

**HEIRS OF SEVERA P. GREGORIO, REPRESENTED BY ITS
ADMINISTRATRIX BUENCONSEJO PINEDA VDA. DE VIVAR,
PETITIONERS, VS. COURT OF APPEALS, RICARDO SANTOS,
ROSALINA PALOMO, SPOUSES WILS...**

G.R. No. 117609. December 29, 1998

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is an appeal by way of petition for review on certiorari from the decision of the Court of Appeals which reversed the holding of the Regional Trial Court of Quezon City, Branch 79, in Civil Case No. Q-49254, entitled Heirs of Severa P. Gregorio, et al., vs. Rosalina Palomo, vs. spouses Wilson and Benita Lui Tan, nullified the questioned Deed of Absolute Sale, dated July 14, 1971, as falsified, fictitious and forged, and adjudged the defendant spouses, Wilson Tan and Benita Lui Tan, as purchasers/holders in bad faith.

As culled by the Court of Appeals, the facts of the case are, as follows:

"Spouses Wilson Tan and Benita Lui Tan are the registered owners of a 1,381.1 square meter lot located along Quezon Blvd., Quezon City, covered by TCT No. 349788 issued by the register of Deeds of Quezon City.

The lot was previously owned by Severa Gregorio as evidenced by TCT No. 8787 issued to her on January 4, 1949.

Sometime in 1965, Shell company leased the lot from Severa for a period of twenty (20) years.

On September 20, 1976, Severa died intestate leaving behind three (3) legitimate children - Buenconsejo Vivar, Jesusa aGalang and Cecilio Pineda. On March 9, 1982, Cecilio died.

In late September or October, 1986, after the lease with Shell Company expired, Buenconsejo Vivar tried to sell the lot to one Federico Ng. So she asked her son Oliver to get certified true copies of the pertinent documents from the Quezon City Registry of Deeds. Oliver was able to secure certified true copies of (1) deed of absolute sale dated July 18, 1971 executed by Severa Gregorio in favor of Ricardo Santos; (2) deed of absolute sale dated September 17, 1986 executed by Ricardo Santos in favor of spouses Wilson and Benita Tan; and (3) deed of assignment executed by spouses Felicisimo and Rosalina Palomo in favor of spouses Wilson and Benita Tan.

Buenconsejo was shocked to find that her brother's title, TCT No. 8787, was cancelled and that in lieu thereof, TCT No. 349787 was issued to spouses Tan.

Records show that Severa Gregorio sold to Ricardo Santos 2/3 portion of the lot. Santos, in turn, sold the same 2/3 portion to spouses Wilson and Benita Tan for P1,400,000.00.

With respect to the remaining 1/3 portion, it appears that in 1978, spouses Felicisimo and Rosalina Palomo filed with the then Court of First Instance of Caloocan City an action for a sum of money against Jesusa Galang (Severa's daughter) and her husband Victoriano Galang. The court decided the case in favor of the

Palomos. On December 20, 1978, the 1/3 undivided share of Jesusa in the lot was sold on execution to the Palomos, being the highest bidders. The Galangs failed to redeem the property within one year. Hence, a final deed of sale in favor of the Palomos was confirmed by the court and recorded in the Quezon City Registry of Deeds.

On September 18, 1986, the Palomos assigned to spouses Wilson and Benita Tan that 1/3 portion of the lot for P800,000.00.

On the same day, September 18, 1986, at the instance of spouses Tan, (1) the deed of sale between Severa Gregorio and Ricardo Santos, (2) the subsequent deed of sale between Ricardo Santos and spouses Tan and (3) the deed of assignment between spouses Palomo and spouses Tan were registered in the Quezon City Registry of Deeds. Consequently, TCT No. 8787 in the name of Severa Gregorio was cancelled and TCT No. 349788 was issued in the name of spouses Tan covering the entire lot.

On October 30, 1986, the heirs of Severa Gregorio filed with the trial court the instant complaint against spouses Tan for cancellation of title and/or reconveyance with damages alleging that the deeds of conveyance were forged and are therefore void.

Thereafter, on or on June 11, 1988, a fire gutted the Quezon City Hall Building. The entire records of this case were destroyed. The key documents, such as the original copy of the deed of sale between Severa Gregorio and Ricardo Santos dated July 14, 1971 covering 2/3 portion of the lot; the original copy of the deed of sale between Ricardo Santos and spouses Tan covering the same portion dated September 17, 1986; the original copy of the deed of assignment from spouses Palomo to spouses Tan covering 1/3 portion of the same lot dated September 18, 1986; and the original copy of TCT No. 349788 in the names of spouses Tan were all burned.

On July 10, 1989, the trial court issued an order for the reconstitution of the records. The parties had hardly started the reconstitution when, on September 29, 1989, the heirs of Gregorio filed an amended and/or supplemental complaint which was admitted by the court. The supplemental matters revolved around the signature of Severa Gregorio affixed to the July 14, 1971 deed of sale between her and Ricardo Santos. On February 12, 1990, spouses Tan filed an answer to the amended complaint alleging that the deed of sale was genuine and that they purchased the property in good faith.

Summons on defendant Ricardo Santos was effected through publication on May 28, June 4, and June 11, 1990. However, Santos did not file any answer. He was accordingly declared in default on September 13, 1990.

During the trial, the heirs of Gregorio presented as their witnesses Bienvenido Albacea, a Questioned Document Examiner of the National Bureau of Investigation (NBI); Dr. Wilhelmina Vibar, daughter of Buenconsejo Vibar; and Viterbo Cahilig, Records Officer, Quezon City Register of Deeds. Spouses Tan presented appellant Wilson Tan; Atty. Jose Ramos Sunga, counsel of spouses Tan; Records Officer Viterbo Cahilig; and June Pangilinan, OIC of the Records Section of the Regional Trial Court in Kalookan.

Defendants Palomo did not present any evidence but adopted all the testimonial and documentary evidence adduced by spouses Tan.

On December 29, 1992, the trial court rendered its decision, the dispositive portion of which reads:

‘WHEREFORE, a decision is hereby rendered in this case as follows:

1. Declaring the forged Deed of Sale purportedly signed and executed by Severa P. Gregorio in favor of defendant Ricardo G. Santos dated July 18, 1971 conveying the subject property covered by TCT No. 8787 null and void ab initio;
2. Declaring the Deed of Absolute Sale executed by Ricardo G. Santos in favor of spouses Wilson C. Tan and Benita Lui Tan dated September 17, 1986 conveying 2/3 undivided portion of the subject property covered by

TCT No. 8787 null and void ab initio;

3. Declaring and maintaining the validity of the Deed of Assignment executed by Spouses Felicisimo Palomo and Rosalina Palomo in favor of spouses Wilson C. Tan and Benito Lui Tan dated September 18, 1986 regarding 1/3 undivided portion of the subject property covered by TCT No. 8787;

4. Declaring null and void and ordering the cancellation of TCT No. 349788, Quezon City Registry, in the name of spouses Wilson C. Tan and Benita Lui Tan;

5. Declaring null and void and ordering the cancellation of TCT No. 349789, Quezon City Registry, in the name of Ricardo G. Santos;

6. Ordering the Register of Deeds of Quezon City to reinstate TCT No. 8787, Quezon City Registry, in the name of the registered owner Severa P. Gregorio including all the entries in the memorandum of encumbrances;

7. Ordering the Register of Deeds of Quezon City to annotate the memorandum of encumbrance of TCT No. 8787, the Deed of Assignment of 1/3 undivided share of spouses Felicisimo Palomo and Rosalina Palomo in favor of spouses Wilson C. Tan and Benita Lui Tan dated September 18, 1986;

8. Ordering defendant Ricardo G. Santos to pay plaintiffs' attorney's fees in the sum of P50,000.00;

9. Ordering defendant Ricardo G. Santos to pay and return to spouses Wilson C. Tan and Benita Lui Tan the purchase price of 2/3 portion of the subject property in the sum of P1,400,000.00 with legal rate of interest to be computed from the date of the filing of this case until it is fully paid;

10. Ordering defendant Ricardo G. Santos to pay spouses Wilson C. Tan and Benita Lui Tan P100,000.00 moral damages and P50,000.00 attorney's fees;

11. Ordering the plaintiffs to pay spouses Wilson C. Tan and Benita Lui Tan the sum of P69,946.41 by way of reimbursement of the taxes paid for the subject property by spouses Tan."^[1]

From the aforesaid Decision, both the plaintiffs and defendant spouses Tan appealed to the Court of Appeals - the plaintiffs with respect to the ruling below (a) ordering them to reimburse the spouses Tan the sum of P69,946.41 representing unpaid realty taxes allegedly paid by the latter for the property, (b) declaring as valid the deed of assignment between the spouses Palomo and defendant spouses Tan over the 1/3 undivided portion of subject lot, and (c) disallowing the removal and/or demolition of whatever improvements plaintiffs may have introduced on the property. Defendants appealed with respect to the finding by the trial court that they were not innocent purchasers for value of the 2/3 undivided portion or interest in the property and that the notarized Deed of Sale dated July 14, 1971 was falsified and forged.

On April 29, 1994, the Twelfth Division of the Court of Appeals came out with a decision^[2] reversing the aforementioned findings of the trial court, and disposing, thus:

"WHEREFORE, the questioned decision of the trial court is hereby REVERSED and SET ASIDE. The ownership and title of spouses Wilson Tan and Benita Lui Tan over the entire disputed lot are declared valid. Costs against the plaintiffs-appellants heirs of Severa Gregorio.

SO ORDERED."^[3]

Hence, the appeal by the heirs of Severa Gregorio assigning as errors, that:

A. RESPONDENT COURT OF APPEALS ERRED IN NOT GIVING DUE WEIGHT TO THE TESTIMONY OF THE NBI HANDWRITING EXPERT FOR THE REASON THAT WHAT HE TESTIFIED ON IN COURT WAS A MERE XEROX COPY OF THE QUESTIONED DEED OF SALE, AND

B. RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT DEFENDANT SPOUSES TAN ARE INNOCENT PURCHASERS FOR VALUE AND IN GOOD FAITH WITH RESPECT TO THE 2/3 PORTION OF THE SUBJECT LOT CONVEYED TO THEM BY RICARDO SANTOS.

The assignment of rights by the spouses Palomo to respondent spouses Tan over a 1/3 portion of subject property sold on execution to the Palomos in satisfaction of a final judgment is not raised as an issue in this appeal.

Petitioners fault the Court of Appeals for not giving credence to the testimony of NBI handwriting expert Bienvenido Albacea, who examined the deed of sale in question and concluded that the signature thereon purporting to be that of the late Severa Gregorio, is forged. They contend that, as borne out by the records, (1) on September 10, 1987, Albacea conducted an examination of the original copy of subject deed of sale dated July 14, 1971 at the Office of the Register of Deeds of Quezon City; (2) on the basis of such examination, he arrived at the conclusion that the signature appearing thereon was forged; (3) unfortunately, as a result of the fire of June 11, 1988, which destroyed the Quezon City Hall, the records of the case were all burned including the original copy of the aforesaid deed of sale; and (4) the said original copy of the deed of sale could not be produced in court thereby necessitating the presentation of a certified true xerox copy thereof.[4]

Following the ruling in *U.S. vs. Gregorio*[5] and *Borje vs. Sandiganbayan*[6], the Court of Appeals reversed the findings by the trial court and ruled out the testimony of the NBI handwriting expert, holding that "when the genuineness of signatures on a document is sought to be proved or disproved through comparison of standard signatures with the questioned signatures, a xerox copy or photo copy cannot be used by the expert witness in lieu of the original." It disregarded the expert testimony of the said witness who presented during his testimony in court only a mere photostat (xerox) copy of the subject deed of sale.

The petition is not impressed with merit.

Basic is the rule of evidence that when the subject of inquiry is the contents of a document, no evidence is admissible other than the original document itself except in the instances mentioned in Section 3, Rule 130 of the Revised Rules of Court. Mere photocopies of documents are inadmissible pursuant to the best evidence rule.[7] This is especially true when the issue is that of forgery.

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence[8] and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in an instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged. Without the original document containing the alleged forged signature, one cannot make a definitive comparison which would establish forgery. A comparison based on a mere xerox copy or reproduction of the document under controversy cannot produce reliable results.

Petitioners claim that what was actually examined by the NBI expert on September 10, 1987 at the Office of the Register of Deeds of Quezon City was the original copy of the deed of sale dated July 14, 1971 but a fire accident supervened preventing its introduction during trial.

This contention of petitioners is untenable. Due to the technicality of the procedure involved in the examination of forged documents, the expertise of questioned document examiners is usually helpful. However, resort to questioned document examiners is not mandatory and while probably useful, they are not indispensable in examining or comparing handwriting.[9] A finding of forgery does not depend entirely on the testimony of handwriting experts. Although such testimony may be useful, the judge still exercises independent judgement on the issue of authenticity of the signatures under scrutiny. The judge cannot rely on the mere testimony of the handwriting expert. In the case of *Gamido vs. Court of Appeals*[10] (citing the case of *Alcon vs. Intermediate*

Appellate Court, 162 SCRA 833), the Court held that the authenticity of signatures

"... is not a highly technical issue in the same sense that questions concerning , e.g., quantum physics or topology or molecular biology, would constitute matters of a highly technical nature. The opinion of a handwriting expert on the genuineness of a questioned signature is certainly much less compelling upon a judge than an opinion rendered by a specialist on a highly technical issue."

A judge must therefore conduct an independent examination of the signature itself in order to arrive at a reasonable conclusion as to its authenticity and this cannot be done without the original copy being produced in court.

Neither can we discern any sustainable basis for the second assigned error relied upon by petitioners.

The Court of Appeals found that the petitioners were not able to overcome the presumption of good faith which benefits defendant spouses Tan and that

"At any rate, the heirs of Gregorio failed to present evidence of any dishonest purpose or moral obliquity on the part of the spouses Tan. In fact, no bad judgment or negligence can be attributed to them because they took the necessary steps to protect their investment." [11]

It is axiomatic that good faith is always presumed unless convincing evidence to the contrary is adduced. It is incumbent upon the party alleging bad faith to sufficiently prove such allegation. Absent enough proof thereof, the presumption of good faith prevails. In the case under examination, the burden of proving bad faith therefore lies with petitioners (plaintiffs below) but they failed to discharge such onus probandi. Without a clear and persuasive substantiation of bad faith, the presumption of good faith in favor of respondents stands.

In view of the indefeasibility of a torrens title, every person dealing on registered lands may safely rely on the correctness of the certificate of title of the vendor/transferor, and he is not required to go beyond the certificate and inquire into the circumstances culminating in the vendor's acquisition of the property.[12] The rights of innocent third persons who relied on the correctness of the certificate of title and acquired rights over the property covered thereby cannot be disregarded and the courts cannot order the cancellation of such certificate for that would impair or erode public confidence in the torrens system of land registration.[13]

When a portion of registered property was sold and the sale was duly registered (and annotated in the certificate of title of the vendor), the vendee technically becomes the owner of the sold portion as of the registration of the sale although the title to said property is still in the name of the vendor.[14]

It bears stressing, however, that the indefeasibility of the torrens title should not be used as a means to perpetuate fraud against the rightful owner of real property. Mere registration of sale is not good enough. Good faith must concur with registration because otherwise registration becomes an exercise in futility.[15]

A purchaser in good faith 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 at the time of purchase or before he has notice of the claim or interest of some other person in the property.[16] As good faith primarily refers to a state of mind and is always a question of intention, evidence as to conduct and outward acts are usually resorted to in order to arrive at a reasonable determination of the inward motive or intention.[17]

In this case, when the spouses Tan purchased the subject property from defendant Santos, the title was clean and free from any lien and encumbrance except for the claim of the spouses Palomos by virtue of a final judgment in court awarding 1/3 undivided portion of the lot to the latter. As a matter of fact, the trial court and the Court of Appeals were in agreement with the following factual findings, to wit:

"Wilson Tan testified that...they did not know or meet Severa P. Gregorio but they came across her name in 1986 when the property was offered to them by Zapata Realty. x x x They asked for a xerox copy of the title and they were given a xerox copy of the title in the name of Severa Gregorio and a Deed of Sale between Severa Gregorio and Ricardo Santos. He verified the title in the Office of the Register of Deeds of Quezon City and found the title clean except for that portion belonging to the Palomos. So he agreed to purchase the lot at the offered price of P2,000.00 per sq.m. x x x " (RTC Decision, p. 13)

The Court of Appeals likewise found as follows:

"x x x Tan did not know the Gregorio family before he purchased the lot. He learned about the lot being offered for sale through Zapata Realty, a professional real estate broker . Ricardo Santos showed Tan the original 1971 deed of sale from Severa Gregorio to him (Santos) and the duplicate original copy of her TCT No. 8787. Tan went to the Office of the Register of Deeds of Quezon City and satisfied himself with the authenticity of the documents shown by Santos. With respect to the 1/3 portion, Tan had the title cleaned of all adverse claims before he purchased the share of the Palomos. Also, before buying the lot , he visited it to check its condition." (Rollo, p.35)

Good faith is the opposite of fraud and consists of the honest intention to abstain from taking an unconscionable and unscrupulous advantage of another.[18] From the evidence on record, it can be gleaned that respondent spouses Tan were not personally acquainted with Santos prior to the sale. They bought the property through a real estate broker, Zapata Realty, and not from Santos himself. But they satisfied themselves that subject certificate of title was clean, and of the genuineness and authenticity of the deed of sale of Santos, by personally verifying the same with the Register of Deeds of Quezon City. Such verification, in fact, disclosed that subject certificate of title was free from any adverse claim except that of the Palomos. Respondent spouses Tan even consulted a lawyer before proceeding with the sale. Verily, the latter were not amiss in their duty to ascertain their vendor's capacity to sell the property.

WHEREFORE, the petition is hereby DENIED and the decision appealed from AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Romero (Chairman), Kapunan, and Pardo, JJ., concur.

[1] Rollo, pp.24-29

[2] Penned by the Honorable Angelina S. Gutierrez, and concurred by the Honorable Jaime M. Lantin, Chairman, and Conchita Carpio Morales, Member

[3] Ibid., p.38

[4] Rollo, pp.9-10

[5] 17 Phil. 522

[6]125 SCRA 763 (1983)

[7] Gobonseng vs. Court of Appeals, 246 SCRA 472

[8] Tenio-Obsequio vs. Court of Appeals, 230 SCRA 550

[9] People vs. Godoy, 250 SCRA 676

[10] 251 SCRA 101

[11] Rollo, pp. 34-35

[12] Pino vs. Court of Appeals, 198 SCRA 434; Centeno vs. Court of Appeals, 139 SCRA 545, 555; Manzanilla vs. CA, 183 SCRA 207, 215; Pino vs. CA, 198 SCRA 434; A.D. Guerrero vs. Juntilla, 173 SCRA 572; Tajonera vs. CA, 103 SCRA 46

[13] Duran vs. IAC, 138 SCRA 489

[14] Alarcon vs. Bidin, 120 SCRA 390

[15] Claudel vs. CA, G.R. No. 85240, July 12, 1991, 199 SCRA 113; Vda. de Jomos vs. CA, 200 SCRA 74, 79 , citing Bergado vs. CA, 173 SCRA 497; and Concepcion vs. CA, G.R. #83208, Feb. 6, 1991

[16] Co vs. CA, G.R. 93687, May 6, 1991; 196 SCRA 705

[17] Leung Yee vs. Strong Machinery Company, et al, 37 Phil. 645

[18] Abando vs. Lozada, 178 SCRA 509.

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