma Veloso, the wife of the plaintiff. She should have been impleaded in the case. In fact, Plaintiff's cause of action should have been against his wife, Irma. Consequently, defendant Escario prayed for the dismissal of the complaint and the payment to her of damages.[8]

Pre-trial was conducted. The sole issue to be resolved by the trial court was whether or not there was a valid sale of the subject property.[9]

During the trial, plaintiff (herein petitioner) Francisco Veloso testified that he acquired the subject property from the Philippine Building Corporation, as evidenced by a Deed of Sale dated October 1, 1957.[10] He married Irma Lazatin on January 20, 1962.[11] Hence, the property did not belong to their conjugal partnership. Plaintiff further asserted that he did not sign the power of attorney and as proof that his signature was falsified, he presented Allied Bank Checks Nos. 16634640, 16634641 and 16634643, which allegedly bore his genuine signature.

Witness for the plaintiff Atty. Julian G. Tubig denied any participation in the execution of the general power of attorney. He attested that he did not sign thereon, and the same was never entered in his Notarial Register on November 29, 1985.

In the decision of the trial court dated March 9, 1990,[12] defendant Aglaloma Escaro was adjudged the lawful owner of the property as she was deemed an innocent purchaser for value. The assailed general power of attorney was held to be valid and sufficient for the purpose. The trial court ruled that there was no need for a special power of attorney when the special power was already mentioned in the general one. It also declared that plaintiff failed to substantiate his allegation of fraud. The court also stressed that plaintiff was not entirely blameless for although he admitted to be the only person who had access to the title and other important documents, his wife was still able to possess the copy. Citing Section 55 of Act 496, the court held that Irma's possession and production of the certificate of title was deemed a conclusive authority from the plaintiff to the Register of Deeds to enter a new certificate. Then applying the principle of equitable estoppel, plaintiff was held to bear the loss for it was he who made the wrong possible. Thus:

"WHEREFORE, the Court finds for the defendants and against plaintiff-

- a. declaring that there was a valid sale of the subject property in favor of the defendant;
- b. denying all other claims of the parties for want of legal and factual basis.

Without pronouncement as to costs.

SO ORDERED."

Not satisfied with the decision, petitioner Veloso filed his appeal with the Court of Appeals. The respondent court affirmed in toto the findings of the trial court.

Hence, this petition for review before us.

This petition for review was initially dismissed for failure to submit an affidavit of service of a copy of the petition on the counsel for private respondent.[13] A motion for reconsideration of the resolution was filed but it was denied in a resolution dated March 30, 1992.[14] A second motion for reconsideration was filed and in a resolution dated Aug. 3, 1992, the motion was granted and the petition for review was reinstated.[15]

A supplemental petition was filed on October 9, 1992 with the following assignment of errors:

I

The Court of Appeals committed a grave error in not finding that the forgery of the power of attorney (Exh. "C") had been adequately proven, despite the preponderant evidence, and in doing so, it has so far departed from the applicable provisions of law and the decisions of this Honorable Court, as to warrant the grant of this petition for review on certiorari.

II

There are principles of justice and equity that warrant a review of the decision.

III

The Court of Appeals erred in affirming the decision of the trial court which misapplied the principle of equitable estoppel since the petitioner did not fail in his duty of observing due diligence in the safekeeping of the title to the property.

We find petitioner's contentions not meritorious.

An examination of the records showed that the assailed power of attorney was valid and regular on its face. It was notarized and as such, it carries the evidentiary weight conferred upon it with respect to its due execution. While it is true that it was denominated as a general power of attorney, a perusal thereof revealed that it stated an authority to sell, to wit:

"2. To buy or sell, hire or lease, mortgage or otherwise hypothecate lands, tenements and hereditaments or other forms of real property, more specifically TCT No. 49138, upon such terms and conditions and under such covenants as my said attorney shall deem fit and proper." [16]

Thus, there was no need to execute a separate and special power of attorney since the general power of attorney had expressly authorized the agent or attorney in fact the power to sell the subject property. The special power of attorney can be included in the general power when it is specified therein the act or transaction for which the special power is required.

The general power of attorney was accepted by the Register of Deeds when the title to the subject property was canceled and transferred in the name of private respondent. In LRC Consulta No. 123, Register of Deeds of Albay, Nov. 10, 1956, it stated that:

"Whether the instrument be denominated as 'general power of attorney' or 'special power of attorney,'-- what matters is the extent of the power or powers contemplated upon the agent or attorney in fact. If the power is couched in general terms, then such power cannot go beyond acts of administration. However, where the power to sell is specific, it not being merely implied, much less couched in general terms, there can not be any doubt that the attorney in fact may execute a valid sale. An instrument may be captioned as 'special power of attorney' but if the powers granted are couched in general terms without mentioning any specific power to sell or mortgage or to do other specific acts of strict dominion, then in that case only acts of administration may be deemed conferred."

Petitioner contends that his signature on the power of attorney was falsified. He also alleges that the same was not duly notarized for as testified by Atty. Tubig himself, he did not sign thereon nor was it ever recorded in his notarial register. To bolster his argument, petitioner had presented checks, marriage certificate and his residence certificate to prove his alleged genuine signature which when compared to the signature in the power of attorney, showed some difference.

We found, however, that the basis presented by the petitioner was inadequate to sustain his allegation of forgery. Mere variance of the signatures cannot be considered as conclusive proof that the same were forged. Forgery cannot be presumed.[17] Petitioner, however, failed to prove his allegation and simply relied on the apparent

difference of the signatures. His denial had not established that the signature on the power of attorney was not his.

We agree with the conclusion of the lower court that private respondent was an innocent purchaser for value. Respondent Aglaloma relied on the power of attorney presented by petitioner's wife, Irma. Being the wife of the owner and having with her the title of the property, there was no reason for the private respondent not to believe in her authority. Moreover, the power of attorney was notarized and as such, carried with it the presumption of its due execution. Thus, having had no inkling on any irregularity and having no participation thereof, private respondent was a buyer in good faith. It has been consistently held that a purchaser in good faith is one who buys property of another, without notice that some other person has a right to, or interest in such property and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of some other person in the property.[18]

Documents acknowledged before a notary public have the evidentiary weight with respect to their due execution. The questioned power of attorney and deed of sale, were notarized and therefore, presumed to be valid and duly executed. Atty. Tubig denied having notarized the said documents and alleged that his signature had also been falsified. He presented samples of his signature to prove his contention. Forgery should be proved by clear and convincing evidence and whoever alleges it has the burden of proving the same. Just like the petitioner, witness Atty. Tubig merely pointed out that his signature was different from that in the power of attorney and deed of sale. There had never been an accurate examination of the signature, even that of the petitioner. To determine forgery, it was held in *Cesar vs. Sandiganbayan*[19] (quoting *Osborn, The Problem of Proof*) that:

"The process of identification, therefore, must include the determination of the extent, kind, and significance of this resemblance as well as of the variation. It then becomes necessary to determine whether the variation is due to the operation of a different personality, or is only the expected and inevitable variation found in the genuine writing of the same writer. It is also necessary to decide whether the resemblance is the result of a more or less skillful imitation, or is the habitual and characteristic resemblance which naturally appears in a genuine writing. When these two questions are correctly answered the whole problem of identification is solved."

Even granting for the sake of argument, that the petitioner's signature was falsified and consequently, the power of attorney and the deed of sale were null and void, such fact would not revoke the title subsequently issued in favor of private respondent Aglaloma. In the case of *Tenio-Obsequio vs. Court of Appeals*,[20] it was held, viz.:

"The right of an innocent purchaser for value must be respected and protected, even if the seller obtained his title through fraud. The remedy of the person prejudiced is to bring an action for damages against those who caused or employed the fraud, and if the latter are insolvent, an action against the Treasurer of the Philippines may be filed for recovery of damages against the Assurance Fund."

Finally, the trial court did not err in applying equitable estoppel in this case. The principle of equitable estoppel states that where one or two innocent persons must suffer a loss, he who by his conduct made the loss possible must bear it. From the evidence adduced, it should be the petitioner who should bear the loss. As the court *quo* found:

"Besides, the records of this case disclosed that the plaintiff is not entirely free from blame. He admitted that he is the sole person who has access to TCT No. 49138 and other documents appertaining thereto (TSN, May 23, 1989, pp. 7-12). However, the fact remains that the Certificate of Title, as well as other documents necessary for the transfer of title were in the possession of plaintiff's wife, Irma L. Veloso, consequently leaving no doubt or any suspicion on the part of the defendant as to her authority. Under Section 55 of Act 496, as amended, Irma's possession and production of the Certificate of Title to defendant operated as "conclusive authority from the plaintiff to the Register of Deeds to enter a new certificate." [21]

Considering the foregoing premises, We found no error in the appreciation of facts and application of law by the lower court that will warrant the reversal or modification of the appealed decision.

ACCORDINGLY, the petition for review is hereby DENIED for lack of merit.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and Mendoza, JJ., concur.

[1] Decision, Rollo, p.59, penned by J.N. Lapeña, Jr. and concurred in by J.R. Pronove and J.C. Santiago.

[2] Exh. "A", Annex "A", Records, p.12 and 155.

[3] Exh. "A-1", Ibid.

[4] Exh. "A-2", Ibid.

[5] Exh. "B", Annex B, Exh. "3", Records, pp. 15 and 157.

[6] Records, pp. 96-97.

[7] Records, pp. 94-95.

[8] Answer, Records, pp. 43-47.

[9] Order, Records, pp. 74-76.

[10] Exh. "F", Records, pp. 163-164.

[11] Exh. "H", Records, p.166.

[12] Decision, Records, pp. 283-292.

[13] Resolution, February 3, 1992, Rollo, p.65.

[14] Rollo, p.72.

[15] Rollo, p.93.

[16] Records, pp. 96-97.

[17] Tenio-Obsequio vs. Court of Appeals, G.R. 107967, March 1, 1994.

[18] Bautista, et. al. vs. Court of Appeals, G.R. 106042, Feb. 28, 1994.

[19] G.R. Nos. 54719-50, 17 January 1985.

[20] G.R. 109767, March 1, 1994.

[21] Decision, Records, p.291.

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