JUAN DELA RAMA AND EUGENIA DELA RAMA, PETITIONERS, VS. OSCAR PAPA AND AMEUERFINA PAPA, RESPONDENTS.

G.R. No. 142309. January 30, 2009

Ponente: TINGA, J.

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TINGA, J.:

This petition allows us to reiterate some of the basic rules concerning the notarization of deeds of conveyance involving real property. Such rules are important because an improperly notarized document cannot be considered a public document and will not enjoy the presumption of its due execution and authenticity.

I.

Petitioner spouses Juan and Eugenia dela Rama were the registered owners of a parcel of land situated in Calamba, Laguna, covered by Transfer Certificate of Title (TCT) No. 91166 issued by the Registry of Deeds of Laguna. The property was acquired for P96,000.00 by way of sale from Canlubang Sugar Estate (CSE), as evidenced by a notarized Absolute Deed of Sale dated 10 July 1980 executed by Juan dela Rama and CSE, as represented by Jesus de Veyra. Eugenia dela Rama also affixed her signature as proof of her marital consent.[1]

According to Juan dela Rama, he became a resident of the United States by 1984 and would acquire American citizenship by 1989.[2] In 1992, petitioners through their representative, were reminded to pay the realty tax on the property, only to be informed by the assessor's office that their title to the property had in fact been cancelled, and a new title, TCT No. 102128, issued in favor of respondents Oscar and Ameorfina Papa.[3]

Until 31 July 1985, Oscar Papa had been the Assistant Vice- President and Head of Marketing of the Laguna Estate Development Corporation (LEDC), a marketing arm of CSE and the entity through which the property had earlier been marketed and sold to petitioners. The property was transferred to and retitled in the name of the spouses Papa pursuant to a notarized Deed of Absolute Sale dated 29 March 1985, covering the subject property, and identifying petitioners as the vendors and respondents as the vendees. The 1985 deed of sale bears the signatures of petitioners and respondents, at least two witnesses (whose identities are not spelled out or otherwise ascertainable on the face of the document), and the notarial signature and seal of Atty. William Gumtang. The new title in the name of respondents was issued on 21 June 1985.

Articulating the primary claim that their signatures on the 1985 deed of sale were forged, petitioners filed a complaint with the Regional Trial Court of Calamba, Branch 92, for "Cancellation of Title Obtained Under Forged Deed of Sale."[4] They prayed for the declaration of nullity of the 1985 deed of sale, the corresponding cancellation of TCT No. 102128 in the name of respondents and the issuance of a new one in their names. Respondents counterposed in their Answer with Compulsory Counterclaim:[5] (1) that the 1985 deed of sale had been duly executed; (2) that laches had barred the complaint since they had obtained title and physical possession as far back as 1985; (3) that they had every reason to believe that the person from whom they purchased the property was duly authorized to sell the same given that such person was in possession of the owner's duplicate

TCT; and (4) that their purchase of the property was in good faith and for value, thus even assuming that the forgery occurred, the action should be directed against those who perpetrated the fraud.

During pre-trial, the following factual matters were stipulated upon: (1) that Juan dela Rama was the registered owner of the property covered by TCT No. T-91166, which was subsequently cancelled; (2) that TCT No. 102128 was issued in the name of respondents after they acquired the same for P96,000.00; (3) that from 1974 to 1985 or thereabouts Oscar Papa was employed or connected with LEDC, holding the position of Head of Marketing; (4) that LEDC was a developer and marketing arm of CSE; and (5) that LEDC had developed the residential subdivision where the subject property is located.

Petitioner Juan dela Rama and respondent Oscar Papa both testified in court. Dela Rama claimed having religiously paid the property taxes since 1980. He denied that he or his wife executed the 1985 deed of sale or any other document that conveyed their interests or rights over the property. He even denied having met Papa before he testified in court in 1995. Dela Rama also explained that he had purchased the property in 1980 while a student at New York University, and that he had been a permanent resident of California since 1984, and a United States citizen since 1989.

Oscar Papa testified that he was connected with LEDC from 1974 to 1985, where he marketed residential, industrial and agricultural lots which belonged to the Canlubang Sugar Estates. He claimed not to recall who had offered to him to buy the subject property, and that he had never met Juan Dela Rama. He also admitted signing the deed of sale, such document being witnessed by two staff members of LEDC, but he did not see dela Rama sign the same document. Neither could he remember signing the deed of sale in front of the notary public who notarized the document.

Papa claimed that in real estate transactions, it was standard practice that the buyer first sign the document before the seller did so. He also claimed that it was likewise standard practice in the real estate industry that the buyer and seller did not necessarily have to meet face to face. Respondent further alleged that at the time of the transaction, "sales of real property was (sic) very bad with several owners trying to sell back their property even at a price less than the purchase price," as this came shortly after the assassination of Senator Benigno Aquino, Jr.

On 26 June 1986, the RTC promulgated a Decision[6] annulling the deed of sale, cancelling respondents' title and reinstating petitioners' title to the subject property. The RTC said that the facts and evidence presented indicated "preponderating evidence that the plaintiffs' signatures in the deed of sale x x x are not their signatures,"[7] such conclusion being corroborated by the admission of Papa that he did not see petitioners sign the deed of sale. The RTC also disbelieved respondents' contention that it was standard practice in real estate transactions for the buyer to first affix his signature before the seller; noting that "[i]t must be that before a buyer would part with his money, he will first see to it that the sellers [sic] signatures were already affixed and if possible, affixed in his presence."[8]

The RTC did not consider respondents as buyers in good faith, given their dubious assertion that it was typical that the buyer signs the deed of sale before the seller, as well as such circumstances like the failure of respondents to ever pay real estate taxes on the property and to assert possession or occupancy over the property. Accordingly, it held that the cancellation of respondents' title was proper. In addition, the RTC discounted the claim of defendants that laches and estoppel had set in to bar the action, pointing out that under Section 47 of Pres. Decree No. 1529, "no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession," and that under Article 1410 of the Civil Code, "[t]he action of defense for the declaration of the inexistence of a contract does not prescribe."[9]

Respondents appealed to the Court of Appeals. On 7 September 1999, the appellate court rendered a Decision

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reversing the RTC and upholding the validity of the deed of sale.[10]

The Court of Appeals considered the pivotal issue as whether the signatures of the petitioners on the deed of sale were indeed forged, and ultimately concluded that there was no such evidence to support the finding of forgery. It was observed that the burden of proving the forgery fell upon the petitioners, yet they failed to present convincing evidence to establish the forgery. The only evidence presented to establish the forgery was the oral testimony of Juan dela Rama himself, which according to the Court of Appeals, was self-serving. The RTC was chided for not applying Section 22 of Rule 132 of the Rules of Evidence, which provided in clear terms how handwriting must be proved. It was pointed out that the Rule required that the handwriting of a person 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."[11]

Moreover, the Court of Appeals cited that neither one of the dela Ramas was confronted with their signatures in the challenged deed of sale. Nor did they positively and unequivocally declare that the signatures were not theirs or that these were forged.

II.

Hence, this petition for review. Petitioners devote considerable effort in highlighting facts and admissions elicited from Oscar Papa himself to cast doubt on the validity of the deed of sale. Yet it would be impertinent on our part to immediately dwell on such evidentiary matters without first contending with the legal arguments cited by the Court of Appeals in dismissing the complaint. While this Court is generally not a trier of fact, there are recognized exceptions to that rule, such as when the findings of fact are conflicting, or 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.[12]

The petition hinges on a factual question-whether the signatures of the petitioners as appearing on the deed of sale were forged. The Court of Appeals correctly observed that petitioners had the onus probandi to establish such forgery. In concluding that petitioners failed to discharge such burden, the appellate court cited the rule upholding the presumption of regularity of a notarized document. Applying that rule, it is necessary that the forgery must be established not merely by preponderance of evidence, but by clear, positive and convincing evidence, and the Court of Appeals appears to have applied that more exacting standard.

However, petitioners point out that respondent Papa had admitted before the Court that he did not sign the deed of sale in front of the Notary Public. Based on the transcript of Papa's testimony before the RTC,[13] it is clear at least that the witness could not attest to the fact that he had signed the document in front of the Notary Public.

> Atty. Lizares:
>
> Do you recall Mr. Witness if you sign[ed] this document in front of a Notary Public?
>
> [Papa]:
>
> No[,] sir.
>
> Atty. Lizares:
>
> Do you know this Mr. William Gumtang?
>
> Witness:

Yes

Atty. Lizares:

How do you know him Mr. Witness?

Witness:

Atty. Gumtang is one of the Notary Public of CSE.

Atty. Lizares:

He is one of the Notary Public of CSE?

Witness:

Yes[,] sir.

Atty. Lizares:

So you do not recall if you signed this in front of Atty. Gumt[a]ng?

Witness:

I do not recall.

The deed was purportedly notarized by Atty. William Gumtang, who was personally known to Papa as he was one of the notaries public of CSE.[14] Had Atty. Gumtang testified that Papa had signed the deed of sale in his presence, Papa's memory lapse would have had less relevance. Yet Atty. Gumtang was never called on as a witness for the defense, nor was any other step taken by the respondents to otherwise establish that Papa had signed the deed of sale in front of the notary public.

A.

Papa's admissions, refreshing in their self-incriminatory candor, bear legal significance. With respect to deeds of sale or conveyance, what spells the difference between a public document and a private document is the acknowledgment in the former that the parties acknowledging the document appear before the notary public and specifically manifest under oath that they are the persons who executed it, and acknowledge that the same are their free act and deed. The Court, through Chief Justice Davide, had previously explained:

A jurat which is normally in this form:

Subscribed and sworn to before me in _____, this ____ day of _____, affiant having exhibited to me his Community (before, Residence) Tax Certificate No. _____ issued at _____ on _____.

"is that part of an affidavit in which the officer certifies that the instrument was sworn to before him. It is not a part of a pleading but merely evidences the fact that the affidavit was properly made (Young vs. Wooden, 265 SW 24, 204 Ky. 694)." The jurat in the petition in the case also begins with the words "subscribed and sworn to me."

To subscribe literally means to write underneath, as one's name; to sign at the end of a document. To swear means to put on oath; to declare on oath the truth of a pleading, etc. Accordingly, in a jurat, the affiant must sign the document in the presence of and take his oath before a notary public or any other person authorized to administer oaths.

As to acknowledgment, Section 1 of Public Act No. 2103 provides:

> (a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment 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 the party acknowledging must likewise appear before the notary public or any other person authorized to take acknowledgments of instruments or documents.(Emphasis supplied)[15]

The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. We cannot ascribe that conclusion at bar to the deed of sale. Respondent failed to confirm before the RTC that he had actually appeared before the notary public, a bare minimum requirement under Public Act No. 2103. Such defect will not ipso facto void the deed of sale. However, it eliminates the presumptions that are carried by notarized public documents and subject the deed of sale to a different level of scrutiny than that relied on by the Court of Appeals. This consequence is with precedent. In Tigno v. Sps. Aquino,[16] where the public document in question had been notarized by a judge who had no authority to do so, the Court dispensed with the clear and convincing evidentiary standard normally attached to duly notarized documents, and instead applied preponderance of evidence as the measure to test the validity of that document.

It appears that respondents had previously laid stress on the claim that it is a common practice in real estate transactions that deeds of conveyance are signed on separate occasions by the vendor and the vendee, and not necessarily in the presence of the notary public who notarizes the document but they adduced nothing to support their claim but their mere say-so. Assuming arguendo that is indeed the common practice in the business, we quite frankly do not care. The clear requirements of law for a proper acknowledgment may not be dispensed with simply because generations of transactions have blithely ignored such requirements. If it is physically impossible for the vendor and the vendee to meet and sign the deed in the presence of one notary public, there is no impediment to having two or more different notaries ratifying the document for each party that respectively appears before them. This is the prudent practice adopted by professional law enterprises, and it is a correct measure in consonance with the law.

B.

There is another implication under our rules of evidence. Under Section 19, Rule 132 of the Rules of Court, "documents acknowledged before a notary public except for last wills and testaments" are deemed as public documents, and as such, under Section 23 of the same Rule, they are evidence of the fact which gave rise to its execution and as to its date.[17] Excepting the other public documents enumerated in Section 19, all other writings are private, and before such private document is offered as authentic, its due execution and authenticity must be proved either: (a) by anyone who saw the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker.[18] Accordingly, in order that the challenged deed of sale may be accepted by the Court as genuine, we must be satisfied by the evidence on record establishing that its genuineness was proved by anyone who saw the document executed or written, or by evidence of the genuineness or handwriting of the maker.

This shift in perspectives relieves petitioners of an extraordinary burden to prove with clear and convincing evidence that the deed of sale was forged, as well as any presumption that the said document is genuine as to its due execution. The question now is thus whether they were able to establish the fact of forgery through a preponderance of evidence.

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III.

It is now upon this Court to ascertain whether the genuineness and due execution of the deed of sale have been duly proven, there being no presumption that it was. In doing so, we continue to recognize that it remains incumbent on the petitioners to prove their allegation that the deed of sale was forged even though that document no longer enjoys any significantly weighted presumption as to its validity since it cannot be considered as a public document. The properly applicable standard of preponderance of evidence necessitates that the court counterweigh the respective evidence submitted by the litigants to test whether the plaintiff's claims are actionable. Accordingly, in this case if the evidence presented by the petitioners that the deed of sale is a forgery is greater or more convincing than that presented by the respondents, then favorable relief may be granted to petitioners.

The evidence-in-chief presented by petitioners to prove that the deed of sale was fraudulent consists of the testimony of two witnesses for the plaintiff - petitioner Juan dela Rama, and respondent Oscar Papa, who called as a hostile witness for the plaintiff.

A.

We begin with Juan dela Rama's testimony. Petitioners assert that Juan dela Rama expressly denied in open court his signature on the deed of sale, and such denial is made plain in the transcript of his testimony of 25 July 1995.

> Atty. Lizares:
>
> Mr. Witness I am showing to you the document mark[ed] as plaintiff[`s] exhibit which is the Deed of [A]bsolute Sale which is also the Annex "C" of complaint purportedly executed on March 29, 1985 by Juan Eugenio dela Rama and Eugenia dela Rama in favor of Mr. Oscar Papa, did you execut[e] the document?
>
> [dela Rama]:
>
> I did not.
>
> Court:
>
> What exhibit is that.
>
> Atty. Lizares:
>
> Exhibit "1" your Honor is defendant marking the same document that is mark as exhibit "M" and "M-1" for the plaintiff this a common exhibit. This is a 2 pag[e] document. Did you execute the document?
>
> Witness:
>
> No [I] did not.
>
> Atty. Fortun:
>
> May I know the date?
>
> Atty. Lizares:
>
> March 29, 1985. Did you execute any document whatsoever M[r]. Witness disposing or transferring any interest or right over the property which was earlier evidence[d] by your TCT No. T-91166?
>
> Witness:
>
> No such document was ever executed by me or my wife.

x x x

[On cross examination]

Atty. Fortun:

You declare that when you [were] shown that contract, it Appears that between you and Mr. Papa you stated that was not your signature?

Witness:

Yes Ma'am.[19]

[On redirect]

Atty. Lizares: So you never executed any Deed of Absolute Sale on any document transferring your right or interest of the property covered by TCT No. T-91166.

Witness:

No sir.[20]

The Court of Appeals noted that his testimony was not corroborated, thus, "self-serving," and further castigated the trial court for failing to apply Section 22 of Rule 132, which establishes how the genuineness of handwriting must be proved. The provision reads:

> 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.

Petitioners argue that our ruling in Emas v. De Zuzuarregui and Aguilar[21] is in point. Emas involved a plaintiff who sought annulment of title on the ground that his signature on the contract of mortgage on which the conveyance of the property was based had been forged. In explaining that the plaintiff's testimony on the forgery of his signature sufficed to debunk the genuineness of the contract, we held:

> The proof adduced before the trial court shows, we think, beyond any doubt, that the deed, original of Exhibit A, which purports to show a conveyance of the property in which purports to show a conveyance of the property in question from the plaintiff, Lucio Emas, to the defendant De Zuzuarregui, is a forgery, and that the fraud was consummated substantially in the manner above described. The plaintiff in this action (the real Lucio Emas) testified unequivocally that he had never taken any part in the creation of the deed in question, and his testimony, in our opinion, leaves no room to doubt that he was speaking the truth. As evidence of the crime of forgery, the plaintiff's attorney submitted in the trial court certified copies of the judgments entered in the Court of First Instance of Manila and afterwards in the Supreme Court in the criminal case convicting Ortega of the crime of estafa by falsification of a public document. These certified copies were admitted by the trial court as competent proof and the attorney for the defendants objected on the ground that said judgments are inadmissible in this civil action, beingres inter alios acta. As an abstract point of law the assignment of error based on this exception is perhaps well taken; but we are of the opinion that, apart from said certified judgments, the record contains ample evidence to support the finding of the trial court that the original of the Exhibit A is a forged document, and that the present plaintiff, Lucio Emas, was not a party thereto.[22]

Does Section 22 of Rule 132 accommodate the testimony of the very person whose signature is disputed as a means to establish the genuineness of handwriting? We believe that it does, and Emas remains a good law

notwithstanding the subsequent enactment of the Rules of Court. After all, the owner of such disputed signature may fall within the category of "any witness who believes it to be the handwriting of such person because he has seen the person write... and has thus acquired knowledge of the handwriting of such person." In Alo v. Rocamora,[23] plaintiff Alo presented in evidence a deed of sale establishing that he, and not the defendant, was the prior purchaser of the land in question. Alo himself testified as to the authenticity of the deed of sale. In discussing whether the genuineness of such document was proved, we cited the then Section 324 of the Code of Civil Procedure, which provides "any writing may be proved, either by anyone who saw the writing executed; or by evidence of the genuineness of the handwriting of the maker; or by a subscribing witness." The Court then pronounced:

> As to the authenticity of Exhibit A, introduced by the plaintiff, it may be said that it was fully established by the testimony of the plaintiff himself and by that of the witness, Vicente Alquizola, who signed the same together with thegobernadorcilloand who testified under oath that he was present when the document was executed and signed by those whose names are subscribed thereto. x x x
>
> Telesforo Alo and Vicente Alquizola witnessed the execution of the said instrument, the latter having been one of the accompanying witnesses of the local authority before whom it was executed. Consequently there is no doubt as to the authenticity of the said document, nor as to the truth of the contents thereof, nor is there anything in the record, or any legal reason, that would justify this court in holding that the said document was false.[24]

Section 324 of the Code of Civil Procedure is substantially similar to Section 22 of Rule 132, so our application of the former rule in Alo remains appropriate today. At the very least, Section 22 of Rule 132 does not exclude such testimony from consideration. It is in fact well-established in the law of evidence that the testimony of the very person whose signature is disputed is more than competent proof on the genuineness of such signature. According to Wigmore on Evidence, there even was once thought "that for proving the genuineness of a document the alleged writer was a preferred witness," though it is now believed that no such rule of preference exists.[25] At the same time, there really is no rule that automatically discounts the testimony of the alleged writer as to the genuineness or spuriousness of his own signature. In enumerating the methods of authentication of a handwriting, Professor Herrera actually designates as the first method, the testimony of the purported writer:

> - Proof of the Genuineness of a handwriting
>
> - Methods of Authentication
>
> 1. The Testimony of the purported writer
>
> Except to the extent that certain formalities of proof are required by the rules relating to attesting witnesses or rules requiring formal certification, and the like, various means are available for proving the authenticity of a document as a prerequisite to its admission in evidence. Under ordinary circumstances, it would seem that the testimony of the purported writer would be the most satisfactory authentication, where it is available.
>
> While this is generally true, it is not necessarily so in all cases. There is no preferential rule requiring the testimony of the writer on the ground that it is the best evidence; the fact that the best available evidence is not used being significant only in so far as it affects the weight. Thus evidence of handwriting may be admissible even though the person whose writing it is claimed to be in available as a witness.
>
> x x x
>
> When the testimony of the writer is not available it may be said that the next best evidence in quality would be in the testimony of a witness who had seen the writer sign his name or actually make the writing x x x (Citations omitted)[26]

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We acknowledge the general premise that the testimony of the very person whose signature is put in question has probative value, whether such testimony is offered to affirm or dispute the genuineness of his signature. That testimony satisfies the requirements under Section 22 of Rule 132 on how handwriting must be proved. At the same time, the evidentiary weight of such testimony wholly depends on the strength of the particular witness's testimony viewed in conjunction with the totality of the evidence at hand.

It may be possible, as the Court of Appeals did in this case, to discount the testimony of a plaintiff disavowing the authenticity of his purported signature as "self-serving," but such posture can only be warranted if the "self-serving" assertion is negated by other evidence or legal presumptions. If the challenged deed of sale were considered by us as a public document, then dela Rama's mere testimonial disavowal of his signature would be insufficient to rebut the presumptive due execution of that writing. However, since we cannot consider the deed of sale as a public document owing to its improper acknowledgment, Dela Rama's denial that the signature was his gains greater weight for evidentiary purposes.

B.

Counter-intuitively perhaps, the petitioners as plaintiffs called on Oscar Papa to testify in their behalf as a hostile witness. This he did on 25 July 1995. It was an impressive gambit on the part of counsel for the petitioners that produced spectacular results.

Papa testified for the petitioners that he did not sign the document in the presence of the dela Ramas.

> Atty. Lizares:
>
> But you do not (sic) meet the person. Who signed as Juan Eugenio dela Rama?
>
> [Papa]:
>
> No I did not see him sign.
>
> Atty. Lizares:
>
> So you did not see him signing?
>
> Witness:
>
> Yes.
>
> Atty. Lizares:
>
> But you said you sign[ed] this document?
>
> Witness:
>
> Yes.
>
> Atty. Lizares:
>
> When you sign[ed] this document did Mr. dela Rama were [sic] the person who purportedly signed in his behalf?
>
> Atty. Fortun:
>
> Your Honor he had repeatedly answered that he signed it without seeing him.[27]

A contrary admission on Oscar Papa's part would have allowed the Court cause to believe that the petitioners had

consented to the sale.

As a witness for the petitioners, Oscar Papa admitted that he had not never met Juan dela Rama before and during the sale, and until 1995 or ten years after the sale.

> Atty. Lizares:
>
> Have you ever met Juan Eugenio dela Rama?
>
> [Papa]:
>
> No sir.
>
> Atty. Lizares:
>
> He is not the one Juan Eugenio dela Rama who testified a while ago?
>
> Atty. Fortun:
>
> Already answered your Honor witness cannot recall.
>
> Court:
>
> Sustain[ed].
>
> Atty. Lizares:
>
> At the time you acquire[d] the property supposedly from Mr. dela Rama you were the Head [of the] Marketing Department?
>
> Witness:
>
> Yes sir.
>
> Atty. Lizares:
>
> Who introduce[d] you to Mr. Juan Eugenio dela Rama?
>
> Atty. Fortun:
>
> Misleading your Honor.
>
> Court:
>
> Sustain[ed].
>
> Atty. Lizares:
>
> So you mean you never met the person who execute[d] this document?
>
> Witness:
>
> Yes sir.[28]

As a witness for the petitioners, Papa could not recall who exactly had offered the subject property to him.

> Atty. Lizares:
>
> Who offer[ed] you this property which is the subject matter of this case?
>
> [Papa]:

> I could not specifically recall who in particular offer[ed] the property, it could have been one of my staff, or brokers at the time because aside from my job I am handling several construction not only this subdivision, not only Ceres I, there is Ceres II and Ceres III and all the industrial lots.[29]
>
> x x x
>
> Atty. Lizares:
>
> You don't recall who offer[ed] this property?
>
> Witness:
>
> At this moment specifically I cannot recall.[30]

As a witness for the petitioners, Papa admitted he could not recall whether or not any of the dela Ramas had already signed the deed of sale when he signed the same:

> Atty. Lizares:
>
> When you signed the document was it already signed by the suppose[d] vendor?
>
> [Papa]:
>
> I could not really recall right now but the fact is at the time for the buyer to sign it first and then give it [to] the seller
> seller and then the seller signed it afterwards.[31]
>
> x x x
>
> Atty. Lizares:
>
> And you also don't recall whether the signature Juan Eugenio dela Rama was already in this document when you sign this document?
>
> Witness:
>
> I do not specifically recall now as I have said earlier the practice was for the buyer to sign first and then the seller signed afterwards.[32]

As a witness for the petitioners, Papa admitted he could not remember where and how he signed the deed of sale.

> Atty. Lizares:
>
> Now so who presented this document to you for your signature?
>
> [Papa]:
>
> My either (sic) my staff or agent who told me that such property is for sale.
>
> Atty. Lizares:
>
> When the staff or agent told you that the property is for sale what document did you ask from agent or staff?
>
> Witness:
>
> Deed of Absolute sale and I presume at the time whoever was selling it inform me that the title is available.
>
> Atty. Lizares:
>
> Now when you sign[ed] this document where did you [sign] it?

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Witness:

I could have signed it in the office or in our house.

Atty. Lizares:

You don't recall where?

Witness:

Yes I cannot recall.

Atty. Lizares:

When you signed it were you alone?

Witness:

I could not even recall where I signed it.

Atty. Lizares:

Or perhaps with your wife?

Atty. Fortun:

Already answered your Honor he does not know.[33]

Had counsel for petitioners been content with relying singly on dela Rama's testimony, there would have been a good chance that the complaint would not have survived. His move to call in Papa as a hostile witness allowed the above-cited testimony to form part of the evidence for the plaintiffs. The trial court correctly appreciated Papa's testimony on 25 July 1995 (as distinguished from his subsequent testimony as a witness for the defense) as part of the evidence for the petitioners.[34]

In addition, another corroborative piece of evidence of the petitioners, as found by the trial court, lay in the fact that the dela Ramas had paid real estate taxes on the property until about 1993,[35] or eight (8) years after the purported sale. Any reasonable person who had sold his property would not undertake the unnecessary burden of continuing to pay real property taxes on the same.

That piece in evidence should be taken into account together with petitioners' presentation of Papa's clear-cut and unrebutted testimony of as well as the evasive and ambivalent testimony of Papa. The totality of the evidence for the petitioners established a prima facie case that the deed of sale was not genuine. Even as the burden of proof may have initially lain with petitioners in establishing the forgery of what is a private document, their evidence was sufficient to shift the burden of evidence to respondents to establish the authenticity and due execution of said private document, especially as it is they who rely on the same in their defense.

III.

There are a myriad of ways respondents could have swayed the case then in their behalf after the burden of evidence had shifted to them. Most pertinently, they could have presented the two persons whom Oscar Papa had identified as witnesses to the deed of sale, Mrs. Galeos and Mrs. Reyes, as well as Atty. Gumtang, to whom the deed was referred to for notarization. All three persons were personally known to Papa. Galeos and Reyes were, according to Papa, "staff of LEDC...who finalize[d] the document,"[36] while Atty. Gumtang was one of the notaries public of CSE.[37] Yet none of them testified in respondents' behalf.

Respondents had initially manifested to the trial court that they were to present Gales and Reyes as witnesses in their behalf,[38] yet only Papa ultimately testified for the defense. Assuming that the deed of sale was prepared, signed and notarized according to Papa's version of events, any of these three witnesses could have easily bolstered the evidence in favor of the genuineness of the deed since Papa himself attested to their personal knowledge of these events. That they were not presented by Papa in his behalf speaks poorly of the veracity of his tale.

When Papa did testify in behalf of the defense on 26 March 1996, his counsel adopted in full his earlier 25 July 1995 testimony as a hostile witness.[39] That earlier testimony unfortunately was quite incriminatory. To make matters worse, his own testimony in his defense poked even more holes to his version of events. On cross-examination, he made it clear that he had no particular interest in meeting the petitioners for the purposes of negotiating or consummating the sale.

> Atty. Lizares:
>
> In your previous testimony Mr. Witness you testified that you never met Mr. Dela Rama do you confirm that?
>
> [Papa]:
>
> Yes sir.
>
> Atty. Lizares:
>
> And you never had a chance to speak with him?
>
> Witness:
>
> Yes sir.
>
> Atty. Lizares:
>
> And neither his wife?
>
> Witness:
>
> Yes sir.
>
> Atty. Lizares:
>
> Did you ever ha[ve] a chance to ask the broker or the person facilitating this whoever he was that you want to meet Mr. dela Rama?
>
> Atty. Fortun:
>
> Objection your Honor. Misleading.
>
> Atty. Lizares:
>
> No I'm just asking whether he had a chance to ask.
>
> Court:
>
> Reform your question.
>
> Atty. Lizares:
>
> Did you ever make a request in connection with this Transaction to meet with Mr. dela Rama?

Witness:

I cannot answer because I cannot recall.[40]

Most incredibly, Papa revealed he could not even remember to whom he tendered the purchase price of P96,000.00.

Atty. Lizares:

Mr. Witness, you or do you recall to whom did you made paid (sic) of the P96,000.00 that you said you paid to whoever who effected or facilitate[d] the sale?

[Papa]:

Unfortunately I cannot recall at this time because it was on 1985 and this is not the only transaction I am handling at that time being in sales I am also handling the same of company's commercial lots, also handling the industrial lots the golf shares, I've been meeting a lot of people, I could not really recall how this particular transaction happen.

Atty. Lizares:

So you do not remember to whom you pay the money?

Witness:

Yes sir.

Atty. Lizares:

Do you remember if there is only one or two or three person[s] who arrange[d] with you for the sale of the property?

Witness:

I cannot recall but as I am trying to recall the numerous transaction handled at that time, normally with this kind of transaction it will involv[e] some person, or some broker or even some agent.

Atty. Lizares:

But for this particular transaction you can tell exactly how many?

Witness:

No sir.[41]

In the context of trying to establish the authenticity and due execution of the deed of sale, Papa's testimony proves woefully insufficient. It must be remembered that the transaction was personal to Papa, and he was not conducting in behalf of his employers. It was his own money, and not the company's, that he was tendering. Thus, it is highly incredulous that Papa could not recall even the most basic details over his own personal transaction, in fact the only one he had during his stint at the LEDC, that involved a then princely sum of P96,000.00 of his own money.

Papa did testify in court that he had signed the deed of sale,[42] and that assertion by itself has about as much weight as dela Rama's claim that he did not. At the same time, that statement even if true does not conclusively prove the validity of the sale as it does not establish mutual consent as to the putative vendors and vendees to the sale. That point is especially salient since Papa admitted that he did not sign the document in the presence of the petitioners.

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IV.

We are cognizant that the Court of Appeals approached its analysis of the case from a wholly different, and ultimately erroneous perspective. We are unable to utilize its appreciation of the facts. The Court of Appeals was unable to advert to anything on record as to how the deed of sale was substantiated during trial by Papa. Respondents, before this Court, are likewise unable to offer any convincing argument tending to verify the deed of sale that is independent of the now-debunked legal presumption that the document was duly executed.

The reversal of the Court of Appeals decision is clearly warranted. We do not discount the fact that the petitioners could have further bolstered their case either by presenting a handwriting expert, or Amuerfina dela Rama as a witness. Still, their failure to do so is not fatal as the document in question is a private document, one which carries no presumption as to its authenticity and due execution. All told, the findings and conclusions of the trial court are correct and credible, compared to those of the Court of Appeals hence, reinstatement of the lower court's decision is in order.

At the same time, we wish to impart a few more observations.

Given that the deed of sale has been proven as false, is there still any basis for which the respondents can retain title to their property? We observe that at the respective levels of the trial court and the Court of Appeals, respondents had argued that they should be considered as purchasers in good faith, especially since the complaint had adverted to "certain unscrupulous persons illegally representing themselves to be the plaintiffs" and "illicitly forging plaintiff's signatures sold to herein defendants."[43] We are unable to agree. By the very version of facts submitted by the respondents, there are enough circumstances to discount good faith on their part. Papa never bothered to communicate directly with the petitioners to ascertain whether the persons claiming to be their representatives - persons Papa could not even identify - were indeed authorized by the petitioners. Papa's inability to remember to whom he tendered payment for the property likewise reveals utter apathy on his part as to the circumstances of the sale.

In Abad v. Guimba,[44] we ruled that a party was not an innocent mortgagee in good faith because he neglected to check if the person he was dealing with had any authority to mortgage the property. The rules on ascertaining mortgagee in good faith are the same as those for purchasers in good faith. Without directly communicating with the petitioners, how could have Papa been certain that the persons apparently unknown to him were indeed duly authorized by the petitioners to sell the property.

The following observation of the trial court is also pertinent in this regard:

> The defendants said that it is the practice in real estate transaction for the buyer to first affixed his signature and then the seller. This asseverations cannot be accepted as ordinary. It must be that before a buyer would part with his money, he will first see to it that the sellers signatures were already affixed and if possible, affixed in his presence. Intriguing also is the failure of the defendants to assert their right of ownership over the land by actually entering and occupying the premises and their failure at any moment the real estate taxes since 1985 when they allegedly purchased the property. xxx[45]

Finally, the Court of Appeals had observed that upon close comparison of the signatures on the questioned deed of sale and that earlier executed between the petitioners and CSE and in petitioners' passport, the challenged signatures appeared "very similar with each other." We have examined the signatures in the two deeds of sale, and in fact noticed distinct differences, and varying writing styles. The signatures of the petitioners on the 1980 deed of sale are smooth and smaller than their purported signatures on the 1985 deed of sale. Moreover, the signature of Juan dela Rama in the deed of sale appears hesitant and non-fluid. The signature "Eugenia dela Rama" on the two deeds betray their very distinctive angles or slants.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals dated 7 September 1999 and the Resolution dated 1 March 2000 in CA G.R. CV No. 53914 are REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Calamba, Branch 92 dated 26 June 1996 is REINSTATED. Costs against private respondents.

SO ORDERED.

Quisumbing, (Chairperson), Corona[*], Carpio Morales, and Brion, JJ., concur.

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[*]Additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 558.

[1] Rollo, pp. 195-196.

[2] Id. at 90.

[3] As identified in the assailed Court of Appeals Decision, but she is intermittently referred to in the petition and in portions of the record as "Ameurfina."

[4] Records, pp. 1-4.

[5]Id. at 30-34.

[6] CA rollo¸ pp. 10-24.

[7]Id. at 21.

[8]Id. at 23.

[9] Id.

[10] Rollo, pp. 53-63.

[11] Rules of Court, Rule 132, Sec. 22.

[12] See Sacay v. Sandiganbayan, 226 Phil. 496, 510 (1986).

[13]See rollo, pp. 116-117.

[14]Id. at 117.

[15] Gamido v. New Bilibid Prisons (NBP) Officials, 312 Phil. 100, 104-105 (1995).

[16] 486 Phil. 254 (2004).

[17] See Rules of Court, Rule 132, Sec. 23.

[18] See Rules of Court, Rule 132, Sec. 20.

[19] Rollo, pp. 81-82.

[20]Id. at 100-101.

[21] 53 Phil. 197 (1929).

[22] Id. at 202-203.

[23] 6 Phil 201 (1906).

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[24] Id. at 201.

[25] §1339, 4 Wigmore on Evidence 660.

[26] O. Herrera, VI Remedial Law (1999 ed.) at 277.

[27] TSN dated 25 July 1995. See rollo, pp. 114.

[28] Id. at 112-113.

[29]Id. at 111.

[30]Id. at 112.

[31]Id. at 115.

[32]Id. at 118.

[33] Id. at 115-116.

[34] See Records, pp. 18-19.

[35] Records, p. 20.

[36]Rollo, p. 120.

[37]Id. at 117.

[38]Records, pp. 16-17.

[39] See rollo, p. 164.

[40] Id. at 189-190.

[41] Id. at 174-176.

[42] See rollo, p. 113.

[43] Records, p. 83.

[44] G.R. No. 157002, 29 July 2005, 465 SCRA 356.

[45] Records, p. 33.

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