SPOUSES ARTURO CONDES AND NORA CONDES, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND DR. PACIFICO A. DISTURA, RESPONDENTS.

G.R. NO. 161304. July 27, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 76927, dated August 28, 2003, which granted the petition for certiorari filed by respondent from the trial court's order denying the respondent's demurrer to evidence. Likewise assailed in this petition is the CA Resolution dated November 21, 2003, denying the motion for reconsideration of the assailed decision.

The antecedents of the case are as follows:

On September 21, 1995, the petitioners, spouses Arturo and Nora Condes, filed a Complaint for annulment of deed of sale or declaration thereof as an equitable mortgage, cancellation of Transfer Certificate of Title (TCT) No. T-110767, and the restoration of TCT No. T-78260 with damages. According to the petitioners, they are the registered owners of a parcel of land with an area of 684 sq. m., covered by TCT No. T-78260. To release the property from a mortgage with a certain Bernan Certeza, they allegedly re-mortgaged the property to respondent, Dr. Pacifico Distura, through their attorney-in-fact, Josephine Condes-Jover, on April 26, 1995 for the sum of P665,504.81 (P572,296.58 at 5% interest per month for three months, plus P3,000.00, attorney's fees). They averred that, contrary to what was agreed upon, Josephine was made to sign a deed of sale instead of a mortgage contract.

The petitioners further narrated that on June 7, 1995, the respondent and their attorney-in-fact executed an Agreement of Option to Repurchase[2] the property giving the petitioners until August 26, 1995 within which to pay the loan. They, however, failed to pay on the said date and pleaded with the respondent for additional time. The latter agreed and told them to raise the amount of P665,504.81, plus 5% interest for one month or P33,275.24, for a total of P698,780.05. They were allegedly able to raise the amount of P665,504.81 on September 4, 1995, and they expressed willingness to pay the additional interest due but the respondent told them that he will only sell back the property for P1 million. The petitioners averred that they found out later that the respondent had the Deed of Sale notarized on June 7, 1995 by Notary Public Joenel Alipao, without the presence of Josephine. They posited that to evade payment of the right amount of taxes, the respondent executed another falsified Deed of Sale dated August 29, 1995, wherein he misrepresented that the consideration was only P68,000.00. As a result, the respondent succeeded in obtaining a new title, TCT No. T-110767, in his name. The petitioners averred that the last time they contacted the respondent, the latter was willing to sell back the property for P1,070,678.78.

The petitioners prayed that the Deed of Sale dated April 26, 1995 be declared as an equitable mortgage; the Deed of Sale dated August 29, 1995 be declared a forgery; and moral and exemplary damages be paid to them, plus attorney's fees and litigation expenses.

In his Answer with Counterclaim,[3] the respondent contended that the petitioners sold the property to him on the condition that they will be given a right to repurchase the property for a period of one month; thus, he executed the Agreement of Option to Repurchase. He asserted that when the petitioners failed to repurchase the property, he insisted that the certificate of title be transferred to his name. The petitioners allegedly agreed provided that the consideration appearing in the deed of sale be reduced to P250,000.00 so that they can save on the payment of taxes. He said that he found out later on that there was another deed of sale for P68,400.00 registered in the Registry of Deeds.

After pre-trial, the petitioners, as plaintiffs, presented their witnesses. Josephine Condes-Jover testified that she offered to transfer the mortgage on the petitioners' property to the respondent for P665,504.81; that the respondent agreed and made her sign a deed of sale; that she wondered why she was made to sign a deed of sale when their understanding was that the property will only be mortgaged; that she trusted him because they were close, and the latter assured him that the property will be redeemed in the future;[4] and that she did not appear before a notary public for the acknowledgment of the said deed of sale.[5]

Petitioner Nora Condes likewise testified that she only agreed to transfer the mortgage on the property, not to sell the same to the respondent; the latter agreed and gave her three months within which to pay the mortgage and an additional one month as grace period.[6] She narrated that when the loan was about to become due, she arranged to sell the property to a certain Dr. Latañafrancia for P1.2 million[7] but the respondent and his wife asked her to let them buy the property for P1 million.[8] After consulting with her husband, she agreed to sell the property to the respondent only to be told that he needed more time because his buyer was still in Manila. They were surprised because they thought the respondent himself would buy the property. They waited for more than two weeks, but the respondent told them later that his prospective buyer was not interested anymore. He then offered to buy the property for P300,000.00 but she refused. The respondent told her then that the property was already his and that they have no right over it anymore. His statement made her anxious, and so she went to the Registry of Deeds to verify the condition of their title and was relieved to learn that it was still intact.[9]

Petitioner Arturo Condes corroborated his wife's testimony that the agreement was only to mortgage the property. He added that he obtained from the Registry of Deeds a copy of the Deed of Sale which resulted in the transfer of their title. He identified the same as the Deed of Sale dated August 29, 1995 showing that the consideration was P68,400.00. He confronted Josephine with the said document, and the latter denied executing the deed.[10]

The petitioners also employed the services of Col. Pedro Elvas, Jr., a practicing Questioned Documents Examiner, who testified that based on his examination, the signature of Josephine Condes-Jover appearing in the Deed of Definite Sale dated August 29, 1995 is a forgery.

The trial court admitted the documentary evidence offered by the petitioners,[11] which consisted of the following:

> Exh. B – Certified machine copy of the Deed of Sale dated August 29, 1995 for the amount of P68,400.00 allegedly executed by Josephine Condes-Jover in favor of Dr. Pacifico Distura, notarized by Florecita Gelvezon;
>
> Exh. C – Certified machine copy of TCT No. T-110767 registered in the name of Dr. Pacifico Distura;
>
> Exh. F – Machine copy of the Special Power of Attorney dated May 3, 1995;
>
> Exh. G – Bio-data of Col. Pedro S. Elvas, Jr., alleged handwriting expert;
>
> Exh. H – Certificate of Achievement of Col. Pedro S. Elvas, Jr. by the Department of State, Agency of International Development of the Government of the United States of America dated November 19, 1964;

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Exh. I – Questioned Document Report No. 17-0997 dated October 3, 1997;

Exh. J – Certified machine copy of Deed of Sale dated August 29, 1995 containing the marking of the questioned signatures of Josephine Condes-Jover;

Exh. K – Machine copy of the letter of plaintiff Arturo Condes addressed to the Register of Deeds of Iloilo City;

Exh. L – Comparison Chart of the enlarged photographs of the questioned signatures of Josephine Condes-Jover and the standard specimen signatures;

Exh. M – St. Joseph Grade School Progress Report Card of Von Jovi Jover for school year 1994-95 with signatures of Josephine Condes- Jover;

Exh. N – Official Receipt of driver's license dated August 16, 1995 with signature of Josephine Condes-Jover;

Exh. O – Sworn Statement of Josephine Condes-Jover dated September 25, 1995 with her signatures;

Exhs. P and P-1 – Two (2) Sworn Statements of Josephine Condes-Jover dated January 23, 1996 with her signatures;

Exh. Q – Community Tax Certificate of Josephine Condes-Jover dated February 13, 1997 with her signature;

Exh. R – COMELEC VRR No. 03395358 dated June 22, 1997 with the signature of Josephine Condes-Jover;

Exh. S – Plain sheet of bond paper with the specimen signatures Josephine Condes-Jover;

Exh. T – Certified machine copy of TCT No. T-78260 registered in the name of the plaintiffs;

Exh. V and V-1 – Medical Certificate of plaintiff Nora Condes with the signature of attending physician dated September 25, 1995;

Exh. W and W1 – Medical Certificate of plaintiff Nora Condes with the signature of attending physician dated September 27, 1995;

Exh. X – Certified machine copy of Official Receipt No. 059880 issued by the City Treasurer of Iloilo City;

Exh. Y – Authority to accept payment under Nos. 2580033, 2361465 and 2361466 for the sale of P68,400.00 dated August 30, 1995;

Exh. Z – Capital Gains Tax Return on the sale for P68,400.00;

Exh. AA – BIR Certificate No. 774924;

Exh. EE – Primary Entry Book;

Exh. FF – Releasing Book of Title;

Thereafter, the petitioners rested their case.

On November 29, 2002, the respondent filed a Demurrer to Evidence[12] on the ground that the petitioners had not proven their claims by a preponderance of evidence. He contended that the petitioners' evidence contradict their claims considering that the Deed of Definite Sale dated August 29, 1995 notarized by Florecita Gelvezon, which they claimed as a forgery, was not the one used in the transfer of the certificate of title in his name. He pointed out that Exhibit "T," TCT No. 78260, shows that it was cancelled by virtue of a Deed of Sale dated August 28, 1995, for the sum of P68,000.00 executed by Josephine Jover and acknowledged before Notary Public Joenel T. Alipao,[13] not Notary Public Florecita Gelvezon. Hence, even if the said Deed of Definite Sale dated

August 29, 1995 is declared as void, it would not affect the transfer of title to his name.

On January 9, 2003, the Regional Trial Court (RTC) of Iloilo City, Branch 36, issued the Order[14] denying the demurrer to evidence on the ground that some of the petitioners' claims could be supported by their evidence and will prevail in the absence of controverting evidence. On January 28, 2003, the trial court reiterated its previous ruling and denied the respondent's motion for reconsideration.

Unconvinced, the respondent filed a petition for certiorari with the CA. He succeeded in obtaining a favorable decision when the CA rendered its decision on August 28, 2003, the dispositive portion of which states:

> WHEREFORE, the instant petition is hereby GRANTED and GIVEN DUE COURSE. The Orders, dated January 9, 2003 and January 29, 2003, are hereby REVERSED and SET ASIDE. The instant complaint in Civil Case No. 22566 pending before the Regional Trial Court of Iloilo City, Branch 36, is hereby DISMISSED.
>
> SO ORDERED.[15]

The petitioners moved for the reconsideration of the CA's decision, but the CA denied the same on November 21, 2003.[16] Consequently, they filed a petition for review, wherein the petitioners raise the following issues:

> - THE RESPONDENT HONORABLE COURT OF APPEALS FAILED TO RESOLVE ALL THE ISSUES IN CIVIL CASE NO. 22566 BASED ON THE EVIDENCE, TESTIMONIAL AND DOCUMENTARY, PRESENTED BY THE PETITIONERS IN THE TRIAL COURT, FOREMOST OF WHICH IS THE ISSUE ON EQUITABLE MORTGAGE;
>
> - THE PETITION FOR CERTIORARI UNDER RULE 65 OF RESPONDENT DR. DISTURA IS INSUFFICIENT IN FORM AND IN SUBSTANCE BECAUSE IT FAILED AND OMITTED TO PRESENT TO THE RESPONDENT HONORABLE COURT OF APPEALS ALL THE EVIDENCE TESTIMONIAL AND DOCUMENTARY, PRESENTED BY THE PETITIONERS IN THE TRIAL COURT, WHICH WOULD HAVE BEEN MADE AS BASIS BY THE RESPONDENT HONORABLE COURT OF APPEALS IN DETERMINING WHETHER OR NOT THE TRIAL JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING RESPONDENT'S DR. DISTURA'S DEMURRER TO EVIDENCE;
>
> - THE PETITIONERS HAVE PROVEN BY PREPONDERANCE OF EVIDENCE ALL THEIR CAUSES OF ACTION AS WELL AS ALL THE ISSUES AGREED BY THE PARTIES IN CIVIL CASE NO. 22566 BY THEIR EVIDENCE, TESTIMONIAL AND DOCUMENTARY;
>
> - THE PETITIONERS' CAUSES OF ACTION ARE NOT ANCHORED ONLY ON THE FORGED DEED OF SALE, OR ON ITS USE IN THE TRANSFER OF THE TITLE TO THE PROPERTY FROM THE PETITIONERS TO RESPONDENT DR. DISTURA, BUT ON OTHER EVIDENCE, TESTIMONIAL AND DOCUMENTARY, AS WELL AS ON THE JUDICIAL ADMISSION OF THE LATTER.[17]

Briefly, the issues posed by the petitioners are as follows: (a) whether the CA erred when it failed to resolve all the issues in its decision granting the demurrer to evidence considering that such a decision is in effect an adjudication on the merits; (b) whether the petition for certiorari before the CA should have been dismissed for being defective in form; and (c) whether the CA erred in granting the demurrer to evidence.

The petition is meritorious.

Before proceeding to the merits of the case, we first delve into the procedural issue raised by the petitioners' that the CA erred in not dismissing the petition for certiorari for failure to attach important testimonial and documentary evidence. We do not agree. The CA committed no reversible error in giving due course to the petition for certiorari even without the said documents being attached thereto.

Section 1 of Rule 65 of the Rules of Court enumerates the essential documents required to be attached to a petition for certiorari:

> Section 1. Petition for certiorari. – x x x x
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

The rule does not specify the precise documents, pleadings, or parts of the records that should be appended to the petition other than the judgment, final order, or resolution being assailed. These documents and pleadings are generally the ones needed by the reviewing courts to decide whether to give due course to the petition.[18] The initial determination of what pleadings, documents or orders are relevant and pertinent to the petition rests on the petitioner.[19] Thereafter, the CA will review the petition and determine whether additional pleadings, documents or orders should have been attached thereto.

The appellate court found the present petition sufficient in form when it proceeded to decide the case on the merits, without raising any question as to the sufficiency of the petition. Acceptance of a petition for certiorari, as well as granting due course thereto is addressed to the sound discretion of the court.[20] Where it does not appear, as in this case, that in giving due course to the petition for certiorari, the CA committed any error that prejudiced the substantial rights of the parties, there is no reason to disturb its determination that the copies of the pleadings and documents attached to the petition were sufficient to make out a prima facie case.[21]

Generally, interlocutory orders are neither appealable nor subject to certiorari proceedings.[22] Though interlocutory in character, an order denying a demurrer to evidence may be the subject of a certiorari proceeding, provided the petitioner can show that it was issued with grave abuse of discretion; and that appeal in due course is not plain, adequate or speedy under the circumstances.[23] It must be stressed that a writ of certiorari may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, not errors of judgment. Where the issue or question involves or affects the wisdom or legal soundness of the decision —not the jurisdiction of the court--the same is beyond the province of a petition for certiorari.[24]

However, even as the CA did not err in not dismissing the respondent's petition on the strength of the documents attached thereto, we find that neither did the RTC commit grave abuse of discretion when it denied the demurrer to evidence. This is evident from the said Order, which ratiocinated, thus:

> While it may be true that the evidence presented by the plaintiff would run counter to some allegations in this complaint, there are evidence[s] which could satisfactorily support other allegations unless rebutted by the defendant. It will also be noted that the existence of a number of deeds of sale could support the claim of irregularity as to the transfer of the lot subject matter thereof if not controverted by other evidence. In short, in the absence of controverting evidence, there are claims which could be supported by the evidence presented by the plaintiff.[25]

The petitioners insist that the demurrer to evidence should not have been granted since they have been able to establish some, if not all, of their claims through a preponderance of evidence. They point out that the decision which granted the demurrer to evidence was, in effect, adjudication on the merits of the case. Thus, they claim that the CA should have ruled on all the issues submitted by them, particularly the issue on whether the deed of sale should be declared as an equitable mortgage.

It is clear from these arguments that the petitioners misunderstood the essence of a demurrer to evidence and the meaning of preponderance of evidence. A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is filed after the plaintiff rests his case. It is an objection by one of the parties in an

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action, to the effect that the evidence which his adversary produced, is insufficient in point of law, whether true or not, to make out a case or sustain the issue.[26] The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, has been able to establish a prima facie case.

In civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence.[27] "Preponderance of evidence" means evidence which is of greater weight, or more convincing than that which is offered in opposition to it.[28] It is, therefore, premature to speak of "preponderance of evidence" in a demurrer to evidence because it is filed before the defendant presents his evidence. The purpose of a demurrer to evidence is precisely to expeditiously terminate the case without the need of the defendant's evidence. It authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part as he would ordinarily have to do, if it is shown by plaintiff's evidence that the latter is not entitled to the relief sought.[29]

It would have been unnecessary, if not antithetical, for the CA to resolve all the issues submitted by the petitioners when it found that the evidence of the plaintiffs was not sufficient. The essential question to be resolved in a demurrer to evidence is whether the plaintiffs have been able to show that they are entitled to their claim and it was incumbent upon the CA to make such a determination. A perusal of the CA Decision however shows that it is barren of any discussion on this matter.

After a careful review of the petitioners' evidence, we find that the CA erred in dismissing the petitioners' complaint. The Court has recently established some guidelines on when a demurrer to evidence should be granted, thus:

> A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the plaintiff's evidence together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is prima facie insufficient for a recovery.[30]

Collectively, the petitioners' evidence, testimonial and documentary, sufficiently proved the essential averments of the complaint, that is, that their attorney-in-fact was made to sign the Deed of Sale dated April 26, 1995 when what was actually agreed upon was only the mortgage of their property; and that their attorney-in-fact only signed the said Deed of Sale dated April 26, 1995, and that the other deeds of sale, particularly the Deed of Definite Sale dated August 29, 1995 for P68,400.00, were forged.

The respondent, however, contends that the petitioners failed to prove that the Deed of Definite Sale dated August 29, 1995 for the sum of P68,400.00, notarized by Florecita Gelvezon, was the deed of sale used in transferring the title to respondent's name. The respondent anchors his contention on the fact that the description of the deed of sale that resulted in the cancellation of petitioners' title differed from that of the Deed of Definite Sale. In the petitioners' certificate of title, it was annotated therein that it was cancelled by virtue of a Deed of Sale dated August 28, 1995 for the sum of P68,000.00, notarized by Joenel Alipao. The respondent, therefore, posits that, even if the Deed of Definite Sale is declared as void, his title would not be cancelled.

We do not agree. Petitioner Arturo Condes testified that the deed of sale which he obtained from the Registry of Deeds was the Deed of Definite Sale dated August 29, 1995, notarized by Florecita Gelvezon. This testimony, taken with the testimony of Josephine Condes-Jover, the petitioners' attorney-in-fact, that she did not execute any other deeds of sale except the one that was dated April 26, 1995, was more than enough to prove that the transfer of the certificate of title in the name of the respondent was questionable.

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All told, without prejudice to the trial court's findings, we hold that the petitioners' evidence, in the absence of any controverting evidence, will stand and would be sufficient to prove some, if not all, of their claims. In order to arrive at a just decision on the contending claims of the parties, trial on the merits is, therefore, necessary.

WHEREFORE, premises considered, the petition is GRANTED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No, 76927, dated August 28, 2003 and November 21, 2003, respectively, are REVERSED and SET ASIDE. The trial court is directed to REINSTATE Civil Case No. 22566. Costs against the respondent.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Mariano C. Del Castillo and Arturo D. Brion, concurring; rollo, pp. 9-13.

[2] CA rollo, pp. 31-32.

[3] Rollo, pp. 61-64.

[4] TSN, August 2, 1996, pp. 8-10; id. at 80-82.

[5] Id at 7; id. at 79.

[6] TSN, June 8, 1998, pp. 15-16; rollo, pp. 97-98.

[7] Id. at 22; id. at 104.

[8] Id. at 29; id. at 111.

[9] Id. at 32-39; id. at 114-121.

[10] TSN, September 28, 1998, pp. 36-37; id at 184-185.

[11] Rollo, p. 256.

[12] Id. at 257-270.

[13] Id. at 245.

[14] Id. at 271.

[15] Id. at 12.

[16] Id. at 15.

[17] Id. at 34.

[18] Barcenas v. Tomas, G.R. No. 150321. March 31, 2005, 454 SCRA 593, 605.

[19] Garcia v. Philippine Airlines, Inc., G.R. No. 160798, June 8, 2005, 459 SCRA 768, 780.

[20] Floren Hotel v. National Labor Relations Commission, G.R. No. 155264, May 6, 2005, 458 SCRA128, 141.

[21] Id. at 142.

[22] Choa v. Choa, 441 Phil. 175, 181 (2002).

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[23] Id. at 178.

[24] Deutsche Bank Manila v. Chua Yok See, G.R. No. 165606, February 6, 2006, 481 SCRA 672, 692.

[25] Rollo, p. 271.

[26] Celino v. Heirs of Alejo and Teresa Santiago, G.R. No. 161817, July 30, 2004, 435 SCRA 690, 693.

[27] Ong v. Yap, G.R. No. 146797, February 18, 2005, 452 SCRA 41, 50.

[28] Rivera v. Court of Appeals, 348 Phil. 734, 742 (1998).

[29] Heirs of Emilio Santioque v. Heirs of Emilio Calma, G.R. No. 160832, October 27, 2006, 505 SCRA 665, 679.

[30] Id. at 679-680.

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