

MARISSA R. UNCHUAN, PETITIONER, VS. ANTONIO J.P. LOZADA, ANITA LOZADA AND THE REGISTER OF DEEDS OF CEBU CITY, RESPONDENTS.

G.R. No. 172671. April 16, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review are the Decision[1] dated February 23, 2006 and Resolution[2] dated April 12, 2006 of the Court of Appeals in CA-G.R. CV. No. 73829. The appellate court had affirmed with modification the Order[3] of the Regional Trial Court (RTC) of Cebu City, Branch 10 reinstating its Decision[4] dated June 9, 1997.

The facts of the case are as follows:

Sisters Anita Lozada Slaughter and Peregrina Lozada Saribay were the registered co-owners of Lot Nos. 898-A-3 and 898-A-4 covered by Transfer Certificates of Title (TCT) Nos. 53258[5] and 53257[6] in Cebu City.

The sisters, who were based in the United States, sold the lots to their nephew Antonio J.P. Lozada (Antonio) under a Deed of Sale[7] dated March 11, 1994. Armed with a Special Power of Attorney[8] from Anita, Peregrina went to the house of their brother, Dr. Antonio Lozada (Dr. Lozada), located at 4356 Faculty Avenue, Long Beach California.[9] Dr. Lozada agreed to advance the purchase price of US\$367,000 or P10,000,000 for Antonio, his nephew. The Deed of Sale was later notarized and authenticated at the Philippine Consul's Office. Dr. Lozada then forwarded the deed, special power of attorney, and owners' copies of the titles to Antonio in the Philippines. Upon receipt of said documents, the latter recorded the sale with the Register of Deeds of Cebu. Accordingly, TCT Nos. 128322[10] and 128323[11] were issued in the name of Antonio Lozada.

Pending registration of the deed, petitioner Marissa R. Unchuan caused the annotation of an adverse claim on the lots. Marissa claimed that Anita donated an undivided share in the lots to her under an unregistered Deed of Donation[12] dated February 4, 1987.

Antonio and Anita brought a case against Marissa for quieting of title with application for preliminary injunction and restraining order. Marissa for her part, filed an action to declare the Deed of Sale void and to cancel TCT Nos. 128322 and 128323. On motion, the cases were consolidated and tried jointly.

At the trial, respondents presented a notarized and duly authenticated sworn statement, and a videotape where Anita denied having donated land in favor of Marissa. Dr. Lozada testified that he agreed to advance payment for Antonio in preparation for their plan to form a corporation. The lots are to be eventually infused in the capitalization of Damasa Corporation, where he and Antonio are to have 40% and 60% stake, respectively. Meanwhile, Lourdes G. Vicencio, a witness for respondents confirmed that she had been renting the ground floor of Anita's house since 1983, and tendering rentals to Antonio.

For her part, Marissa testified that she accompanied Anita to the office of Atty. Cresencio Tomakin for the signing of the Deed of Donation. She allegedly kept it in a safety deposit box but continued to funnel monthly rentals to

Peregrina's account.

A witness for petitioner, one Dr. Cecilia Fuentes, testified on Peregrina's medical records. According to her interpretation of said records, it was physically impossible for Peregrina to have signed the Deed of Sale on March 11, 1994, when she was reported to be suffering from edema. Peregrina died on April 4, 1994.

In a Decision dated June 9, 1997, RTC Judge Leonardo B. Cañares disposed of the consolidated cases as follows:

WHEREFORE, judgment is hereby rendered in Civil Case No. CEB-16145, to wit:

- Plaintiff Antonio J.P. Lozada is declared the absolute owner of the properties in question;
- The Deed of Donation (Exh. "9") is declared null and void, and Defendant Marissa R. Unchuan is directed to surrender the original thereof to the Court for cancellation;
- The Register of Deeds of Cebu City is ordered to cancel the annotations of the Affidavit of Adverse Claim of defendant Marissa R. Unchuan on TCT Nos. 53257 and 53258 and on such all other certificates of title issued in lieu of the aforementioned certificates of title;
- Defendant Marissa R. Unchuan is ordered to pay Antonio J.P. Lozada and Anita Lozada Slaughter the sum of P100,000.00 as moral damages; exemplary damages of P50,000.00; P50,000.00 for litigation expenses and attorney's fees of P50,000.00; and
- The counterclaims of defendant Marissa R. Unchuan [are] DISMISSED.

In Civil Case No. CEB-16159, the complaint is hereby DISMISSED.

In both cases, Marissa R. Unchuan is ordered to pay the costs of suit.

SO ORDERED.[13]

On motion for reconsideration by petitioner, the RTC of Cebu City, Branch 10, with Hon. Jesus S. dela Peña as Acting Judge, issued an Order[14] dated April 5, 1999. Said order declared the Deed of Sale void, ordered the cancellation of the new TCTs in Antonio's name, and directed Antonio to pay Marissa P200,000 as moral damages, P100,000 as exemplary damages, P100,000 attorney's fees and P50,000 for expenses of litigation. The trial court also declared the Deed of Donation in favor of Marissa valid. The RTC gave credence to the medical records of Peregrina.

Respondents moved for reconsideration. On July 6, 2000, now with Hon. Soliver C. Peras, as Presiding Judge, the RTC of Cebu City, Branch 10, reinstated the Decision dated June 9, 1997, but with the modification that the award of damages, litigation expenses and attorney's fees were disallowed.

Petitioner appealed to the Court of Appeals. On February 23, 2006 the appellate court affirmed with modification the July 6, 2000 Order of the RTC. It, however, restored the award of P50,000 attorney's fees and P50,000 litigation expenses to respondents.

Thus, the instant petition which raises the following issues:

I.

WHETHER THE COURT OF APPEALS ERRED AND VIOLATED PETITIONER'S RIGHT TO DUE PROCESS WHEN IT FAILED TO RESOLVE PETITIONER'S THIRD ASSIGNED ERROR.

II.

WHETHER THE HONORABLE SUPREME COURT MAY AND SHOULD REVIEW THE CONFLICTING

FACTUAL FINDINGS OF THE HONORABLE REGIONAL TRIAL COURT IN ITS OWN DECISION AND RESOLUTIONS ON THE MOTIONS FOR RECONSIDERATION, AND THAT OF THE HONORABLE COURT OF APPEALS.

III.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S CASE IS BARRED BY LACHES.

IV.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE DEED OF DONATION EXECUTED IN FAVOR OF PETITIONER IS VOID.

V.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT ANITA LOZADA'S VIDEOTAPED STATEMENT IS HEARSAY.[15]

Simply stated, the issues in this appeal are: (1) Whether the Court of Appeals erred in upholding the Decision of the RTC which declared Antonio J.P. Lozada the absolute owner of the questioned properties; (2) Whether the Court of Appeals violated petitioner's right to due process; and (3) Whether petitioner's case is barred by laches.

Petitioner contends that the appellate court violated her right to due process when it did not rule on the validity of the sale between the sisters Lozada and their nephew, Antonio. Marissa finds it anomalous that Dr. Lozada, an American citizen, had paid the lots for Antonio. Thus, she accuses the latter of being a mere dummy of the former. Petitioner begs the Court to review the conflicting factual findings of the trial and appellate courts on Peregrina's medical condition on March 11, 1994 and Dr. Lozada's financial capacity to advance payment for Antonio. Likewise, petitioner assails the ruling of the Court of Appeals which nullified the donation in her favor and declared her case barred by laches. Petitioner finally challenges the admissibility of the videotaped statement of Anita who was not presented as a witness.

On their part, respondents pray for the dismissal of the petition for petitioner's failure to furnish the Register of Deeds of Cebu City with a copy thereof in violation of Sections 3[16] and 4,[17] Rule 45 of the Rules. In addition, they aver that Peregrina's unauthenticated medical records were merely falsified to make it appear that she was confined in the hospital on the day of the sale. Further, respondents question the credibility of Dr. Fuentes who was neither presented in court as an expert witness[18] nor professionally involved in Peregrina's medical care.

Further, respondents impugn the validity of the Deed of Donation in favor of Marissa. They assert that the Court of Appeals did not violate petitioner's right to due process inasmuch as it resolved collectively all the factual and legal issues on the validity of the sale.

Faithful adherence to Section 14,[19] Article VIII of the 1987 Constitution is indisputably a paramount component of due process and fair play. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court.[20]

In the assailed Decision, the Court of Appeals reiterates the rule that a notarized and authenticated deed of sale enjoys the presumption of regularity, and is admissible without further proof of due execution. On the basis thereof, it declared Antonio a buyer in good faith and for value, despite petitioner's contention that the sale violates public policy. While it is a part of the right of appellant to urge that the decision should directly meet the issues presented for resolution,[21] mere failure by the appellate court to specify in its decision all contentious issues raised by the appellant and the reasons for refusing to believe appellant's contentions is not sufficient to

hold the appellate court's decision contrary to the requirements of the law[22] and the Constitution.[23] So long as the decision of the Court of Appeals contains the necessary findings of facts to warrant its conclusions, we cannot declare said court in error if it withheld "any specific findings of fact with respect to the evidence for the defense." [24] We will abide by the legal presumption that official duty has been regularly performed,[25] and all matters within an issue in a case were laid down before the court and were passed upon by it.[26]

In this case, we find nothing to show that the sale between the sisters Lozada and their nephew Antonio violated the public policy prohibiting aliens from owning lands in the Philippines. Even as Dr. Lozada advanced the money for the payment of Antonio's share, at no point were the lots registered in Dr. Lozada's name. Nor was it contemplated that the lots be under his control for they are actually to be included as capital of Damasa Corporation. According to their agreement, Antonio and Dr. Lozada are to hold 60% and 40% of the shares in said corporation, respectively. Under Republic Act No. 7042,[27] particularly Section 3,[28] a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines, is considered a Philippine National. As such, the corporation may acquire disposable lands in the Philippines. Neither did petitioner present proof to belie Antonio's capacity to pay for the lots subjects of this case.

Petitioner, likewise, calls on the Court to ascertain Peregrina's physical ability to execute the Deed of Sale on March 11, 1994. This essentially necessitates a calibration of facts, which is not the function of this Court.[29] Nevertheless, we have sifted through the Decisions of the RTC and the Court of Appeals but found no reason to overturn their factual findings. Both the trial court and appellate court noted the lack of substantial evidence to establish total impossibility for Peregrina to execute the Deed of Sale.

In support of its contentions, petitioner submits a copy of Peregrina's medical records to show that she was confined at the Martin Luther Hospital from February 27, 1994 until she died on April 4, 1994. However, a Certification[30] from Randy E. Rice, Manager for the Health Information Management of the hospital undermines the authenticity of said medical records. In the certification, Rice denied having certified or having mailed copies of Peregrina's medical records to the Philippines. As a rule, a document to be admissible in evidence, should be previously authenticated, that is, its due execution or genuineness should be first shown.[31] Accordingly, the unauthenticated medical records were excluded from the evidence. Even assuming that Peregrina was confined in the cited hospital, the Deed of Sale was executed on March 11, 1994, a month before Peregrina reportedly succumbed to Hepato Renal Failure caused by Septicemia due to Myelodysplastic Syndrome.[32] Nothing in the records appears to show that Peregrina was so incapacitated as to prevent her from executing the Deed of Sale. Quite the contrary, the records reveal that close to the date of the sale, specifically on March 9, 1994, Peregrina was even able to issue checks[33] to pay for her attorney's professional fees and her own hospital bills. At no point in the course of the trial did petitioner dispute this revelation.

Now, as to the validity of the donation, the provision of Article 749 of the Civil Code is in point:

ART. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

When the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable.[34] Here, the Deed of

Donation does not appear to be duly notarized. In page three of the deed, the stamped name of Cresencio Tomakin appears above the words Notary Public until December 31, 1983 but below it were the typewritten words Notary Public until December 31, 1987. A closer examination of the document further reveals that the number 7 in 1987 and Series of 1987 were merely superimposed.[35] This was confirmed by petitioner's nephew Richard Unchuan who testified that he saw petitioner's husband write 7 over 1983 to make it appear that the deed was notarized in 1987. Moreover, a Certification[36] from Clerk of Court Jeffrey S. Joaquin of the Notarial Records Division disclosed that the Deed of Donation purportedly identified in Book No. 4, Document No. 48, and Page No. 35 Series of 1987 was not reported and filed with said office. Pertinent to this, the Rules require a party producing a document as genuine which has been altered and appears to have been altered after its execution, in a part material to the question in dispute, to account for the alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he fails to do that, the document shall, as in this case, not be admissible in evidence.[37]

Remarkably, the lands described in the Deed of Donation are covered by TCT Nos. 73645[38] and 73646,[39] both of which had been previously cancelled by an Order[40] dated April 8, 1981 in LRC Record No. 5988. We find it equally puzzling that on August 10, 1987, or six months after Anita supposedly donated her undivided share in the lots to petitioner, the Unchuan Development Corporation, which was represented by petitioner's husband, filed suit to compel the Lozada sisters to surrender their titles by virtue of a sale. The sum of all the circumstances in this case calls for no other conclusion than that the Deed of Donation allegedly in favor of petitioner is void. Having said that, we deem it unnecessary to rule on the issue of laches as the execution of the deed created no right from which to reckon delay in making any claim of rights under the instrument.

Finally, we note that petitioner faults the appellate court for not excluding the videotaped statement of Anita as hearsay evidence. Evidence is hearsay when its probative force depends, in whole or in part, on the competency and credibility of some persons other than the witness by whom it is sought to be produced. There are three reasons for excluding hearsay evidence: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath.[41] It is a hornbook doctrine that an affidavit is merely hearsay evidence where its maker did not take the witness stand.[42] Verily, the sworn statement of Anita was of this kind because she did not appear in court to affirm her averments therein. Yet, a more circumspect examination of our rules of exclusion will show that they do not cover admissions of a party;[43] the videotaped statement of Anita appears to belong to this class. Section 26 of Rule 130 provides that "the act, declaration or omission of a party as to a relevant fact may be given in evidence against him. It has long been settled that these admissions are admissible even if they are hearsay.[44] Indeed, there is a vital distinction between admissions against interest and declaration against interest. Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness. Declaration against interest are those made by a person who is neither a party nor in privity with a party to the suit, are secondary evidence and constitute an exception to the hearsay rule. They are admissible only when the declarant is unavailable as a witness.[45] Thus, a man's acts, conduct, and declaration, wherever made, if voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not.[46] However, as a further qualification, object evidence, such as the videotape in this case, must be authenticated by a special testimony showing that it was a faithful reproduction.[47] Lacking this, we are constrained to exclude as evidence the videotaped statement of Anita. Even so, this does not detract from our conclusion concerning petitioner's failure to prove, by preponderant evidence, any right to the lands subject of this case.

Anent the award of moral damages in favor of respondents, we find no factual and legal basis therefor. Moral

damages cannot be awarded in the absence of a wrongful act or omission or fraud or bad faith. When the action is filed in good faith there should be no penalty on the right to litigate. One may have erred, but error alone is not a ground for moral damages.[48] The award of moral damages must be solidly anchored on a definite showing that respondents actually experienced emotional and mental sufferings. Mere allegations do not suffice; they must be substantiated by clear and convincing proof.[49] As exemplary damages can be awarded only after the claimant has shown entitlement to moral damages,[50] neither can it be granted in this case.

WHEREFORE, the instant petition is DENIED. The Decision dated February 23, 2006, and Resolution dated April 12, 2006 of the Court of Appeals in CA-G.R. CV. No. 73829 are AFFIRMED with MODIFICATION. The awards of moral damages and exemplary damages in favor of respondents are deleted. No pronouncement as to costs.

SO ORDERED.

Carpio-Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 35-51. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr. concurring.

[2] Id. at 62-63.

[3] Id. at 173-176. Dated July 6, 2000. Penned by Judge Soliver C. Peras.

[4] Id. at 95-155. Penned by Judge Leonardo B. Cañares.

[5] Records, Vol. I, pp. 355-358.

[6] Id. at 351-354.

[7] Id. at 347-350.

[8] Records, Vol. II, pp. 187-188.

[9] TSN, August 19, 1996, p. 8.

[10] Records, Vol. I, p. 278.

[11] Id. at 279.

[12] Id. at 344-346.

[13] Rollo, pp. 154-155.

[14] Id. at 156-172.

[15] Id. at 235-236.

[16] SEC. 3. Docket and other lawful fees; proof of service of petition.-- Unless he has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the Supreme Court and deposit the amount of P500.00 for costs at the time of the filing of the petition. Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition. (Emphasis supplied.)

[17] SEC. 4. Contents of petition.— The petition shall be filed in eighteen (18) copies, with the original copy

intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.

[18] TSN, April 25, 1996, p. 6.

[19] Sec. 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

[20] Yao v. Court of Appeals, G.R. No. 132428, October 24, 2000, 344 SCRA 202, 219.

[21] Id. at 218.

[22] RULES OF COURT, Rule 36, Sec. 1

SECTION 1. Rendition of judgments and final orders.—A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court.

[23] J. G. BERNAS, CONSTITUTIONAL STRUCTURE AND POWERS OF GOVERNMENT NOTES AND CASES PART I 632 (3rd ed., 2005).

[24] Id.

[25] RULES OF COURT, Rule 131, Sec.3, par. (m).

[26] RULES OF COURT, Rule 131, Sec.3, par. (o).

[27] AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES, AND FOR OTHER PURPOSES, approved on June 13, 1991.

[28] sec. 3. Definitions.—As used in this Act:

(a) the term "Philippine National" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines....

[29] Twin Towers Condominium Corporation v. Court of Appeals, G.R. No. 123552, February 27, 2003, 398 SCRA 203, 222.

[30] Records, Vol. II, pp. 375-376.

[31] S. A.F. APOSTOL, ESSENTIALS OF EVIDENCE 438 (1991).

[32] Records, Vol. II, p. 320.

[33] Id. at 238-241.

[34] CIVIL CODE, Art. 1356.

[35] Records, Vol. II, p. 357.

[36] Id. at 248.

[37] RULES OF COURT, Rule 132, Sec. 31.

[38] Records, Vol. I, p. 295.

[39] Id. at 296.

[40] Id. at 408-418.

[41] Estrada v. Desierto, G.R. Nos. 146710-15 & 146738, April 3, 2001, 356 SCRA 108, 128.

[42] People v. Quidato, Jr., G.R. No. 117401, October 1, 1998, 297 SCRA 1, 8.

[43] Estrada v. Desierto, supra at 131.

[44] Id.

[45] II F. D. REGALADO, REMEDIAL LAW COMPENDIUM 491 (6th Revised ed. 1989).

[46] United States v. Ching Po, 23 Phil. 578, 583 (1912).

[47] S. A.F. APOSTOL, ESSENTIALS OF EVIDENCE 63 (1991).

[48] Filinvest Credit Corporation v. Mendez, No. L-66419, July 31, 1987, 152 SCRA 593, 601.

[49] Quezon City Government v. Dacara, G.R. No. 150304, June 15, 2005, 460 SCRA 243, 256.

[50] Id. at 257.

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