

THE ESTATE OF PEDRO C. GONZALES AND HEIRS OF PEDRO C. GONZALES, PETITIONERS, VS. THE HEIRS OF MARCOS PEREZ, RESPONDENTS.

G.R. No. 169681. November 05, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This resolves the instant Petition for Review on Certiorari under Rule 45 of the Rules of Court praying for the nullification of the Decision[1] of the Court of Appeals (CA) dated April 25, 2005 in CA-G.R. CV No. 60998 and its Resolution[2] dated September 14, 2005. The challenged Decision of the CA reversed and set aside the judgment of the Regional Trial Court (RTC) of Marikina City, Branch 272 in Civil Case No. 94-57-MK while its assailed Resolution denied petitioners' motion for reconsideration.

The antecedent facts are as follows:

The former Municipality of Marikina in the Province of Rizal (now City of Marikina, Metro Manila) used to own a parcel of land located in Barrio Concepcion of the said municipality covered by Original Certificate of Title (OCT) No. 629[3] of the Register of Deeds of Rizal. The said property was subdivided into three (3) lots, namely, lots A, B and C, per subdivision plan (LRC) Psd-4571.[4]

On January 14, 1966, the Municipal Council of Marikina passed Resolution No. 9, series of 1966 which authorized the sale through public bidding of Municipal Lots A and C.

On April 25, 1966, a public bidding was conducted wherein Pedro Gonzales was the highest bidder. Two days thereafter, or on April 27, 1966, the Municipal Council of Marikina issued Resolution No. 75 accepting the bid of Pedro. Thereafter, a deed of sale was executed in favor of the latter which was later forwarded to the Provincial Governor of Rizal for his approval. The Governor, however, did not act upon the said deed.

Sometime in September 1966, Pedro sold to Marcos Perez a portion of Lot C, denominated as Lot C-3, which contains an area of 375 square meters. The contract of sale was embodied in a Deed of Sale[5] which, however, was not notarized. To segregate the subject property from the remaining portions of Lot C, Marcos had the same surveyed wherein a technical description of the subject lot was prepared by a surveyor.[6]

Subsequently, Pedro and Marcos died.

On February 7, 1992, the Municipality of Marikina, through its then Mayor Rodolfo Valentino, executed a Deed of Absolute Transfer of Real Property over Lots A and C in favor of the Estate of Pedro C. Gonzales.[7] On June 25, 1992, Transfer Certificate of Title (TCT) No. 223361, covering Lot C, was issued in the name of the said estate.[8]

Subsequently, herein petitioners executed an extra-judicial partition wherein Lot C was subdivided into three lots. As a result of the subdivision, new titles were issued wherein the 370-square-meter portion of Lot C-3 is now

denominated as Lot C-1 and is covered by TCT No. 244447[9] and the remaining 5 square meters of the subject lot (Lot C-3) now forms a portion of another lot denominated as Lot C-2 and is now covered by TCT No. 244448.[10]

On October 1, 1992, herein respondents sent a demand letter to one of herein petitioners asking for the reconveyance of the subject property.[11] However, petitioners refused to reconvey the said lot. As a consequence, respondents filed an action for "Annulment and/or Rescission of Deed of Absolute Transfer of Real Property x x x and for Reconveyance with Damages." [12]

On February 2, 1998, the RTC rendered its Decision with the following dispositive portion:

WHEREFORE, foregoing premises, judgment is hereby rendered as follows:

- DISMISSING the complaint subject of the case in caption for lack of merit;
- DECLARING VALID both Transfer Certificates of Title Nos. 244447 and 244448 issued by the Register of Deeds of Marikina;
- DISMISSING the defendants' counterclaim.

No pronouncement as to costs.

SO ORDERED.[13]

The RTC ruled that since the Deed of Sale executed between Pedro and Marcos was not notarized, the same is considered void and of no effect. In addition, the trial court also held that Pedro became the owner of the subject lot only on February 7, 1992; as such, he could not have lawfully transferred ownership thereof to Marcos in 1966.

Herein respondents appealed the RTC Decision to the CA contending that the RTC erred in relying only on Articles 1356 and 1358 of the Civil Code. Instead, respondents assert that the RTC should also have applied the provisions of Articles 1357, 1403 (2), 1405 and 1406 of the same Code.

On April 25, 2005, the CA rendered its presently assailed Decision disposing as follows:

WHEREFORE, premises considered, the instant Appeal is hereby GRANTED and the assailed Decision dated February 2, 1998 is REVERSED and SET ASIDE. TCT No. 244447 and partially, TCT No. 244448, with respect to five (5) square meters, are declared NULL and VOID and defendants-appellees are ordered to reconvey in favor of the plaintiffs-appellants the subject property covered by said Transfer Certificates of Title (five square meters only with respect to TCT No. 244448). The trial court's dismissal of defendants-appellees' counterclaim is, however, AFFIRMED.

SO ORDERED.[14]

The CA held that a sale of real property, though not consigned in a public instrument, is nevertheless valid and binding among the parties and that the form required in Article 1358 of the Civil Code is not essential to the validity or enforceability of the transactions but only for convenience.

Petitioners filed a motion for reconsideration, but the same was denied by the CA in its Resolution of September 14, 2005 on the ground that the said motion was filed out of time.

Hence, the present petition with the following assignment of errors:

WITH DUE RESPECT TO THE HONORABLE COURT OF APPEALS, ITS FINDINGS OF FACT RUN COUNTER TO THOSE OF THE TRIAL COURT, THUS, IT HAS DECIDED THE CASE IN A WAY NOT

IN ACCORD WITH LAW AND JURISPRUDENCE.

WITH DUE RESPECT, THE ALLEGED DEED OF SALE IS SUSPECT AND RIDDEN WITH INCONSISTENCIES. IN FACT, THE LOWER COURT HELD THAT THE DEED OF SALE FAILED TO MEET THE SOLEMNITY REQUIREMENTS PROVIDED UNDER THE LAW FOR ITS VALIDITY.

WITH DUE RESPECT, THE COURT OF APPEALS ERRED IN DISREGARDING THE FINDINGS OF FACT AND THE APPLICATION OF LAW BY THE REGIONAL TRIAL COURT THAT UNDER THE PURPORTED DEED OF SALE THE VENDOR COULD NOT HAVE TRANSFERRED OWNERSHIP.[15]

In their first and last assigned errors, petitioners contend that Marcos, who is respondents' predecessor-in-interest, could not have legally bought the disputed parcel of land from petitioners' predecessor-in-interest, Pedro, in September 1966 because, during that time, Pedro had not yet acquired ownership of the subject lot. Petitioners' assertion is based on the premise that as of February 29, 1968, the Deed of Sale between Pedro and the Municipality of Marikina was still subject to approval by the Provincial Governor of Rizal, as required under Section 2196 of the Revised Administrative Code. Considering that on the supposed date of sale in favor of Marcos, the requisite approval of the Provincial Governor was not yet secured, petitioners conclude that Pedro could not be considered as the owner of the subject property and, as such, he did not yet possess the right to transfer ownership thereof and, thus, could not have lawfully sold the same to Marcos.

The Court does not agree.

Section 2196 of the Revised Administrative Code provides:

SECTION 2196. Execution of deeds. - When the government of a municipality is a party to a deed or an instrument which conveys real property or any interest therein or which creates a lien upon the same, such deed or instrument shall be executed on behalf of the municipal government by the mayor, upon resolution of the council, with the approval of the governor.

In *Municipality of Camiling v. Lopez*,^[16] the Court found occasion to expound on the nature and effect of the provincial governor's power to approve contracts entered into by a municipal government as provided for under Section 2196 of the Revised Administrative Code. The Court held, thus:

x x x The approval by the provincial governor of contracts entered into and executed by a municipal council, as required in [S]ection 2196 of the Revised Administrative Code, is part of the system of supervision that the provincial government exercises over the municipal governments. It is not a prohibition against municipal councils entering into contracts regarding municipal properties subject of municipal administration or control. It does not deny the power, right or capacity of municipal councils to enter into such contracts; such power or capacity is recognized. Only the exercise thereof is subject to supervision by approval or disapproval, i.e., contracts entered in pursuance of the power would ordinarily be approved if entered into in good faith and for the best interests of the municipality; they would be denied approval if found illegal or unfavorable to public or municipal interest. The absence of the approval, therefore, does not per se make the contracts null and void.[17]

This pronouncement was later reiterated in *Pechueco Sons Company v. Provincial Board of Antique*,^[18] where the Court ruled more emphatically that:

In other words, as regards the municipal transactions specified in Section 2196 of the Revised Administrative Code, the Provincial Governor has two courses of action to take - either to approve or disapprove the same. And since absence of such approval does not necessarily render the contract entered into by the municipality null and void, the transaction remains voidable until such time when by subsequent unfavorable action of the governor, for reasons of public interest, the contract is thereby invalidated.[19]

It is clear from the above-quoted pronouncements of the Court that, pending approval or disapproval by the Provincial Governor of a contract entered into by a municipality which falls under the provisions of Section 2196 of the Revised Administrative Code, such contract is considered voidable. In the instant case, there is no showing that the contract of sale entered into between Pedro and the Municipality of Marikina was ever acted upon by the Provincial Governor. Hence, consistent with the rulings enunciated above, the subject contract should be considered voidable. Voidable or annulable contracts, before they are set aside, are existent, valid, and binding, and are effective and obligatory between the parties.[20]

In the present case, since the contract was never annulled or set aside, it had the effect of transferring ownership of the subject property to Pedro. Having lawfully acquired ownership of Lots A and C, Pedro, in turn, had the full capacity to transfer ownership of these parcels of land or parts thereof, including the subject property which comprises a portion of Lot C.

It is wrong for petitioners to argue that it was only on June 25, 1992, when TCT No. 223361 covering Lot C was issued in the name of the estate of Pedro, that he became the owner thereof.

Article 1496 of the Civil Code provides:

The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.

In conjunction with the above-stated provision, Article 1497 of the Civil Code states that:

The thing sold shall be understood as delivered when it is placed in the control and possession of the vendee.

In the present case, there is no dispute that Pedro took control and possession of the said lot immediately after his bid was accepted by the Municipal Government of Marikina. In fact, herein petitioners, in their Answer with Compulsory Counterclaim admit that both Pedro and Marcos, together with their respective heirs, were already occupying the subject property even before the same was sold to Pedro and that, after buying the same, Pedro allowed Marcos and his family to stay thereon.[21] This only shows that upon perfection of the contract of sale between the Municipality of Marikina and Pedro, the latter acquired ownership of the subject property by means of delivery of the same to him.

Hence, the issuance of TCT No. 223361, as well as the execution of the Deed of Absolute Transfer of Real Property on February 7, 1992 by the Municipal Mayor of Marikina, could not be considered as the operative acts which transferred ownership of Lot C to Pedro. Pedro already acquired ownership of the subject property as early as 1966 when the same was delivered to him by the Municipality of Marikina, and the execution of the Deed of Absolute Transfer of Real Property as well as the consequent issuance of TCT No. 223316 are simply a confirmation of such ownership.

It may not be amiss to point out at this juncture that the Deed of Absolute Transfer of Real Property executed by the Mayor of Marikina was no longer subject to approval by the Provincial Governor of Rizal because Marikina already became part of Metro Manila on November 7, 1975.[22] On December 8, 1996, Marikina became a chartered city.[23]

In their second assignment of error, petitioners question the authenticity and due execution of the Deed of Sale executed by Pedro in favor of Marcos. Petitioners also argue that even assuming that Pedro actually executed the subject Deed of Sale, the same is not valid because it was not notarized as required under the provisions of Articles 1403 and 1358 of the Civil Code.

The Court is not persuaded.

The RTC, in its abbreviated discussion of the questions raised before it, did not touch on the issue of whether the Deed of Sale between Pedro and Marcos is authentic and duly executed. However, the CA, in its presently assailed Decision, adequately discussed this issue and ruled as follows:

x x x In the present case, We are convinced that plaintiffs-appellants [herein respondents] have substantially proven that Pedro, indeed, sold the subject property to Marcos for P9,378.75. The fact that no receipt was presented to prove actual payment of consideration, in itself, the absence of receipts, or any proof of consideration, would not be conclusive since consideration is always presumed. Likewise, the categorical statement in the trial court of Manuel P. Bernardo, one of the witnesses in the Deed of Sale, that he himself saw Pedro sign such Deed lends credence. This was corroborated by another witness, Guillermo Flores. Although the defendants-appellees [herein petitioners] are assailing the genuineness of the signatures of their parents on the said Deed, they presented no evidence of the genuine signatures of their parents as would give this Court a chance to scrutinize and compare it with the assailed signatures. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules.[24]

In the instant petition, petitioners would have us review the factual determinations of the CA. However, settled is the rule that the Court is not a trier of facts and only questions of law are the proper subject of a petition for review on certiorari in this Court.[25] While there are exceptions to this rule,[26] the Court finds that the instant case does not fall under any of them. Hence, the Court sees no reason to disturb the findings of the CA, which are supported by evidence on record.

On the question of whether the subject Deed of Sale is invalid on the ground that it does not appear in a public document, Article 1358 of the same Code enumerates the acts and contracts that should be embodied in a public document, to wit:

Art. 1358. The following must appear in a public document:

- (1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405;
- (2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;
- (3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person; and
- (4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by Articles 1403, No. 2 and 1405.

On the other hand, pertinent portions of Article 1403 of the Civil Code provide as follows:

Art. 1403. The following contracts are unenforceable, unless they are ratified:

x x x x

- (2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

(a) An agreement that by its terms is not to be performed within a year from the making thereof;

x x x x

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein; x x x[27]

Under Article 1403(2), the sale of real property should be in writing and subscribed by the party charged for it to be enforceable.[28] In the case before the Court, the Deed of Sale between Pedro and Marcos is in writing and subscribed by Pedro and his wife Francisca; hence, it is enforceable under the Statute of Frauds.

However, not having been subscribed and sworn to before a notary public, the Deed of Sale is not a public document and, therefore, does not comply with Article 1358 of the Civil Code.

Nonetheless, it is a settled rule that the failure to observe the proper form prescribed by Article 1358 does not render the acts or contracts enumerated therein invalid. It has been uniformly held that the form required under the said Article is not essential to the validity or enforceability of the transaction, but merely for convenience.[29] The Court agrees with the CA in holding that a sale of real property, though not consigned in a public instrument or formal writing, is, nevertheless, valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale of real estate produces legal effects between the parties.[30] Stated differently, although a conveyance of land is not made in a public document, it does not affect the validity of such conveyance. Article 1358 does not require the accomplishment of the acts or contracts in a public instrument in order to validate the act or contract but only to insure its efficacy.[31] Thus, based on the foregoing, the Court finds that the CA did not err in ruling that the contract of sale between Pedro and Marcos is valid and binding.

WHEREFORE, the instant petition is DENIED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 60998 are AFFIRMED.

SO ORDERED.

Quisumbing,[*] Carpio, (Chairperson), Chico-Nazario, and Abad,**] JJ., concur.

[*] Designated to sit as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 755 dated October 12, 2009.

[**] Designated to sit as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 753 dated October 12, 2009.

[1] Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Conrado M. Vasquez, Jr. (now Presiding Justice) and Rebecca De Guia-Salvador, concurring; rollo, pp. 23-36.

[2] Id. at 37.

[3] Exhibit "15," folder of exhibits, pp. 63-65.

[4] Exhibit "15-B," id. at 65.

[5] Exhibit "D," id. at 4.

[6] See Exhibit "A," id. at 1.

[7] Exhibit "G"/ Exhibit "12," id. at 10 and 60.

- [8] Exhibit "K"/ Exhibit "9," id. at 16.
- [9] Exhibit "N"/ Exhibit "13," id. at 28.
- [10] Exhibit "O"/ Exhibit "14," id. at 29.
- [11] Exhibit "L," id. at 18.
- [12] Records, pp. 1-8.
- [13] Id. at 394-395.
- [14] Rollo, p. 35.
- [15] Id. at 14, 16, and 18.
- [16] 99 Phil. 187. (1956).
- [17] Id. at 189-190. (Emphasis supplied.)
- [18] No. L-27038, January 30, 1970, 31 SCRA 320.
- [19] Id. at 325. (Emphasis supplied.)
- [20] *Gonzales v. Climax Mining Ltd.*, G.R. No. 161957, February 28, 2005, 452 SCRA 607, 622, citing *IV Tolentino*, 1991 ed., p. 596.
- [21] Exhibit "11," folder of exhibits, p. 49.
- [22] By virtue of Presidential Decree No. 824.
- [23] By virtue of Republic Act No. 8223.
- [24] CA rollo, p. 87.
- [25] *Programme Incorporated v. Province of Bataan*, G.R. No. 144635, June 26, 2006, 492 SCRA 529, 534.
- [26] 1. When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
2. When the inference made is manifestly mistaken, absurd or impossible;
3. Where there is a grave abuse of discretion;
4. When the judgment is based on a misapprehension of facts;
5. When the findings of fact are conflicting;
6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
7. When the findings are contrary to those of the trial court;
8. When the findings of fact are conclusions without citation of specific evidence on which they are based;
9. When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (*Samaniego-Celada v. Abena*, G.R. No. 145545, June 30, 2008, 556 SCRA 569, 576-577)

[27] Emphasis supplied.

[28] *Cenido v. Spouses Apacionado*, 376 Phil. 801, 819 (1999).

[29] *James Estreller, et al. v. Luis Miguel Ysmael, et al.*, G.R. No. 170264, March 13, 2009; *Tigno v. Aquino*, 486 Phil. 254, 268 (2004).

[30] *Id.*

[31] *Chong v. Court of Appeals*, G.R. No. 148280, July 10, 2007, 527 SCRA 144, 163; *Cenido v. Apacionado*, *supra* note 28, at 820.

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