MAXIMA HEMEDES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, DOMINIUM REALTY AND CONSTRUCTION CORPORATION, ENRIQUE D. HEMEDES, AND R & B INSURANCE CORPORATION, RESPONDENTS.

G.R. No. 107132. October 08, 1999

Ponente: GONZAGA_REYES, J.

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GONZAGA_REYES, J.:

Assailed in these petitions for review on certiorari is the decision[1] of the eleventh division of the Court of Appeals in CA-G.R. CV No. 22010 promulgated on September 11, 1992 affirming in toto the decision of Branch 24 of the Regional Trial Court of Laguna in Civil Case No. B-1766 dated February 22, 1989,[2] and the resolution dated December 29, 1992 denying petitioner R & B Insurance Corporation's (R & B Insurance) motion for reconsideration. As the factual antecedents and issues are the same, we shall decide the petitions jointly.

The instant controversy involves a question of ownership over an unregistered parcel of land, identified as Lot No. 6, plan Psu-111331, with an area of 21,773 square meters, situated in Sala, Cabuyao, Laguna. It was originally owned by the late Jose Hemedes, father of Maxima Hemedes and Enrique D. Hemedes. On March 22, 1947 Jose Hemedes executed a document entitled "Donation Inter Vivos With Resolutory Conditions"[3] whereby he conveyed ownership over the subject land, together with all its improvements, in favor of his third wife, Justa Kauapin, subject to the following resolutory conditions:

> (a) Upon the death or remarriage of the DONEE, the title to the property donated shall revert to any of the children, or their heirs, of the DONOR expressly designated by the DONEE in a public document conveying the property to the latter; or
>
> (b) In absence of such an express designation made by the DONEE before her death or remarriage contained in a public instrument as above provided, the title to the property shall automatically revert to the legal heirs of the DONOR in common.

Pursuant to the first condition abovementioned, Justa Kausapin executed on September 27, 1960 a "Deed of Conveyance of Unregistered Real Property by Reversion"[4] conveying to Maxima Hemedes the subject property under the following terms -

> That the said parcel of land was donated unto me by the said Jose Hemedes, my deceased husband, in a deed of "DONATION INTER VIVOS WITH RESOLUTORY CONDITIONS" executed by the donor in my favor, and duly accepted by me on March 22, 1947, before Notary Public Luis Bella in Cabuyao, Laguna;
>
> That the donation is subject to the resolutory conditions appearing in the said deed of "DONATION INTER VIVOS WITH RESOLUTORY CONDITIONS," as follows:
>
> "(a) Upon the death or remarriage of the DONEE, the title to the property donated shall revert to any of the children, or their heirs, of the DONOR expressly designated by the DONEE in a public document conveying

> the property to the latter; or
>
> (b) In absence of such an express designation made by the DONEE before her death or remarriage contained in a public instrument as above provided, the title to the property shall automatically revert to the legal heirs of the DONOR in common."

That, wherefore, in virtue of the deed of donation above mentioned and in the exercise of my right and privilege under the terms of the first resolutory condition therein contained and hereinabove reproduced, and for and in consideration of my love and affection, I do hereby by these presents convey, transfer, and deed unto my designee, MAXIMA HEMEDES, of legal age, married to RAUL RODRIGUEZ, Filipino and resident of No. 15 Acacia Road, Quezon City, who is one of the children and heirs of my donor, JOSE HEMEDES, the ownership of, and title to the property hereinabove described, and all rights and interests therein by reversion under the first resolutory condition in the above deed of donation; Except the possession and enjoyment of the said property which shall remain vested in me during my lifetime, or widowhood and which upon my death or remarriage shall also automatically revert to, and be transferred to my designee, Maxima Hemedes.

Maxima Hemedes, through her counsel, filed an application for registration and confirmation of title over the subject unregistered land. Subsequently, Original Certificate of Title (OCT) No. (0-941) 0-198[5] was issued in the name of Maxima Hemedes married to Raul Rodriguez by the Registry of Deeds of Laguna on June 8, 1962, with the annotation that "Justa Kausapin shall have the usufructuary rights over the parcel of land herein described during her lifetime or widowhood."

It is claimed by R & B Insurance that on June 2, 1964, Maxima Hemedes and her husband Raul Rodriguez constituted a real estate mortgage over the subject property in its favor to serve as security for a loan which they obtained in the amount of P6,000.00. On February 22, 1968, R & B Insurance extrajudicially foreclosed the mortgage since Maxima Hemedes failed to pay the loan even after it became due on August 2, 1964. The land was sold at a public auction on May 3, 1968 with R & B Insurance as the highest bidder and a certificate of sale was issued by the sheriff in its favor. Since Maxima Hemedes failed to redeem the property within the redemption period, R & B Insurance executed an Affidavit of Consolidation dated March 29, 1974 and on May 21, 1975 the Register of Deeds of Laguna cancelled OCT No. (0-941) 0-198 and issued Transfer Certificate of Title (TCT) No. 41985 in the name of R & B Insurance. The annotation of usufruct in favor of Justa Kausapin was maintained in the new title.[6]

Despite the earlier conveyance of the subject land in favor of Maxima Hemedes, Justa Kausapin executed a "Kasunduan" on May 27, 1971 whereby she transferred the same land to her stepson Enrique D. Hemedes, pursuant to the resolutory condition in the deed of donation executed in her favor by her late husband Jose Hemedes. Enrique D. Hemedes obtained two declarations of real property - in 1972, and again, in 1974, when the assessed value of the property was raised. Also, he has been paying the realty taxes on the property from the time Justa Kausapin conveyed the property to him in 1971 until 1979. In the cadastral survey of Cabuyao, Laguna conducted from September 8, 1974 to October 10, 1974, the property was assigned Cadastral No. 2990, Cad. 455-D, Cabuyao Cadastre, in the name of Enrique Hemedes. Enrique Hemedes is also the named owner of the property in the records of the Ministry of Agrarian Reform office at Calamba, Laguna.

On February 28, 1979, Enriques D. Hemedes sold the property to Dominium Realty and Construction Corporation (Dominium). On April 10, 1981, Justa Kausapin executed an affidavit affirming the conveyance of the subject property in favor of Enrique D. Hemedes as embodied in the "Kasunduan" dated May 27, 1971, and at the same time denying the conveyance made to Maxima Hemedes.

On May 14, 1981, Dominium leased the property to its sister corporation Asia Brewery, Inc. (Asia Brewery) who,

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even before the signing of the contract of lease, constructed two warehouses made of steel and asbestos costing about P10,000,000.00 each. Upon learning of Asia Brewery's constructions upon the subject property, R & B Insurance sent it a letter on March 16, 1981 informing the former of its ownership of the property as evidenced by TCT No. 41985 issued in its favor and of its right to appropriate the constructions since Asia Brewery is a builder in bad faith. On March 27, 1981, a conference was held between R & B Insurance and Asia Brewery but they failed to arrive at an amicable settlement.

On May 8, 1981, Maxima Hemedes also wrote a letter addressed to Asia Brewery wherein she asserted that she is the rightful owner of the subject property by virtue of OCT No. (0-941) 0-198 and that, as such, she has the right to appropriate Asia Brewery's constructions, to demand its demolition, or to compel Asia Brewery to purchase the land. In another letter of the same date addressed to R & B Insurance, Maxima Hemedes denied the execution of any real estate mortgage in favor of the latter.

On August 27, 1981, Dominium and Enrique D. Hemedes filed a complaint[7] with the Court of First Instance of Binan, Laguna for the annulment of TCT No. 41985 issued in favor of R & B Insurance and/or the reconveyance to Dominium of the subject property. Specifically, the complaint alleged that Dominium was the absolute owner of the subject property by virtue of the February 28, 1979 deed of sale executed by Enrique D. Hemedes, who in turn obtained ownership of the land from Justa Kausapin, as evidenced by the "Kasunduan" dated May 27, 1971. The plaintiffs asserted that Justa Kausapin never transferred the land to Maxima Hemedes and that Enrique D. Hemedes had no knowledge of the registration proceedings initiated by Maxima Hemedes.

After considering the merits of the case, the trial court rendered judgment on February 22, 1989 in favor of plaintiffs Dominium and Enrique D. Hemedes, the dispositive portion of which states –

> WHEREFORE, judgment is hereby rendered:
>
> (a) Declaring Transfer Certificate of Title No. 41985 of the Register of Deeds of Laguna null and void and ineffective;
>
> (b) Declaring Dominium Realty and Construction Corporation the absolute owner and possessor of the parcel of land described in paragraph 3 of the complaint;
>
> (c) Ordering the defendants and all persons acting for and/or under them to respect such ownership and possession of Dominium Realty and Construction Corporation and to forever desist from asserting adverse claims thereon nor disturbing such ownership and possession; and
>
> (d) Directing the Register of Deeds of Laguna to cancel said Transfer Certificate of Title No. 41985 in the name of R & B Insurance Corporation, and in lieu thereof, issue a new transfer certificate of title in the name of Dominium Realty and Construction Corporation. No pronouncement as to costs and attorney's fees.[8]

Both R & B Insurance and Maxima Hemedes appealed from the trial court's decision. On September 11, 1992 the Court of Appeals affirmed the assailed decision in toto and on December 29, 1992, it denied R & B Insurance's motion for reconsideration. Thus, Maxima Hemedes and R & B Insurance filed their respective petitions for review with this Court on November 3, 1992 and February 22, 1993, respectively.

In G.R. No. 107132[9] , petitioner Maxima Hemedes makes the following assignment of errors as regards public respondent's ruling –

I

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN APPLYING ARTICLE 1332 OF THE NEW CIVIL CODE IN DECLARING AS SPURIOUS THE DEED OF CONVEYANCE OF UNREGISTERED REAL PROPERTY BY REVERSION EXECUTED BY JUSTA KAUSAPIN IN FAVOR OF PETITIONER MAXIMA HEMEDES.

II

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT FINDING AS VOID AND OF NO LEGAL EFFECT THE "KASUNDUAN" DATED 27 MAY 1971 EXECUTED BY JUSTA KAUSAPIN IN FAVOR OF RESPONDENT ENRIQUE HEMEDES AND THE SALE OF THE SUBJECT PROPERTY BY RESPONDENT ENRIQUE HEMEDES IN FAVOR OF RESPONDENT DOMINIUM REALTY AND CONSTRUCTION CORPORATION.

III

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT FINDING RESPONDENTS ENRIQUE AND DOMINIUM IN BAD FAITH.

IV

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT ORIGINAL CERTIFICATE OF TITLE NO. (0-941) 0-198 ISSUED IN THE NAME OF PETITIONER MAXIMA HEMEDES NULL AND VOID.

V

RESPONDENT COURT OF APPEALS ERRED IN NOT FINDING THAT NO LOAN WAS OBTAINED BY PETITIONER MAXIMA HEMEDES FROM RESPONDENT R & B INSURANCE CORPORATION.

VI

RESPONDENT COURT OF APPEALS ERRED IN NOT FINDING THAT NO REAL ESTATE MORTGAGE OVER THE SUBJECT PROPERTY WAS EXECUTED BY PETITIONER MAXIMA HEMEDES IN FAVOR OF RESPONDENT R & B INSURANCE CORPORATION.

VII

RESPONDENT COURT OF APPEALS ERRED IN NOT FINDING THAT THE VALID TITLE COVERING THE SUBJECT PROPERTY IS THE ORIGINAL CERTIFICATE OF TITLE NO. (0-941) 0-198 IN THE NAME OF PETITIONER MAXIMA HEMEDES AND NOT THE TRANSFER CERTIFICATE OF TITLE (TCT) NO. 41985 IN THE NAME OF R & B INSURANCE CORPORATION.[10]

Meanwhile, in G.R. No. 108472[11] , petitioner R & B Insurance assigns almost the same errors, except with regards to the real estate mortgage allegedly executed by Maxima Hemedes in its favor. Specifically, R & B Insurance alleges that:

I

RESPONDENT COURT ERRONEOUSLY ERRED IN APPLYING ARTICLE 1332 OF THE CIVIL CODE.

II

RESPONDENT COURT SERIOUSLY ERRED IN GIVING CREDENCE ON (sic) THE KASUNDUAN BY AND BETWEEN JUSTA KAUSAPIN AND ENRIQUE NOTWITHSTANDING THE FACT THAT JUSTA KAUSAPIN BY WAY OF A DEED OF CONVEYANCE OF UNREGISTERED REAL PROPERTY BY REVERSION CEDED THE SUBJECT PROPERTY TO MAXIMA SOME ELEVEN (11) YEARS EARLIER.

III

RESPONDENT COURT SERIOUSLY ERRED IN GIVING CREDENCE ON (sic) THE AFFIDAVIT OF REPUDIATION OF JUSTA KAUSAPIN NOTWITHSTANDING THE FACT THAT SHE IS A BIAS (sic) WITNESS AND EXECUTED THE SAME SOME TWENTY-ONE (21) YEARS AFTER THE EXECUTION OF THE DEED OF CONVEYANCE IN FAVOR OF MAXIMA.

IV

RESPONDENT COURT SERIOUSLY ERRED IN NOT FINDING THAT THE COMPLAINT OF ENRIQUE AND DOMINIUM HAS PRESCRIBED AND/OR THAT ENRIQUE AND DOMINIUM WERE GUILTY OF LACHES.

V

RESPONDENT COURT SERIOUSLY ERRED IN FINDING R & B AS A MORTGAGEE NOT IN GOOD FAITH.

VI

RESPONDENT COURT SERIOUSLY ERRED IN NOT GRANTING THE DAMAGES PRAYED FOR BY R & B IN ITS COUNTERCLAIM AND CROSSCLAIM.[12]

The primary issue to be resolved in these consolidated petitions is which of the two conveyances by Justa Kausapin, the first in favor of Maxima Hemedes and the second in favor of Enrique D. Hemedes, effectively transferred ownership over the subject land.

The Register of Deeds of Laguna issued OCT No. (0-941) 0-198 in favor of Maxima Hemedes on the strength of the “Deed of Conveyance of Unregistered Real Property by Reversion” executed by Justa Kausapin. Public respondent upheld the trial court’s finding that such deed is sham and spurious and has “no evidentiary value under the law upon which claimant Maxima Hemedes may anchor a valid claim of ownership over the property.” In ruling thus, it gave credence to the April 10, 1981 affidavit executed by Justa Kausapin repudiating such deed of conveyance in favor of Maxima Hemedes and affirming the authenticity of the “Kasunduan” in favor of Enrique D. Hemedes. Also, it considered as pivotal the fact that the deed of conveyance in favor of Maxima Hemedes was in English and that it was not explained to Justa Kausapin, although she could not read nor understand English; thus, Maxima Hemedes failed to discharge her burden, pursuant to Article 1332 of the Civil Code, to show that the terms thereof were fully explained to Justa Kausapin. Public respondent concluded by holding that the registration of the property on the strength of the spurious deed of conveyance is null and void and does not confer any right of ownership upon Maxima Hemedes. [13]

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Maxima Hemedes argues that Justa Kausapin's affidavit should not be given any credence since she is obviously a biased witness as it has been shown that she is dependent upon Enrique D. Hemedes for her daily subsistence, and she was most probably influenced by Enrique D. Hemedes to execute the "Kasunduan" in his favor. She also refutes the applicability of article 1332. It is her contention that for such a provision to be applicable, there must be a party seeking to enforce a contract; however, she is not enforcing the "Deed of Conveyance of Unregistered Real Property by Reversion" as her basis in claiming ownership, but rather her claim is anchored upon OCT No. (0-941) 0-198 issued in her name, which document can stand independently from the deed of conveyance. Also, there exist various circumstances which show that Justa Kausapin did in fact execute and understand the deed of conveyance in favor of Maxima Hemedes. First, the "Donation Intervivos With Resolutory Conditions" executed by Jose Hemedes in favor of Justa Kausapin was also in English, but she never alleged that she did not understand such document. Secondly, Justa Kausapin failed to prove that it was not her thumbmark on the deed of conveyance in favor of Maxima Hemedes and in fact, both Enrique D. Hemedes and Dominium objected to the request of Maxima Hemedes' counsel to obtain a specimen thumbmark of Justa Kausapin.[14]

Public respondent's finding that the "Deed of Conveyance of Unregistered Real Property By Reversion" executed by Justa Kausapin in favor of Maxima Hemedes is spurious is not supported by the factual findings in this case.. It is grounded upon the mere denial of the same by Justa Kausapin. A party to a contract cannot just evade compliance with his contractual obligations by the simple expedient of denying the execution of such contract. If, after a perfect and binding contract has been executed between the parties, it occurs to one of them to allege some defect therein as a reason for annulling it, the alleged defect must be conclusively proven, since the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties.[15]

Although a comparison of Justa Kausapin's thumbmark with the thumbmark affixed upon the deed of conveyance would have easily cleared any doubts as to whether or not the deed was forged, the records do not show that such evidence was introduced by private respondents and the lower court decisions do not make mention of any comparison having been made.[16] It is a legal presumption that evidence willfully suppressed would be adverse if produced.[17] The failure of private respondents to refute the due execution of the deed of conveyance by making a comparison with Justa Kausapin's thumbmark necessarily leads one to conclude that she did in fact affix her thumbmark upon the deed of donation in favor of her stepdaughter.

Moreover, public respondent's reliance upon Justa Kausapin's repudiation of the deed of conveyance is misplaced for there are strong indications that she is a biased witness. The trial court found that Justa Kausapin was dependent upon Enrique D. Hemedes for financial assistance.[18] Justa Kausapin's own testimony attests to this fact -

> Atty. Conchu:
>
> Q: Aling Justa, can you tell the Honorable Court why you donated this particular property to Enrique Hemedes?
>
> A: Because I was in serious condition and he was the one supporting me financially.
>
> Q: As of today, Aling Justa are you continuing to receive any assistance from Enrique Hemedes?
>
> A: Yes Sir.
>
> (TSN pp. 19 and 23, November 17, 1981)[19]

Even Enrique Hemedes admitted that Justa Kausapin was dependent upon him for financial support. The transcripts state as follows:

> Atty. Mora:
>
> Now you said that Justa Kausapin has been receiving from you advances for food, medicine & other personal or family needs?
>
> E. Hemedes:
>
> A: Yes.
>
> Q: Was this already the practice at the time this "Kasunduan" was executed?
>
> A: No that was increased, no, no, after this document.
>
> xxx xxx xxx
>
> Q: And because of these accommodations that you have given to Justa Kausapin; Justa Kausapin has in turn treated you very well because she's very grateful for that, is it not?
>
> A: I think that's human nature.
>
> Q: Answer me categorically, Mr. Hemedes she's very grateful?
>
> A: Yes she might be grateful but not very grateful.
>
> (TSN, p. 34, June 15, 1984)[20]

A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false.[21] At the time the present case was filed in the trial court in 1981, Justa Kausapin was already 80 years old, suffering from worsening physical infirmities and completely dependent upon her stepson Enrique D. Hemedes for support. It is apparent that Enrique D. Hemedes could easily have influenced his aging stepmother to donate the subject property to him. Public respondent should not have given credence to a witness that was obviously biased and partial to the cause of private respondents. Although it is a well-established rule that the matter of credibility lies within the province of the trial court, such rule does not apply when the witness' credibility has been put in serious doubt, such as when there appears on the record some fact or circumstance of weight and influence, which has been overlooked or the significance of which has been misinterpreted.[22]

Finally, public respondent was in error when it sustained the trial court's decision to nullify the "Deed of Conveyance of Unregistered Real Property by Reversion" for failure of Maxima Hemedes to comply with article 1332 of the Civil Code, which states:

> When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.
>
> Article 1332 was intended for the protection of a party to a contract who is at a disadvantage due to his illiteracy, ignorance, mental weakness or other handicap.[23] This article contemplates a situation wherein a contract has been entered into, but the consent of one of the parties is vitiated by mistake or fraud committed by the other contracting party.[24] This is apparent from the ordering of the provisions under Book IV, Title II, Chapter 2, section 1 of the Civil Code, from which article 1332 is taken. Article 1330 states that -

A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable.

This is immediately followed by provisions explaining what constitutes mistake, violence, intimidation, undue influence, or fraud sufficient to vitiate consent.[25] In order that mistake may invalidate consent, it should refer to

the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.[26] Fraud, on the other hand, is present when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.[27] Clearly, article 1332 assumes that the consent of the contracting party imputing the mistake or fraud was given, although vitiated, and does not cover a situation where there is a complete absence of consent.

In this case, Justa Kausapin disclaims any knowledge of the "Deed of Conveyance of Unregistered Real Property by Reversion" in favor of Maxima Hemedes. In fact, she asserts that it was only during the hearing conducted on December 7, 1981 before the trial court that she first caught a glimpse of the deed of conveyance and thus, she could not have possibly affixed her thumbmark thereto.[28] It is private respondents' own allegations which render article 1332 inapplicable for it is useless to determine whether or not Justa Kausapin was induced to execute said deed of conveyance by means of fraud employed by Maxima Hemedes, who allegedly took advantage of the fact that the former could not understand English, when Justa Kausapin denies even having seen the document before the present case was initiated in 1981.

It has been held by this Court that "... mere preponderance of evidence is not sufficient to overthrow a certificate of a notary public to the effect that the grantor executed a certain document and acknowledged the fact of its execution before him. To accomplish this result, the evidence must be so clear, strong and convincing as to exclude all reasonable controversy as to the falsity of the certificate, and when the evidence is conflicting, the certificate will be upheld."[29] In the present case, we hold that private respondents have failed to produce clear, strong, and convincing evidence to overcome the positive value of the "Deed of Conveyance of Unregistered Real Property by Reversion" – a notarized document. The mere denial of its execution by the donor will not suffice for the purpose.

In upholding the deed of conveyance in favor of Maxima Hemedes, we must concomitantly rule that Enrique D. Hemedes and his transferee, Dominium, did not acquire any rights over the subject property. Justa Kausapin sought to transfer to her stepson exactly what she had earlier transferred to Maxima Hemedes – the ownership of the subject property pursuant to the first condition stipulated in the deed of donation executed by her husband. Thus, the donation in favor of Enrique D. Hemedes is null and void for the purported object thereof did not exist at the time of the transfer, having already been transferred to his sister.[30] Similarly, the sale of the subject property by Enrique D. Hemedes to Dominium is also a nullity for the latter cannot acquire more rights than its predecessor-in-interest and is definitely not an innocent purchaser for value since Enrique D. Hemedes did not present any certificate of title upon which it relied.

The declarations of real property by Enrique D. Hemedes, his payment of realty taxes, and his being designated as owner of the subject property in the cadastral survey of Cabuyao, Laguna and in the records of the Ministry of Agrarian Reform office in Calamba, Laguna cannot defeat a certificate of title, which is an absolute and indefeasible evidence of ownership of the property in favor of the person whose name appears therein.[31] Particularly, with regard to tax declarations and tax receipts, this Court has held on several occasions that the same do not by themselves conclusively prove title to land.[32]

We come now to the question of whether or not R & B Insurance should be considered an innocent purchaser of the land in question. At the outset, we note that both the trial court and appellate court found that Maxima Hemedes did in fact execute a mortgage over the subject property in favor of R & B Insurance. This finding shall not be disturbed because, as we stated earlier, it is a rule that the factual findings of the trial court, especially when affirmed by the Court of Appeals, are entitled to respect, and should not be disturbed on appeal.[33]

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In holding that R & B Insurance is not a mortgagee in good faith, public respondent stated that the fact that the certificate of title of the subject property indicates upon its face that the same is subject to an encumbrance, i.e. usufructuary rights in favor of Justa Kausapin during her lifetime or widowhood, should have prompted R & B Insurance to "...investigate further the circumstances behind this encumbrance on the land in dispute," but which it failed to do. Also, public respondent considered against R & B Insurance the fact that it made it appear in the mortgage contract that the land was free from all liens, charges, taxes and encumbrances.[34]

R & B Insurance alleges that, contrary to public respondent's ruling, the presence of an encumbrance on the certificate of title is not reason for the purchaser or a prospective mortgagee to look beyond the face of the certificate of title. The owner of a parcel of land may still sell the same even though such land is subject to a usufruct; the buyer's title over the property will simply be restricted by the rights of the usufructuary. Thus, R & B Insurance accepted the mortgage subject to the usufructuary rights of Justa Kausapin. Furthermore, even assuming that R & B Insurance was legally obliged to go beyond the title and search for any hidden defect or inchoate right which could defeat its right thereto, it would not have discovered anything since the mortgage was entered into in 1964, while the "Kasunduan" conveying the land to Enrique D. Hemedes was only entered into in 1971 and the affidavit repudiating the deed of conveyance in favor of Maxima Hemedes was executed by Justa Kausapin in 1981.[35]

We sustain petitioner R & B Insurance's claim that it is entitled to the protection of a mortgagee in good faith.

It is a well-established principle that every person dealing with registered land may safely rely on the correctness of the certificate of title issued and the law will in no way oblige him to go behind the certificate to determine the condition of the property.[36] An innocent purchaser for value[37] is one who buys the 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 of another person.[38]

The annotation of usufructuary rights in favor of Justa Kausapin upon Maxima Hemedes' OCT dose not impose upon R & B Insurance the obligation to investigate the validity of its mortgagor's title. Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance.[39] The usufructuary is entitled to all the natural, industrial and civil fruits of the property[40] and may personally enjoy the thing in usufruct, lease it to another, or alienate his right of usufruct, even by a gratuitous title, but all the contracts he may enter into as such usufructuary shall terminate upon the expiration of the usufruct.[41]

Clearly, only the jus utendi and jus fruendi over the property is transferred to the usufructuary.[42] The owner of the property maintains the or the power to alienate, encumber, transform, and even destroy the same.[43] This right is embodied in the Civil Code, which provides that the owner of property the usufruct of which is held by another, may alienate it, although he cannot alter the property's form or substance, or do anything which may be prejudicial to the usufructuary.[44]

There is no doubt that the owner may validly mortgage the property in favor of a third person and the law provides that, in such a case, the usufructuary shall not be obliged to pay the debt of the mortgagor, and should the immovable be attached or sold judicially for the payment of the debt, the owner shall be liable to the usufructuary for whatever the latter may lose by reason thereof.[45]

Based on the foregoing, the annotation of usufructuary rights in favor of Justa Kausapin is not sufficient cause to require R & B Insurance to investigate Maxima Hemedes' title, contrary to public respondent's ruling, for the reason that Maxima Hemedes' ownership over the property remained unimpaired despite such encumbrance. R & B Insurance had a right to rely on the certificate of title and was not in bad faith in accepting the property as a security for the loan it extended to Maxima Hemedes.

Even assuming in gratia argumenti that R & B Insurance was obligated to look beyond the certificate of title and investigate the title of its mortgagor, still, it would not have discovered any better rights in favor of private respondents. Enrique D. Hemedes and Dominium base their claims to the property upon the "Kasunduan" allegedly executed by Justa Kausapin in favor of Enrique Hemedes. As we have already stated earlier, such contract is a nullity as its subject matter was inexistent. Also, the land was mortgaged to R & B Insurance as early as 1964, while the "Kasunduan" was executed only in 1971 and the affidavit of Justa Kausapin affirming the conveyance in favor of Enrique D. Hemedes was executed in 1981. Thus, even if R & B Insurance investigated the title of Maxima Hemedes, it would not have discovered any adverse claim to the land in derogation of its mortgagor's title. We reiterate that at no point in time could private respondents establish any rights or maintain any claim over the land.

It is a well-settled principle that where innocent third persons rely upon the correctness of a certificate of title and acquire rights over the property, the court cannot just disregard such rights. Otherwise, public confidence in the certificate of title, and ultimately, the Torrens system, would be impaired for everyone dealing with registered property would still have to inquire at every instance whether the title has been regularly or irregularly issued.[46] Being an innocent mortgagee for value, R & B Insurance validly acquired ownership over the property, subject only to the usufructuary rights of Justa Kausapin thereto, as this encumbrance was properly annotated upon its certificate of title.

The factual findings of the trial court, particularly when affirmed by the appellate court, carry great weight and are entitled to respect on appeal, except under certain circumstances.[47] One such circumstance that would compel the Court to review the factual findings of the lower courts is where the lower courts manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion.[48] Also, it is axiomatic that the drawing of the proper legal conclusions from such factual findings are within the peculiar province of this Court.[49]

As regards R & B Insurance's prayer that Dominium be ordered to demolish the warehouses or that it be declared the owner thereof since the same were built in bad faith, we note that such warehouses were constructed by Asia Brewery, not by Dominium. However, despite its being a necessary party in the present case, the lower courts never acquired jurisdiction over Asia Brewery, whether as a plaintiff or defendant, and their respective decisions did not pass upon the constructions made upon the subject property. Courts acquire jurisdiction over a party plaintiff upon the filing of the complaint, while jurisdiction over the person of a party defendant is acquired upon the service of summons in the manner required by law or by his voluntary appearance. As a rule, if a defendant has not been summoned, the court acquires no jurisdiction over his person, and any personal judgment rendered against such defendant is null and void.[50] In the present case, since Asia Brewery is a necessary party that was not joined in the action, any judgment rendered in this case shall be without prejudice to its rights.[51]

As to its claim for moral damages, we hold that R & B Insurance is not entitled to the same for it has not alleged nor proven the factual basis for the same. Neither is it entitled to exemplary damages, which may only be awarded if the claimant is entitled to moral, temperate, liquidated or compensatory damages.[52] R & B Insurance's claim for attorney's fees must also fail. The award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins a suit. Its award pursuant to article 2208 of the Civil Code demands factual, legal and equitable justification and cannot be left to speculation and conjecture.[53] Under the circumstances prevailing in the instant case, there is no factual or legal basis for an award of attorney's fees.

WHEREFORE, the assailed decision of public respondent and its resolution dated February 22, 1989 are REVERSED. We uphold petitioner R & B Insurance's assertion of ownership over the property in dispute, as evidenced by TCT No. 41985, subject to the usufructuary rights of Justa Kausapin, which encumbrance has been

properly annotated upon the said certificate of title. No pronouncement as to costs.

SO ORDERED.

Panganiban, and Purisima, JJ., concur.

Melo, J., please see dissenting opinion.

Vitug, J., please see Separate (Concurring) Opinion.

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[1] Penned by Pacita Canizares-Nye; Manuel C. Herrera and Justo P. Torres, Jr., concurring.

[2] Entitled “Dominium Realty and Construction Corporation and Enrique D. Hemedes vs. R & B Insurance Corporation and Maxima Hemedes.”

[3] Annex “D” of Maxima Hemedes’ Petition; Rollo, pp. 113-114.

[4] Annex “E” of Maxima Hemedes’ Petition; Rollo, pp. 115-117.

[5] Annex "H" of Maxima Hemedes' Petition; Rollo, pp. 122-124.

[6] Rollo of G.R. No. 108472, p. 17.

[7] Docketed as Civil Case No. B-1766.

[8] Rollo of G.R. No. 107132, pp. 107-108.

[9] Entitled “Maxima Hemedes vs. The Honorable Court of Appeals, Eleventh Division, Dominium Realty and Construction Corporation, Enrique D. Hemedes, and R & B Insurance Corporation.”

[10] Rollo of G.R. No. 107132, p. 28.

[11] Entitled “R & B Insurance Corporation vs. The Honorable Court of Appeals, Eleventh Division, Dominium Realty and Construction Corporation, Enrique D. Hemedes, and Maxima Hemedes.”

[12] Rollo of G.R. No. 108472, p. 34.

[13] Ibid., pp. 63-64, 91-96.

[14] Rollo of G.R. No. 107132, pp. 29-41.

[15] Chavez vs. IAC, 191 SCRA 211 (1990).

[16] Rollo, pp. 61, 90-96.

[17] Rules of Court, Rule 131, sec. 3(e); Sulit vs. Court of Appeals, 268 SCRA 441 (1997).

[18] Rollo of G.R. No. 107132, p. 94.

[19] Ibid., p. 37.

[20] Ibid., pp. 39-40.

[21] People vs. Dones, 254 SCRA 696 (1996).

[22] People vs. Subido, 253 SCRA 196 (1996), citing People vs. Aguilar, 222 SCRA 394 (1993).

[23] Bunyi vs. Reyes, 39 SCRA 504 (1971), citing the Report of the Code Commission, p. 136.

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[24] Yanas vs. Acaylar, 136 SCRA 52 (1985); Heirs of Enrique Zambales vs. CA, 120 SCRA 897 (1983); Bunyi vs. Reyes, supra.

[25] Civil Code, arts. 1331-1344.

[26] Id., art. 1331.

[27] Id., art. 1338.

[28] Rollo of G.R. No. 108472, p. 64

[29] Bunyi vs. Reyes, supra., citing Robinson vs. Villafuerte, 18 Phil. 171; Jocson vs. Estacion, 60 Phil. 1055.

[30] Civil Code, art. 1409.

[31] Heirs of Leopoldo Vencilao, Sr. vs. CA, 288 SCRA 574 (1998).

[32] Ibid; Titong vs. CA, 287 SCRA 102 (1998).

[33] People vs. Cahindo, 266 SCRA 554 (1997).

[34] Rollo of G.R. No. 108472, pp. 65-66.

[35] Ibid., pp. 47-55.

[36] Legarda vs. CA, 280 SCRA 642 (1997).

[37] The phrase “innocent purchaser for value” or any equivalent phrase shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value. Presidential Decree No. 1529, sec. 32.

[38] Mathay vs. CA, 295 SCRA 556 (1998).

[39] Civil Code, art. 562.

[40] Id., art. 566.

[41] Id., art. 572.

[42] Tolentino, II Civil Code of the Philippines, 318 (1992), citing Eleizegui vs. Manila Lawn Tennis Club, 2 Phil 309.

[43] Ibid., 46.

[44] Civil Code, art. 581.

[45] Id., art. 600.

[46] Cruz vs. CA, 281 SCRA 491 (1997).

[47] Exceptional circumstances that would compel the Supreme Court to review the findings of fact of the lower courts are: (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly absurd, mistaken or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the judgment is premised on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the Court of Appeals are contrary to those of

the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on absence of evidence but are contradicted by the evidence of record. Limketkai Sons Milling, Inc. vs. CA, 255 SCRA 626 (1996); Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc., G.R. No. L-46908, May 17, 1980; Manlapaz vs. CA, 147 SCRA 236 (1987).

[48] Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc., supra.

[49] Binalay vs. Manalo, 195 SCRA 374 (1991).

[50] Arcelona vs. Court of Appeals, 280 SCRA 20 (1997).

[51] Rules of Court, Rule 3, sec. 9.

[52] Civil Code, art. 2229.

[53] Morales vs. CA, 274 SCRA 282 (1997).

DISSENTING OPINION

MELO, J., Dissenting

I find myself unable to join the majority. The opinion written by my esteemed colleague, Madame Justice Minerva Gonzaga-Reyes, will have far-searching ramification on settled dotrines concerning the finality and conclusiveness of the factual findings of the trial court in view of its unique advantage of being able to observe at first-hand the demeanor and deportment of witnesses, and especially when such findings of facts are affirmed by the Court of Appeals, which is the final arbiter of questions of fact (People vs. Edaño, 64 SCRA 675 [1975]; People vs. Tala, 141 SCRA 240; People vs. Canada and Dondoy, 144 SCRA 121 [1986]; People vs. Clore, 184 SCRA 638 [1990]; Binalay vs. Manalo, 195 SCRA 374 [1991]; People vs. Miscala, 202 SCRA 26 [1991]; People vs. Lagrosa, 230 SCRA 298 [1994]). All these conditions are present in the case at bar, and I have grave reservations about the propriety of setting aside time-tested principles in favor of a finding that hinges principally on the credibility of a single witness, whom we are asked to disbelieve on the basis merely of her recorded testimony without the benefit of the advantage that the trial court had, disregarding in the process another long-established rule – that mere relationship of a witness to a party does not discredit his testimony in court (U.S. vs. Mante, 27 Phil 124; People vs. Pagaduan, 37 Phil 90; People vs. Reyes, 69 SCRA 474 [1976]; People vs. Padiernos, 69 SCRA 484 [1976]; Borromeo vs. Court of Appeals, 70 SCRA 329 [1976]; People vs. Estocada, 75 SCRA 295 [1977]; People vs. Ciria, 106 SCRA 381 [1981]; People vs. Ramo, 132 SCRA 174 [1984]; People vs. Atencio, 156 SCRA 242 [1987]; People vs. Gutierrez, Jr., 158 SCRA 614 [1988]; People vs. Bandoquillo, 167 SCRA 549 [1988]; People vs. Suitos, 220 SCRA 419 [1993]).

The primordial issue is whether or not the “Deed of Conveyance of Unregistered Real Property by Reversion” dated September 27, 1960 conveying the subject property to Maxima Hemedes is valid. If the transfer is not valid, no title passed to her successor-in-interest, R & B Insurance Corporation.

The Court of Appeals, confirming and summarizing the findings of fact and law made by the trial court, declared:

> We sustain the findings of the trial court.
>
> To begin with, the “deed of Conveyance of Unregistered Real Property by Reversion” was nullified by the trial court on two (2) grounds:

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First, MAXIMA failed to comply with the requirements laid down by Article 1332 of the Civil Code. Said provision reads:

> "Art. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former."
>
> In her testimony, MAXIMA admitted the entire document was written in English, a language not known to Justa Kausapin (TSN, 17 November 1981, pp. 7-8; Deposition of Justa Kausapin). Yet, MAXIMA failed to introduce sufficient evidence that would purportedly show that the deed of conveyance was explained to Justa Kausapin before the latter allegedly affixed her thumbmark. On the contrary, she admitted having failed to translate the deed of conveyance to Justa Kausapin because according to her, the latter has "no voice" anyway insofar as the property is concerned. Her testimony reads:
>
> "Q- In connection with this deed of conveyance which has been marked as Exh. "2-Maxima," we note that this is written in English, do you know, Mrs. Hernandez (MAXIMA), whether this document was ever translated to Justa Kausapin?
>
> "A- Justa Kausapin has no voice because that's the order of my father so anyway...
>
> "Court – Answer the question, you were only asked whether that was translated.
>
> "A – No." (TSN 26 November, 1984, pp.36-37, Maxima Hemedes).

Second, MAXIMA failed to repudiate the allegation of Justa Kausapin disclaiming knowledge of her having executed such a deed. As a matter of fact, Justa Kausapin claimed that it was only during the hearing conducted on 07 December 1981 that she first caught glimpse of the deed of conveyance (TSN, 07 December 1981, pp. 22-23, ibid.) She therefore could not have possibly affixed her thumbmark therein. In the light of such a denial, the burden of proving that the deed of conveyance was indeed genuine laid on MAXIMA. After all, any party who asserts the affirmative of the issue has the burden of presenting evidence required to obtian a favorable judgment (Republic v. Court of Appeals, 182 SCRA 290).

Instead, what was clearly established from the deposition of Justa Kausapin is the fact that she never executed any document donating the property to anybody else except ENRIQUE. This can be readily gleaned from her testimony, reading:

> "Q – From the time, Aling Justa, that your husband Jose Hemedes donated the property to you up to the time you in turn donated the same to Enrique Hemedes in 1971, do you recall having executed any document donating this particular property to anybody else?
>
> "A – None, Sir. (TSN, 17 November 1981, p. 21)"

(pp. 63-64, Rollo.)

There is no dispute that Justa Kausapin twice repudiated the conveyance in favor of Maxima Hemedes. As found by the trial court:

> In an Affidavit dated April 10, 1981 executed by Justa Kausapin before three witnesses (Exh. D-Dominium), said affiant disowned the alleged 'Deed of Conveyance of Unregistered Real Property by Reversion" invoked by defendant Maxima Hemedes, and expressly stated that she never granted any right over the property to Maxima Hemedes, whether as owner or mortgagor, that she never allowed her to use the land as security or collateral for loan. In the same affidavit, Justa Kausapin affirmed the authenticity of the 'Kasunduan' whereby she transferred ownership of the disputed land to Enrique Hemedes, her stepson and reliable source of assistance throughout the years that she was in need of help. The testimony of Justa Kausapin was also taken

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> by deposition on November 17, December 7 and 14, 1981 and on January 14, 1982, wherein all the contending parties were represented and had the opportunity to cross-examine her. In her testimony (the entire transcript of which has been submitted as Exh. K-Enrique), Justa Kausapin reiterated her repudiation of the Deed of Conveyance in favor of Maxima Hemedes and re-affirmed the validity of the 'Kasunduan' in favor of Enrique Hemedes, as well as the sunsequent sale of the land by Enrique Hemedes to Dominium."
>
> (pp. 83-84, Rollo.)

The majority would hold that the twin repudiation cannot be given credence because the witness is biased in favor of Enrique Hemedes, who, by providing support and financial assistance to the witness before, during and after the execution of the "Kasunduan," is said to have influenced her into signing the same. This issue refers to the credibility of witnesses which, as stated earlier, is best left for determination by the trial court (People vs. Oliano, 287 SCRA 158 [1998], citing People vs. Pontillar, Jr., 275 SCRA 338 [1997]; People vs. Rubio, 257 SCRA 528 [1996]; People vs. Del Prado, 253 SCRA 731 [1996]). I am not prepared to substitute my judgment for that of the trial court on the credibility of Justa Kausapin on the basis alone of the relationship between her and Enrique Hemedes. To reiterate, the rule is "mere relationship of a witness to a party does not discredit his testimony in court." (U.S. vs. Mante, supra; Aznar vs. Court of Appeals, 70 SCRA 329 [1976]; People vs. Letigio, 268 SCRA 227, 243 [1997]).

I cannot infer from the mere circumstance that Justa Kausapin was receiving support and sustenance from Enrique Hemedes that she had any improper motives to testify in favor of Enrique and against Maxima. It must be remembered that Justa Kausapin had a legal right to such financial assistance, not only from respondent Enrique Hemedes, but also from Maxima Hemedes, who are both her stepchildren. If one must impute improper motives in favor of Enrique, one could just as easily ascribe these to Maxima. Furthermore, it must be noted that Justa kausapin's entitlement to support flowed from her usufructuary rights contained in the "Donation Inter Vivos with Resolutory Conditions" executed by her late husband, Jose Hemedes, the common father of petitioner Maxima and respondent Enrique Hemedes. In supporting his stepmother, Enrique was, therefore, merely performing a legal or contractual duty in favor of Justa Kausapin. There was nothing improper in Justa Kausapin's repudiation of the conveyance in favor of Maxima, especially so if one considers the fact that the latter did not adduce any other evidence to defeat the presumption that Justa Kausapin was stating the truth when she said that she never conveyed the property to Justa Maxima. As the trial court found:

> . . . The actuation of Enrique Hemedes towards Justa Kausapin is legally and morally justified. It must be remembered that Justa Kausapin is the stepmother of Enrique Hemedes; she was also the usufructuary of property in dispute. It is only natural and in keeping with law and custom, or Filipino tradition, for a son to support his mother (even if she happens to be a stepmother); and form a legal standpoint, the naked owner Enrique Hemedes was bound to support Justa Kausapin by way of giving her what she was entitled to as usufructuary.
>
> (p. 104, Rollo.)

The trial court's ruling on the invalidity of the title of Maxima is not based solely on Justa Kausapin's repudiation of the deed of conveyance, but likewise on the very acts of Maxima and her transferee R & B Surety and Insurance. The factual findings of the trial court are to the effect that despite the alleged transfer of ownership from Justa Kausapin to Maxima Hemedes on September 27, 1960 and the subsequent transfer to R & B Insurance on May 3, 1968 by way of foreclosure and public auction sale, neither do these petitioners exercised their rights of ownership over the disputed property, never even asserting their supposed ownership rights until it was too late. The following findings of the trial court stand unassailed:

> There are other indication which led this Court to believe that neither defendant Maxima Hemedes not

> defendant R & B INSURANCE consider themselves the owner of the property in question. Both of these claimants never declared themselves as owners of the property for tax purposes; much less did they pay a single centavo in real estate taxes. The argument that since Justa Kausapin was in possession of the property as usufructuary she should pay the taxes contravenes the clear provision of the Civil Code that the taxes which may be imposed directly on the capital during the usufruct, in this case the realty taxes, shall be at the expense of the owner (Article 597, Civil Code). If Maxima Hemedes and R & B INSURANCE were convinced that they were the owners of the property, why did they not pay taxes for the same? This attitude is not consistent with that of an owner in good faith. The Court has noted that the very owner of R & B INSURANCE has admitted in her testimony that they declared the property as one of the assets of R & B INSURANCE only in 1976, which is eight years after they supposedly bought it at public auction in 1968 (TSN, July 6, 1987, pp. 22-23) Decision, pp. 32-33).
>
> (pp. 101-102, Rollo.)

Faced with the categorical and straightforward repudiations of the conveyance supposedly made in her favor, Maxima Hemedes could only gratuitously assert otherwise, as no other testimonial or documentary evidence was adduced in support thereof. Maxima's self-serving assertions, however, are legally infirm in view of her admission that the deed of conveyance in her favor was written in a language unknown to the person who supposedly executed the same and the terms thereof were not fully explained to the person who executed the same. These are the facts as found by the trial court:

> Questioned about the execution of the 'Deed of Conveyance of Unregistered Real Property by Reversion' which is the basis of her claim, defendant Maxima Hemedes admitted that the document which is in English was not translated or explained to Justa Kausapin before the latter supposedly affixed her thumbmark to the document (TSN, November 26, 1984, p. 34; TSN, December 10, 1984, p. 9). The Court has noted from the records that the Notary Public before whom the said document was notarized was not presented as a wittiness by defendant Maxima Hemedes, if only to attest to the execution of said document by Justa Kausapin, considering that the latter is an illiterate when it comes to documents written in English. Maxima explained the non-translation of the Deed of Conveyance into a language understood by Justa Kausapin with the statement that the latter (Justa Kausapin) 'has no voice' anyway in so far as the property is concerned (TSN, November 26, 1984, p. 36) ... the Notary Public before whom the said document was supposed to have been axknowledged was also not presented as a witness, and there was no explanation as to why he was not also presented. In the face of such an admission and failure on the part of defendant Maxima Hemedes, coupled with the Straightforward repudiation by Justa Kausapin herself of the document relied upon by said defendant the Court finds and so concludes that the 'Deed of Conveyance of Unregistered Real Property by Reversion' is not a credible and convincing evidence and is of no evidentiary value under the law upon which claimant Maxima Hemedes may anchor a valid claim of ownership over the property subject of this action.
>
> (pp. 91-93, Rollo.)

It is argued that private respondents failed to have the thumbmarks of Justa Kausapin appearing on the deeds executed in favor of Maxima and Enrique compared and this failure may be taken as wilful suppression of evidence that is presumed to be adverse if produced (Rules of Court, rule 131, Sec. 3(e). The applicability of this rule presupposes that the suppressed evidence is not available to the other party for production in court (People vs. Padiernos, 69 SCRA 484 [1976]; People vs. Silvestre, 279 SCRA 474, 495 [1997]). This is not the case here for the same documents were available to petitioners. In fact, the records show that counsel for Maxima Hemedes pledged to submit the document which will be compared with the specimen thumbmark to be obtained from Justa Kausapin (TSN, December 7, 1981, p. 28). The records, however, do not show that said counsel persisted in his request for comparison of Kausapin's thumbmarks. If petitioners were convinced that the specimen thumbprint of Justa Kausapin was of crucial importance to their cause, they should have insisted on presenting her as a witness

and, thereupon, obtaining her thumbprint. Their own failure to pursue the production of the specimen thumprint of Justa Kausapin negated any belated claim that the said specimen was suppressed (People vs. Tulop, citing People vs. Pagal, 272 SCRA 443 [1998] ; Commissioner of Internal Revenue vs. Tokyo Shipping Company, Ltd., 244 SCRA 332 [1995]; citing Nicolas vs. Nicolas, 52 Phil 265 [1928] and Ang Seng Quiem vs. Te Chico, 7 Phil 541 [1907]).

The two courts below were, to my mind, most perceptive when they held that proof of authenticity of the thumbprint of Justa Kausapin would not render valid an otherwise void document in light of the admission of Maxima Hemedes that she did not explain the English contents thereof to Justa Kausapin in a language understood by her.

On the other hand, the validity of the conveyance to Enrique Hemedes is amply proven by the evidence on record. Thus, largely uncontested are the following findings of the fact of the trial court:

> Enough has already been said hereinabove concerning the claim of ownership of plaintiff Enrique. From an overall evaluation of the facts found by the Court to be substantiated by the evidence on record, the Court is convinced and so holds that the three conflicting claimants, it is party plaintiffs, Enrique Hemedes and now DOMINIUM, who have both law and equity on their side. Plaintiff Enrique Hemedes' title to the property in question by virtue of the "Kasunduan" dated May 27, 1971 was confirmed twice by his grantor, Justa Kausapin; he complied with his obligations as naked owner by giving Justa Kausapin her usufructaury rights in the form of financial and other assistance; he declared his ownership of the property openly and adversely to other claimants by recording the same in the appropriate government agencies, namely, the Municipal and Provincial Assessor's Office, the Ministry of Agrarian Reform and the Bureau of Lands; he was openly known in the community where the property is located as the owner thereof; he paid the taxes on the property conscientiously from the time he acquired the same to the time he sold the same to co-plaintiff DOMINIUM; he was in continuous possession of the property during the said period; he paid the tenant, Nemesio Marquez, the disturbance fee required under the Land Reform Law.
>
> (pp. 102-103, Rollo.)

The Court of Appeals, therefore, did not err in holding that since the deed of conveyance to Maxima was found to be spurious, it necessarily follows that OCT No. (0-941) 0-198 issued in her name is null and void. This is because the registration will not invalidate a forged or invalid document.

I, therefore, vote to dismiss the petition and to affirm the decision appealed from.

SEPARATE (CONCURRING) OPINION

VITUG, J.:

I share the opinion expressed by my esteemed colleague, Mme. Justice Minerva P.Gonzaga-Reyes, in her ponencia.

I just would like to add that a donation would not be legally feasible if the donor has neither ownership nor real right that he can transmit to the donee. Unlike an ordinary contract, a donation, under Article 712, in relation to Article 725 of the Civil Code is also a mode of acquiring and transmitting ownership and other real rights by an act of liberality whereby a person disposes gratuitously that ownership or real right in favor of another who accepts it. It would be an ineffecacious process if the donor would have nothing to convey at the time it is made.

Article 744 of the Civil Code states that the "donation of the same thing to two or more different donees shall be

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governed by the provisions concerning the sale of the same thing to two or more persons," i.e., by Article 1544 of the same Code, as if so saying that there can be a case of "double donations" to different donees with opposing interest. Article 744 is a new provision, having no counter part in the old Civil Code, that must have been added unguardedly. Being a mode of acquiring and transmitting ownership or other real rights, a donation once perfected would deny the valid execution of a subsequent inconsistent donation (unles perhaps if the prior donation has provided a suspensive condition which still pends when the later donation is made).

In sales, Article 1544, providing for the rules to resolve the conflicting rights of two or more buyers, is appropriate since the law does not prohibit but, in fact, sanctions the perfection of a sale by a non-owner, such as the sale of future things or a short sale, for it is only at the consummation stage of the sale, i.e., delivery of the thing sold, that ownership would be deemed transmitted to the buyer. In the meanwhile, a subsequent sale to another of the same thing by the same seller can still be a legal possibility. This rule on double sales finds no relevance in an ordinary donation where the law requires the donor to have ownership of the thing or the real right he donates at the time of its perfection (see Article 750, Civil Code) since a donation constitutes a mode, not just a title in an acquisition and transmission of ownership.

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