

LEOPOLDO DALUMPINES PETITIONER, VS. COURT OF APPEALS, (FIRST DIVISION), AND DOMINGO ESTOYA, RESPONDENTS.*G.R. No. 139500. July 27, 2000*

Ponente: GONZAGA-REYES, J.

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Before us is a Petition for Review on Certiorari seeking the reversal of the December 10, 1998 Decision[1] and July 9, 1999 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 41661. The Court of Appeals (CA) set aside the Decision[3] of the Regional Trial Court (RTC) of Himamaylan, Negros Occidental, Branch 56, in Civil Case No. 460 reversing the Decision[4] of the Municipal Trial Court (MTC) of Hinigaran in Civil Case No. MTC-159 for ejectment.

The CA narrated the factual antecedents of this case as follows:

"On August 25, 1989, Atty. Oscar M. Lagtapon, a notary public for the past 27 years (pp. 4 and 8, tsn, October 25, 1994; pp. 65 and 69, Rollo) prepared and notarized two documents, viz: a "Deed of Absolute Sale" and a "Declaration of Heirship and Deed of Absolute Sale" (pp. 4-5 and 12, tsn, October 25, 1994; pp. 65-66 and 73, Rollo). The first document, the "Deed of Absolute Sale" stated that Primitiva Estoya, Saturnina Estoya, Alfonso Estoya and Domingo Estoya are the owners of Lot 725 of the Cadastral Survey of Hinigaran, Negros Occidental covered by Transfer Certificate of Title No. T-78497 (pp. 87 and 171, Rollo). It further stated that the owners of said Lot 725 are selling a half portion thereof to the heirs of Norberto Gerial for a consideration of P6,000.00 (Ibid). The Estoyas did not affix their respective signatures above their respective names as vendors on the deed, but affixed their respective signatures on the acknowledgment portion written thereafter (Ibid).

The second document, the "Declaration of Heirship and Deed of Absolute Sale", on the other hand, stated that Norberto Gerial was the owner of Lot No. 725 of the Cadastral Survey of Hinigaran, Negros Occidental which was covered by Transfer Certificate of Title No. T-78497 (p. 88, Rollo). Said document further stated that Norberto Gerial, having died intestate, was succeeded by his heirs Moises Gerial, Pastor Gerial, Bernardo Gerial, Maximina Gerial-Borbon and Jocelyn Pescador Abada to the ownership of said land (pp. 88-89, Rollo). Said document also stated that the heirs of Norberto Gerial are selling Lot 725 to Leopoldo Dalumpines for a consideration of P12,000.00 (Ibid). Both vendors and vendee affixed their respective signatures on the document (Ibid).

On the basis of both the "Deed of Absolute Sale" and the "Declaration of Heirship and Deed of Absolute Sale", Transfer Certificate of Title No. T-78497 covering Lot 725 was cancelled, and in lieu thereof, Transfer Certificate of Title No. T-151598 was issued in the name of Leopoldo Dalumpines (p. 168, Rollo).

Armed with his new transfer certificate of title over Lot 725, Dalumpines on July 14, 1994, filed a complaint for unlawful detainer with the Municipal Trial Court of Hinigaran, Negros Occidental against Domingo Estoya who was occupying a portion of Lot 725 for residential purposes since his birth (pp. 32-34 and 96, Rollo). The complaint was docketed as Civil Case No. MTC-159 (p. 48, Rollo).

Suspicious of the two documents which facilitated the cancellation of Transfer Certificate of Title No. T-78497 and the corresponding issuance of Transfer Certificate of Title No. T-151598 in the name of Dalumpines, the contents of which contradicted each other (pp. 6-7 of MTC Decision; pp. 53-54, Rollo), the Municipal Trial Court rendered decision on November 22, 1995 holding that Estoya "cannot be ejected from the premises in question" (p. 7 of MTC Decision; p. 54, Rollo). The decretal portion of said decision reads:

"WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered against the plaintiff and in favor of the defendant as follows:

- The plaintiff is ordered to pay defendant P10,000.00 as attorney's fee and appearance fee at P500.00 per court appearance;
- The plaintiff is ordered to pay defendant P5,000.00 by way of litis expenses;

Cost against the plaintiff.

SO ORDERED." (pp. 7-8 of MTC Decision; pp. 54-55, Rollo)

Dalumpines appealed the Municipal Trial Court's decision to the Regional Trial Court of Himamaylan, Negros Occidental (p. 57, Rollo). His appeal was docketed as Civil Case No. 460 (p. 56, Rollo). On August 2, 1996, Branch 56 thereof rendered decision reversing the decision appealed from as follows:

"WHEREFORE, in view of all the foregoing, the appealed decision is hereby REVERSED and SET ASIDE and a new one is rendered in favor of the plaintiff-appellant, as follows:

- 1.1. Defendant-appellee is hereby ordered to vacate the premises of Lot 725, Hinigaran Cadastre;
2. Defendant-appellee is ordered to pay plaintiff-appellant the amount of P5,000.00 for attorney's fee plus P500.00 for every court appearance.
3. Costs against defendant-appellee.

SO ORDERED." (p. 7 of RTC Decision; p. 62, Rollo)"[5]

On appeal, the Court of Appeals set aside the decision of the RTC and reinstated that of the MTC for the following reasons:

"Petitioner Domingo Estoya argues that contrary to the respondent court's finding, the "Deed of Absolute Sale" prepared and notarized by Atty. Oscar M. Lagtapon, is invalid and could not have transferred ownership over Lot 725 in favor of the heirs of Norberto Gerial, the reason therefor being the Estoyas' failure to affix their respective signatures to the "Deed of Absolute Sale" which manifests the fact that they did not consent to the sale of one-half portion of Lot 725 in favor of Norberto Gerial's heirs (pp. 21-27, Rollo). Per Article of the New Civil Code which states:

"A contract which is the direct result of a previous illegal contract, is also void and inexistent." petitioner therefore concludes that respondent Dalumpines could not have acquired ownership over Lot 725 from Norberto Gerial's heirs by way of the "Declaration of Heirship and Deed of Absolute Sale" (pp. 27-28, Rollo).

In his comment to the petition for review, Dalumpines stands pat on the validity of the "Deed of Absolute Sale" which facilitated the transfer of the title to Lot 725 in his name (pp. 153-164, Rollo).

The Court agrees with petitioner. The decision under review must be set aside and the Municipal Trial Court's decision reinstated.

The basis of Dalumpines' right of possession over Lot 725 is the transfer certificate of title in his name which covers it. It is however, obvious from the evidence on record that said title was secured through fraud and misrepresentation perpetrated by then heirs of Norberto Gerial, with the complicity of the notary public Oscar M.

Lagtapon, and with the full knowledge of respondent Dalumpines.

It is true that the case at bar is not the proper forum in which Dalumpines' title over Lot 725 can be attacked, but in the face of the aforecited facts, the Court can determine whether or not he has a right to possess the property.

The question that keeps nagging on the court's mind is why would the notary public prepare and notarize two documents purporting to convey Lot 725, with each document containing statements that are contrary to each other? And both documents were even prepared and notarized on the same day, August 25, 1989. Thus, the "Deed of Absolute Sale" states that the owners of Lot 725 were the Estoyas who sold half thereof to the heirs of Norberto Gerial. The "Declaration of Heirship and Deed of Absolute Sale" on the other hand, stated that Norberto Gerial was the owner of Lot 725 which his heirs acquired by way of succession when he died intestate. Also, the "Deed of Absolute Sale" states that the heirs of Norberto Gerial acquired ownership of half a portion of Lot 725 by way of sale, while the "Declaration of Heirship and Deed of Absolute Sale" stated that they acquired ownership over the entire Lot 725 by way of succession. These contrary statements certainly cast serious doubts on the veracity of both documents.

The truth is, Norberto Gerial never owned Lot 725 as stated in the "Declaration of Heirship and Deed of Absolute Sale", because his heirs had to buy only a half portion thereof from the Estoyas as stated in the "Deed of Absolute Sale". And assuming that the "Deed of Absolute Sale" were intrinsically and extrinsically valid, Norberto's heirs can only transfer ownership of a half portion of Lot 725 to Dalumpines by way of sale since they bought only a half-portion thereof from the Estoyas. But Transfer Certificate of Title No. T-151598 states that Dalumpines is the owner of the entire Lot 725 of the Cadastral Survey of Hinigaran (p. 168, Rollo). How then was he able to acquire ownership of the other half of Lot 725?

Norberto's heirs did not convey title to the entire Lot 725 to Dalumpines per the "Declaration of Heirship and Deed of Absolute Sale" because they are not and never were the owners of the lot in question.

The Court rules that Dalumpines has derived his alleged possessory right from a questionable, if not inexistent right of ownership over Lot 725. He cannot, by the simple expedient of a complaint for unlawful detainer, wrest possession thereof from petitioner Estoya."^[6]

and disposed as follows:

"WHEREFORE, as prayed for in the instant petition for review, the Decision dated August 2, 1996 rendered by public respondent Regional Trial Court of Himamaylan, Negros Occidental, Branch 56 in Civil Case No. 460 is hereby REVERSED and SET ASIDE and the decision dated November 22, 1995 rendered by the Municipal Trial Court of Hinigaran, Negros Occidental in Civil Case No. MTC-159 is hereby reinstated.

SO ORDERED."^[7]

The Court of Appeals denied reconsideration in its Resolution of July 9, 1999.

Hence, the present petition for review on certiorari where petitioner raises the following issues for consideration of this Court:

I

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS ERRED IN DISREGARDING THE TESTIMONY OF NOTARY PUBLIC ATTY. OSCAR LAGTAPON AND GIVING CREDENCE TO THE TESTIMONY OF PRIVATE RESPONDENT DOMINGO ESTOYA.

II

WHETHER OR NOT THE COURT OF APPEALS HAS ERRED IN HOLDING THAT THE HEIRS OF THE LATE LAMBERTO ESTOYA HAVE NOT SOLD THE REAL PROPERTY WHICH IS THE SUBJECT MATTER OF THE CONTROVERSY.

III

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS HAS COMMITTED A GRAVE ERROR IN GIVING DUE COURSE TO THE PETITION FOR REVIEW WHICH WAS FILED OUT OF TIME BY THE PRIVATE RESPONDENT DOMINGO ESTOYA.[8]

The petition is devoid of merit.

In order to resolve the issue of possession, the CA passed upon the question of ownership with the express qualification that such issue of ownership shall be resolved only for the purpose of determining the issue of possession. It has been held that where the resolution of the issue of possession hinges on a determination of the validity and interpretation of the document of title or any other contract on which the claim of possession is premised, the inferior court may pass upon these issues.[9] However, the resulting judgment would be conclusive only with respect to the possession but not the ownership of the property.[10] The CA found that the two documents (the "Deed of Absolute Sale" and the "Declaration of Heirship and Deed of Absolute Sale") from which petitioner Dalumpines supposedly derived his title to the entire Lot 725 are questionable and of doubtful validity to the end that petitioner Dalumpines could not use the said documents to wrest possession from private respondent Estoya.

Petitioner, however, insists that the Deed of Absolute Sale executed by Primitiva, Alfonso, Saturnina, Enriqueta and Domingo, all surnamed Estoya (as vendors), and the heirs of Norberto Gerial(as vendees)[11] is valid as it bears the signatures of all the above-named Estoyas with their Residence Certificate Numbers on the Acknowledgement portion of the deed evincing their consent to the sale. Petitioner Dalumpines further argues that private respondent Estoya admitted during the clarificatory hearing held in the MTC that it is his signature which appears on the Deed of Absolute Sale and that Atty. Oscar Lagtapon who notarized the subject document stated in his affidavit "that the heirs of the late Lambertito Estoya, namely, Primitiva Santillan Estoya, Saturnina Estoya, Alfonso Estoya, Domingo Estoya and Enrique Estoya have signed the Deed of Absolute Sale selling one half portion of lot 725, Hinigaran Cadastre, in favor of the heirs of the late Norberto Gerial on August 25, 1989." [12] According to petitioner, this statement of the notary public should prevail over the testimony of private respondent Estoya that the Estoyas did not give their consent to the sale.

Petitioner's arguments fail to persuade.

First, the signatures of the Estoyas as the alleged vendors were affixed in the Acknowledgement portion of the deed, and not on the space reserved for vendees after the recital of the terms and conditions of the sale. True, private respondent Estoya admitted that it is his signature that appears in the acknowledgment portion of the deed, however, there is no deed or instrument to acknowledge as the spaces reserved for the vendors in the Deed of Absolute Sale were absolutely blank. Section 1 of Public Act. No. 2103 provides:

"(a) The acknowledgement shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state."

It is obvious that a party cannot acknowledge an inexistent contract for want of the signatures of the contracting

parties. Petitioner Dalumpines himself mentioned that the Estoyas are unschooled rural folk, hence, greater care should have been taken in the execution of the deed in order to bind the parties thereto. The absence of the signatures of the contracting parties on the deed itself casts serious doubt in the preparation and execution of the deed - consequently, the claim of private respondent Estoya that he did not consent to the sale is more plausible than petitioner Dalumpines' claim to the contrary.

Second, the fact that a deed of sale is a notarized document does not necessarily justify the conclusion that the said sale is a true conveyance to which the parties thereto are irrevocably and undeniably bound.[13] Notary public Oscar Lagtapon when questioned in the hearing conducted on October 25, 1994 as to why he did not advise the vendors to sign in the proper place, simply answered that he was busy with his work. He also testified that he did not bother to have them sign in the proper place when he discovered the omission since they already left. While the document was notarized, the same is not entitled to full faith and credit considering that the notary public who is designated by law to certify to the due execution of deeds, i.e. instruments affecting title to real property, did not observe utmost care in the performance of his duty and took for granted the solemn duties appertaining to his office.

Third, the glaring inconsistency between the Deed of Absolute Sale and the Declaration of Heirship and Deed of Absolute Sale taints both documents as spurious or fraudulent. The Deed of Absolute Sale states that the Estoyas sold half of Lot 725 to the heirs of Norberto Gerial while the Declaration of Heirship and Deed of Absolute Sale states that the heirs of Norberto Gerial acquired ownership of the entire lot by way of succession and sold the same to Leonardo Dalumpines. Apparently realizing the discrepancy between the two deeds, petitioner Dalumpines chooses, oddly enough, to focus on the validity of the Deed of Absolute Sale between the Estoyas and the Gerials and mentions nothing about the Declaration of Heirship and Deed of Absolute Sale, which instrument directly conveys title to the entire Lot 725 in his favor.

The foregoing irregularities and inconsistencies aside, petitioner Dalumpines has inadvertently, if not inevitably and inescapably admitted in his pleadings that the Deed of Absolute Sale between the Estoyas and the Gerials covered only one half portion of lot 725. Even the affidavit of notary public Oscar Lagtapon heavily relied upon by petitioner Dalumpines to establish the validity of the subject deed clearly states that the Deed of Absolute Sale covers only the half portion of Lot 725. This demolishes petitioner Dalumpines' claim of possession over the entire lot. Verily, petitioner who derives his title from the Gerials could not claim ownership of the entire lot and eject private respondent Estoya who is entitled to remain on the lot in question as co-owner with his brothers and sisters of the unsold one-half portion.

Clutching at straws, petitioner now changes his story and claims for the first time that Norberto Gerial acquired ownership over Lot 725 by virtue of a Deed of Sale executed by Florencia and Leonardo Togle executed on October 2, 1973 and that TCT No. 78479 covering the subject lot was issued in the name of Norberto Gerial. Petitioner goes on to state that after the issuance of TCT No. 78497, the Estoyas began complaining to the Gerials concerning their alleged share over Lot 725. To buy peace, the heirs of Norberto Gerial entered into a Deed of Absolute Sale with the Estoyas wherein it was made to appear that the Estoyas were selling half portion of Lot 725 to the Gerials in consideration of the sum of P6,000.00, despite the fact that they are no longer the owners of Lot 725 or any portion thereof.

This is a new matter which was not averred in the complaint nor raised during the trial in the court below and in the appeals to both the RTC and to the Court of Appeals. It is elementary that a party may not initiate and try his case under one theory or upon a set of facts on which he bases his cause of action and then switch to another subsequently.[14] This is referred to as the theory of the case which pertains to the facts on which the cause of action is based as alleged in the complaint. A party is prohibited from changing his theory on appeal as this is

offensive to fair play or due process .[15]

Lastly, petitioner argues that the Court of Appeals erred in giving due course to the petition for review filed by private respondent Estoya before said court for having been filed out of time. Petitioner Dalumpines points out that while private respondent Estoya filed his petition within the extended period granted by the Court of Appeals, he could not have availed of the extended period since the motion for extension of time was filed for and on behalf of petitioner Leonardo Dalumpines.

It appears that the last day of the original period for filing the petition before the Court of Appeals fell on August 27, 1996. On August 22, 1996, counsel for private respondent Estoya filed a motion for extension of time to file a petition for review, however, Dalumpines was captioned as the petitioner instead of Estoya. The following day, counsel for private respondent Estoya filed a manifestation before the Court of Appeals pointing out the clerical error and rectifying the same. On September 10, 1996, counsel for private respondent Estoya filed the appropriate pleading within the extended period prayed for.

Obviously, the motion for extension of time was not filed for and on behalf of Dalumpines as it was filed by Estoya's counsel of record and the former's name was placed there through inadvertence. This matter was brought to the attention of the Court of Appeals the very next day and rectified. It has been said that "liberal construction of the Rules may be invoked in situations wherein there may be some excusable formal deficiency or error in the pleading, provided that the same does not subvert the essence of the proceeding." [16] This is one of those instances, hence, the Court of Appeals did not err in giving due course to the petition.

In giving recognition to the action for forcible entry and unlawful detainer, the purpose of the law is to protect the person who in fact has actual possession. [17] It is undisputed that private respondent Estoya is already 68 years old and had been in actual possession of a portion of Lot 725 since birth. Forcible entry and unlawful detainer cases are summary proceedings designed to provide for an expeditious means of protecting actual possession or right to possession of the property involved. [18] In the instant case, private respondent Estoya is clearly deserving of this protection.

WHEREFORE, the instant petition for review on certiorari is hereby DENIED and the questioned Decision of the Court of Appeals AFFIRMED without prejudice to the filing by either party of an action regarding the ownership of the property involved.

Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Penned by Justice Ramon A. Barcelona and concurred in by Justices Arturo B. Buena and Demetrio G. Demetria; Rollo, pp. 97-102.

[2] Rollo, p. 113.

[3] Penned by Judge Jose Y. Aguirre, Jr.; Rollo, pp. 47-53.

[4] Penned by Judge Rolando V. Balgos; Rollo, pp. 39-46.

[5] Rollo, pp. 97-99.

[6] Rollo, pp. 99-102.

[7]Rollo, p. 102.

[8]Rollo, p. 10.

[9]Refugia vs. Court of Appeals, 258 SCRA 347 (1996).

[10]Ibid.

[11]Moises Gerial, Pastor Gerial, Bernardo Gerial , Maximina Gerial Borbon and Jocelyn Fescador Abada.

[12]Rollo, p. 20.

[13]Suntay vs. Court of Appeals, 251 SCRA 430 (1995).

[14]Manuel R. Pamaran, Trial Practice in Philippine Courts (Quezon City: Central Professional Books, Inc., 1994), p. 57.

[15]Rivera vs. Court of Appeals, 176 SCRA 169 (1989).

[16]Republic vs. Hernandez, 253 SCRA 509 (1996).

[17]Sarmiento vs. Court of Appeals, 250 SCRA 108 (1995).

[18]Don Tino Realty and Development Corp. vs. Julian Florentino, G.R. No. 134222 (September 10 1999).

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