

DIONISIO C. LADIGNON, PETITIONER, VS. COURT OF APPEALS AND LUZVIMINDA C. DIMAUN, RESPONDENTS.

G.R. No. 122973. July 18, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

The instant Petition for Review seeks to set aside the December 11, 1995 Decision of respondent Court of Appeals in CA-G.R. CV No. 38183 which reversed the May 20, 1992 Decision of the Regional Trial Court of Quezon City, Branch 85 in Civil Case No. Q-90-5871.

The case originates from a Complaint for Declaration of Nullity of Conveyance and Recovery of Possession and Damages,[1] filed on May 12, 1990 by private respondent against petitioner, Richard C. Tong, Jose Porciuncula, Jr. and Litogo Company, Inc. In the Complaint, private respondent alleged that petitioner, a relative by affinity, offered his services as lawyer to mediate between her and the relatives of her adoptive mother with respect to inheritance she was expecting to receive from her adoptive parents.

Private respondent claimed that petitioner made her sign a Petition[2] for the reconstitution of Transfer Certificate of Title No. 240724, covering an eight hundred fifty nine and seven/tenths (859.7) square meter parcel of land located in Talayan, Quezon City, registered under her name and that of her adoptive mother, Ligaya Flores Collantes. Said Petition was, however, dismissed on August 28, 1989 for her failure to appear at the scheduled hearing. Private respondent claims that she did not know of such dismissal, neither of the fact that Transfer Certificate of Title No. 240724 was superseded by Transfer Certificate of Title No. 383675 of the Registry of Deeds of Quezon City, in her name alone.

Attached to private respondent's Complaint was a copy of a Deed of Absolute Sale which appears to have been executed by her as vendor and by Litogo Co., Inc., represented by its President, Richard Tong, as vendee. Subject of the said sale was the Talayan property. Under the terms of the Deed, the purchase price of the sale was P800,000.00, receipt of which was therein specifically acknowledged by the vendor. The Deed, dated May 12, 1989, was duly notarized in Manila on the same date as Document No. 267, Page No. 55, Book No. VI, Series of 1989 of the notarial books of Notary Public Elsa R. Reblora.

Private respondent denied having received the purchase price therefor, nor having signed the same, insisting that her alleged signatures thereon are falsified or forged. Thus, she prayed for the declaration of nullity of the said Deed of Absolute Sale and for the defendants therein to be ordered to surrender possession of the lot covered thereby as well as the owner's duplicate copy of TCT No. 38365. Private respondent also sought P50,000.00 in moral damages, P30,000.00 as attorney's fees, exemplary and nominal damages, litigation expenses and costs of suit.

During pre-trial, the parties agreed to limit the issues to the following -

"1.....Whether the signatures of plaintiff on the Deed of Absolute Sale (Exhibit "F") conveying the inherited

property to defendants are forged/falsified or not;

2.....Whether the failure of plaintiff to reconstitute TCT No. 240724 covering the property subject matter hereof affects the issuance of TCT No. 383675 or not;

3.....Whether defendants should be held liable for damages to plaintiff for their wanton acts of depriving plaintiff of her inherited property."[3]

The trial court found the evidence submitted by private respondent as insufficient to overturn the public document sought to be annulled. Thus, a Decision was rendered on May 20, 1992, in favor of petitioner, to wit -

"WHEREFORE, in the light of the foregoing, judgment is hereby rendered DISMISSING the complaint and, on the counterclaim, ordering the plaintiff to pay defendant Dionisio Ladignon the sum of P50,000.00 by way of moral and exemplary damages, and P25,000.00 as attorney's fees, plus costs.

The crossclaim of defendant Litogo Company, Inc. and Richard Tong against defendant Dionisio Ladignon is likewise DISMISSED.

SO ORDERED."[4]

Private respondent appealed the decision to the Court of Appeals which reversed the trial court's decision dated May 20, 1992. In reversing the said judgment, respondent Court of Appeals relied on the following findings: First, that the authenticity of TCT No. 383675, which was the subject of the questioned deed, was highly questionable; and second, that the private respondent was shown to have no participation in the questioned deed of sale.

The dispositive portion of said Decision states:

"WHEREFORE, premises considered, the appeal is GRANTED being meritorious. Judgment appealed from is hereby REVERSED and judgment is hereby rendered as follows:

1).....The deed of sale of the Talayan property is declared NULL and VOID. Consequently, the entry in what purports to be TCT No. 383675 re said sale is also ANNULLED and CANCELLED;

2).....Ordering Ladignon to pay appellant Dimaun P50,000.00 by way of moral damages; P30,000.00 by way of attorney's fees; and P30,000.00 by way of exemplary damages;

3).....Ordering Litogo to surrender possession of the Talayan property to appellant Dimaun;

4).....Ordering the Register of Deeds of Quezon City to cancel TCT No. 383675 which is hereby declared annulled and of no force and effect;

5).....Atty. Ladignon is ordered to return to Litogo Company the amount of P2,063,280.00 with interest at 6% per annum from May 12, 1989 until fully paid; and

6).....To pay the costs of suit.

SO ORDERED."[5]

Hence, the instant petition for review based on the following grounds:

"I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING CREDENCE TO THE THEORY OF THE PRIVATE RESPONDENT WHEN THERE IS NO EVIDENCE EVER ADDUCED TO SUBSTANTIATE THE ASSEVERATION.

II

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION, TANTAMOUNT TO LACK OF JURISDICTION WHEN IT DISREGARDED JURISPRUDENTIAL EDICTS ON PRESUMPTIONS THAT PRIVATE TRANSACTIONS ARE FAIR AND REGULAR AND THAT DOCUMENTS EXECUTED BY THE PARTIES ARE VALID AND REGULAR.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE FACTUAL FINDINGS OF THE TRIAL COURT IN THE ABSENCE OF ANY SHOWING THAT THE LOWER COURT ABUSED ITS DISCRETION IN APPRECIATING THE EVIDENCE ADDUCED BY THE PARTIES.

IV

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT ACCUSED PETITIONER OF COMMITTING AN INFRACTION WHEN THE EVIDENCE ON RECORD DOES NOT SUPPORT THE CONCLUSION AND NO LESS THAN THE PROSECUTORIAL ARM OF THE GOVERNMENT DISMISSED THE COMPLAINT FILED BY THE PRIVATE RESPONDENT FOR WANT OF PROBABLE CAUSE."[6]

It is evident that the instant Petition calls for a review of the facts of the case. On this matter, well-settled is the rule that in the exercise of the power to review, the findings of fact of the Court of Appeals are conclusive and binding on this Court. However, there are recognized exceptions among which is when the factual findings of the trial court and the appellate court are conflicting.[7] The instant case falls within this exception and we are thus constrained to examine the arguments presented by petitioner.

We note that the Deed of Absolute Sale being questioned is a public document, having been notarized by Atty. Elsa R. Reblora who appeared on the witness stand to testify on the due execution of the same.[8]

As a public document, the subject Deed of Absolute Sale had in its favor the presumption of regularity, and to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise the document should be upheld.[9]

It is also worth stressing that private respondent claim that her signature on the subject Deed of Absolute Sale is forged. As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.[10]

Was the evidence presented by private respondent against the Deed of Absolute Sale clear, convincing and more than merely preponderant to overcome both the presumption of regularity attached to public documents and to meet the stringent requirements to prove forgery?

Far from being clear and convincing, all private respondent had to offer by way of evidence was her mere denial that she had signed the same. Such mere denial will not suffice to overcome the positive value of the subject Deed, a notarized document. Indeed, even in cases where the alleged forged signature was compared to samples of genuine signatures to show its variance therefrom, this Court still found such evidence insufficient, to wit --

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

We found, however, that the basis presented by the petitioner was inadequate to sustain his allegation of forgery. Mere variance of the signatures cannot be considered as conclusive proof that the same were forged.

Forgery cannot be presumed (*Tenio-Obsequio vs. Court of Appeals*, G.R. 107967, March 1, 1994). Petitioner, however, failed to prove his allegation and simply relied on the apparent difference of the signatures. His denial had not established that the signature on the power of attorney was not his.

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Documents acknowledged before a notary public have the evidentiary weight with respect to their due execution. The questioned power of attorney and deed of sale, were notarized and therefore, presumed to be valid and duly executed. Atty. Tubig denied having notarized the said documents and alleged that his signature had also been falsified. He presented samples of his signature to prove his contention. Forgery should be proved by clear and convincing evidence and whoever alleges it has the burden of proving the same. Just like the petitioner, witness Atty. Tubig merely pointed out that his signature was different from that in the power of attorney and deed of sale. There had never been an accurate examination of the signature, even that of the petitioner. To determine forgery, it was held in *Cesar vs. Sandiganbayan* (G.R. Nos. 54719-50, 17 January 1985, quoting *Osborn, The Problem of Proof*) that:

"The process of identification, therefore, must include the determination of the extent, kind, and significance of this resemblance as well as of the variation. It then becomes necessary to determine whether the variation is due to the operation of a different personality, or is only the expected and inevitable variation found in the genuine writing of the same writer. It is also necessary to decide whether the resemblance is the result of a more or less skillful imitation, or is the habitual and characteristic resemblance which naturally appears in a genuine writing. When these two questions are correctly answered the whole problem of identification is solved." [11]

In *American Express International, Inc. v. Court of Appeals*, [12] the means to prove the genuineness of a handwriting were laid down, as follows --

"Licarte's testimony likewise failed to demonstrate the existence of forgery. He only stated that the cardholders denied having made the transactions as they were allegedly not in the Philippines. Forgery cannot be deduced therefrom. As stated in *Tenio-Obsequio v. Court of Appeals* (G.R. No. 107967, 1 March 1994, 230 SCRA 550), forgery cannot be presumed; it must be proved by clear, positive and convincing evidence. In imputing discrepancy in the signatures appearing in the charge forms and those appearing on the credit cards as well as in its records, AMEXCO should have conducted an examination of the signatures before the court (Sec. 22. How genuineness of handwriting proved. - The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge [Rule 132, Rules of Court]). A comparison of both the differences and similarities in the questioned signatures should have been made to satisfy the demands of evidence. Failing to introduce ample proof to substantiate its claim of forgery, petitioner's case has no leg to stand on."

In the case at bar, we cannot accept the claim of forgery where no comparison of private respondent's signatures was made, no witness (save for private respondent herself) was presented to testify on the same, much less an expert witness called, and all that was presented was private respondent's testimony that her signature on the questioned Deed was forged. Indeed, even when the evidence is conflicting, the public document must still be upheld. [13]

Neither was private respondent able to prove that contrary to the recital in the acknowledgment, she never appeared before the notary public and acknowledged the deed to be her voluntary act, a burden which was hers to discharge. [14] Instead, the notary public even directly testified that private respondent had acknowledged to her that she had signed the questioned Deed, to wit -

"Q:

Atty. Reblora, on May 12, 1989, you were the duly commissioned Notary Public for the City of Manila, is that correct?

A:

Yes sir.

Q:

And do you know one of the defendants in this case Richard Tong?

A:

Yes sir.

Q:

And why do you know him?

A:

I know him because aside from the fact that he is holding office on the same building that I work, on May 12, 1989, he together with or accompanied by a woman who introduced herself as Luzviminda Collantes, then asked me to notarize a deed of sale. (sic)

Q:

I am showing to you a deed of sale, previously marked as Exh. 4 for Ladignon and another deed of sale which was marked as Exh. F for the plaintiff, will you please tell the Honorable Court, what is the relation of this document to the document that you notarized on May 12, 1989?

A:

These are the same. This is the same deed of sale that I notarized on that day.

Q:

And appearing at the end of the same are the signature, document number 267, page no. 55, book no. 6, series of 1989 which is marked as Exh. 4-Ladignon and Exh. F for the plaintiff is the document no. 267, page no. 55, book 6, series of 1989, will you please state what are the relation of these 2 documents as per numbers and identification of the same?

A:

.These are the same and one sir.

Q:

Now, after presented (sic) to you this document for notarization, what did you do when the same was presented to you?

A:

When they came to my office, I asked them if the parties to the transaction were present.

Q:

.Now, you asked the parties, were Luzviminda the plaintiff and Richard Tong present at that time?

A:

Yes sir.

Q:

.After you were satisfied of their presence, what did you do next in relation to your job as a Notary Public?

A:

After that, I verified whether their signature on the deed of sale are their signature. After verifying to be their signature (sic) and the same to have been acknowledged by the same, I notarized the document.

Q:

When you said that you have verified, that these signatures appearing on Exh. F for Ladignon are their signature, to whom are you referring to?

A:

These parties namely: Richard Tong and Luzviminda Collantes.

Q:

And when you asked whether they are their signatures, did they confirm the same?

A:

Yes, they answered yes."[15]

All told, we find that private respondent, who has filed the Complaint for nullity of conveyance below has not sufficiently met the burden of proof to sustain her case and for such reason, we must reinstate the dismissal of her complaint as ordered by the court a quo.

In upholding private respondent's position, respondent Court of Appeals gave much importance to the claim by private respondent that there was no valid reconstitution of Transfer Certificate of Title No. 240724 upon which Transfer Certificate of Title No. 383675 (subject of the questioned Deed of Absolute Sale) was derived. Respondent Court of Appeals posited that Transfer Certificate of Title No. 383675 was "highly questionable for the simple reason that no basis for its issuance has been shown." And as such, it went on to conclude that "no Deed of Sale between plaintiff-appellant Dimaun and Litogo had ever been executed." Aside from being an obvious stretch of reasoning, this conclusion finds no basis in the case before us, which is simply one for nullity of conveyance. What is worse, in ordering the cancellation of Transfer Certificate of Title No. 383675, respondent Court of Appeals acted without jurisdiction. After all, it is hornbook law that a torrens title cannot be collaterally attacked. The issue of validity of a torrens title, whether fraudulently issued or not, may be posed only in an action brought to impugn or annul it. Unmistakable, and cannot be ignored, is the germane provision of Section 48 of Presidential Decree No. 1529, that a certificate of title can never be the subject of a collateral attack. It cannot be

altered, modified, or cancelled except in a direct proceeding instituted in accordance with law.[16] Clearly, the action below for nullity of conveyance is hardly the direct proceeding required by law to attack a Torrens Certificate of Title.

WHEREFORE, the instant Petition for Review is hereby GRANTED. The challenged Decision of the Court of Appeals is REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Quezon City, Branch 85, dismissing Civil Case No. Q-90-5871 is REINSTATED in its totality. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Rollo, pp. 1-25, filed on March 6, 1989.

[2] Exhibit "B", Complaint, Civil Case No. Q90-5871; Rollo, pp. 10-16.

[3] Pre-Trial Order, Civil Case No. Q-90-5871, p. 3; Rollo, p. 154.

[4] Decision, Civil Case No. Q-90-5871, p. 13; Rollo, p. 81.

[5] Decision, CA-G.R. CV No. 38183, pp. 13-14; Records, pp. 67-68.

[6] Petition for Review, pp. 3-4; Records, pp. 11-12.

[7] American Express International, Inc. v. Court of Appeals, 308 SCRA 65, 69 (1999), citing Security Bank & Trust Company v. Triumph Lumber and Construction Corporation, 301 SCRA 537 .

[8] T.S.N., October 22, 1991, pp. 2-12.

[9] See Bernardo v. Court of Appeals, G.R. No. 107791, 12 May 2000, citing Spouses Caoili v. Court of Appeals, G.R. No. 128325, 14 September 1999.

[10] Heirs of Gregorio v. Court of Appeals, 300 SCRA 565, 574 (1998)

[11] Veloso vs. Court of Appeals, 260 SCRA 593, 601-602 (1996)

[12] See Note 7, at pp. 71-72.

[13] See R&B Insurance Corporation v. Court of Appeals, G.R. No. 108472, 9 October 1999.

[14] See Aznar Brothers Realty Company v. Court of Appeals, G.R. No. 128102, 7 March 2000, citing Daroy v. Abecia, 298 SCRA 239, 251 (1998)

[15] T.S.N., October 22, 1991, pp. 3-4.

[16] Pasay City & Republic Real Estate Corporation v. Court of Appeals, 299 SCRA 199 (1998); Carreon v. Court of Appeals, G.R. No. 112041, 22 June 1998, citing Trinidad v. Intermediate Appellate Court, 204 SCRA 524 (1991)

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