

**HOSPICIA ENCABO ALIAS SIMPLICIA ENCABO, ET AL., PLAINTIFFS
AND APPELLANTS, VS. CEBU PORTLAND CEMENT COMPANY,
DEFENDANT AND APPELLEE.***G. R. No. 17571. December 17, 1966*

Ponente: DIZON, J.

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Appeal taken by Hospicia Encabo, alias Simplicia Encabo, and her daughters Dionisia, Fulgencia and Lucila, all surnamed Enciso, assisted by their respective husbands,—hereinafter referred to as the Encisos—from the decision of the Court of First Instance of Cebu in Civil Case No. R-334 dismissing their complaint against the Cebu Portland Cement Company—hereinafter referred to as Cepoc—and ordering them to pay the latter the sum of P500 as damages, and the costs.

On December 2, 1953 the Encisos commenced the present action in the above-named court to recover from Cepoc the ownership and possession of a parcel of land situated In barrio Tina-an, municipality of Naga, province of Cebu, containing an approximate area of 17,341 square meters, plus back rentals due thereon since the year 1943, expenses, damages, attorneys fees and costs. Their complaint alleged that said land was a portion of a parcel of 45,611 sq. m. originally owned by Hospicia Encabo and her deceased husband, Romualdo Enciso, and is made up of Lots C and D appearing on Plan Psu-36327 (Exhibit A) with a total area of approximately 17,341 square meters; that In 1937 Romualdo Enciso sold a different portion of around 15,000 square meters, Indicated as Lot B in the same plan to Cepoc for the sum of P2,000.00; that on another portion designated as Lot A in the same plan, with an area of 3,270 square meters, the Encisos had built their home; that at the time of the sale of Lot B, Cepoc asked its vendor to allow it to use Lots C and D (now in question), promising to pay fair rentals thereon when it would have the means to do so and, by way of reciprocity, it promised to accommodate for employment any member of the vendor's family; that relying on Cepoc's assurance that it would pay the proper rentals in due time and on its promise to accommodate for employment any member of his family, Enciso allowed Cepoc to occupy and use the lots in question; that in 1943, or ten years prior to the filing of the present action, Cepoc constructed on the premises a water tank and two residential houses, and, at the time of the filing of the action, a recreation hall was being constructed thereon; and that, despite repeated demands therefor, Cepoc refused to pay rentals for the use of the premises.

Cepoc's original answer to the complaint alleged that it had acquired through purchase from the Enciso spouses more than ten years before a parcel of land (Lot 8 of the Encisos' plan) with an area of 15,000 square meters; that it was likewise the owner of a portion of the lots in question by virtue of the Law of Waters of August 3, 1866, and that the remaining portion designated as Lot D in said plan was government property being leased by it under Fore- shore Lease FL-164-Amd-3.

While the Encisos were presenting their evidence Cepoc, with leave of court, filed an amended answer alleging that it owned Lots B, C, and D in fee simple; that the action of the Encisos was barred by a prior judgment and by

prescription; and by way of counterclaim alleged that the action was clearly unfounded and had resulted in Cepoc suffering damages in the sum of P5,000.00.

Still later and after Cepoc had presented a considerable part of its own evidence, the lower court, after proper hearing, admitted Cepoc's second amended answer for the purpose of making its pleadings conform to its evidence. This appeared to be convenient, if not necessary, because under the allegations of ownership in fee simple made in Cepoc's first amended answer, it had been allowed to present documentary evidence (Exhibit 6) showing that on September 1, 1936 the spouses Romualdo Enciso and Hospicia Encabo had sold to Cepoc a parcel of land with an area not of 15,000 but of 30,714.90 square meters, for the sum of P2,000.00; that thereafter, registration proceedings were commenced in connection with the land thus acquired (registration case No. 418, G.L.R.O record No. 51665) and that, as a result thereof, said land was ordered registered in Cepoc's name, as shown by Decree No. 647162 of August 10, 1937; that since the time of the sale on September 1, 1936, Cepoc had occupied the more than 30,000 square meters already referred to as absolute owner thereof and had actually constructed thereon a hospital, a number of concrete residential houses and other permanent improvements.

Upon conclusion of the trial, the court rendered the appealed judgment.

Although in their voluminous brief the Encisos submit for our consideration a total of twenty assignments of error covering diverse questions of fact and law, the fact is that the main issue to be resolved is whether or not the area of the parcel of land sold by the Encisos to Cepoc on September 1, 1936 was 15,000 or 30,714.90 square meters. This issue, in turn, depends firstly on whether the public document marked as Exhibit 6 is a forgery or not, and secondly, on whether or not the land subjectmatter thereof has already been registered in the name of Cepoc.

The Encisos admit the fact of the sale, but they claim that the land sold had only an area of 15,000 square meters. It appears, however, that on September 1, 1936, for and in consideration of P2,000.00, the Encisos executed in favor of Cepoc a deed of sale (see Exhibits 6 and 6-B) whereby they sold to the latter a parcel of land described as follows:

"Boundaries: Corners marked by stones.

North: A canal used as a discharge from the Power House of Cebu Portland Cement Company.

East: Seashore

South: Property of Cebu Portland Cement Company

West: Provincial Road

Area: 30,714.90 square meters

Improvements: About 15 young coconut trees.

Tax No: 26292

Kind: Part swampy and part agricultural.

Assessed value of entire land: P920.00

Actual Possessors: Romualdo Enciso & Hospicia Encabo."

It appears further that in the year 1937 and in Land Registration Case No. 418, G.L.R.O. Record No. 51665 (Exhibits 3, 3-A to 3-D, Exhibits 8, 8-A to 8-D), the land above described was decreed in the name of Cepoc. Its application for registration was based on Plan Psu-102184—the reconstructed copy of which is now in the record as Exhibit 4—and the same was heard without any opposition by the original owners of the land nor by any

adjoining owner. On June 8, 1937, the Court rendered decision whose dispositive part reads as follows:

"For tanto se ordena la adjudicacion y registro de las tres parcelas de terreno—descritas en el piano Exh. 'B' y en la descripcion tecnica Exh. 'A', con todas sus mejoras y libre de toda carga y gravamen, a favor de la Cebu Portland Cement Company, corporacion organizada de acuerdo con las leyes de Filipinas, domiciliada en el Municipio de Naga de esta provincia de Cebu, Filipinas.—Firme esta decision bajo la ley, expidase el decreto y el certificado de titulo correspondientes.—Asi se ordena Cebu, Cebu, 8 de Junio de 1937."

Believing itself to be the absolute owner of them land thus decreed in its favor and of which it had been in possession since 1936, Cepoc constructed thereon several improvements of a permanent character, such as a hospital, several permanent structures including a water intake tank, a recreation hall, and two residential buildings.

It is true, of course, that in the years 1941, 1948, and 1953, Hospicia Encabo appears to have made upon Cepoc verbal demands for payment of rentals over the land where the above permanent Improvements had been constructed, but such demands were met with a refusal. Thereafter, written demands were sent to Cepoc (Exhibits E, E-1 and E-2), and it was only upon the latter's reiterated refusal to pay that the present suit was instituted.

It thus appears that it was only in 1941, five years after the execution of the Deed of Sale Exhibits 6, and four years after the land subjectmatter thereof had been decreed in the name of Cepoc, and after several improvements of a permanent nature had been constructed thereon, that the Encisos made verbal demands for the payment of rentals, and that it was only on December 2, 1953—more than 15 years after Cepoc had enjoyed full possession of the property—that they went to court to enforce their alleged rights. This, jointly with the openly observed conduct of Cepoc to consider the land in question as absolutely its exclusive property, can not but lead us to believe that the Encisos themselves had recognized such ownership.

The Encisos claim, however, that the Deed of Sale Exhibit 6 is a forgery, and that in connection with this issue, Cepoc is bound by the opinion of the expert of the National Bureau of Investigation sustaining their view because "both parties of the present case have promised to abide by whatever findings the National Bureau of Investigation would submit as to the genuineness of the document in question" (appellants' brief p. 94).

The record does not sustain the claim that Cepoc had agreed to be bound by the findings of the NBI expert. To the contrary, it shows (stenographic transcript corresponding to the hearing held on March 29, 1957) that it was only the Encisos' side that agreed to be bound by the result of the examination to be made by the NBI expert; that while Cepoc did not object to having the Deed of Sale Exhibit 6 (attached as Annex A to Cepoc's second amended answer), together with other documents referred to the NBI for examination and comparison of signatures, it indicated that it was reserving its right to accept or dispute the result of said examination. As a matter of fact, after counsel for the Encisos had asked for the submission of the Deed of Sale to the NBI for examination, and had expressed "the idea of abiding with whatever ruling will be made by that government entity", counsel for Cepoc tried to hedge and stated that he "would rather have the discussion on this matter be postponed on the date when the hearing is to be continued", and it was only after the trial judge had said that time could be gained if Cepoc made up its mind on the subject right then and there that Cepoc's attorney stated that "We do not have any objection to the examination by the NBI, although we might send some representations to the NBI when this is examined". To this counsel for the Encisos replied: "That would be all right". Moreover, the record also discloses that when the report of the NBI Examiner was offered in evidence as Exhibit HH, Cepoc's counsel objected to its admission.

It must be admitted, however, that the opinion rendered by Mr. Felipe P. Logan of the NBI is adverse to the genuineness or authenticity of the document under consideration, but in this connection We must bear in mind

that, as a rule, opinions of handwriting experts are not necessarily binding upon the courts, more so in a case like the present where Mr. Logan was not presented as a witness to give the party adversely affected by his opinion an opportunity to cross-examine him.

This notwithstanding, the trial court admitted Logan's report but refused to accept it as correct, saying the following in its decision:

"Again, there is the further contention of plaintiffs—and the Court considers this as most important and controversial—that the original of Exhibit 6 (certified true copy of deed of sale) was spurious and forged, and consequently of no probative value. The Court is not prepared to agree with this contention of plaintiffs. The defendant has more than sufficiently established, and this by means of the testimony of Atty. Prospero Pañares who prepared the document, that the same had been executed and signed accordingly, moreover, the corresponding records were found intact in the Division of Archives, even after the lapse of almost twenty years. There is evidently a presumption in favor of the veracity and due execution of said documents. It is true that plaintiffs had questioned the signatures appearing therein purporting to be those of plaintiff Hospicia Encabo and her deceased spouse Romualdo Enciso, and forwarded the same to the National Bureau of Investigation, and that Expert in questioned documents and handwriting Felipe P. Logan had rendered an opinion favorable to plaintiffs' contention. Note, however, that Logan has not appeared as witness for plaintiffs and has not been cross-examined by defendant's counsel or by the Court, Inasmuch, nevertheless, as the Court had allowed the said signatures to be submitted to him for opinion, the Court would discuss the same. Experts' opinions are not binding upon the Court, although they may serve as guide, and shall have such weight or influence upon the mind of the Court as the facts and circumstances may warrant."

"The Court has likewise taken pains in examining the aforementioned three questioned signatures as well as those appearing in the five documents whose signatures are considered standard, and has taken into account the following circumstances, namely, Impulse, movement, tremors, pen pressures, general appearance (that is, the way in which the signatures are written), their graphic form, the appearance of the lines, possible retouchings, and regularity or irregularity of the pen strokes, as well as the vanishing points at every end of the signature in the questioned as well as in the standard ones. While certain differences really appear as specified by expert Logan upon a comparison of the questioned as well as the standard signatures, the Court is of the opinion and hereby concludes that such differences as have been noted by expert Logan are of such Intensity as are not altogether sufficient to warrant a conclusion that the questioned signatures (in Exhibit 6-C) are not those of the persons concerned namely, Hospicia Encabo, Romualdo Enciso and Esperidion del Socorro, and consequently forged. Such differences may be taken into consideration as are possible to happen if all the signatures had been signed by the same three persons, If we consider the circumstance that these documents had been signed in the years 1934, 1941 and 1948, respectively—thus, showing an interval of a considerable number of years before and after 1936 when the signatures in the deed of sale (photostat, Exhibit 6-c) have been possibly signed by the persons concerned.

"The differences pointed out by expert Logan under the heading General Appearance and Pictorial Effect, and under Line Quality are such as might be considered negligible.

"Under the heading, Writing Habit Logan concludes that in the standard signatures, the letter capital 'H' in Hospicia Encabo is smaller and takes an almost vertical slant than the corresponding capital letter 'H' in the questioned signatures. Surely, sizes of letters in one's signature, as a matter of common knowledge, usually differs from one another, this depending often upon the space in the corresponding document that may be accorded the signer.

"This is also true as regards the alleged differences under the caption Pen Pressure. Under this caption, Logan submits that the writer of the standard signature 'Hospicia Encabo' has produced a line of varying width or Intensity as shown in the pen pressure, while that in the questioned signature has shown consistent width and intensity because of superior muscular control. The Court does not seem to see any materiality or variance in

these signatures.

"Under the caption General Symptoms of Forgery, he asserts that the small letter 'c' in Encabo in the questioned signature shows evidence of suspicious retouchings. This may be so, as such retouching really appears, but in all the other signatures in the questioned Exhibit 6-c and all the signatures in the aforementioned standard five documents, the same retouching occurs at random. Granting that there is such retouching it would be quite sweeping and dangerous to suppose that a signature with retouched letters is forged. In general appearance or pictorial effect, writing habit, and the characteristic sequence of the letters in the aforementioned signatures, taken altogether in general, do not reveal any substantial differences between the questioned and the standard signatures.

"The Court, therefore, hereby holds that while there may be some differences as pointed to by expert Logan in the aforementioned signatures, the same would not warrant a conclusion that the signature of the plaintiff Hospicia Encabo, as well as those of her deceased husband Romualdo Enciso and Espiridion del Socorro, in Exhibit 6-C, have not been signed by these persons concerned. On the other hand, the Court holds that the said signatures are genuine signatures of Hospicia Encabo, Romualdo Enciso, and Espiridion del Socorro. This conclusion sits on the premise, that even granting the aforementioned differences to exist, the evidence, particularly the positive testimony of Attorney and Notary Public Prospero Paftares who prepared the original of Exhibit 6-C and before whom the parties signed and acknowledged the same, and above all, the existence of said document in the Division of Archives, when taken altogether with the other attending facts and circumstances, would leave not an iota of doubt that there was but one deed of sale executed by plaintiff Hospicia Encabo and her deceased husband Romualdo Enciso in favor of defendant, and that was on September 1, 1936. Plaintiffs' claim that there was a subsequent deed of sale on the same lots has miserably failed as no tangible evidence except the bare and uncorroborated testimony of Hospicia Encabo, has been introduced. The circumstance that Exhibit 6-c was the only one found in the Division of Archives, conclusively proves that that was the only document that had been sent there for record purposes. And this conclusion of the court is further strengthened by the circumstance that the defendant had registered the lots involved and secured the corresponding torrens title therefor-whose proceedings had been with the knowledge and consent of plaintiffs who did not object thereto, as a matter of fact, they did not remember to demand for the rentals (if it were true as plaintiffs claim that the lots in question had just been occupied by defendant under the promise of paying rentals therefor).

"Considering altogether the evidence for both parties, the Court hereby holds that the preponderance of said evidence is decidedly in favor of the defendant."

Moreover, the circumstances under which the existence of the Deed of Sale was discovered in the Division of Archives speaks strongly in favor of its genuineness. In this connection it appears that while the trial of the case was in progress Cepoc moved to have the Director of Lands included as defendant. Upon denial of this motion by the trial court, former Justice Fortunato Borromeo, as counsel for Cepoc, took the case to this court by certiorari, but the petition was dismissed on April 18, 1955. It appears that during the time the certiorari case was pending before Us, former Justice Borromeo discovered in the Bureau of Lands, the Department of Justice and the Office of the Land Registration Commissioner important documents showing that in the year 1937 Cepoc had applied for the registration of three lots in the Court of First Instance of Cebu and that, as a matter of fact, a decree had been issued for their registration in its name and for the issuance of the corresponding certificate of title. This prompted Cepoc to file on July 15, 1955 its first amended answer claiming ownership in fee simple of Lots 2, 3 and 4 of the plan attached as Appendix A to the complaint.

After the admission of said amended answer and the resumption of the trial, Hospicia Encabo, while testifying on cross-examination, admitted that she had actually seen the Deed of Sale for the land for which Cepoc had paid P2,000.00; that their copy of the same was destroyed during the war; that the deed was notarized before Notary

Public Pañares, that the price was P0.20 per square meter. Unable to obtain from the notary a copy of the Deed of Sale, Cepoc's representation made inquiries regarding the same in the Division of Archives in Manila and it was there where a copy of the Deed of Sale executed by Enciso in favor of Cepoc was found and a certified copy thereof (now marked as Exhibit 6) was obtained. The document clearly shows that the property sold to Cepoc had an area of 30,714.90 square meters.

In view of all the circumstances we find it extremely hard to believe that the document in question is a forgery.

Moreover, as already stated heretofore, it appears sufficiently established that on January 4, 1937 Cepoc commenced registration proceedings to have the property subjectmatter of the Deed of Sale Exhibit 6 registered in its name (Land Registration Case No. 418, G.L.R.O. Record No. 51665, the application filed being based on Plan Psu-102184, the reconstructed copy of which is now in the record as Exhibit 4). The application was called for hearing unopposed, and on June 8, 1937, the judge then presiding the Court of First Instance of Cebu rendered judgment confirming Cepoc's title upon the land purchased from the Encisos—which the lower court found to include the lots now in question. On July 22, 1937, the corresponding order for the issuance of the decree was issued (Exhibit 8-C, p. 36 of Exhibit 8) and a copy of said decree No. 647162 dated October 9, 1937 is also in the record as Exhibit 8-D, found at pp. 41-43 of Exhibit 8.

The claim of Cepoc is entirely consistent not only with its own conduct subsequent to the sale but also with that observed by the Encisos themselves—to which we have already made reference heretofore. As far as Cepoc is concerned, the record is conclusive of the fact that it had actually treated the properties in question as included in the land purchased by it from Enciso on September 1, 1936 by constructing thereon valuable improvements of permanent character and by applying for its registration in its name.

The Encisos claim, inter alia, that it was error on the part of the trial court to admit Cepoc's second amended answer whereby it was allowed to adopt a completely different theory of defense. We find no merit in this contention. There was in reality no change of defense. In its original answer as well as in the first amended answer, Cepoc claimed ownership of the land in question. The same claim was made in the second amended answer although it was premised on the Deed of Sale Exhibit 6 discovered during the trial.

Moreover, at the time the second amended answer was submitted for admission, Cepoc had already introduced evidence concerning the purchase by it not of 15,000 square meters but of 30,000 square meters of land from the Enciso spouses. It is clear, therefore, that the second amended answer was allowed simply to make the pleadings conform to the evidence already in the record, a matter entirely within the sound discretion of the trial court.

In view of the conclusions We have arrived at upon the matters expressly resolved above, We deem it unnecessary to pass upon the other questions raised in the brief submitted by the Encisos.

WHEREFORE, the appealed judgment is hereby affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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