

EMILIE T. SUMBAD AND BEATRICE B. TAIT, PETITIONERS, VS. THE COURT OF APPEALS, EDUARD OKOREN, OLIVIA T. AKOKING, EVELYN W. SACLANGEN, ASSISTED BY HER HUSBAND JULIO SACLANGEN, MA...

G.R. No. 106060. June 21, 1999

Ponente: MENDOZA J.

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MENDOZA J.:

This is a petition for review of the decision[1] of the Court of Appeals, Fifth Division, dated May 28, 1992, in CA-G.R. CV No. 32711, affirming, with modification, the dismissal by the Regional Trial Court of Bontoc, Mountain Province, Branch 36, of a complaint for quieting of title, annulment of sale, and recovery of possession filed by petitioners against private respondents.

The facts are as follows:

After the death of his wife, Agata B. Tait, in 1936, George K. Tait, Sr. lived in common-law relationship with Maria F. Tait to whom on April 2, 1974 he donated a certain parcel of unregistered land in Sitio Sum-at, Bontoc, more particularly described as follows:

One (1) parcel of unregistered agricultural land situated in sitio Sumat, Bontoc, Mt. Province, bounded on the North by Sumat Creek and the rice field of Inginga Limayog, East by the Hospital Reservation of Bontoc and the lots of Agustin Ututan and Inginga, South by a Foot Trail and West by the Roman Catholic Mission, Pakeopan and the rice fields of Narding and Pappi, previously declared under Tax Dec. No. 6000 of Bontoc, Mt. Province;[2]

George K. Tait, Sr. himself passed away on December 24, 1977. From 1982 to 1983, Maria F. Tait sold lots included within the Sum-at property in favor of private respondents Eduard Okoren, Gregorio Acoking, Evelyn Saclangan, Mary Atiwag, Jaime T. Fronda, Barbara Tallongen, Julia Piyas, Glen Paquito, and Felicitas Alinao. Private respondents purchased the lots on the strength of a Tax Declaration over the Sum-at property showing the seller, Maria F. Tait, to be the owner of the property in question and thereafter planted different kinds of fruit trees and plants on the lots purchased by them.

On July 24, 1989, petitioners Emilie T. Sumbad and Beatrice B. Tait brought an action for quieting of title, nullification of deeds of sale, and recovery of possession with damages against private respondents. They alleged that they are the children and compulsory heirs of the spouses George K. Tait, Sr. and Agata B. Tait of Bontoc, Mountain Province; that said spouses died on December 24, 1977 and April 30, 1936, respectively; that said spouses owned real property in Otucan, Bauko, Mountain Province; and that after the death of their mother, their father George K. Tait, Sr. sold the Otucan property and used the proceeds thereof to purchase a residential lot in Sum-at, Bontoc, Mountain Province.

Petitioners further alleged that from 1982 to 1983, Maria F. Tait, without their knowledge and consent, sold lots

included within the Sum-at property to private respondents; that prior to the sales transactions, private respondents were warned that the Sum-at property did not belong to Maria F. Tait but to the heirs of George K. Tait, Sr.; that notwithstanding, private respondents proceeded to purchase the lots in question from Maria F. Tait; that Maria F. Tait had no right to sell the Sum-at property; that the deeds of sale are null and void and did not transfer title to private respondents; that petitioners discovered the transactions only in 1988 but, as soon as they learned of the same, they lost no time in communicating with private respondents; and that private respondents refused petitioners' request for a meeting, leaving the latter no other alternative but to file the case in court.

Private respondents moved to dismiss the complaint, but their motion was denied by the trial court in its Order, dated September 26, 1989.[3] They then filed their answer in which they denied they had been informed of petitioners' claim of ownership of the lots. They also denied that petitioners learned of the sales to them only in 1988. They alleged that the Sum-at property, covered by Tax Declaration No. 399, did not belong to the conjugal partnership of George K. Tait, Sr. and Agata B. Tait for the reason that the latter died more than thirty (30) years before the issuance of Tax Declaration No. 399 in 1973; that the late Maria F. Tait, second wife of George K. Tait, Sr., did not need the consent of petitioners to be able to sell the Sum-at property to private respondents; that private respondents were purchasers in good faith and for value; that the action was barred by laches; that they were in possession of the lots and had introduced improvements thereon; and that they had separate tax declarations covering their respective lots. As a compulsory counterclaim, private respondents prayed that petitioners be ordered to pay P10,000.00 as moral damages, P2,000 as attorney's fees to each private respondent, the appearance fees, and costs.

On November 21, 1989, the trial court issued a pre-trial order stating the parties' stipulation of facts, as well as the factual and legal issues, as follows:

B. Stipulations or Admissions of the Parties:

- Plaintiffs admit the following:

- That Agata Banagui Tait died on April 30, 1936;
- That the property in issue was bought by George Tait after the death of Agata Banagui Tait;
- That a deed of donation was executed by George Tait in favor of Maria with the land in dispute as the subject matter thereof;
- That deeds of sale of the property in question were executed in favor of the defendants by Maria Tait in 1984;
- That Maria Tait died in 1988.

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C. Issues Involved:

- Factual:

- Whether or not George Tait and Agata Banagui Tait owned and sold a lot at Otucan, Bauko, Mt. Province and the proceeds thereof used in buying the property in dispute;
- Whether or not Maria Tait sold the lot in issue to the defendants without the knowledge of the plaintiffs;
- Whether or not defendants before buying the land were forewarned of its controversial status;
- Whether or not plaintiffs only recently discovered the sale made by Maria Tait to the defendants.

- Legal:

- Whether or not plaintiffs are the compulsory heirs of the deceased George Tait and Agata Banagui Tait;
- Whether or not the property covered by TD 399 and the subject hereof was owned by George Tait and Agata Banaga Tait;
- Whether or not the deed of donation executed by George Tait in favor of Maria Tait is valid and effective;
- Whether or not the sale made by Maria Tait to the defendants is valid and effective;
- Whether or not defendants are buyers in good faith;
- Whether or not laches barred the claim of the plaintiffs.[4]

Realizing that the pre-trial order included their admission that a deed of donation was executed by George K. Tait, Sr. in favor of Maria F. Tait of the Sum-at property, petitioners subsequently moved for the inclusion as one of the factual issues the alleged forgery of the deed of donation. The Court did not act on petitioners' motion. However, petitioners were allowed to present evidence on the alleged forgery without objection by the private respondents.

On April 3, 1990, the trial court, on motion of petitioners, authorized the clerk of court of the Municipal Trial Court in Cities, Baguio City to take the deposition of one of petitioners' witnesses, Shirley Eillinger.

During the trial, petitioners presented the following as witnesses: Beatrice B. Tait, Dalino Pio, Rosita Aclipen, and Atty. Angela D. Papa.

Petitioner Beatrice B. Tait, a 60-year-old missionary nun and resident of Capangan, Benguet, testified that she and co-plaintiff Emilie T. Sumbad are sisters; that their parents are George K. Tait, Sr. and Agata B. Sumbad; that the late Maria F. Tait was their stepmother; that Maria F. Tait became their stepmother some time in 1941; that her parents had a property in Sum-at but it was sold; that her parents had a property in Otucan; and that she did not know what happened to the said property although she thought that her parents sold it in order to purchase the Sum-at property.[5]

On cross-examination, petitioner Beatrice Tait testified that her mother, Agata B. Tait, died in 1936; that she lived with her parents in Otucan from 1940 to 1941; and that the house at Sum-at was occupied by her grandmother (her stepmother's mother).[6]

Dalino Pio, a 60 year-old farmer and resident of Payag-eo, testified that Agata B. Tait was her sister and George K. Tait, Sr. was the latter's husband; that George K. Tait, Sr. and Agata B. Tait lived in Otucan; that Agata B. Tait inherited the Otucan property from their father; that George K. Tait moved to Bontoc at a place near the market; and that the spouses sold the Otucan property and afterwards purchased the Sum-at property.[7]

On cross-examination, Dalino Pio said that at the time that George K. Tait, Sr. sold the Otucan property, Agata B. Tait was already dead; that she does not know Maria F. Tait; that she did not personally see the Sum-at property; and that her sole basis for saying that George K. Tait, Sr. had used the proceeds of the sale of the Otucan property to purchase the property at Sum-at was what George K. Tait related to her.[8]

Lanoy Takayeng, a farmer, testified that she knew the late George K. Tait, Sr.; that she also knew someone named Fani-is; that George K. Tait, Sr. gave money to Fani-is for the purchase of the Sum-at property; that she does not know the exact amount given by George K. Tait, Sr. to Fani-is; that also present during that meeting were three (3) other persons named Samoki, Amok, and Aclipen; and that George K. Tait, Sr. afterwards planted coffee and orange trees on the Sum-at property and built a house thereon.[9]

On cross-examination, Lanoy Takayeng testified that George K. Tait, Sr. was her uncle; that when George K. Tait, Sr. acquired the Sum-at property, he was already married to Maria F. Tait; and that the money used to

purchase the Sum-at property came from the proceeds of the sale of the house at Bauko.[10] She testified that George K. Tait, Sr. was an educated man and a former member of Congress.[11]

Rosita Aclipen, a 48-year-old housewife and resident of Bontoc, testified that she knew the private respondents; that she sent a letter to private respondents on May 30, 1989; that she was instructed by petitioners to send the letter to private respondents; and that the letter was prepared and signed by petitioners' lawyer.[12]

Atty. Angela D. Papa testified that she had been the register of deeds of Bontoc since February 16, 1987; that as such, she was in charge of keeping records of all documents relating to the registration of real property, instruments, and mortgages; that she did not recall receiving a letter from Emilie T. Sumbad; and that she issued a certification, marked as Exhibit F, to the effect that no deeds of sale between Maria F. Tait and Acoking, Arthur Atiwag, Blanza, Glenn Paquito, Jaime Fronda, and Lolita Tolentino were registered in her office.[13]

For their documentary evidence, petitioners presented tax declarations covering the Sum-at property in the name of George K. Tait, Sr.; a certification showing payment of real estate taxes made by George K. Tait, Sr. on the property; official receipts; a certification by the register of deeds of Bontoc that no deed of sale covering the Sum-at property was registered in her office; a copy of the deed of donation, dated April 2, 1974; a letter, dated May 30, 1989, addressed to private respondents; and the transcripts of the deposition of Shirley Eillenger.[14]

In her deposition, Shirley Eillenger stated that she knew Beatrice B. Tait and Emilie T. Sumbad, daughters of the late George K. Tait, Sr.; that she personally knew George K. Tait, Sr.; that she also knew a person named Raquel Tait who had been her boardmate at the Perpetual Help Dormitory in Baguio City when the witness was in the third year of her college education; that Raquel Tait was George K. Tait, Sr.'s ward; that she saw a Deed of Donation regarding the Sum-at property and other documents containing the signature of George K. Tait, Sr.; and that she was able to read the contents of the Deed of Donation. She identified Exhibit I as a carbon copy of the document she referred to. She further testified that in 1979 or 1980 she saw Raquel type the Deed of Donation at the Perpetual Help Dormitory; that George K. Tait, Sr. was already dead at that time, having died in 1976 when the witness was a third year high school student; that she saw Raquel Tait forge the signature of George K. Tait, Sr. on a piece of paper; that Raquel herself at first tried to copy the signature of George K. Tait, Sr. on the paper then asked other male boarders to copy the signature of George K. Tait, Sr.; that she told Raquel Tait that it was wrong to forge the signature of any person but Raquel Tait ignored her and told her to keep quiet; that Raquel Tait personally signed the Deed of Donation; that Raquel Tait also tried to forge the signature of Maria Tait; that she did not see Raquel Tait put Maria Tait's signature on the document but only saw Raquel Tait forge Maria Tait's signature on a piece of paper; and that the following day, Raquel Tait went to Bontoc bringing with her the Deed of Donation.[15]

On cross-examination, this witness stated that it took Raquel about 20 to 30 minutes to type the Deed of Donation; that Raquel Tait had a form from which she copied the Deed of Donation; that Raquel Tait did not refer to a tax declaration in preparing the Deed of Donation; and that it took the male boarders the entire morning, from 8 o'clock until 11 o'clock, to copy the signature of George K. Tait, Sr.[16]

On the other hand, private respondents presented the following witnesses: Felipa Piyes, Julio Saclangen, Glenn Paquito, and Edward Okoren.

Felipa Piyes, a 61-year old businesswoman and resident of Loc-ong, Bontoc, testified that her son is one of the lot purchasers of the Sum-at property; that Rosita Aclipen called for her and demanded additional payment for the lot purchased by her son; that she asked Rosita Aclipen why additional payment was being demanded when the price of the lot had already been fully paid to Maria F. Tait; that Emilie T. Sumbad was also present when Rosita Aclipen demanded money from her; and that Emilie T. Sumbad is the stepdaughter of Maria F. Tait.[17]

On cross-examination, Felipa Piyes narrated that it was her son, Edward Piyes, who provided the money for the purchase of the Sum-at lot; that she received a letter some time in May or June, 1989 from Rosita Aclipen; that she affixed her signature on the letter; that during that time, Edward, who was in Saudi Arabia, told her to purchase the lot for as long as there was no controversy over the same; that Mrs. Tait had a tax declaration under her name and on the faith thereof, she purchased the lot from Maria F. Tait; that a deed of sale was executed between Maria F. Tait and Julia Piyes, her daughter-in-law, as purchaser; that as a resident of Bontoc, she knew George K. Tait, Sr. and Maria F. Tait; that George K. Tait, Sr. was formerly a congressman for the Mountain Province; that George K. Tait, Sr. and Maria F. Tait lived together as husband and wife but did not have any children; and that she knew that the petitioners are stepdaughters of Maria F. Tait.[18]

Julio Saclangen, a resident of Omfeg, testified that a deed of sale was also executed between him and his wife Evelyn Saclangen, on the one hand, and Maria F. Tait, on the other; that from the records of the municipal office, they verified that Maria F. Tait was the owner of the Sum-at property; that they also verified from other lot purchasers that Maria F. Tait is the real owner of the property; that after purchasing the lot, they planted camote and banana on the lot; and that he and his wife caused the issuance of a tax declaration in their name.[19]

Glenn Paquito, 48 years old and a resident of Chakchakan, Bontoc, claimed that upon learning that lots were being offered for sale in Sum-at, he verified from the municipal assessor's office that the Sum-at property was owned by Maria F. Tait; that he had a tax declaration covering the lot purchased from Maria F. Tait; that he planted camote and papaya on the lot; that he had been paying real estate taxes on the lot from the time he purchased it; and that since acquiring the lot he had never been disturbed in his possession.[20] On cross-examination, he revealed that he also received a letter, dated May 30, 1989, from the petitioners' representatives; that after receiving the letter, a conference was held between the parties at the house of Rosita Aclipen wherein the latter asked the purchasers for additional payment for the purchased lots; that aside from them, other lot purchasers were present at the conference; and that upon investigation in the municipal assessor's office, he was only shown one tax declaration and did not ask to be shown previous tax declarations on the Sum-at property.[21]

Edward Okoren, a 46-year-old teacher and resident of Guina-ang, Bontoc, testified that he purchased a lot from Maria F. Tait; that he had a tax declaration covering the lot in his name; that the deed of sale was registered with the Register of Deeds of Bontoc, Mountain Province; that after purchasing the lot, he planted camote and constructed a stone wall thereon; that he had never been disturbed in his possession until the present; that he paid real estate taxes on the lot; and that he was asked to attend a conference with petitioners but he declined because he was busy.[22]

Private respondents presented copies of the deeds of sale executed in their favor by Maria F. Tait as documentary evidence.

On April 8, 1991, the trial court rendered judgment dismissing the complaint. The dispositive portion provides as follows:

WHEREFORE, decision is hereby rendered dismissing the instant action and ordering the plaintiffs to pay each of the defendants herein P500.00 by way of attorney's fees and litigation expenses.

Costs against plaintiffs.

SO ORDERED.[23]

On appeal, the Court of Appeals affirmed the trial court's decision with the modification that the award of attorney's fees was set aside.[24] Hence, this petition.

Petitioners assign the following errors as having been allegedly committed by the appellate court:

- THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THE DEED OF DONATION INTER VIVOS IN FAVOR OF MARIA TAIT AS NULL AND VOID;
- THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THE DEEDS OF SALE TO THE DEFENDANTS AS NULL AND VOID IT HAVING ORIGINATED FROM A VOID DOCUMENT AND TRANSACTION;
- THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT APPLYING ART. 133, NEW CIVIL CODE, (NOW ART. 87, FAMILY CODE) AND ART. 749 OF THE NEW CIVIL CODE IN THE ABOVE-ENTITLED CASE;
- THE HONORABLE COURT OF APPEALS ERRED IN NOT APPRECIATING THE STRAIGHTFORWARD AND CATEGORICAL DECLARATIONS OF SHIRLEY EILLENGER REGARDING THE FORGERY OF THE DONATION INTER VIVOS;
- THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT THE LATE MARIA FAS-ANG TAIT HAD THE AUTHORITY TO DISPOSE OF THE LAND IN CONTROVERSY, NOTWITHSTANDING THE FACT THAT IT DID NOT BELONG TO HER AND THE FACT THAT THE ALLEGED DEED OF DONATION IN HER FAVOR IS A FORGERY AND VOID AB INITIO;
- THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE DEFENDANTS OWNERSHIP OF THE LOTS (UNLAWFULLY) SOLD TO THEM, NOTWITHSTANDING THE FACT THAT THE SELLER DID NOT HAVE THE RIGHT OR AUTHORITY TO DO SO;
- THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE DEFENDANTS HAVE THE BETTER RIGHT TO POSSESS THE PREMISES IN QUESTION;
- THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE PLAINTIFFS-PETITIONERS FAILED TO PROVE THEIR RIGHT OF SUCCESSION TO THE PROPERTY IN QUESTION;
- THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT PLAINTIFFS HAVE NO TITLE, LEGAL OWNERSHIP OR EQUITABLE, TO THE PROPERTY IN QUESTION;
- THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT THE ACTION IS BARRED BY LACHES.[25]

Petitioners contend that the deed of donation, dated April 2, 1974, is void for the following reasons: (1) it is a forgery; (2) it was made in violation of Art. 133 of the Civil Code, now Art. 87 of the Family Code; and (3) it was notarized by a person who had no authority to act as a notary public. They further contend that Maria F. Tait had no authority to sell the Sum-at property and, therefore, the sales in favor of private respondents are null and void; that as heirs of George K. Tait, they are entitled to the Sum-at property; and that since they only learned of the sales transactions sometime in 1988 when Maria F. Tait became seriously ill, they are not barred from bringing the present action.

The petition has no merit. It is settled that factual findings of the trial court will not be disturbed on appeal unless the court has overlooked or ignored some fact or circumstance of sufficient weight or significance, which, if considered, would alter the result of the case.[26] When there is no conflict between the findings of the trial and appellate courts, a review of the facts found by the appellate court is unnecessary.[27] In the case at bar, even a review of the evidence fails to yield any reason for us to disregard the factual findings of the trial court and the appellate court.

First. Petitioners fault both the trial and appellate courts for not giving credence to the testimony of Shirley Eillenger with respect to the forgery of the deed of donation. As the Court of Appeals ruled, however:

The plaintiffs assail the validity of the deed of donation in question on the ground that it is a forgery. On this point, the plaintiffs presented a witness who testified in a deposition taken before the Clerk of Court of the Municipal Trial Court in Baguio City on April 11, 1990 - a certain Shirley Eillenger.

....

Remarking on this testimony of Shirley Eillenger, the trial court had said:

. . . Anent the deed of donation inter vivos the validity of which is put in issue by plaintiffs, the deposition of Shirley Eillenger to the effect that she personally saw one Raquel Tait draft the document and forge the signature of George K. Tait now appearing therein is incredible and grossly unconvincing. For considerations difficult to pin down, the statements of the witness on the point somehow does not ring true and appear to have been rehearsed. It is too pat to be credible.

We agree with the lower court when it said that this testimony of Eillenger is "vague and incredible." We have studied with care the deed of donation in question and find unworthy of credence the claim of Eillenger that Raquel Tait, who must have been a young girl about 20 years of age in 1979 or 1980 (she gave her age as 30 on April 11, 1990), could have, in 20 to 30 minutes, prepared the document in all its legal form supposedly copying only from a "format". It also taxes the mind to believe that Raquel Tait had called the boys in the boarding house and, within the view of every one, asked them to forge the signature of George K. Tait, Sr. and, with the boys failing to accomplish the task, herself forged the signature not only of George K. Tait, Sr. but also of Maria Tait in that one sitting and in that short span of time.

The alleged forgery could have been proven with more competent evidence, such as by handwriting experts. This, the plaintiffs failed to do. As stated by the trial court, the validity of the public document cannot be impugned or overcome by the testimony of the witness Eillenger.[28]

Forgery should be proved by clear and convincing evidence, and whoever alleges it has the burden of proving the same.[29] Not only is Shirley Eillenger's testimony difficult to believe, it shows it had been rehearsed as she anticipated the questions of petitioner's counsel, and sometimes said more than was called for by the question. This is illustrated by the following portions of her testimony:

Q

When you were boardmates with Raquel Tait at Perpetual Help, along Gen. Luna, Baguio City, do you recall if you have seen any document regarding that Sum-at property of George Tait, Sr.?

A Yes, sir, I saw it.

Q And, what document is that if you could still recall?

A I saw a Deed of Donation... and other documents where the signature of George Tait, Sr. was written.

ATTY. SOKOKEN:

There was an Ilocano word.

ATTY. LOCKEY:

May we put it in Ilocano?

WITNESS:

A Ania daguidiay nga documento tattayen?

ATTY. LOCKEY:

Q You mentioned about a Deed of Donation. Were you able to read or see that Deed of Donation?

A Yes, sir.

Q I have here a duplicate original of a Deed of Donation Intervivos dated April 2, 1974. Will you go over that document?

HEARING OFFICER:

Witness is going over the document handed to her by counsel.

ATTY. LOCKEY:

Q Have you gone over the document?

A Yes, sir.

Q

What relation has that document to the Deed of Donation which you claim to have been typewritten by Raquel Tait in your boardinghouse at Perpetual Help, along Gen. Luna, Baguio City?

A It was the carbon copy of the Deed of Donation that Raquel Tait typed in our boardinghouse.

Q By the way, Mrs. Witness, what year was that when you saw Raquel Tait typewriting the Deed of Donation, if you could still recall?

A As far as I can recall, it was in the year 1979 to 1980.

Q And, at that time, do you recall where George Tait, Sr. was?

A George Tait, Sr. is already dead during that time.

Q When did George Tait, Sr. die, if you could still recall?

A As far as I can recall, he died in the year 1976 when I was in 3[rd] year high school.

Q Going back to the Deed of Donation which you have just identified, what was the condition of this document to that Deed you saw being typewritten by Raquel Tait?

ATTY. SOKOKEN:

May we interpose an objection? The question maybe ambiguous insofar as to the condition of the document when it was typed.

ATTY. LOCKEY:

We will reform the question, your Honor.

Q

I noticed that in this Deed of Donation there are written entries as well as signatures. At the time you saw this Deed of Donation being typewritten by Raquel Tait, were the written entries and signatures already there?

A The signatures were not yet there when Raquel Tait typed this Deed of Donation. However, the following day

ATTY. SOKOKEN:

May we request that the question be just answered.

HEARING OFFICER:

Make it of record that there is an objection of the defendants' counsel, asking that the deponent will only answer the question asked.

....

ATTY. LOCKEY:

Q

After seeing the document already marked as Exh. "I" being typewritten by Raquel Tait, was there any occasion wherein you have seen again that document aside from today's hearing?

WITNESS:

A Yes, sir.

Q When was that, if you can still recall?

A Last April.

ATTY. SOKOKEN:

May I manifest, Mr. Hearing Officer, that the witness is taking time to remember the answer.

HEARING OFFICER:

Make that of record.

WITNESS:

A April 6, 1990.

ATTY. LOCKEY:

Q Whereat?

A At the office of Atty. Lockey.

Q And how come that you went there in the office of Atty. Lockey on April 6, 1990?

A Atty. Lockey asked for me to go there.

Q Do you know for what purpose that you were asked to go there?

A Yes, sir.

Q Please tell the Court.

A To inquire about that Deed of Donation.

Q And was there really an inquiry about what was done or made in the Office of Atty. Lockey regarding that Deed of Donation?

A Yes, sir.

....

ATTY. LOCKEY:

Q What else did Raquel Tait do, if any, after typewriting that Deed of Donation in your boardinghouse at Perpetual Help?

WITNESS:

A I saw her forging the signature of George Tait, Sr. on a piece of bond paper.

Q And how did you see her forging the signature of George Tait, sr. on that bond paper?

A I saw her try to copy the signature of George Tait, Sr. and calling some boys, our boardmates, to copy the signature of George Tait, Sr. in that bond paper also.

Q From where was Raquel Tait copying the signature of George Tait, Sr.?

A In a separate document.

Q You said that Raquel Tait was also requiring the boys to copy. Did the boys accede to the request of Raquel Tait?

A Some boys tried to forge it, but they did not follow it.

Q Seeing this situation - meaning Raquel Tait trying to forge the signature of George Tait, what step or steps did you take, if any?

A I warned her by saying that she is making "kalokohan" out of that Deed of Donation.

HEARING OFFICER:

Make it of record also that the witness made use of the word "kalokohan" in Filipino language. Let that term be put on record.

ATTY. LOCKEY:

Q And, what did Raquel Tait tell you, if any, in connection with your comment?

A She said I will just keep quiet.

Q What else did Raquel Tait do in connection with the Deed of Donation you have earlier identified aside from what you have already stated, if any?

A She personally signed this one.

HEARING OFFICER:

Witness pointing to the document earlier marked as Exh. "I" particularly to the signature above the typewritten name George K. Tait, Donor.

ATTY. LOCKEY:

Perhaps it would not be remiss for us to say that the signature pointed to by the witness be encircled and be marked as Exh. "I-1".

HEARING OFFICER:

Mark it.

ATTY. LOCKEY:

Q Aside from that, what else did she do, if any?

A She wants to try to forge the signature of Maria Tait.

Q Was she able to do it?

A Yes, sir.[30]

Petitioners should have presented handwriting experts to support their claim that George K. Tait, Sr.'s signature on the deed of donation was indeed a forgery.

Second. Petitioners argue that the deed of donation is invalid under Art. 749 of the Civil Code, which requires a public instrument as a requisite for the validity of donations of immovable property. They contend that the person who notarized the deed had no authority to do so. However, petitioners have not shown this to be the case. The acknowledgment clause states that the person who notarized it was the deputy clerk of court, Gonzalo Reyes, who acted "For and in the absence of the Clerk of Court." Sec. 21 of the Revised Administrative Code of 1917, as amended by C.A. Nos. 270 and 641, provides:

SEC. 21. Officials authorized to administer oaths. -- The following officers have general authority to administer oaths, to wit:

Notaries public; justices of the peace and auxiliary justices of the peace; clerks of court; the Secretary of the National Assembly; bureau directors; registers of deeds; provincial governors and lieutenant-governors; city

mayors; municipal mayors, municipal district mayors; any other officer in the Philippine service whose appointment is vested in the President of the Philippines, Secretary of War, or President of the United States. A person who by authority of law shall act in the capacity of the officers mentioned above shall possess the same power. (Emphasis added).[31]

In accordance with the presumption that official duty has been regularly performed, it is to be presumed that the deputy clerk of court who notarized the deed of donation in this case was duly authorized by the clerk of court.

Third. Petitioners argue that the deed of donation contravenes Art. 133 of the Civil Code which provides:

Art. 133. Every donation between the spouses during the marriage shall be void. This prohibition does not apply when the donation takes effect after the death of the donor.

Neither does this prohibition apply to moderate gifts which the spouses may give each other on the occasion of any family rejoicing.

in view of our ruling in *Matabuena v. Cervantes*[32] that the prohibition in Art. 133 extends to common-law relations. Indeed, it is now provided in Art. 87 of the Family Code:

Art. 87. Every donation or grant of gratuitous advantage, direct or indirect between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. The prohibition shall apply to persons living together as husband and wife without a valid marriage. (Emphasis added).

This point is being raised for the first time in this Court. The records show that in the trial court, petitioners' attack on the validity of the deed of donation centered solely on the allegation that George K. Tait, Sr.'s signature had been forged and that the person who notarized the deed had no authority to do so. But petitioners never invoked Art. 133 of the Civil Code as a ground to invalidate the deed of donation.

Time and again, this Court has ruled that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice. Even assuming that they are not thus precluded, petitioners were unable to present evidence in support of such a claim. The evidence on record does not show whether George K. Tait, Sr. was married to Maria F. Tait and, if so, when the marriage took place. If, as petitioners claim, Maria F. Tait was not married to their father, evidence should have been presented to show that at the time the deed of donation was executed, their father and Maria F. Tait were still maintaining common-law relations. Beatrice Tait's testimony is only to the effect that in 1941 Maria F. Tait became their stepmother. There is no evidence on record that George K. Tait, Sr. and Maria F. Tait continuously maintained common-law relations until April 2, 1974 when the donation was made.

Fourth. Petitioners claim that they only learned of the sales to private respondents of lots included in the Sum-at property in 1988 when they visited Maria F. Tait in Bontoc because she was seriously ill. As admitted by petitioners, their mother, Agata B. Tait, died on April 30, 1936, while their father, George K. Tait, Sr., died on December 24, 1977.[33] Yet, petitioners waited for twelve (12) years before claiming their inheritance, having brought their present action only on July 24, 1989. Petitioners are thus guilty of laches which precludes them from assailing the donation made by their father in favor of Maria F. Tait. Laches is the failure or neglect for an unreasonable length of time to do that which, by exerting due diligence, could or should have been done earlier.[34]

Finally, Lanoy Takayeng's testimony that George K. Tait, Sr. gave Fani-is money to purchase the Sum-at property does not necessarily mean that the money came from the proceeds of the sale of the Otucan property. For one, Lanoy Takayeng could not state with certainty when the alleged meeting took place. Second, this witness could

not even remember the amount of money allegedly given by George K. Tait, Sr. to Fani-is. Third, Takayeng did not state when the purchase supposedly took place or if the sale was consummated in accordance with George K. Tait, Sr.'s instructions. It is anybody's guess whether George K. Tait's orders were carried out by Fani-is and whether George K. Tait, Sr. tapped other funds to purchase the Sum-at property.

In sum, petitioners have not sufficiently shown the nullity of private respondents' title to the lots purchased by them. To the contrary, as the Court of Appeals well observed:

The deed of donation in question was executed by their father in 1974. Assuming that the plaintiffs were not aware of the existence of said document, as they now claim, they could not have failed to notice that the land in question had been occupied by Maria F. Tait and later by defendants who bought portions thereof and that said defendants, numbering nine (9), and their families, had built their respective houses and introduced other improvements on the portions they had purchased from Maria F. Tait and had resided therein since 1982 and 1983. As stated by the trial court, the plaintiffs offered no plausible excuse for their failure to assert their rights sooner. They apparently waited until Maria F. Tait died in 1988 before assailing the validity of the sales made by the latter in favor of the defendants.

We believe that the defendants herein bought their respective portions they now possess in good faith. The land is not registered under the Torrens system and they checked with the Assessor's Office and found that the same was declared in the name of Maria F. Tait. Further, it was the said Maria F. Tait and not the plaintiffs who was in possession thereof. The claim of the plaintiffs that the defendants were forewarned [prior to the sales transactions] that the property was not owned by Maria F. Tait but by the heirs of George K. Tait, Sr. was not proven in these proceedings.

Indeed, the plaintiffs have failed in the duty to prove their allegations in their complaint as required by the Rules of Court. We find their evidence too inadequate to be considered as preponderantly in their favor.

In fine, there is no reason for this Court to set aside the findings of the trial court, except insofar as it orders the plaintiffs to pay the defendants attorney's fees. As aptly pointed out by the plaintiffs-appellants there should be no premium on the right to litigate. We find that the plaintiffs filed this complaint in good faith and that the defendants' claim for attorney's fees was not adequately established.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Bellosillo (Chairman), and Quisumbing, JJ., concur.

Puno, J., no part. Involved in CA decision.

Buena, J., no part. On leave.

[1] Penned by Associate Justice Salome A. Montoya, with Associate Justice Reynato S. Puno and Associate Justice Celso L. Magsino, concurring.

[2] Records, p. 121, Exhibit "I".

[3] Id., p. 18; Order, dated September 26, 1989, p. 1.

[4] Id., pp. 46-47; Pre-trial Order, dated November 21, 1989, pp. 2-3.

[5] TSN, pp. 2-6, Feb. 20, 1990.

[6] Id., pp. 6-7.

- [7] TSN, pp. 1-14, March 14, 1990.
- [8] Id., pp. 11-20.
- [9] Id., pp. 20-24.
- [10] Id., pp. 24-28.
- [11] Id., pp. 28-29.
- [12] TSN, pp. 5-7, March 15, 1990.
- [13] Id., pp. 7-9.
- [14] Records, pp. 104-110; Plaintiffs' Offer of Exhibits, pp. 1-7.
- [15] TSN, pp. 3-14, April 11, 1990.
- [16] Id., pp. 15-19.
- [17] TSN, pp. 2-6, May 29, 1990.
- [18] Id., pp. 7-11.
- [19] Id., pp. 17-20.
- [20] Id., pp. 25-30.
- [21] Id., pp. 30-38.
- [22] Id., pp. 38-42.
- [23] CA Rollo, pp. 40-41.
- [24] Rollo, p. 41; Petition, Annex "A", p. 9.
- [25] Id., pp. 3-4; Id., pp. 3-4.
- [26] *Heirs of Felicidad Canque v. Court of Appeals*, 275 SCRA 741 (1997).
- [27] *Kierulf v. Court of Appeals*, 269 SCRA 433 (1997).
- [28] Rollo, pp. 37-39.
- [29] *Veloso v. Court of Appeals*, 260 SCRA 593 (1996).
- [30] Records, pp. 87-94; TSN, April 11, 1990, pp. 5-12 (emphasis added).
- [31] Republic Act No. 6733, §§1 and 2, provide:

Section 1. Section 21 of the Revised Administrative Code is hereby amended to read as follows:

Sec. 21. Officials authorized to administer oath. $\frac{3}{4}$ The following officers have general authority to administer oaths, to wit:

President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; provincial governors and lieutenant-governors; city mayors; municipal mayors; bureau directors; regional directors; clerk of courts; registrars of deeds; and other civilian officers in the Philippine public service whose appointments are vested in the President of the Philippines and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public. A

person who by authority of law shall serve in the capacity of the officers mentioned above shall possess the same power.

Sec. 2. Section 41 of the Administrative Code of 1987 is hereby to read as follows:

Sec. 41. Officers Authorized to Administer Oath. ^{3/4} The following officers have general authority to administer oaths: President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; Provincial governors and lieutenant-governors; city mayors; municipal mayors; bureau directors; regional directors; clerks of courts; registrars of deeds; other civilian officers in the public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public.

[32]38 SCRA 284 (1971).

[33] Records, p. 1; Complaint, p. 1.

[34]Reyes v. Court of Appeals, 264 SCRA 35 (1996).

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