

HEIRS OF CIPRIANO TRAZONA, NAMELY: FRANCISCA T. MATBAGON, NATIVIDAD T. ABADIANO, CARLITO C. TRAZONA; AND HEIRS OF EDELBERTO C. TRAZONA REPRESENTED BY HIS DAUGHTER DOMICINA T. AR...

G.R. No. 175874. December 11, 2013

Ponente: SERENO, C.J.

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SERENO, C.J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] and Resolution[2] of the Court of Appeals Cebu City (CA) in CA-G.R. CV No. 00099. The CA reversed the Decision[3] of the Regional Trial Court of Cebu City, Branch 57 (RTC) in Civil Case No. CEB-20620, which annulled the Deed of Absolute Sale dated 27 June 1956 and ordered the cancellation of Tax Declaration No. 23959 in the name of Dionisio Cañada (Dionisio), predecessor of respondents.

Petitioners are heirs of Cipriano Trazona (Cipriano), who owned an untitled parcel of land referred to as Lot No. 5053-H. The property, located in Minglanilla, Cebu, is covered by Tax Declaration No. 07764 and has an area of 9,515 square meters.[4] The land was purchased from the government in 1940.[5] Since then, Cipriano had taken possession of the land, cultivated it and diligently paid taxes thereon.[6]

In 1949, Dionisio bought the adjacent parcel of land from Pilar Diaz.[7] It was later found that he had encroached on a small portion of Lot No. 5053-H. He was then summoned by Cipriano for a confrontation before the barangay captain in 1952.[8] Dionisio offered to buy the encroached portion, but Cipriano refused the offer.[9] In 1956, the latter gave Dionisio permission to temporarily build a house on said portion, where it still stands.[10] No action for ejectment was filed against Dionisio during the lifetime of Cipriano,[11] who eventually died on 18 May 1982.[12] The latter's son Hermogenes, one of the petitioners herein who had cultivated the lot since 1972, took over.[13] On 24 March 1992, Dionisio died.[14]

The present controversy arose in 1997. Petitioners went to the Office of the Municipal Assessor to secure a copy of Tax Declaration No. 07764, as they intended to sell Lot No. 5053-H to an interested buyer.[15] To their surprise, they were informed that Tax Declaration No. 07764 had been cancelled and, in lieu thereof, Tax Declaration No. 23959 was issued on 24 June 1996 in the name of Dionisio.[16] Apparently, respondents had caused the issuance of Tax Declaration No. 23959 by submitting a Deed of Absolute Sale dated 27 June 1956 supposedly executed by Cipriano in favor of Dionisio.[17] That sale involved a portion of Lot No. 5053-H described as follows:

x x x that portion of land of Lot No. FIVE THOUSAND FIFTY THREE-H (5053-H) under subdivision plan FLR-133 approved by the Director of Lands Jose P. Dans on September 5, 1953, covered by monuments No. 7, 8, 9, 10, 11, of said Lot No. 5053 bounded on the North by Lot No. 5954 & portion of Lot 5053-H; East by portion of Lot 5053-H; South by Lot no. 5053-J of Domingo Ababon; West by Lot no. 9479; x x x.[18]

Petitioners summoned respondents before the Lupon Tagapamayapa, but the conciliation was not successful.[19]

On 28 July 1997, petitioners filed a Complaint[20] against respondents for quieting of title, annulment of deed of sale, cancellation of Tax Declaration No. 23959, recovery of possession and ownership, damages, and payment of attorney's fees. Petitioners alleged therein that the Deed of Absolute Sale dated 27 June 1956 was a forgery. Respondents, in their Answer,[21] alleged that the assailed deed was a genuine document and asked for the payment of moral and exemplary damages, and attorney's fees, as counterclaims.

During trial, among the witnesses presented by petitioners was Romeo O. Varona, document examiner of the Philippine National Police Crime Laboratory, Region VII. He testified that according to his comparative analysis of Cipriano's signature on the assailed deed and standard signatures on other documents, Cipriano's signature on the deed in question was a forgery.[22]

For their part, respondents presented Dionisio's son Gorgonio, who testified that he was present when the assailed deed was executed.[23] He also stated that they had enjoyed the fruits of the lot in question from 1956 until 1960, when they were confronted by petitioners. Respondents were asked to show proof of ownership, but could not present any.[24] Thus, from 1960 onwards, petitioners enjoyed the fruits of the property.[25] Later, respondents were able to find a copy of the assailed deed in the National Archives, thereby enabling them to cause the issuance of Tax Declaration No. 23959.[26]

In the presentation of their rebuttal evidence, petitioners presented a Deed of Absolute Sale dated 11 April 1953,[27] executed by Pilar Diaz in favor of Dionisio. This prior sale involved the exact same portion allegedly sold to him by Cipriano – except that in the date of approval of the subdivision plan by the Director of Lands, two figures were interchanged. Whereas the assailed deed showed the date as “September 5, 1953,” the Deed of Absolute Sale dated 11 April 1953 showed the date as “September 5, 1935.”

In its Decision dated 6 April 2004, the RTC annulled the assailed deed and ordered the cancellation of Tax Declaration No. 23959, as well as the reinstatement of Tax Declaration No. 07764.[28] Respondents were also ordered to demolish their residential house on Lot No. 5053-H and to pay petitioners attorney's fees and litigation expenses.[29]

The RTC found that respondents' failure to present the deed for 40 years from its alleged execution had not been satisfactorily and convincingly explained.[30] It also found that the assailed deed was indeed a forgery for the following reasons:

- It would have been pointless for Dionisio to buy the same property twice from different owners.
- Cipriano's residence certificate, whose number was indicated in the assailed deed, as well as in the notarial register where the deed was recorded, was allegedly issued in Minglanilla, Cebu. The other persons' residence certificates, whose numbers were indicated on the same page of the notarial register, appear to have come from the same booklet as the residence certificate of Cipriano, judging from their numerical sequence. However, the residence certificates of these other persons had been issued in Sogod, Cebu.
- There was indeed a glaring difference between the alleged signature of Cipriano in the assailed deed and in his standard signatures in 10 other documents submitted by plaintiffs.

Respondents filed a Notice of Appeal dated 30 April 2004.

Ruling of the CA

On 25 May 2006, the CA issued a Decision reversing that of the RTC. The appellate court ruled that petitioners had failed to prove by requisite evidence their allegation that the assailed deed was a forgery.[31] The deed, being a notarized document, enjoyed the presumption of authenticity and due execution. Also, the fact that it was an

ancient document that “remained unaltered after so many years, bodes well for its authenticity.”[32]

The CA also concluded that the document examiner was not able to determine the forgery with certainty. What he had examined was a mere machine copy of the assailed deed.[33] Furthermore, even he admitted that the standard signatures of Cipriano had shown variations among themselves.

Finally, the CA ruled that respondents were the actual possessors of Lot No. 5053-H, since it was their house that was standing on the property.[34] Thus, the CA granted the appeal and consequently dismissed the Complaint of petitioners.

Issues

Petitioners come before us on a Petition for Review on Certiorari[35] alleging that the CA erred as follows:

- Ruling that petitioners were not able to overturn the presumption of regularity of the assailed deed;
- Finding that the document examiner was not able to establish the forgery with certainty;
- Finding that respondents were in actual possession of Lot No. 5053-H;
- Ruling that there was no merit in petitioners’ prayer for the award of attorney’s fees and litigation expenses.

Our Ruling

Petitioners presented clear and convincing evidence that the assailed deed is a forgery.

Well-settled is the rule that petitions for review on certiorari under Rule 45 before this Court should involve only questions of law.[36] A reading of the issues raised by petitioners readily show that they are questions of fact, which are generally not within the purview of this Court. When a question involves facts, the findings of the CA, including the probative weight accorded to certain pieces of evidence, are binding on this Court. Also well-settled, however, are exceptions to this rule,[37] such as when the findings of fact of the CA are contrary to those of the RTC, as in this case.

We sustain the findings of the RTC.

At the outset, it is worth pointing out that the sale of a mere portion of Lot No. 5053-H was what brought about the cancellation of Tax Declaration No. 07764 and the consequent issuance of Tax Declaration No. 23959, each of which covered the entire lot. The fact that the assailed deed covers only a portion of Lot No. 5053-H becomes clearer still when one considers that it was bounded on the north and the east by portions of Lot No. 5053-H itself.

As will be shown below, the assailed deed is a forgery. Assuming it were genuine, petitioners have a right to the rest of the property not covered by the purported sale. If the procedure for the issuance of tax declarations was followed – if care had been observed to make sure that all papers were in order and understood – this irregularity would not have taken place.

It is true that notarized documents are accorded evidentiary weight as regards their due execution.[38] Nevertheless, while notarized documents enjoy the presumption of regularity, this presumption is disputable. They can be contradicted by evidence that is clear, convincing, and more than merely preponderant.[39] Here, contrary to the conclusion of the CA, we find clear and convincing evidence that is enough to overturn the presumption of regularity of the assailed deed.

First, the document examiner determined that the signature of Cipriano in the assailed deed had been forged. No issue has been raised about his expertise. The finding of the CA that he had examined a mere machine copy of the assailed deed was erroneous. The pertinent portion of his testimony clearly shows otherwise, to wit:

ATTY. DURANO:

Q: Now you made mention of the standard documents, could you kindly tell the Honorable Court what is [the] questioned document stated in your report?

[ROMEO O. VARONA]

[A]: The questioned document is the Deed of Absolute Sale dated June 27, 1956.

Q: Do you have a copy of that Deed of Sale as examined by you?

A: Well, I have a machine copy. I have examined the original copy at the archive's office, Mandaue City.[40]
(Emphasis supplied)

In concluding that the signature of Cipriano in the assailed deed was a forgery, the document examiner found that there were "significant differences in letter formation, construction and other individual handwriting characteristics" between the assailed and the standard signatures of Cipriano.[41]

The fact that the document examiner himself admitted that even the standard signatures of Cipriano showed variations among themselves does not make the former's determination any less convincing. He explained that while every signature of the same person varies, the individual handwriting characteristics of the person remain the same.[42] In *Cesar v. Sandiganbayan*,[43] we recognized that there is bound to be some variation in the different samples of genuine signatures of the same person.

Second, the RTC did not just rely on expert testimony in ruling that the signature was forged. It likewise supported its finding that the signature was forged through independent observation:

Finally, a scrutiny of the signature on the questioned deed of sale compared to the eleven (11) signatures on the ten (10) standard documents there exists a glaring difference in the letter formation of capital letters "C" in Cipriano and "T" in Trazona. The capital C in questioned signature, the initial stroke stopped at the upper curve of the letter C while in the standard signatures, it overlaps from the upper curve. In the word Trazona, the capital T in the questioned signature is disconnected from the T bar to the body of the questioned signature whereas, in the standard signatures, the capital T is connected. These discrepancies can easily be noticed by mere physical appearance that the letters C and T were written.[44]

Third, the existence of the Deed of Absolute Sale dated 11 April 1953 brings into question the regularity of the assailed deed. This deed was never disputed by respondents at any stage of the proceedings, and was in fact admitted by them in their Comments to Plaintiffs' Additional Formal Offer of Exhibits.[45] Indeed, the RTC was correct in its observation that no one in complete possession of one's mental faculties would buy the same property twice from different owners. Respondents never provided any explanation for this anomalous situation. In any case, it has been established that Lot No. 5053-H is in the name of Cipriano, who bought it from the government in 1940. Thus, only Cipriano had the right to dispose of the property, or portions thereof.

Fourth, Cipriano had cultivated the property and paid taxes thereon since the time he acquired it from the government, and even after its purported sale to Dionisio, until his death.[46] Petitioners continued paying the taxes thereon even after Cipriano had died.[47] Respondents started paying taxes on the property only after Tax Declaration No. 23959 was issued in Dionisio's name in 1997.[48] It would be absurd for petitioners to pay taxes on a property they do not own.

Fifth, as admitted by Gorgonio himself, petitioners were the ones enjoying the fruits of the property from 1960 until the present controversy.[49] Again, it is incongruous for petitioners to enjoy the fruits if respondents owned the property.

Sixth, as the RTC noted, there was an irregularity regarding the place of issuance of Cipriano's residence certificate indicated in the assailed deed, as compared with the residence certificates of the other persons indicated on the same page of the notarial register.

Finally, when the record management analyst from the Bureau of Archives presented the assailed deed, the paper was noted to be white, while its supposed contemporaries in the bunch from where it was taken had turned yellow with age.[50] Further, when the analyst was asked the question of when the assailed deed was received by the Bureau of Archives, she answered that it was forwarded to them only on 28 September 1987 by RTC Region 7, Notarial Division.[51]

Clearly, the evidence adduced fully supports the position of petitioners that the assailed deed of sale is forged and that they are the owners of the property. Having been forced to litigate in order to protect their interest therein, the award of attorney's fees and litigation expenses to them is in order.

The actual possession of Lot No. 5053-H by petitioners has been properly ruled on by the RTC. Much has been made by the CA of the fact that respondents' house was standing on the property. However, petitioners have explained that the house was erected only after Cipriano permitted it.

Dionisio was then well aware that this temporary arrangement may be terminated at any time. Respondents cannot now refuse to vacate the property or eventually demand reimbursement of necessary and useful expenses under Articles 448 and 546 of the New Civil Code, because the provisions apply only to a possessor in good faith, i.e., one who builds on land with the belief that he is the owner thereof.[52] Persons who occupy land by virtue of tolerance of the owners are not possessors in good faith.[53] Thus, the directive of the RTC for respondents to demolish their residential house on Lot No. 5053-H was also proper.

WHEREFORE, the Decision and Resolution of the Court of Appeals Cebu City in CA-G.R. CV No. 00099 are REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Cebu City, Branch 57, in Civil Case No. CEB-20620 is REINSTATED in all respects.

SO ORDERED.

Leonardo-De Castro, Bersamin, Villarama, Jr., and Reyes, JJ., concur.

[1] Rollo, pp. 100-105. The Decision dated 25 May 2006 of the Court of Appeals (CA) Cebu City Nineteenth Division was penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr. concurring.

[2] Id. at 106-107. The Resolution dated 8 November 2006 of the CA Cebu City Special Former Nineteenth Division was penned by Associate Justice Isaias P. Dicdican, with Associate Justices Romeo F. Barza and Priscilla Baltazar-Padilla concurring.

[3] Id. at 204-215.

[4] Id. at 204.

[5] Id.

[6] Id. at 204-205.

[7] Id. at 207.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id. at 204.

[13] TSN, 4 March 1999, p. 16.

[14] Rollo, p. 205.

[15] Id. at 205, 207.

[16] Id. at 205.

[17] Id.

[18] Folder of Exhibits, p. 14.

[19] Rollo, p. 205.

[20] Records, pp. 1-9.

[21] Id. at 22-25.

[22] Rollo, p. 208.

[23] TSN, 5 August 1999, pp. 7-8.

[24] Id. at 12-13.

[25] Id. at 13.

[26] Id. at 13-15.

[27] Folder of Exhibits, p. 58.

[28] Rollo, p. 215.

[29] Id.

[30] Id. at 213.

[31] Id. at 102.

[32] Id. at 103.

[33] Id.

[34] Id. at 104.

[35] Id. at 5-98.

[36] RULES OF COURT, Rule 45, Sec. 1.

[37] (1) [T]he factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such

findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record. (*Heirs of Ampil v. Manahan*, G.R. No. 175990, 11 October 2012, 684 SCRA 130, 138-139)

[38] *Basilio v. CA*, 400 Phil. 120, 124 (2000).

[39] *Cleofas v. St. Peter Memorial Park, Inc.*, 381 Phil. 236, 247 (2000).

[40] TSN, 14 April 1999, pp. 8-9.

[41] Folder of Exhibits, p. 51.

[42] TSN, 15 April 1999, pp. 8-9.

[43] 219 Phil. 87, 106 (1985).

[44] *Rollo*, p. 214.

[45] Records, pp. 206-207.

[46] *Id.* at 213.

[47] *Id.*

[48] *Id.*

[49] TSN, 5 August 1999, pp. 12-13.

[50] TSN, 9 December 2002, pp. 10-12.

[51] TSN, 18 March 2003, p. 8.

[52] *Esmaguel v. Coprada*, G.R. No. 152423, 15 December 2010, 638 SCRA 428.

[53] *Resuena v. CA*, 494 Phil. 40 (2005).

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