PASTOR DE JESUS, PETITIONER, VS. HONORABLE COURT OF APPEALS, RONALDO, ALICIA, FLORANTE, NELSON, BELLAFLOR, MARIO, ARNOLFO, JOCELYN AND GODFREY, ALL SURNAMED DE JESUS, ALL REPRES...

G.R. No. 127857. June 20, 2006

Ponente: TINGA, J.

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TINGA, J.:

In this Petition[1] for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Pastor de Jesus assails the Decision[2] dated 11 September 1996 of the Court of Appeals in C.A. G.R. CV No. 47008 and its Resolution[3] dated 15 January 1997. The challenged Decision affirmed in part the Decision[4] dated 28 October 1994 of the Regional Trial Court of Tabuk, Kalinga Apayao, Branch 25 in Special Civil Action Case No. 44 entitled, "Ronaldo, Alicia, Florante, Nelson, Bellaflor, Mario, Arnolfo, Jocelyn, and Godfrey, all surnamed De Jesus, all represented by Ronaldo De Jesus v. Pastor De Jesus." The trial court declared null and void the Extrajudicial Settlement with Simultaneous Sale of Rights and Interests in the Estate of a Deceased Person (Deed of Sale) dated 13 September 1979 and directed the partition of the real property subject of the litigation in pro indiviso equal shares among Pastor de Jesus, respondents-all surnamed de Jesus (respondents de Jesus)-and Consolacion Resurreccion de Jesus Abando (Consolacion).

The factual and legal antecedents culled from the decision of the Court of Appeals follow.

Herein respondents de Jesus, in their capacity as legal heirs and successors-in-interest to the property inherited by their late father Fermin de Jesus (Fermin) filed a petition before the trial court on 3 June 1991, seeking the partition of a parcel of land left by their deceased grandparents.

From the pleadings and evidence presented by the parties, the following facts were established: that respondents de Jesus, namely Ronaldo, Alicia, Florante, Nelson, Bellaflor, Mario, Arnolfo, Jocelyn, and Godfrey, all surnamed de Jesus, represented by Ronaldo de Jesus (Ronaldo), are the legitimate children of Fermin; that Pastor de Jesus is their uncle, being the brother of Fermin; that the parties are all residents of Bulanao, Tabuk, Kalinga-Apayao; that the spouses Juan and Eustaquia de Jesus were the parents of Fermin, Consolacion and Pastor de Jesus from whom they inherited through intestate succession the parcel of land in dispute consisting of more or less five (5) hectares located in Ipil, Bulanao, Tabuk, Kalinga-Apayao and covered by Tax Declaration No. 16100; that Juan de Jesus died on 7 December 1964 while Fermin died on 24 September 1979; that as of the filing of the petition, the title to the property remained in the name of Juan de Jesus.

Mainly in dispute is the claim of respondents de Jesus that ownership of the said property had never been transferred to anyone and/or partitioned among the legal heirs thereto, and that as legitimate children of Fermin and by right of representation under the law of intestate succession, they are entitled to their rightful share of the estate left by their grandfather Juan de Jesus.

Pastor de Jesus contended that respondents de Jesus are no longer entitled to their father's share in the subject property as the latter has already sold to Pastor de Jesus his property right along with only sister Consolacion for a consideration of P10,000.00. This is evidenced by the notarized Deed of Sale dated 13 September 1979, which respondent admits has not yet been registered with the Registry of Deeds. Pastor de Jesus prayed, among others, for the dismissal of the petition for lack of factual and legal basis.

The trial court ordered the Deed of Sale to be submitted to the NBI for examination in order to determine its genuineness and due execution.

Respondents de Jesus presented as witnesses Alicia de Jesus Oakes, Ronaldo de Jesus and the NBI Handwriting Expert Zenaida Torres. Their rebuttal witnesses were Ronaldo and Maura Maramag de Jesus (Maura).

On the other hand, Pastor de Jesus's witnesses were his sister Consolacion, Atty. Marcos C. Diasen, Jr., Zenaida Tuazon and himself.

After trial, the trial court rendered its decision on 28 October 1994, disposing as follows:

> WHEREFORE, judgment is hereby rendered as follows:
>
> - Declaring null and void Extra-judicial Settlement with Simultaneous Sale of Estate of Deceased Person dated September 13, 1979;
>
> - Directing the Partition of Lot 769, Pls-93 covered by Original Certificate of Title No. P-131 under the registered name of the late Juan de Jesus;
>
> - Appointing commissioners to make partition over Lot 769, Pls-93 covered by Original Certificate of Title No. P-131 of decedent Juan de Jesus, namely: (a) The Clerk of Court of RTC, Branch 25; (b) The Municipal Treasurer of the Municipality of Tabuk; and (c) The Municipal Assessor of the Municipality of Tabuk, in the Province of Kalinga-Apayao, and for said commissioners to submit a report of Partition not later than December 30, 1994;
>
> - Directing Respondents to pay Petitioners the sum of THIRTY THOUSAND PESOS (P30,000.00) by way of attorney's fees; and to pay costs.
>
> Let a copy of this decision be furnished the Register of Deeds of Kalinga-Apayao.
>
> SO ORDERED.[5]

Aggrieved, Pastor de Jesus interposed an appeal before the Court of Appeals claiming that the trial court erred: (1) in not giving weight to the evidence he offered to prove that the Deed of Sale was duly executed by the heirs of Juan de Jesus; (2) in relying on the testimony of the expert witness than on the testimonies of disinterested and knowledgeable witnesses asserting the genuineness of the signatures; and (3) in declaring, without substantial basis, null and void the Deed of Sale.[6]

The Court of Appeals found Pastor de Jesus's appeal to be devoid of merit. It shared the lower court's observations: that a mere look at the signature above the name Fermin de Jesus[7] evinces a disparity of the signature with that appearing on page two (2) of the Deed of Sale;[8] that despite the assertion of petitioners Alicia de Jesus Oakes and Ronaldo de Jesus that the signature on page two (2) of the questioned document is that of their father's, it cannot be better than or absolute as the conclusions found by expert witness Zenaida Torres that the signature on the second page of the Deed of Sale and by standard signatures "were not written by one and the same person;" and that since the genuineness of the signature becomes the crux of the proceedings, a closer examination of the questioned signature and the circumstances then prevailing becomes of utmost necessity. The Court of Appeals thus declared that there is sufficient evidence to warrant the declaration of Fermin's signature as

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a forgery.[9]

However, even without the testimony of the handwriting expert, the appellate court ruled that there are valid reasons to doubt the due execution of the document in question.[10]

It observed that the testimony of Consolacion on the physical condition of Fermin was fraught with contradictions and inconsistencies seriously eroding her credibility. Consolacion testified that Fermin had been admitted to various hospitals and was eventually released because his illness was already beyond treatment or hopeless yet she insisted that Fermin was still strong. Consolacion contradicted herself when she testified that Fermin was fetched with a wheelchair when they alighted from the helicopter on their way to the medicare room. This shows that Fermin not only could not withstand the rigors of long travel, as pointed out by the trial court, but could not also walk by himself. This affirms Maura's testimony that Fermin was already very weak and very thin when he arrived in the Kalinga-Apayao Hospital, which is why he had to be carried on a stretcher to the emergency room and later on bodily carried to his bed when he went home. Under these given facts, Consolacion's uncorroborated claim that Fermin was strong and that she saw him seated in the balcony when she fetched the latter to go to the notary public, is unworthy of belief.[11]

The appellate court likewise ruled that Pastor de Jesus's credibility was not impressive. During the pre-trial conference, Pastor de Jesus admitted being in possession of the original copy of the Deed of Sale but when later pressed to produce the original, his reply was that Fermin left him only a duplicate copy.[12]

In conclusion, the Court of Appeals stated that the rule that "a notarized document is admissible in evidence without proof of its due execution and is conclusive as to the truthfulness of its contents" is not absolute and may be rebutted by evidence to the contrary, which respondents de Jesus were able to present convincingly in the case at bar. The appellate court thus declared that the notarized Deed of Sale is null and void. Inconsistently, however, it declared the same valid and binding with regard to Pastor de Jesus and his sibling Consolacion. The Court of Appeals disposed as follows:

> WHEREFORE, in view of all the foregoing, the decision of the court a quo is AFFIRMED with the modification that the Extrajudicial Settlement with Simultaneous Sale of Estate of Deceased Person dated September 13, 1979 is declared NULL AND VOID only insofar as the one-third (1/3) share of Fermin de Jesus is concerned.
>
> No costs.
>
> SO ORDERED.[13]

With the denial of his motion for reconsideration,[14] Pastor de Jesus filed the instant petition wherein he argues in the main that the testimony of the parties and their witnesses to a notarized agreement, including that of the notary public who notarized the same, should be given more weight than the opinion of an expert witness denying the authenticity of a signature on the document.

In addition, Pastor de Jesus asserts in his Supplemental Petition for Review on Certiorari[15] that the presumption of regularity of notarized documents has not been rebutted in the case at bar. Hence, the appellate court erred in declaring the subject document as null and void.

In their Comment,[16] respondents de Jesus maintain that the instant petition is but a reiteration of Pastor de Jesus's brief before the appellate court and that there is nothing new in the points raised therein. They further contend that the document entitled "Extrajudicial Settlement with Simultaneous Sale of Rights and Interests in the Estate of a Deceased Person" suffers from grave infirmities such that it cannot be considered as a duly executed document.[17]

The petition is without merit.

At the outset, it should be stressed that under Rule 45 of the 1997 Rules of Civil Procedure, only questions of law may be raised in a petition for review on certiorari, the reason being that the Court is not a trier of facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.[18]

It is not the function of this Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.[19]

The theory advanced by respondents de Jesus that Fermin's signatures on the Deed of Sale is a forgery involves a question of fact previously raised and satisfactorily ruled upon by the two lower courts. Generally, findings of fact of the Court of Appeals, affirming those of the trial court, are final and conclusive. The Supreme Court cannot review those findings on appeal, especially when they are borne out by the records or are based on substantial evidence.[20] The reliance of appellate tribunals on the factual findings of the trial court is based on the postulate that the latter had firsthand opportunity to hear the witnesses and to observe their conduct and demeanor during the proceedings.[21]

Although this rule admits of several exceptions,[22] none of the exceptions is available in the instant case which gives us reason to deviate from the rule. The courts a quo had sufficient factual basis in holding that the questioned signatures are spurious.

In any event, we are not convinced that the courts a quo erred in declaring null and void the Deed of Sale. Generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and has in its favor the presumption of regularity. However, this presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary.[23]

To prove forgery, respondents de Jesus presented Alicia de Jesus Oakes and Ronaldo de Jesus, children of Fermin who were familiar with his handwriting; and NBI Handwriting Expert Zenaida Torres.

Alicia de Jesus Oakes and Ronaldo asserted that the signature on page one (1) of the Deed of Sale was not Fermin's signature but the signature on the second page was his. Zenaida Torres, on the other hand, came up with the finding that the purported signature of Fermin on page two (2) of the Deed of Sale was not written by the same person whose signatures appear on the documents that served as standard signatures of Fermin. As stated in the decisions of the courts a quo, some of the striking differences noted by the expert witness are as follows:First- On the sample signature, the "T" bar on the "F" is either little bit straight coming from below while that of the signature on page 2 comes from the top.

Second- Looking at letter "E", there is a very small but significant difference. The beginning of the letter "E" is hooking from the top while that cannot be seen on the sample signatures because all the "E's" are either straight or hooking comes from below.

Third-That, another unusual thing is that when you cover the first and second "s" in Jesus on the sample signature, you can decipher a letter "W." But on the questioned signature, even if the letter "s" is not covered does not form a letter "W" but letter "U" instead because the stroke tends to go straight down.

Fourth- The crown in F on the signature on page 2 shows a pronounced tremor and shaky appearance which is not visible in the sample signature.

Fifth- Letter R is of the signature on page 2 is fundamentally different from those of the specimen signatures.[24]

With regard to Fermin's abbreviated signature on page one (1) of the Deed of Sale, expert witness Torres initially testified that she could not make a definite opinion about it because the sample signatures, which are long hand signatures, cannot be used as bases for comparative examination. However, on cross-examination, she clarified that there are indications that the signature on page one (1) and the standard/sample signatures compared were also not written by one and the same person.[25]

It is true that the opinion of handwriting experts are not necessarily binding upon the court,[26] the expert's function being to place before the court data upon which the court can form its own opinion.[27] Handwriting experts are usually helpful in the examination of forged documents because of the technical procedure involved in analyzing them. But resort to these experts is not mandatory or indispensable to the examination or the comparison of handwriting. A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity.[28] As held in Estacio v. Jaranilla,[29] to wit:

> It bears stressing that the trial court may validly determine forgery from its own independent examination of the documentary evidence at hand. This the trial court judge can do without resorting to experts, especially when the question involved is mere handwriting similarity or dissimilarity, which can be determined by a visual comparison of specimen of the questioned signatures with those of currently existing ones. Section 22 of Rule 132 of the Rules of Court explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting 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.[30]

The courts below did exactly this. They conducted their independent examination of the signatures and concluded that the disparity of the signatures on page one (1) and page two (2) of the Deed of Sale is readily noticeable upon inspection. Moreover, the appellate court observed that a scrutiny of the documents where Fermin's specimen signatures appear show that most of them do not bear his printed name but Fermin consistently signed his name in full and never in the abbreviated style as the one on page one (1) of the Deed of Sale.

In support of Pastor de Jesus's contention, on the other hand, Pastor de Jesus, Consolacion, Atty. Marcos C. Diasen, Jr., and Zenaida Tuazon all testified that Fermin signed the Deed of Sale in their presence.

However, the trial court held that their inconsistent and incredible testimonies together with the circumstances at the time of its alleged execution rendered doubtful the genuineness of the Deed of Sale.[31] Moreover, the trial court found it irregular that two (2) typewriters were used in preparing the Deed of Sale when only one secretary typed the document. The reason for this was not explained to the full satisfaction of the trial court.[32]

Thus, considering the testimonies of the witnesses and a plain comparison of the questioned signatures with admittedly genuine ones, the Court finds no reason to reverse the findings of the two lower courts. Although the Deed of Sale was a public document having in its favor the presumption of regularity, such presumption of regularity was adequately refuted by competent witnesses and the visual analysis of the signatures made by the courts below.

Since the signatures of Fermin were forged, the Deed of Sale is effectively nullified. The document should not be annulled only with respect to Fermin's share. The document bearing the forged signatures is in fact an extrajudicial settlement which requires the assent of all the heirs to the extrajudicial partition.[33] It is not binding upon any person who has not participated therein or had notice thereof.[34]

WHEREFORE, in view of the foregoing, the Petition is hereby DENIED. The Decision dated 11 September 1996 of the Court of Appeals in CA-G.R. CV No. 47008 is AFFIRMED except insofar as it declared the Extrajudicial Settlement with Simultaneous Sale of Estate of Deceased Person dated 13 September 1979 null and void only

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with respect to the 1/3 share of Fermin de Jesus. The Decision dated 28 October 1994 of the Regional Trial Court of Tabuk, Kalinga Apayao, Branch 25 in Special Civil Action Case No. 44 is REINSTATED. Costs against petitioner Pastor de Jesus.

SO ORDERED.

Quisumbing, (Chairman), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 9-21; Dated 19 February 1997.

[2] Id. at 25-39; Penned by Associate Justice Salome A. Montoya with the concurrence of Associate Justices Godardo A. Jacinto and Maximiano C. Asuncion.

[3] Id. at 40.

[4] CA rollo, pp. 97-119; Penned by Judge Milnar T. Lammawin.

[5] CA rollo, pp. 118-119.

[6] Rollo, p. 32.

[7] Exhibit "A-2" or "1-B."

[8] Exhibit "A-3" or "1-H."

[9] Rollo, p. 35.

[10] Id. at 37.

[11] Id. at 37-38.

[12] Id. at 38.

[13] Id. at 39.

[14] In a Resolution dated 15 January 1997; id. at 40.

[15] Id. at 43-50; Dated 14 May 1997.

[16] Id. at 53-59; Dated 2 June 1997.

[17] Id. at 58.

[18] Suyat, Jr. v. Torres, G.R. No. 133530, 25 October 2004, 441 SCRA 265, 276.

[19] Potenciano v. Reynoso, 449 Phil. 396, 405 (2003).

[20] Id. at 405-406.

[21] Jimenez v. Commission on Ecumenical Mission United Presbyterian Church, 432 Phil. 895, 906 (2002).

[22] Larena v. Mapili, 455 Phil. 945, 950-951 (2003); Baricuatro, Jr. v. Court of Appeals, 382 Phil. 15, 24-25 (2000).

[23] Potenciano v. Reynoso, supra note 20; See also Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals and Nicolas Capistrano, G.R. No. 125283, 10 February 2006.

[24] See Rollo, p. 36; CA rollo, p. 102.

[25] See TSN, 29 January 1993, pp. 136-137; Records, pp. 309-310.

[26] Jimenez v. Commission on Ecumenical Mission, United Presbyterian Church, USA, supra note 21, at 907.

[27] People v. Agresor, 378 Phil. 34, 56 (1999).

[28] Jimenez v. Commission on Ecumenical Mission, United Presbyterian Church, USA, supra note 21, AT 907.

[29] G.R. No. 149250, 8 December 2003, 417 SCRA 250.

[30] Id. at 256.

[31] CA rollo, p. 113.

[32] Id. at 115.

[33] FRANCISCO V. J., THE REVISED RULES OF COURT IN THE PHILIPPINES, Special Proceedings Vol. V-A 1970, p. 683.[34] RULES OF COURT, Rule 74, Sec. 1.

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