

HEIRS OF JOSE LIM, REPRESENTED BY ELENITO LIM, PETITIONERS, VS. JULIET VILLA LIM, RESPONDENT.

G.R. No. 172690. March 03, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Civil Procedure, assailing the Court of Appeals (CA) Decision[2] dated June 29, 2005, which reversed and set aside the decision[3] of the Regional Trial Court (RTC) of Lucena City, dated April 12, 2004.

The facts of the case are as follows:

Petitioners are the heirs of the late Jose Lim (Jose), namely: Jose's widow Cresencia Palad (Cresencia); and their children Elenito, Evelia, Imelda, Edelyna and Edison, all surnamed Lim (petitioners), represented by Elenito Lim (Elenito). They filed a Complaint[4] for Partition, Accounting and Damages against respondent Juliet Villa Lim (respondent), widow of the late Elfledo Lim (Elfledo), who was the eldest son of Jose and Cresencia.

Petitioners alleged that Jose was the liaison officer of Interwood Sawmill in Cagsiay, Mauban, Quezon. Sometime in 1980, Jose, together with his friends Jimmy Yu (Jimmy) and Norberto Uy (Norberto), formed a partnership to engage in the trucking business. Initially, with a contribution of P50,000.00 each, they purchased a truck to be used in the hauling and transport of lumber of the sawmill. Jose managed the operations of this trucking business until his death on August 15, 1981. Thereafter, Jose's heirs, including Elfledo, and partners agreed to continue the business under the management of Elfledo. The shares in the partnership profits and income that formed part of the estate of Jose were held in trust by Elfledo, with petitioners' authority for Elfledo to use, purchase or acquire properties using said funds.

Petitioners also alleged that, at that time, Elfledo was a fresh commerce graduate serving as his father's driver in the trucking business. He was never a partner or an investor in the business and merely supervised the purchase of additional trucks using the income from the trucking business of the partners. By the time the partnership ceased, it had nine trucks, which were all registered in Elfledo's name. Petitioners asseverated that it was also through Elfledo's management of the partnership that he was able to purchase numerous real properties by using the profits derived therefrom, all of which were registered in his name and that of respondent. In addition to the nine trucks, Elfledo also acquired five other motor vehicles.

On May 18, 1995, Elfledo died, leaving respondent as his sole surviving heir. Petitioners claimed that respondent took over the administration of the aforementioned properties, which belonged to the estate of Jose, without their consent and approval. Claiming that they are co-owners of the properties, petitioners required respondent to submit an accounting of all income, profits and rentals received from the estate of Elfledo, and to surrender the administration thereof. Respondent refused; thus, the filing of this case.

Respondent traversed petitioners' allegations and claimed that Elfledo was himself a partner of Norberto and

Jimmy. Respondent also claimed that per testimony of Cresencia, sometime in 1980, Jose gave Elfledo P50,000.00 as the latter's capital in an informal partnership with Jimmy and Norberto. When Elfledo and respondent got married in 1981, the partnership only had one truck; but through the efforts of Elfledo, the business flourished. Other than this trucking business, Elfledo, together with respondent, engaged in other business ventures. Thus, they were able to buy real properties and to put up their own car assembly and repair business. When Norberto was ambushed and killed on July 16, 1993, the trucking business started to falter. When Elfledo died on May 18, 1995 due to a heart attack, respondent talked to Jimmy and to the heirs of Norberto, as she could no longer run the business. Jimmy suggested that three out of the nine trucks be given to him as his share, while the other three trucks be given to the heirs of Norberto. However, Norberto's wife, Paquita Uy, was not interested in the vehicles. Thus, she sold the same to respondent, who paid for them in installments.

Respondent also alleged that when Jose died in 1981, he left no known assets, and the partnership with Jimmy and Norberto ceased upon his demise. Respondent also stressed that Jose left no properties that Elfledo could have held in trust. Respondent maintained that all the properties involved in this case were purchased and acquired through her and her husband's joint efforts and hard work, and without any participation or contribution from petitioners or from Jose. Respondent submitted that these are conjugal partnership properties; and thus, she had the right to refuse to render an accounting for the income or profits of their own business.

Trial on the merits ensued. On April 12, 2004, the RTC rendered its decision in favor of petitioners, thus:

WHEREFORE, premises considered, judgment is hereby rendered:

- 1) Ordering the partition of the above-mentioned properties equally between the plaintiffs and heirs of Jose Lim and the defendant Juliet Villa-Lim; and
- 2) Ordering the defendant to submit an accounting of all incomes, profits and rentals received by her from said properties.

SO ORDERED.

Aggrieved, respondent appealed to the CA.

On June 29, 2005, the CA reversed and set aside the RTC's decision, dismissing petitioners' complaint for lack of merit. Undaunted, petitioners filed their Motion for Reconsideration,[5] which the CA, however, denied in its Resolution[6] dated May 8, 2006.

Hence, this Petition, raising the sole question, viz.:

IN THE APPRECIATION BY THE COURT OF THE EVIDENCE SUBMITTED BY THE PARTIES, CAN THE TESTIMONY OF ONE OF THE PETITIONERS BE GIVEN GREATER WEIGHT THAN THAT BY A FORMER PARTNER ON THE ISSUE OF THE IDENTITY OF THE OTHER PARTNERS IN THE PARTNERSHIP?[7]

In essence, petitioners argue that according to the testimony of Jimmy, the sole surviving partner, Elfledo was not a partner; and that he and Norberto entered into a partnership with Jose. Thus, the CA erred in not giving that testimony greater weight than that of Cresencia, who was merely the spouse of Jose and not a party to the partnership.[8]

Respondent counters that the issue raised by petitioners is not proper in a petition for review on certiorari under Rule 45 of the Rules of Civil Procedure, as it would entail the review, evaluation, calibration, and re-weighing of the factual findings of the CA. Moreover, respondent invokes the rationale of the CA decision that, in light of the admissions of Cresencia and Edison and the testimony of respondent, the testimony of Jimmy was effectively

refuted; accordingly, the CA's reversal of the RTC's findings was fully justified.[9]

We resolve first the procedural matter regarding the propriety of the instant Petition.

Verily, the evaluation and calibration of the evidence necessarily involves consideration of factual issues -- an exercise that is not appropriate for a petition for review on certiorari under Rule 45. This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below.[10] When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

- (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.[11]

We note, however, that the findings of fact of the RTC are contrary to those of the CA. Thus, our review of such findings is warranted.

On the merits of the case, we find that the instant Petition is bereft of merit.

A partnership exists when two or more persons agree to place their money, effects, labor, and skill in lawful commerce or business, with the understanding that there shall be a proportionate sharing of the profits and losses among them. A contract of partnership is defined by the Civil Code as one where two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.[12]

Undoubtedly, the best evidence would have been the contract of partnership or the articles of partnership. Unfortunately, there is none in this case, because the alleged partnership was never formally organized. Nonetheless, we are asked to determine who between Jose and Elfledo was the "partner" in the trucking business.

A careful review of the records persuades us to affirm the CA decision. The evidence presented by petitioners falls short of the quantum of proof required to establish that: (1) Jose was the partner and not Elfledo; and (2) all the properties acquired by Elfledo and respondent form part of the estate of Jose, having been derived from the alleged partnership.

Petitioners heavily rely on Jimmy's testimony. But that testimony is just one piece of evidence against respondent.

It must be considered and weighed along with petitioners' other evidence vis-à-vis respondent's contrary evidence. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." "Preponderance of evidence" is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[13] Rule 133, Section 1 of the Rules of Court provides the guidelines in determining preponderance of evidence, thus:

SECTION I. Preponderance of evidence, how determined. In civil cases, the party having burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

At this juncture, our ruling in *Heirs of Tan Eng Kee v. Court of Appeals*[14] is enlightening. Therein, we cited Article 1769 of the Civil Code, which provides:

Art. 1769. In determining whether a partnership exists, these rules shall apply:

- (1) Except as provided by Article 1825, persons who are not partners as to each other are not partners as to third persons;
- (2) Co-ownership or co-possession does not of itself establish a partnership, whether such co-owners or co-possessioners do or do not share any profits made by the use of the property;
- (3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived;
- (4) The receipt by a person of a share of the profits of a business is a prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
 - (a) As a debt by installments or otherwise;
 - (b) As wages of an employee or rent to a landlord;
 - (c) As an annuity to a widow or representative of a deceased partner;
 - (d) As interest on a loan, though the amount of payment vary with the profits of the business;
 - (e) As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

Applying the legal provision to the facts of this case, the following circumstances tend to prove that Elfledo was himself the partner of Jimmy and Norberto: 1) Cresencia testified that Jose gave Elfledo P50,000.00, as share in the partnership, on a date that coincided with the payment of the initial capital in the partnership;[15] (2) Elfledo ran the affairs of the partnership, wielding absolute control, power and authority, without any intervention or opposition whatsoever from any of petitioners herein;[16] (3) all of the properties, particularly the nine trucks of the partnership, were registered in the name of Elfledo; (4) Jimmy testified that Elfledo did not receive wages or salaries from the partnership, indicating that what he actually received were shares of the profits of the business;[17] and (5) none of the petitioners, as heirs of Jose, the alleged partner, demanded periodic accounting from Elfledo during his lifetime. As repeatedly stressed in *Heirs of Tan Eng Kee*,[18] a demand for periodic accounting is evidence of a partnership.

Furthermore, petitioners failed to adduce any evidence to show that the real and personal properties acquired and

registered in the names of Elfledo and respondent formed part of the estate of Jose, having been derived from Jose's alleged partnership with Jimmy and Norberto. They failed to refute respondent's claim that Elfledo and respondent engaged in other businesses. Edison even admitted that Elfledo also sold Interwood lumber as a sideline.[19] Petitioners could not offer any credible evidence other than their bare assertions. Thus, we apply the basic rule of evidence that between documentary and oral evidence, the former carries more weight.[20]

Finally, we agree with the judicious findings of the CA, to wit:

The above testimonies prove that Elfledo was not just a hired help but one of the partners in the trucking business, active and visible in the running of its affairs from day one until this ceased operations upon his demise. The extent of his control, administration and management of the partnership and its business, the fact that its properties were placed in his name, and that he was not paid salary or other compensation by the partners, are indicative of the fact that Elfledo was a partner and a controlling one at that. It is apparent that the other partners only contributed in the initial capital but had no say thereafter on how the business was ran. Evidently it was through Elfledo's efforts and hard work that the partnership was able to acquire more trucks and otherwise prosper. Even the appellant participated in the affairs of the partnership by acting as the bookkeeper sans salary.

It is notable too that Jose Lim died when the partnership was barely a year old, and the partnership and its business not only continued but also flourished. If it were true that it was Jose Lim and not Elfledo who was the partner, then upon his death the partnership should have

been dissolved and its assets liquidated. On the contrary, these were not done but instead its operation continued under the helm of Elfledo and without any participation from the heirs of Jose Lim.

Whatever properties appellant and her husband had acquired, this was through their own concerted efforts and hard work. Elfledo did not limit himself to the business of their partnership but engaged in other lines of businesses as well.

In sum, we find no cogent reason to disturb the findings and the ruling of the CA as they are amply supported by the law and by the evidence on record.

WHEREFORE, the instant Petition is DENIED. The assailed Court of Appeals Decision dated June 29, 2005 is AFFIRMED. Costs against petitioners.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Del Castillo,[*] and Mendoza, JJ., concur.

[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 824 dated February 12, 2010.

[1] Rollo, pp. 9-31.

[2] Particularly docketed as CA-G.R. CV No. 83331; penned by Associate Justice Roberto A. Barrios (deceased), with Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso, concurring; id. at 57-69.

[3] Particularly docketed as Civil Case No. 97-60; rollo, pp. 49-55.

[4] Records, pp. 1-9.

[5] CA rollo, pp. 116-128.

[6] Id. at 157-158.

[7] Petitioners' Memorandum; rollo, pp. 271-295, at 285.

[8] Id.

[9] Respondent's Memorandum; id. at 204-234.

[10] Francisco Madrid and Edgardo Bernardo v. Spouses Bonifacio Mapoy and Felicidad Martinez, G.R. No. 150887, August 14, 2009. (Citations omitted.)

[11] Ontimare, Jr. v. Elep, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265.

[12] Litonjua, Jr. v. Litonjua, Sr., G.R. Nos. 166299-300, December 13, 2005, 477 SCRA 576, 584.

[13] Perfecta Cavile, Jose de la Cruz and Rural Bank of Bayawan, Inc. v. Justina Litanía-Hong, accompanied and joined by her husband, Leopoldo Hong and Genoveva Litanía, G.R. No. 179540, March 13, 2009, citing Go v. Court of Appeals, 403 Phil. 883, 890-891 (2001).

[14] 396 Phil. 68 (2000).

[15] TSN, June 8, 1999, pp. 4, 8 and 9-10.

[16] TSN, May 2, 2000, p. 17.

[17] Id. at 15-16.

[18] Supra note 14, at 83, citing Estanislao, Jr. v. Court of Appeals, 160 SCRA 830, 837 (1988).

[19] TSN, September 15, 1999, p. 8.

[20] SPO2 Yap v. Judge Inopiquez, Jr., 451 Phil. 182, 192 (2003), citing Romago Electric Co., Inc. v. Court of Appeals, 333 SCRA 291, 302 (2000), further citing Ereñeta v. Bezore, 54 SCRA 13 (1973) and Soriano v. Compañía General de Tabacos de Filipinas, 18 SCRA 999 (1966); and Government Service Insurance System v. Court of Appeals, 222 SCRA 685, 696 (1993), further citing Marvel Building Corporation, et al. v. David, 94 Phil. 376 (1954).

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