

HEIRS OF BERNARDO ULEP NAMELY: DOLORES ULEP, BERNARDO ULEP, JR., JAIME ULEP AND JEAN ULEP ESTRERA ALL REPRESENTED BY DOLORES ULEP, PETITIONERS, VS. SPOUSES CRISTOBAL DUCAT AND F...

G.R. No. 159284. January 27, 2009

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the petition for review on certiorari under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) dated October 30, 2002, and the CA Resolution[2] dated July 3, 2003, denying petitioner's motion for reconsideration, be reversed and set aside.

The factual antecedents of the case are accurately summarized by the CA as follows.

The subject matter of the instant action is a parcel of agricultural land with an area of 4,992 square meters located at Barrio Buyagan, Poblacion, La Trinidad, Benguet [with an assessed value of P15,970.00[3]] which, as shown by the records, was previously described as Lot No. 4 in a Survey Plan (Psu-206496) prepared for Agustin Ulep on April 4, 1964 by Private Land Surveyor Mariano D. Singson which was approved by the Bureau of Lands on June 3, 1964.[4]

On June 1, 1964, prior to the approval of the Survey Plan, Agustin Ulep and herein petitioner Cristobal Ducat executed an Agreement whereby the latter agreed and undertook, to cause and perform the conduct of all the necessary procedures for the registration and acquisition of title over several parcels of land possessed and occupied by the former in the concept of an owner, which include the land in dispute.[5] Before Cristobal Ducat was able to accomplish his task of acquiring titles over the lands for and in behalf of Agustin Ulep, the latter died. After the death of Agustin Ulep, his son Cecilio Ulep took over as administrator of the properties.[6]

Cristobal Ducat continued working to acquire titles for the lands of Agustin Ulep. Thereafter, the land in dispute (Lot No. 4) was reflected and now referred to as Lot No. 22 in an Amended Survey Plan (Psu-206496-Amd) prepared for Cristobal Ducat, et al., on November 28-30, 1981 by the same Private Land Surveyor, Geodetic Engineer Mariano D. Singson. This was likewise approved by the Bureau of Lands on October 1, 1982.[7]

On September 16, 1984, Cristobal Ducat filed an Application for Free Patent over the land with the Bureau of Lands of La Trinidad (Records, p. 173). The application was granted and accordingly, on November 14, 1984, the Office of the Register of Deeds of Benguet under the National Land Titles and Deeds Registration issued OCT No. P-1390 registering the land with an area of "49 arcas and 92 centares" (Lot No. 22) in the names of the Spouses Cristobal Ducat and Flora Kiong.[8] Cristobal Ducat subsequently declared the property in his name for taxation purposes.[9]

On November 11, 1994, the heirs of Bernardo Ulep, namely: Dolores, Bernardo, Jr., Jaime and Jean, filed the herein Complaint for the reconveyance of the land with damages against the Spouses Cristobal Ducat and Flora

Kiong before the MTC of La Trinidad. In essence, plaintiffs maintain that the 4,992 square meter parcel of land in dispute is owned by their grandfather Agustin Ulep, the same being a portion of a 24, 388 square meter tract of land which belonged to the latter. Allegedly, Cristobal Ducat fraudulently maneuvered and caused the improper amendment of the Original Survey Plan (Psu-206496) to alter the description of the land from Lot No. 4 to Lot No. 22, claimed and ultimately succeeded in having said property registered in his name and that of his wife under OCT No. P-1390.[10]

On December 17, 1998, after trial on the merits, the MTC of La Trinidad rendered judgment in favor of the Spouses Cristobal Ducat and Flora Kiong, disposing as follows:

WHEREFORE, the complaint is hereby ordered dismissed, for failure of the plaintiffs to prove their cause of action by competent and preponderant evidence. On the other hand, the compulsory counterclaims alleged by the defendants in their Answer are likewise denied, for lack of merit. Costs against plaintiffs.

SO ORDERED.[11]

Plaintiffs appealed the ruling of the MTC to the court a quo (RTC, Branch 10). Once again, the Spouses Cristobal Ducat and Flora Kiong prevailed as on September 30, 1999, a Decision was rendered affirming in toto the MTC Judgment.[12]

Plaintiffs' subsequent Motion for Reconsideration was denied [by the] court a quo in an Order issued on December 6, 1999 on the ground that the same was filed beyond the reglementary period provided under Rule 37 of the Rules on Civil Procedure. x x x

Thereafter, plaintiffs filed a Motion to Resolve Motion for Reconsideration on the Merits.[13]

On May 24, 2000, the court a quo issued the herein assailed Resolution reconsidering its September 30, 1999 Decision and, accordingly, reversed the December 7, 1998 MTC Judgment, and ordered the Spouses Cristobal Ducat and Flora Kiong to reconvey the disputed property to the plaintiffs and to pay the latter damages and attorney's fees.[14]

The spouses Cristobal Ducat and Flora Kiong, herein respondents, then filed a petition for review with the CA, questioning the Resolution of the RTC dated May 24, 2000. The CA ruled in favor of respondents, holding that petitioners failed to discharge the burden of proof to establish that respondents wrongfully or erroneously acquired title over the disputed property. On October 30, 2002, the CA promulgated the Decision subject of this petition, disposing as follows:

WHEREFORE, premises considered, the petition is GRANTED and the assailed Resolution is hereby REVERSED and SET ASIDE. The decision of the MTC of La Trinidad is REINSTATED.

SO ORDERED.[15]

Petitioners moved for reconsideration, but the CA denied said motion per Resolution dated July 3, 2003.

Hence, herein petition submitting the following questions for resolution, to wit:

(a)

Did the respondents use Exhibit "D-2", the tampered Waiver of Rights in order to obtain title over the disputed lot?

(b)

Can respondents' reliance on Exhibit "10", the Transfer of Rights and Improvements executed by Cecilio Ulep and Dionisio Ulep without the participation of the heirs by Bernardo Ulep, justify the respondents' act of

obtaining title over the subject property?

(c)

In the assessment of the validity of a document to transfer a right (Exhibit "10"), is the determination of the RTC of the existence or non-existence of an extra-judicial settlement among heirs considered evidence on appeal?

(d)

Whether or not documentary evidence that is not identified, authenticated and formally offered constitutes evidence at all?

(e)

Did the Court of Appeals commit a very grave error when it reversed the Resolution of the RTC and reinstated the decision of the MTC?[16]

It is well-settled that in order for an action for reconveyance based on fraud to succeed, the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud.[17]

Clearly, the primordial issue in the present petition is whether the CA committed an error in ruling that petitioners had failed to prove their allegation that respondents fraudulently caused the titling of the subject property in their names.

The issue is mainly factual and, as a general rule, questions of fact cannot be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. However, as held in *Republic v. Enriquez*,[18] to wit:

The general rule is that questions of fact are beyond the province of Rule 45 of the Rules of Court. Said rule, however, admits of certain exceptions, to wit:

(1)

when the factual findings of the Court of Appeals and the trial court are contradictory;

(2)

when the findings are grounded entirely on speculations, surmises, or conjectures;

(3)

when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;

(4)

when there is grave abuse of discretion in the appreciation of facts;

(5)

when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6)

when the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7)

when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;

(8)

when the findings of fact are themselves conflicting;

(9)

when the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10)

when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.(Emphasis supplied)[19]

This case falls within exceptions (1) and (7).

After examination of the evidence adduced, the Court finds no merit to the petition.

Petitioners insist that Exhibit "D-2,"[20] the Waiver of Rights and Quitclaim containing some erasures and alterations, is proof of the fraud perpetrated by respondents to obtain title to the land in dispute. Without the erasures and alterations, paragraph 4 of said document stated that Lot 4 and an undivided 6,346-square meter portion of Lot 3 shall belong to and shall be titled in the name of Bernardo Ulep. In Exhibit "D-2," because of some erased portions, the import of paragraph 4 thereof changed, such that only Lot 3 shall belong to and shall be titled in the name of Bernardo Ulep. As the RTC aptly pointed out in its Resolution dated May 24, 2000, Exhibit "D-2," even with its erasures and alterations, did not dispose of Lot 4 in favor of respondents.

Petitioners aver that by virtue of Exhibit "D-2," respondent Cristobal Ducat was able to cause the amendment of the survey plan, making it appear that Lot 4, later designated as Lot 22 in the amended survey, had no claimant. The Court notes however, that even Cecilio Ulep and Dionisio Ulep, co-heirs and siblings of Bernardo Ulep, executed an affidavit stating that they were requesting the amendment of Survey Plan Psu-206496 "in order to delineate the roads-right-of-way, and indicate certain actual occupants of the land who may be entitled to their respective lots." [21] This affidavit negates petitioners' claim that the amendment of the survey plan was effected solely by respondents to effect the fraudulent titling of the property in the latter's name.

Moreover, even assuming that Exhibit "D-2" was instrumental in making it appear that Lot 4 or Lot 22 had no claimant, said document could not have been the basis for respondents' claim of ownership over the property in dispute. Respondents had to present other clear and convincing evidence to establish ownership of said lot in the land registration proceedings.

Evidently, Exhibit "D-2" was not the document which proved respondent's ownership of the land in dispute. The existence of alterations and erasures on said document, whether caused by respondents or petitioners' own predecessors-in-interest, is immaterial, as it does not appear to be the basis for the grant of the certificate of title in favor of respondents.

The MTC is correct in holding that the more important document which proved respondents' ownership of the subject property is Exhibit "15,"[22] the Affidavit of Transfer of Real Property, subscribed and sworn to before the Deputy Provincial and Municipal Assessor. Exhibit "15" is reproduced hereunder:

Provincial Form No. 9

AFFIDAVIT OF TRANSFER OF REAL PROPERTY

TRANSFeree'S AFFIDAVIT

Res. Certificate No. _____ Province of Benguet
Dated _____ Municipality of La Trinidad
Issued at _____

Personally appeared before me, the undersigned official, Cristobal Ducat/(Name of Transferee) who, being duly sworn according to law, depose and says:

That on the 5[th] day of March 1981, he bought/inherited/received as donation from Cecilio J. Ulep & Bernardo J. Ulep, a resident of the Municipality of La Trinidad, Province of Benguet, the real property situated in the Barrio of Buyagan, Poblacion, Municipality of La Trinidad, Province of Benguet, and described in the records of the Provincial Treasurer's Office, Province of Benguet, under Tax No. 4990 and that he is now the legal owner of the said real property.

In testimony whereof he has hereunto affixed his signature.

(signed)

Cristobal Ducat

Signature of Transferee

Subscribed and sworn to before me this [illegible] day of Oct. 1981.

Mathew L. Ticag
Deputy Prov'l. & Mun. Assessor
TAN-1886-760-6
Provincial Assessor, Deputy Assessor,
Mun. Treasurer, Mun. Mayor, Notary
Public or any other person authorized
to administer oath.

TRANSFEROR'S AFFIDAVIT

Res. Certificate No. _____ Province of Benguet
Dated _____ Municipality of La Trinidad
Issued at _____

Personally appeared before me, the undersigned official, Cecilio J. Ulep & Bernardo J. Ulep who, being duly sworn according to law, depose and says:

That on the 5[th] day of March, 1981, he sold/donated to Cristobal Ducat, a resident of the Municipality of La Trinidad, Province of Benguet, the real property situated in the Barrio of Buyagan, Poblacion, Municipality of La Trinidad, Provincia of Benguet, and described in the records of the Provincial Treasurer's Office, Province of Benguet under Tax No. 4990 and that the said Cristobal Ducat is now the legal owner of the abovementioned real property.

In testimony whereof he has hereunto affixed his signature.

(signed) (signed)

Cecilio J. Ulep Bernardo J. Ulep
Signature of Tnansfer

Subscribed and sworn to before me this (illegible) day of Oct., 1981.

Mathew L. Ticag
Deputy Prov'l. & Mun. Assessor
TAN-1886-760-6
Provincial Assessor, Deputy Assessor,
Mun. Treasurer, Mun. Mayor, Notary
Public or any other person authorized
to administer oath.

The upper portion of Exhibit "15" contains the Transferee's Affidavit executed by respondent Cristobal Ducat, stating that he bought the subject property from Cecilio Ulep and Bernardo Ulep, while the lower portion contains the Transferor's Affidavit executed by Cecilio Ulep and Bernardo Ulep, stating that on the 5[th] day of March 1981, they sold/donated subject property to Cristobal Ducat and said person is now the legal owner of the same.

Petitioners do not question the authenticity and due execution of Exhibit "15," but argue that said document should not have been admitted in evidence and given probative weight, as it was not offered by respondents. This claim is totally bereft of merit. Respondents' Formal Offer of Documentary Exhibits[23] definitely included Exhibit "15," the entire Affidavit of Transfer of Real Property. It is further noted that respondents' Exhibit "15" was first presented and offered by petitioners as their Exhibit "I-19," to prove that it was one of the papers submitted by respondents to the Department of Environment and Natural Resources in support of the application for titling of subject property. The signature of Bernardo Ulep on said document was also properly identified, as shown by the testimony of respondent Cristobal Ducat, to wit:

Q:

You remember also if you submitted your application affidavit or transfer of real property executed by you and Cecilio & Bernardo Ulep now marked as Exh. "I-19"?

A:

Maybe because I wanted to have the papers completed.

x x x x

Atty. Bolislis:

May we refer to Exh. "19" [meaning "I-19"] which is the Affidavit of the transfer of real property dated 30[th] day of July, 1981.

x x x x

Q:

Were you present when Cecilio Ulep and Bernardo Ulep signed this?

A:

Yes sir.

Q:

Did you see Bernardo Ulep sign this?

A:

Yes sir.

Q:

Did you see Cecilio Ulep sign this?

A:

Yes sir.[24]

Verily, therefore, respondents' Exhibit "15" or petitioners' Exhibit "I-19" was formally offered as evidence by both parties and properly admitted and considered by the lower courts.

Exhibit "15" is a very solid piece of evidence in favor of respondents. It constitutes an admission against interest made by Bernardo Ulep, petitioners' predecessor-in-interest. In *Rufina Patis Factory v. Alusitain*,^[25] the Court elucidated thus:

x x x Being an admission against interest, the documents are the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not.^[26]

Bernardo Ulep's admission against his own interest is binding on his heirs, herein petitioners. It is now beyond cavil that petitioners' predecessor-in-interest recognized respondents as the legal owner of the lot in dispute.

Petitioners also question whether Exhibit "10,"^[27] the Transfer of Rights and Improvements executed only by Cecilio Ulep and Dionisio Ulep, can validly transfer the subject property to respondents. It is true that the lack of participation of Bernardo Ulep or his heirs in the execution of said document cannot bind them as parties to said transfer of rights. However, as the Court has discussed above, there is another document that proves beyond doubt that Bernardo Ulep has transferred his right over the disputed lot to Cristobal Ducat, that is, Exhibit "15," the Affidavit of Transfer of Real Property.

It is also a settled jurisprudence that an issue cannot be raised for the first time on appeal, as it would be offensive to the basic rules of fair play, justice and due process.^[28] Thus, since the issue of whether the estate of the deceased Agustin Ulep has been settled or not was raised by petitioners for the first time on appeal before the RTC, this issue should not be given consideration.

In sum, the admission against the interest of Bernardo Ulep goes against the theory of petitioners, and the evidence they presented is sorely insufficient to overcome said admission. Thus, there is no proof that the titling of the subject property was fraudulently obtained by respondents in their names.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated October 30, 2002, and the CA Resolution dated July 3, 2003, are AFFIRMED.

SO ORDERED.

Tinga,[*] Chico-Nazario, Nachura, and Leonardo-De Castro,[*] JJ., concur.

* In lieu of Justice Consuelo Ynares-Santiago, per Special Order No. 556 dated January 15, 2009.

* In lieu of Justice Diosdado M. Peralta, per Special Order No. 560 dated January 16, 2009.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Eliezer R. delos Santos and

Amelita G. Tolentino, concurring.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Jose L. Sabio, Jr. and Amelita G. Tolentino, concurring.

[3] See Complaint, Record, p. 5.

[4] Records, p. 85.

[5] Exhibit "L"/"17", records, pp. 246-249.

[6] TSN, August 13, 1996, p. 9.

[7] Records, p. 166.

[8] Id. at 13.

[9] Id. at 14.

[10] Complaint, id. at 2-8.

[11] CA rollo, p. 24.

[12] Id. at 25-30.

[13] Id. at 32-40.

[14] Id. at 41-48.

[15] Rollo, p. 54.

[16] Petitioners' Memorandum, rollo, p. 201

[17] Antonio v. Santos, G.R. No. 149238, November 22, 2007, 538 SCRA 1, 9; Barrera v. Court of Appeals, 423 Phil. 559566 (2001).

[18] G.R. No. 160990, September 11, 2006, 501 SCRA 436.

[19] Id. at p. 442.

[20] Records, p. 194

[21] See Exhibit "2", Joint Affidavit of Cecilio Ulep and Dionisio Ulep, Records, p. 233

[22] Record, p. 186

[23] Records, pp. 221-228.

[24] TSN, December 4, 1996, pp. 10-11.

[25] 478 Phil. 544 (2004).

[26] Id. at 558.

[27] Records, p. 241

[28] Almocera v. Ong, G.R. No. 170479, February 18, 2008, 546 SCRA 164, 178; Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, G.R. No. 159593, October 16, 2006, 504 SCRA 484, 494-495; First Philippine International Bank v. Court of Appeals, 322 Phil. 280, (1996).

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