

MARINA LLEMOS, PEDRO LLEMOS, FELISA LLEMOS AND VIRGINIA M. JIMENEZ, PETITIONERS, VS. ROMEO LLEMOS, ROMY LLEMOS, MERCEDES LLEMOS, EUSEBIA LL. FERNANDEZ, JULIANA LL. CARAMAT, FORT...

G.R. NO. 150162. January 26, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court questioning the Decision[1] dated September 19, 2001 promulgated by the Court of Appeals (CA) in CA-G.R. CV No. 53112, which reversed the Decision dated February 29, 1996 of the Regional Trial Court, Branch 41, of Dagupan City (RTC).

The case originated from a Complaint filed by the respondents, the compulsory heirs of the late Saturnina Salvatin (Saturnina). The Complaint sought to declare the nullity of the transfer certificate of title of the petitioners on the ground that their predecessor-in-interest, the late Felipe Llemos (Felipe), acquired the property described therein through a forged deed of sale.

The facts of the case, as summarized by the CA, are as follows:

[Respondents] and [petitioners] are the heirs of the late Saturnina Salvatin Llemos, being their grandmother. The late Saturnina Salvatin Llemos had four (4) children, namely: Adriano Llemos, Santiago Llemos, Domingo Llemos, who were the predecessors-in-interest of [respondents], and Felipe Llemos, who was the predecessor-in-interest of herein [petitioners].

During her lifetime, the late Saturnina Salvatin Llemos acquired a parcel of land described as Lot No. 2059, covered by Original Certificate of Title No. 38564, which all the parties presently occupy.

x x x x

On November 5, 1964, the Register of Deeds of Dagupan, Pangasinan, cancelled Original Certificate of Title No. 38564 (Exhibit "B") and issued a new one, Transfer Certificate of Title No. 15632 (Exhibit "D") in the name of Felipe Llemos, by virtue of a Deed of Absolute Sale thumb marked by Saturnina Salvatin Llemos conveying said property to Felipe Llemos, herein [petitioners'] predecessor-in-interest, for a consideration of P200.00 (Exhibit "C").

Sometime in 1991, Jovita Llemos Laca, one of the [respondents], decided to improve her residential house on said parcel of land. Hence, she borrowed the title of the property from one of the [petitioners], Felisa Llemos, for purposes of securing a building permit. It was on such instance that [respondents] discovered that the title of the property was already in the name of herein [petitioners].

On August 10, 1992, [respondents] filed the instant action for Declaration of Nullity of said Transfer Certificate [of] Title No. 15632 and for damages. The complaint, was amended on October 24, 1995 to include

additional plaintiffs who are likewise heirs of Saturnina Salvatin Llemos.

In their Answer, [petitioners] alleged that the late Saturnina Salvatin Llemos conveyed to their father, the late Felipe Llemos, the subject parcel of land, thus, said property is their inheritance from their father.

During the pre-trial conference, the parties failed to settle their differences. Hence, trial proceeded.

x x x x[2]

On February 29, 1996, the RTC ruled in favor of the petitioners, then the defendants. The dispositive portion of the Decision states:

WHEREFORE, judgment is hereby rendered dismissing the complaint with costs against plaintiffs.

There is no pronouncement as to damages and attorney's fees.

SO ORDERED.[3]

The RTC held that although respondent Eusebia Ll. Fernandez (Eusebia) testified that Saturnina was her grandmother and that she died in 1938, Eusebia did not testify on the fact of death of Saturnina from personal knowledge; that the respondents' cause of action heavily rests on the Certificate of Death[4] only and no other evidence; that since at the time Saturnina died, there was already an existing public registry by virtue of Act 3753, hence, no other entity, not even the Catholic Church, had the authority to issue a certificate regarding the fact of death which can qualify as a public document; that, for these reasons, the Certificate of Death is a private document and must be authenticated to be admissible as evidence; that respondents failed to notarize or otherwise authenticate the same and, hence, the facts stated therein are hearsay; and finally, since the deed in question was registered as early as 1964, more than 20 years had already lapsed, hence, the respondents' cause of action had already prescribed at the time of the filing of their Complaint on August 10, 1992.

On appeal, the CA reversed the RTC in its Decision dated September 19, 2001, the dispositive portion of which reads:

WHEREFORE, premises considered, the Decision dated February 29, 1996 rendered by the Regional Trial Court of Dagupan City, Branch 41, is hereby REVERSED and SET ASIDE, and a new one is entered as follows:

- The Deed of Absolute Sale (Exhibit "3") is hereby declared NULL and VOID;
- The parties are declared co-owners of the subject parcel of land owned by the late Saturnina Salvatin Llemos, as previously covered by Original Certificate of Title No. 38564;
- Transfer Certificate of Title No. 15632 is ordered cancelled;

No pronouncement as to costs.

SO ORDERED.[5]

The CA held that the entries in the Registry Book of St. John Metropolitan Cathedral in Dagupan City may be considered as entries made in the course of business under then Section 37 of Rule 130,[6] which is an exception to the hearsay rule; that Saturnina passed away on March 12, 1938 as stated by the Book of the Dead of the Catholic Church; that, for this reason, the Deed of Absolute Sale purportedly executed on November 5, 1964 is invalid, as there could not possibly be a meeting of the minds between a dead person and a living one; that all the parties in the instant suit are presently occupying the property in question; and finally, that the petitioners cannot invoke the indefeasibility of title since it may still be attacked even beyond the one year period reckoned from the

date of its issuance on the ground of fraud.

On appeal to this Court, the petitioners raise the following issues:

WHETHER THE CAUSE OF ACTION HAD PRESCRIBED OR THAT THE RESPONDENTS ARE GUILTY OF LACHES.[7]

THE HONORABLE COURT OF APPEALS ERRED IN GIVING UNDUE WEIGHT TO THE CERTIFICATE OF DEATH ISSUED BY THE CHURCH WHEN THE REGISTER WAS NEVER PRESENTED NOR THE CLERK WHO PREPARED THE SAME WAS PRESENTED FOR ITS AUTHENTICATION.[8]

The issue on prescription deserves scant consideration. The Court has recently affirmed the rule that an action for annulment of title or reconveyance based on fraud is imprescriptible where the plaintiff is in possession of the property subject of the acts.[9] It is not disputed that respondents (plaintiffs), including petitioners (defendants), presently occupy the property in question.

Nor can laches be invoked against respondents. In *Agra v. Philippine National Bank*,^[10] the Court held that prescription is different from laches, as the latter is principally a question of equity and each case is to be determined according to its particular circumstances.

In the present case, evidence shows that the Deed of Absolute Sale (Exhibit “C”) dated November 5, 1964, conveying the subject property to Felipe, petitioners’ predecessor-in-interest, was thumbmarked by Saturnina, by virtue of which, the Register of Deeds of Dagupan, Pangasinan cancelled Original Certificate of Title No. 38564 (Exhibit “B”) and issued Transfer Certificate of Title (TCT) No. 15632 (Exhibit “D”) on November 5, 1964 in the name of Felipe.

Petitioners insist that respondents are guilty of laches considering that the latter filed the complaint for declaration of nullity of the TCT only on August 10, 1992 or almost 28 years after the TCT was issued to the former on November 5, 1964. On the other hand, respondents claim that when the Deed of Absolute Sale, on which basis the TCT was issued, was purportedly thumbmarked by Saturnina on November 5, 1964, the latter had been dead since 1938; that therefore fraud attended the execution of the Deed of Absolute Sale; that the TCTs in the names of petitioners are null and void; and that they discovered the fact of fraud only in 1991.

It is a well-settled doctrine that laches cannot be used to defeat justice or perpetuate fraud and injustice. Neither should its application be used to prevent the rightful owners of a property from recovering what has been fraudulently registered in the name of another.^[11]

However, in order that respondents’ complaint may prosper, the burden of proof is on them to show by preponderance of evidence that the execution of the Deed of Absolute Sale was fraudulent and, consequently, the issuance of the TCT, a nullity.

Respondents rely principally on the Certificate of Death^[12] issued by Rev. Fr. Camilo V. Natividad on January 29, 1991, attesting that “Salvatin Salvatin”, widow of Andres Llemos died on the 12th day of March 1938 and was buried in the Roman Catholic Cemetery of the parish of St. John Metropolitan Cathedral, Dagupan City. The Certificate further attests that it is a true copy of the original records as it appears in the Register of Dead of said Parish, Book No. 20, Folio No. 91.

It is well-settled that Church registries of births, marriages, and deaths made subsequent to the promulgation of General Orders No. 68^[13] and the passage of Act No. 190^[14] are no longer public writings, nor are they kept by duly authorized public officials.^[15] They are private writings and their authenticity must therefore be proved as

are all other private writings in accordance with the rules of evidence.[16]

Respondents failed to establish the due execution and authenticity of the Certificate of Death in accordance with Section 20, Rule 132 of the Rules of Court which provides:

SEC. 20. Proof of private document. – Before any private document offered as authentic is received in evidence, 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.

Any other private document need only be identified as that which it is claimed to be.

As aptly pointed out by the RTC, respondents failed to present a witness to prove the due execution and authenticity of the Certificate of Death.

Nonetheless, the CA considered the entry in the Registry Book of St. John Metropolitan Cathedral as to the date of death as admissible in evidence on the ground that it is an entry in the course of official business which is an exception to the hearsay rule, citing Section 37, Rule 130 of the Rules of Court, viz:

SEC. 37. Entries in the course of business. - Entries made at, or near the time of the transactions to which they refer, by a person deceased, outside of the Philippines or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.[17]

The CA committed a reversible error in considering said evidence.

Unfortunately, respondents did not submit as evidence the Register of Dead, Book No. 20 of St. John Metropolitan Cathedral and they failed to comply with the provisions of Section 5, Rule 130, to wit:

SEC. 5. When original document is unavailable. – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.[18]

Under Section 3, Rule 130, Rules of Court, the original document must be produced and no evidence shall be admissible other than the original document itself, except in the following cases:

x x x x

- a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- d) When the original is a public record in the custody of a public officer or is recorded in a public office.

None of the exceptions are attendant in the present case. The Register of Dead is in the custody of St. John Metropolitan Cathedral but respondents failed to show that it presented the Certificate of Death because the

Register of Dead cannot be produced in court. There is no showing that the Register of Dead consists of numerous documents which cannot be examined in court without great loss of time and the fact sought to be established from it is only the general result of the whole. Further, respondents failed to present an authentic document that recites the contents of the Register of Dead. As earlier held, the Certificate of Death is a private document and not a public document; and respondents failed to prove its authenticity by their failure to present any witness to testify on the due execution and genuineness of the signature of Fr. Natividad, pursuant to Section 20, Rule 132.

Moreover, the Court notes the absence of evidence showing that “Salvatin Salvatin” mentioned in the Certificate of Death is the same “Saturnina Salvatin” referred to by them as their predecessor-in-interest; and that Father Natividad has personal knowledge of the date of death of “Salvatin Salvatin”. The CA merely relied on the Register of Dead of the parish which, as earlier pointed out, was not presented in court.

On the other hand, petitioners presented the questioned Deed of Absolute Sale dated November 5, 1964, marked as Exhibit “3”. It is a notarized document which, as correctly found by the RTC, had been

[E]xecuted with all the formalities of law and ratified by a notary public who attested that the vendor Saturnina Salvatin appeared before him and acknowledged her deed to be her free act and deed. It was executed in the presence of two witnesses. Maria Llemos Jimenez likewise testified that the deed was properly executed for valuable consideration at the time.[19]

A notarized document is executed to lend truth to the statements contained therein and to the authenticity of the signatures. Notarized documents enjoy the presumption of regularity which can be overturned only by clear and convincing evidence.[20]

As found earlier, respondents failed to establish the date of death of their predecessor-in-interest which could have proven that the thumbmark of Saturnina in the Deed of Absolute Sale was fraudulently affixed because she had died before the deed of sale was purportedly executed by her.

In fine, respondents failed to establish by preponderance of evidence their claim that petitioners’ predecessor-in-interest obtained his title through fraud.

WHEREFORE, the petition is GRANTED. The challenged Decision of the Court of Appeals is hereby REVERSED and SET ASIDE. The complaint of respondents is DISMISSED.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Ruben T. Reyes (now Presiding Justice) and Mercedes Gozo-Dadole (ret.), concurring.

[2] CA rollo, pp. 79-80.

[3] Rollo, p. 60.

[4] Exhibit “A”, folder of exhibits, p. 1.

[5] Rollo, pp. 22-23.

[6] Now Section 43, Rule 130 of the Rules of Court.

[7] Rollo, p. 8.

[8] Id. at 113.

[9] *Occeña v. Esponilla*, G.R. No. 156973, June 4, 2004, 431 SCRA 116, 126;
Delfin v. Billones, G.R. No. 146550, March 17, 2006, 485 SCRA 38, 47-48.

[10] 368 Phil. 829, 842 (1999).

[11] *Occeña v. Esponilla*, supra note 9.

[12] Exhibit “A”, folder of exhibits, p. 1.

[13] Promulgated on December 18, 1899.

[14] Enacted on August 7, 1901.

[15] *United States v. Evangelista*, 29 Phil. 215, 221 (1915).

[16] *Heirs of Cabais v. Court of Appeals*, 374 Phil. 681, 689 (1999); *Macadangdang v. Court of Appeals*, G.R. No. L-49542, September 12, 1980, 100 SCRA 73, 84; *Paa v. Chan*, 128 Phil. 815, 821 (1967); *Fortus v. Novero*, 132 Phil. 723, 733 (1968); *United States v. Evangelista*, supra note 15; *Adriano v. De Jesus*, 23 Phil. 350, 353 (1912).

[17] Now Section 43.

[18] Formerly Section 4, Rule 130, Rules of Court.

[19] Rollo, p. 59.

[20] *Delfin v. Billones*, supra note 9, at 48; *Lao v. Villones-Lao*, 366 Phil. 49, 58 (1999).

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