

**MANUEL T. DE GUIA, FOR HIMSELF AND AS ATTORNEY-IN-FACT OF
FE DAVIS MARAMBA, RENATO DAVIS, FLORDELIZA D. YEH,
JOCELYN D. QUEBLATIN AND BETTY DAVIS, PETITIONERS, VS. HON.
PRESIDIN...**

G.R. No. 161074. March 22, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is a petition for review on certiorari which assails the Decision[1] dated August 30, 2002 and the Resolution[2] dated November 28, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 38031.

Petitioners Fe Davis Maramba, Renato Davis, Flordeliza D. Yeh, Jocelyn D. Queblatin and Betty Davis are the heirs of the late Primitiva Lejano Davis (Primitiva), the owner of the ½ undivided portion (subject property) of two parcels of land (fishpond), situated in Meycauayan, Bulacan, covered by TCT No. T-6358 of the Register of Deeds of Bulacan. Petitioner Manuel T. de Guia alleged to be the owner of the subject property, having acquired the same from his co-petitioners.

The antecedents, as borne by the records, are as follows:

On August 8, 1973, Primitiva executed a document denominated as Kasulatan ng Sanglaan (Exhibit "J"),[3] a deed of mortgage, in favor of respondents spouses Teofilo R. Morte and Angelina C. Villarico (respondents Spouses Morte) over the subject property in consideration of Primitiva's loan in the amount of P20,000.00.

On February 15, 1974, Primitiva executed another document, Kasunduan ng Bilihang Tuluyan (Exhibit "F"),[4] a deed of sale, over the same subject property in favor of spouses Ruperto C. Villarico and Milagros D. Barretto (respondents Spouses Villarico) for and in consideration of the amount of P33,000.00.

On February 14, 1977, respondents Spouses Villarico executed a document denominated as Kasunduan ng Bilihang Tuluyan (Exhibit "G"),[5] a deed of sale, wherein they sold back the subject property to Primitiva for the same amount of P33,000.00.

On March 26, 1977, Primitiva executed another document, Kasunduan ng Bilihang Tuluyan (Exhibit "H"),[6] a deed of sale, wherein she again sold the subject property to respondents Spouses Villarico for the amount of P180,000.00.

On March 28, 1977, Primitiva executed a Kasulatan ng Sanglaan (Exhibit "I"),[7] a deed of mortgage, over the subject property in favor of respondents Spouses Morte in consideration of a loan in the amount of P180,000.00.

Except for Exhibit "H," all documents were duly notarized and petitioner Renato was one of the instrumental witnesses in all these documents.

On November 10, 1979, Primitiva, respondents Spouses Villarico and Spouses Morte executed before Notary

Public Mamerto A. Abaño the following five (5) documents, each of which was signed by petitioner Renato as an instrumental witness, to wit:

- Kasulatan ng Sanglaan (Exhibit "A")[8] - executed by Primitiva mortgaging the subject property to respondent Spouses Morte in consideration of a loan in the amount of P500,000.00 payable in one (1) year from date of contract at 12% interest;
- General Power of Attorney (Exhibit "B")[9] - executed by Primitiva appointing respondent Spouses Villarico as her attorney-in-fact in the exercise of general control and supervision over the subject property with full authority to act as her representative and agent, to lease, mortgage or sell said share, among other things, for and in her behalf;
- Kasulatan ng Pagpapabuwis ng Palaisdaan (Exhibit "C")[10] - executed between Primitiva, as lessor, and respondent Spouses Villarico, as lessees, over the same subject property at P10,000.00 per year as rental. Primitiva also acknowledged in the same document the receipt of P150,000.00 as advance payment of the yearly rentals for a period of fifteen (15) years ;
- Pagpapawalang SAYSAY ng Kasulatan ng Sanglaan (Exhibit "D")[11] - executed by respondent spouses Morte canceling and rendering without any valid force and effect the "Kasulatan ng Sanglaan" (Exhibit "I") dated March 28, 1977 for a loan of P180,000.00;
- Kasulatan ng Pagpapawalang SAYSAY at Pagpapawalang Bisa ng mga Kasulatan (Exhibit "E")[12] - executed by Primitiva and respondent Spouses Villarico canceling the following documents:
 - a) Kasunduan ng Bilihang Tuluyan (Exhibit "F") dated February 15, 1974;
 - b) Kasunduan ng Bilihang Tuluyan (Exhibit "G") dated February 14, 1977; and
 - c) Kasunduan ng Bilihang Tuluyan (Exhibit "H") dated March 26, 1977;

because the amounts stated in those deeds had already been returned by Primitiva to respondent Spouses Villarico.

Primitiva failed to pay her loan in the amount of P500,000.00 to respondents Spouses Morte as secured by a real estate mortgage on the subject property (Exhibit "A") executed on November 10, 1979. Thus, the latter filed with the Office of the Provincial Sheriff of Bulacan, a petition for extrajudicial foreclosure of real estate mortgage. On January 16, 1986, a Notice of Sheriffs' Sale of the property was published.

On February 17, 1986, petitioner De Guia, for himself and as attorney-in-fact of the other co-petitioners, filed with the Regional Trial Court (RTC) of Malolos, Bulacan, an Amended Complaint for annulment of real estate mortgage and contract of lease with preliminary injunction against respondents Spouses Morte, Spouses Villarico, and Deputy Sheriff Benjamin C. Hao. Petitioners sought to annul the Kasulatan ng Sanglaan (Exhibit "A") and Kasulatan ng Pagbubuwis ng Palaisdaan (Exhibit "C"), both executed by Primitiva in favor of respondents Spouses on November 10, 1979, contending that the documents were null and void, since Primitiva signed them under threat of immediate foreclosure of mortgage on the subject property and without any valuable consideration; and that respondent Sheriff Hao had scheduled the auction sale of the subject property which would cause great and irreparable injury to petitioners. Thus, they prayed that the public auction be enjoined.

In their Answer, respondents Spouses argued that these documents were executed for valuable consideration, and that petitioner Renato was one of the instrumental witnesses in these documents; that Atty. Mamerto Abaño, the Notary Public who notarized the questioned documents, was then Primitiva's lawyer and not of respondents. Respondents clarified that the documents Pagpapawalang SAYSAY ng Kasulatan ng Sanglaan (Exhibit "D") and the Pagpapawalang SAYSAY at Pagpapawalang Bisa ng Mga Kasulatan (Exhibit "E"), both dated November 10, 1979, which made the earlier documents, to wit: Exhibits "F," "G," "H" and "I," executed between Primitiva and the

respondents Spouses of no force and effect, were executed to avoid confusion and to show that the latest documents dated November 10, 1979 represented the actual and subsisting transactions between the parties. In their Counterclaim, respondents Spouses Villarico claimed that they should have been in possession of the fishpond since 1979 if not for the unwarranted refusal of petitioner De Guia to vacate the fishpond despite demands.

On March 6, 1986, the RTC issued an Order granting petitioners' application for the issuance of a writ of preliminary injunction upon the filing of an injunction bond. A writ of preliminary injunction was, subsequently, issued and was served on Sheriff Hao and respondents Spouses.

Thereafter, trial ensued.

On February 28, 2002, the RTC rendered its Decision,[13] the dispositive portion of which reads:

WHEREFORE, the evidence having shown the plaintiffs, particularly Manuel de Guia, their successor-in-interest, not entitled upon the facts and the law to the relief prayed for in the amended complaint, the same is hereby DISMISSED with costs against said plaintiff. Instead as prayed for by defendants, judgment is hereby rendered :

1. Declaring the "Kasulatan ng Sanglaan (Exhs. "A" & "1") dated November 10, 1979, and the "Kasulatan ng Pagpapabuwis ng Palaisdaan (Exhs. "C" & "3") also dated November 10, 1979, as valid for all legal intents and purposes;
2. Ordering the Ex-Officio Sheriff, RTC, Bulacan, to proceed with the extrajudicial foreclosure of the subject real estate mortgage; and
3. Ordering plaintiffs to pay defendants attorney's fees in the amount of P20,000.00

SO ORDERED.[14]

The RTC found that petitioner Renato, Primitiva's son and an instrumental witness to all the questioned documents, did not deny the outstanding obligations of his mother to respondents; that he explicitly declared that his mother had to execute Exhibit "A" to restructure her indebtedness to respondents Spouses Morte, so as to avoid the foreclosure of the mortgage over the subject property; that there was no other force or intimidation used by respondents Spouses upon him or his mother. The RTC ruled that if respondents Spouses Morte threatened to foreclose the mortgage because of Primitiva's failure to pay her indebtedness to them, they were only exercising their right as mortgagees and it was within their right to file a petition for extrajudicial foreclosure of the real estate mortgage. The RTC also found that Primitiva executed the questioned documents for valuable consideration as established by petitioner Renato's testimony that his mother executed the documents to restructure her outstanding obligation with respondents. And it was also established by Atty. Abaño, a former lawyer of Primitiva, that in his presence, certain amounts of money were given or paid by respondents Spouses to Primitiva.

Petitioners filed their appeal with the CA. On August 30, 2002, the CA issued its assailed Decision, the dispositive portion of which reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from must be, as it hereby is AFFIRMED. Costs shall be taxed against appellants.[15]

Petitioners' motion for reconsideration was denied in a Resolution dated November 28, 2003.

Hence, petitioners filed a petition for review raising the following issues, to wit:

A. WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECLARING THAT THE "TRANSACTIONS" EXECUTED ON SAME DATE, NOVEMBER 10, 1979, ARE NOT VOID AND SIMULATED;

B. ASSUMING ARGUENDO, WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT DECLARING THE SAID REAL ESTATE MORTGAGE FOR P500,000.00 AND THE LEASE CONTRACT AS VOID WHEN BOTH AGREEMENTS WERE NOT REGISTERED AND THEREFORE NOT BINDING TO THIRD PERSONS, TO INCLUDE PETITIONER DE GUIA;

C. THE INSTANT PETITION INVOLVES A QUESTION OF LAW WELL WITHIN THE POWER OF REVIEW BY THIS HONORABLE TRIBUNAL.[16]

The issue for resolution of whether the CA committed a reversible error when it upheld the RTC judgment declaring the Kasulatan ng Sanglaan (Exhibit "A") and the Kasulatan ng Pagpapabuwis ng Palaisdaan (Exhibit "C"), both dated November 10, 1979, as valid, is a factual issue.

In petitions for review on certiorari as a mode of appeal under Rule 45 of the Rules of Court, the petitioner can raise only questions of law - the Supreme Court is not the proper venue to consider a factual issue as it is not a trier of facts.[17] A departure from the general rule may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court, or when the same is unsupported by the evidence on record,[18] which we found not obtaining in this case.

Petitioners' claim that Exhibit "A" was simulated, since the signatures of Primitiva and petitioner Renato, as one of the instrumental witnesses, were obtained under threat of an immediate foreclosure of the subject property, is devoid of merit.

The CA affirmed the RTC's finding that petitioner Renato admitted his mother's outstanding obligations to respondents Spouses Morte when he testified that his mother had to execute Exhibit "A" to restructure her indebtedness to respondents Spouses Morte to avoid the foreclosure of the mortgage on the subject property; that other than the threat of foreclosure, petitioner Renato declared that there was no other force or intimidation exerted on them by respondents Spouses Morte to execute Exhibit "A"; and that a threat to enforce one's just and legal claim through a competent authority did not vitiate Primitiva and petitioner Renato's consent.

We agree. Records show that petitioner Renato indeed admitted that his mother Primitiva was not able to pay her loan in the amount of P180,000.00, plus interest, as agreed upon in the earlier Deed of Mortgage dated March 28, 1977 executed between his mother and respondents Spouses Morte. Consequently, Primitiva approached the Spouses Morte for the restructuring of her loan and, thus, she executed Exhibit "A" in order that the subject property will not be foreclosed. Petitioner Renato's testimony on cross-examination stated:

ATTY. PUNO:

x x x x

Q. Tell us, Mr. Davis, what was your participation in that mortgage for P180,000.00?

A. I signed as witness to the document, sir.

Q. And I supposed that your mother signed as the mortgagor, is it not?

A. Yes, sir.

x x x x

Q. Now after this document or mortgage for P180,000.000 was executed by your mother, what happened to that mortgage?

A. The same was not paid also, sir.

Q. It was not paid by your mother?

A. Yes, sir.

Q. And so what happened?

A. Because of that the interest on the same loan was added to that making it bigger than the previously P180,000.00, sir.

Q. How long was the period for that mortgage for P180,000.00.

A. I could not recall how much but (interrupted).

Q. How long a period? The period?

A. It was also for another year at 12%.

Q. Interest?

A. Yes, sir.

Q. And so your mother was not able to pay that and naturally the interest accumulated?

A. Yes, sir.

Q. What happened after that?

A. After the interest accumulated and since we cannot pay we have to execute another mortgage in order not to foreclose the property, sir.

Q. Which mortgage are you referring to now, Mr. Davis?

A. We executed another mortgage for P500,000.00, sir.

Q. Do you recall what document was that?

A. It was a mortgage for P500,000.00 regarding the same property

Q. You are referring to Exh. "A."

ATTY. PUNO:

Q. Could you recall, Mr. Davis, when was the due date of that mortgage for P180,000.00 which was signed by your mother and attested by you as an instrumental witness thereon?

A. Actually, it was intended for only one (1) year, sir.

Q. What year was that?

A. About 1977, sir.

Q. Now is this Exhibit "A" one of the documents which you said you signed in the office of Notary Public Mamerto Abañon?

A. Yes, sir.

Q. Now when you read - Before you signed this document as an instrumental witness you read its contents, Mr. Davis?

A. Yes, sir.

Q. You understood its contents?

A. Yes, sir.

Q. Do you know what it meant?

A. Yes, sir.

Q. And after that you signed as a witness?

A. Yes, sir.

Q. Your mother also signed this document "Kasulatan ng Sanglaan"?

A. Yes, sir.[19]

Petitioner Renato's claim that he and his mother were threatened of foreclosure of the subject property if his mother would not sign Exhibit "A," thus, their consent were vitiated, does not persuade us. As correctly ruled by the lower courts, the last paragraph of Article 1335 of the New Civil Code was applicable in this case, which provides that a threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent. It has been held that foreclosure of mortgaged properties in case of default in payment of a debtor is a legal remedy afforded by law to a creditor. Hence, a threat to foreclose the mortgage would not per se vitiate consent.[20]

We, likewise, find no merit in petitioners' contention that Exhibit "C," executed between Primitiva and the Spouses Villarico, was also simulated. As correctly found by the CA, petitioners failed to adduce any evidence in support of such claim. It had been established that petitioner Renato, an instrumental witness to this document, admitted that he read and understood and was satisfied with the explanation of Notary Public Abaña regarding the contents of the same, before he and his mother affixed their signatures on the documents. Thus, we find no reason to deviate from the findings of both the trial and appellate courts that the assailed documents were validly executed by Primitiva in favor of the respondents Spouses.

Petitioners' argument that both documents were executed without valuable consideration deserves scant consideration. Notably, petitioner Renato admitted that Exhibit "A" was executed by his mother to restructure his mother's outstanding loan obligation to respondents Spouses Morte, which had not been paid. Moreover, respondent Teofilo Morte had also given P200,000.00 to Primitiva when Exhibit "A" was executed, thus, increasing the loaned amount to P500,000.00.[21] In fact, Notary Public Abaña categorically declared that on the day the documents were executed, he saw respondents, the Spouses Morte and the Spouses Villarico, give money to Primitiva and his son petitioner Renato. Thus, it had been established that there was sufficient consideration for the execution of the assailed documents.

Petitioners tried to show the fraudulent character of the assailed documents by alleging that several documents had earlier been executed between Primitiva and the respondents Spouses involving the subject property, to wit: Deed of Sale dated February 15, 1974 (Exhibit "F"), where Primitiva sold the subject property to the Spouses Villarico for P33,000.00; Deed of Sale dated February 14, 1977 (Exhibit "G") where the subject property was sold back to Primitiva for the same amount of P33,000.00; and Deed of Sale dated March 26, 1977 (Exhibit "H"), where Primitiva sold the subject property to the Spouses Villarico for P180,000.00. Petitioners contend that Primitiva could no longer mortgage the subject property to respondents Spouses Morte on March 28, 1977, since the same was earlier sold by Primitiva to respondents Spouses Villarico on March 26, 1977 (Exhibit "H").

We are not persuaded.

Respondent Milagros Villarico provided the explanation for the execution of Exhibits "F," "G" and "H." She testified that she, her husband Ruperto and Primitiva executed Exhibit "F." However, when they went to the house of Judge Teofilo Abejo, the co-owner of the other ½ undivided portion of the property covered by TCT No. T-6358, (the other half is the subject property) to ask his consent to the sale, the latter did not give his consent thereto as he wanted to buy the subject property.[22] Thus, they (respondents Spouses Villarico) had to execute Exhibit "G" selling back the subject property to Primitiva. However, Primitiva executed Exhibit "H," selling the subject property again to respondents Spouses Villarico. Again, Judge Abejo did not give his consent to such sale, thus, the sale did not push through, and in fact, the deed was not notarized.[23]

Notably, Milagros's testimony was corroborated by the fact that Primitiva executed on November 10, 1979, a document denominated as Pagpapawalang Saysay at Pagpapawalang Bisa ng mga Kasulatan (Exhibit "E"), wherein she declared Exhibits "F," "G" and "H," of no force and effect. It bears stressing that petitioner Renato was one of the instrumental witnesses in the execution of Exhibit "E" and he testified that Notary Public Abaño had explained to him the reason why Exhibit "E" was executed, together with the other documents, including the assailed documents, i.e., the documents executed on November 10, 1979 which were the latest transactions between the parties, were intended to show the nullity of the previously signed documents. As petitioner Renato was satisfied with such explanation, coupled with the fact that he read and understood the document, he and his mother then affixed their signatures on Exhibit "E."

Finally, petitioner De Guia's claim that he was an innocent purchaser for value, who bought the subject property without notice of the mortgage on the subject property, was not raised in the trial court. As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule.[24]

WHEREFORE, the Petition is hereby DENIED. The assailed Decision of the Court of Appeals, dated August 30, 2002 in CA-G.R. CV No. 38031, is AFFIRMED.

SO ORDERED..

Corona, (Chairperson), Velasco, Jr., Nachura, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Ruben T. Reyes and Amelita G. Tolentino, concurring; rollo, pp. 49-60.

[2] Id. at 61.

[3] Records, Vol. I, pp. 376-377.

[4] Id. at 372.

[5] Id. at 45.

[6] Id. at 46.

[7] Id. at 374-375.

[8] Id. at 359-361.

[9] Id. at 362-363.

[10] Id. at 364-365.

[11] Id. at 367.

[12] Id. at 368-369.

[13] Penned by Judge Crisanto C. Concepcion; rollo, pp. 126-133.

[14] Id. at 132-133.

[15] Rollo, p. 60.

[16] Id. at 17.

[17] Development Bank of the Philippines v. Perez, 484 Phil. 843, 854 (2004), citing Montecillo v. Reynes, 385 SCRA 244 (2002).

[18] Id., citing Changco v. Court of Appeals, 379 SCRA 590 (2002).

[19] TSN, October 4, 1990, pp. 4-14.

[20] Development Bank of the Philippines v. Perez, supra note 17.

[21] TSN, November 15, 1990, p. 11.

[22] TSN, January 31, 1991, pp. 4-6.

[23] Id. at 8-9.

[24] Del Rosario v. Bonga, 402 Phil. 949, 958 (2001), citing Keng Hua v. Court of Appeals, 286 SCRA 257 (1998); Arcelona v. Court of Appeals, 280 SCRA 20 (1997); Mendoza v. Court of Appeals, 274 SCRA 527 (1997); Remman Enterprises, Inc. v. Court of Appeals, 268 SCRA 688 (1997).

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