

SPOUSES SHEM G. ALFARERO AND AURELIA TAGALOG, SPOUSES GINES G. ALFARERO AND NONI CRUSPERO AND NAOMI G. ALFARERO, PETITIONERS, VS. SPOUSES PETRA AND SANCHO SEVILLA, RESPONDENTS.

G.R. No. 142974. September 22, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review is the decision[1] of the Court of Appeals, dated November 22, 1999, in CA-G.R. CV No. 58277, as well as its resolution,[2] dated April 5, 2000, denying herein petitioners' Motion for Reconsideration. The Court of Appeals had affirmed in toto the judgment[3] of the Regional Trial Court (RTC) of Panabo, Davao del Norte, Branch 4, in Civil Case No. 91-01, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering as follows:

- The plaintiffs are allowed to repurchase the subject property covered under Transfer Certificate of Title No. T-49928 of the Registry of Deeds for the Province of Davao del Norte and the defendants, in whose names the said certificate of title has been issued, are jointly ordered to reconvey and/or sell back the said property to the plaintiffs, who in turn shall pay back to the defendants the purchase price of P12,000.00, plus the legal rate of interest from May 25, 1986 up to defendants' reconveyance and/or re-sale of the subject property to them; in the event of refusal of the defendants to accept the consideration of the reconveyance and/or the re-sale of the property as determined herein, the plaintiffs are allowed to deposit the said consideration plus legal rate of interest in court subject to disposal to the defendants at all times;
- The payment to the plaintiffs by the defendants jointly of attorney's fees in the amount of P7,500.00 only;
- No further costs.

SO ORDERED.[4]

The facts of this case, as found by the appellate court, are as follows:

[The Spouses Petra and Sancho Sevilla] are the registered owners of a piece of land situated at San Vicente, Panabo, Davao [del Norte] with an area of 14.038 hectares, more or less and covered by Original Certificate of Title No. P-15615.

In a Deed of Sale executed and ratified before Notary Public Jose B. Banzon and entered in his Notarial Registry as Doc. No. 148; Page No. 30; Book No. LV; Series of 1986, it appears that on May 25, 1986, a portion of the above-mentioned parcel of land with an area of 1.000 hectare, more or less, was sold to the [Spouses Shem G. Alfarero and Aurelia Tagalog, Spouses Gines G. Alfarero and Noni Cruspero, Joel G. Alfarero and Naomi G. Alfarero] in the amount of P12,000.00.

The Deed of Sale was registered by the [herein petitioners] with the Office of the Register of Deeds of the

Province of Davao and as a result, a Transfer Certificate of Title No. T-49928 was issued in their name.

Inscribed on the face of the said Transfer Certificate of Title No. T-49928 is the following limitation:

"Subject to the rights of repurchase by the Original Patentee or his heirs within a period of five (5) years from the date of the conveyance pursuant to Section 119 of Commonwealth Act 141, as amended."

Sometime on October 1986, plaintiff Petra Sevilla allegedly sent a letter to the parents of the defendants and to the defendants themselves, indicating the plaintiffs' desire to repurchase the above-mentioned parcel of land, but defendants allegedly objected to the offer of repurchase.

On January 3, 1991, plaintiffs filed the present action to repurchase.

Defendants' rejection of the offer to repurchase is based on the defense that the plaintiffs' action has already prescribed, that plaintiffs' offer to repurchase is already beyond the five (5) year limitation period. According to the defendants, the Deed of Sale was executed sometime in December 1985 although notarized only on May 26, 1986. Hence, according to them, counting from December 1985 [to] January 3, 1991, when the plaintiffs filed the present action, the five (5) year period has then [e]lapsed.

During the pre-trial proceedings on August 23, 1996, the parties again moved for judgment on the pleadings. The court granted the parties' motion and allowed them to submit their respective memoranda. After the parties submitted their memoranda, the court resolved the matter [in favor of the plaintiffs] on the basis of such submitted pleadings....[5]

Dissatisfied with the adverse ruling of the trial court, the petitioners herein appealed to the Court of Appeals in CA-G.R. CV No. 58277.

On November 22, 1999, the appellate court affirmed in toto the decision of the trial court.[6]

In sustaining the trial court, the Court of Appeals found that the notarized Deed of Sale executed on May 25, 1986, relied upon by the respondents herein, is entitled to more evidentiary weight than the Deed of Sale offered by the petitioners herein to sustain their theory that the action of the Sevillas had already prescribed. The appellate court noted that the date of execution in the Deed of Sale presented by the Alfareros merely read "__th day of December 1985" and the document was not notarized nor its authenticity proven by substantial evidence. Hence, as between the two Deeds of Sale offered by the parties in evidence, that of the Sevillas, which was notarized and with the date of its execution plainly indicated therein, should prevail over that of the Alfareros, which was not notarized and whose date of execution in December 1985 was not stated with definiteness. Otherwise put, it is the public document, rather than the private one, which commands the greater evidentiary weight, according to the assailed decision.

Hence, the instant petition for review.

Before us, petitioners raise the following questions:

- WHEN TWO DATES APPEAR IN THE DEED OF SALE OF A PARCEL OF LAND: ONE, THE DATE WHEN THE PARTIES SIGNED THE INSTRUMENT; AND, THE OTHER, THE DATE WHEN THE SAME INSTRUMENT WAS NOTARIZED; WHAT IS CONSIDERED AS THE "DATE OF THE CONVEYANCE" FOR THE PURPOSE OF COUNTING THE "PERIOD OF FIVE YEARS," SHALL IT BE THE FORMER OR THE LATTER DATE?

- CAN A PARTY LITIGANT FILE A MOTION FOR NEW TRIAL EVEN IF THE CASE IS ON APPEAL AND IS PENDING BEFORE THE COURT OF APPEALS ON THE GROUND OF NEWLY DISCOVERED EVIDENCE WHICH PETITIONERS COULD NOT, WITH REASONABLE DILIGENCE, HAVE

DISCOVERED AND PRODUCED AT THE TRIAL AND WHICH IF PRESENTED WOULD PROBABLY ALTER THE RESULT?[7]

Succinctly put, the issues are: (1) Did the Court of Appeals commit a reversible error of law in holding that, for purposes of determining the "date of conveyance" under Sec. 119[8] of CA No. 141,[9] as amended, the date of execution as provided for in the notarized document was controlling? and (2) Did the Court of Appeals err in denying petitioners' Motion for New Trial?

On the first issue, the petitioners insist that it was error for the Court of Appeals to have relied upon the notarized Deed of Sale offered by the respondents in making a finding that the date of conveyance of the disputed property was May 25, 1986 and not December 1985. They call our attention to the fact that the date "May 25, 1986" was only superimposed, evidently when the document was notarized. Given this fact of superimposition, it cannot be conclusive when opposed to the petitioners' allegation that the property in question was actually sold to them in December 1985, as shown by the Deed of Sale they offered in evidence.

Respondents counter that what is stake is the evidentiary value of a private instrument of sale vis-à-vis a notarized Deed of Sale. They submit that the court a quo committed no reversible error of law in giving more credence and weight to the notarized document. For the court's holding is in accordance both with the rules of evidence and prevailing jurisprudence, say the respondents.

We find petitioners' arguments less persuasive than respondents'.

First, recall that in Civil Case No. 91-01 for repurchase and damages, the petitioners herein raised the affirmative defense of prescription. As the burden of evidence lies with the party who asserts an affirmative allegation, petitioners had the duty of proving the affirmative allegations in their affirmative defense, namely, that the action had prescribed as the property was conveyed to them sometime in December 1985, while Civil Case No. 91-01 was filed only on January 3, 1991, or beyond the five-year period prescribed by Section 119 of the Public Land Act. The records show, however, that at pre-trial, petitioners moved for a judgment on the pleadings, which motion was granted by the trial court.[10] In so doing, the petitioners thus omitted at the first instance to present any evidence, which would categorically and definitely establish that the sale of the disputed property did indeed take place in December 1985. Petitioners are estopped by their own actions and cannot now come to this Court insisting that the Court of Appeals erred in holding that there was no evidence to support their allegation that the sale took place in December 1985.

Second, recall that the date May 25, 1986, which the court a quo accepted as the date of the sale was contained in a notarized instrument. In so doing, the appellate court merely applied the rule of long standing that a public document executed and attested through the intervention of a notary public is evidence of the facts in a clear, unequivocal manner therein expressed.[11] Otherwise stated, public or notarial documents, or those instruments duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved.[12] In order to contradict the presumption of regularity of a public document, evidence must be clear, convincing, and more than merely preponderant.[13] Such evidence is wanting in this case.

Anent the second issue, petitioners insist that they have new evidence which would show that on December 28, 1990, or one week before Civil Case No. 91-01 was filed, respondents herein delivered P45,000.00 to their counsel for the repurchase of the disputed lot and after their lawyer failed to consign said amount with the trial court, respondents then filed an estafa case against said lawyer. From the foregoing, it can be deduced that the actual purchase price of the property was actually P45,000.00 and not P12,000.00 as indicated in the notarized Deed of Sale relied upon both by the trial court and the Court of Appeals, say the petitioners. They submit that

from the foregoing, a new trial should have been ordered by the court a quo.

Respondents counter that the petitioners' submissions are not even worthy of a lengthy refutation as the 1997 Rules of Civil Procedure clearly provide that a motion for new trial or reconsideration must be filed within the period for taking an appeal.

The time is past for petitioners' arguments. Our scrutiny of the records shows that the second query posed, under the circumstances of this case, is moot and academic. Rule 37, Section 1[14] of the 1997 Rules of Civil Procedure clearly provides that a motion for new trial should be made "within the period for taking an appeal." Instead, what the record shows is that petitioners, in effect, only asked for a new trial after the appellate court had rendered its decision on appeal. Such a situation is definitely not permissible under the Rules. It is well accepted that a motion for new trial based on newly discovered evidence may indeed be filed after judgment, but within the period for perfecting an appeal.[15]

Moreover, the record clearly and categorically shows that petitioners' second query was not raised in the proceedings at the first instance. As a rule, basic considerations of due process dictate that no question will be entertained on appeal unless it has been raised in the court below.[16] Points of law, theories of the case, questions of fact and law, issues, and arguments not brought to the attention of the lower court need not and ordinarily will not be considered by the reviewing court, as these cannot be raised for the first time at that late stage.

To conclude, we hold that the Court of Appeals did not err when it acted unfavorably on petitioners' motion for a new trial.

WHEREFORE, the petition for review is DENIED for lack of merit. The assailed Decision of the Court of Appeals, dated November 22, 1999, as well as its Resolution of April 5, 2000, in CA-G.R. CV No. 58277 are AFFIRMED. Costs against the petitioners.

SO ORDERED.

Bellosillo, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 22-28. Penned by Associate Justice Eloy R. Bello, Jr., with Presiding Justice Jinal D. Rasul and Associate Justice Ruben T. Reyes concurring.

[2] Id. at 30-31.

[3] Records, pp. 77-88.

[4] Id. at 87-88.

[5] CA Rollo, pp. 60-62.

[6] Id. at 66.

[7] Rollo, p. 8.

[8] SEC. 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

[9] The Public Land Act.

[10] Records, p. 67.

[11] Zambo v. Court of Appeals, G.R. No. 104166, 30 July 1993, 224 SCRA 855, 859.

[12] Chua v. Court of Appeals, G.R. No. 88383, 19 February 1992, 206 SCRA 339, 345-346.

[13] Gevero v. Intermediate Appellate Court, G.R. No. 77029, 30 August 1990, 189 SCRA 201, 206; Rebulde v. Intermediate Appellate Court, No. L-70856, 11 November 1987, 155 SCRA 520, 529.

[14] SEC. 1. Grounds of and period for filing motion for new trial or reconsideration. - Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a)

Fraud, accident, mistake, or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b)

Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

[15] Bernardo v. Court of Appeals, G.R. No. 101680, 7 December 1992, 216 SCRA 224, 234.

[16] Del Rosario v. Bonga, G.R. No. 136308, 23 January 2001, 350 SCRA 101, 108, citing Keng Hua Paper Products Co., Inc. v. Court of Appeals, G.R. No. 116863, 12 February 1998, 286 SCRA 257, 267, Arcelona v. Court of Appeals, 345 Phil. 250, 275 (1997); Mendoza v. Court of Appeals, G.R. No. 116216, 20 June 1997, 274 SCRA 527, 538, Remman Enterprises, Inc. v. Court of Appeals, 335 Phil. 1150, 1162 (1997). See also Rule 44, Section 15 of the 1997 Rules of Civil Procedure.

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