

MARIA MAHILUM, SALVADOR MAHILUM, ANGEL MAHILUM, EMILIO OGDIMAN, VICTORIO SALAZAR AND TOMAS SALA-ZAR, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND GORGONIA FLORA DE SOTES,...

G.R. No. 17970. June 30, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an action for partition and damages filed in the Court of First Instance of Negros Occidental, where it was docketed as Civil Case No. 3822. Present respondent Gorgonia Flora de Sotes was plaintiff, and present petitioners were defendants. The latter's answer to the complaint contained a counterclaim, also for damages. The trial court rendered judgment dismissing both the complaint and the counterclaim; but upon appeal by plaintiff the Court of Appeals reversed, as follows:

"For the foregoing considerations,, the judgment appealed from is hereby set aside and another entered, ordering- the partition of Lot No. 2195 of the Cadastral Survey of San Carlos, Negros Occidental in accordance with the deed of sale (Exh. "D") and ordering the receiver to deliver the funds in his possession to plaintiff who is hereby declared, as the rightful owner of a portion of 150,33; square meters of said Cadastral Lot No. 2195, without special pronouncement as to costs in this instance."

The case is now before us on petition for review filed by defendants.

The findings and conclusions of the appellate court are as follows:

"It appears that one Pedro Mahilum was the registered owner of a parcel of land, known as Lot No. 2195 of the Cadastral Survey of San Carlos, Negros Occidental, with an area of 150,333 square meters, as evidenced by Original Certificate of Title No. RO-6024 (22893) (Exh. "1")- Upon the death of Pedro Mahilum in 1934, he was succeeded by his six children, namely, Tomas, Juan, Clemente, Antonia, Juliana and Tomasa who on May 13, 1935, executed a "deed of definite sale" in favor of Gorgonia Flora, married to Basilio Sotes, whereby in consideration of P2,000.00, receipt of which was acknowledged by them, they had ceded and conveyed Kinto her—

" 'A parcel of land (Lot No. 2195—Part of the Cadastral Survey of San Carlos) with improvements thereon, situated in sitio Calimbsan, Barrio Lipat-on, Calatrava, bounded on the North by Lots Nos. 2324; 2320, & 2862; on the East by Lots Nos. 2852, 2334 & 2197; on the South by Lots Nos. 2193, 2559, 2198, & 2197; and on the West by Lots Nos. 2194 & 2194-Part of Maximina Antero, containing an area of 15 hectares, 03 ares and 33 centares, more or less (150,333 square meters), including 500 coconut trees within said lot'. "

"The vendors had acknowledged the deed of sale before Notary Public Nicolas D. Destua.

"It further appears that Gorgonia Flora, the herein plaintiff, had declared the contested portion for taxation purposes and begun paying the taxes therefor in 1936.

"The Mahilums, however, claimed that they never sold any portion of the aforesaid Lot No. 2195 of the San

Carlos Cadastre. As a matter of fact, according to them, Original Certificate of Title No. RO-6024 (22893) is free from any encumbrance whatsoever. They further claimed that if plaintiff had been in possession of a portion of said lot, it was a mere toleration on their part, but not an acknowledgment of her right of ownership over the property. It may be mentioned in this connection that out of the six children of the late Tomas Mahilum, only two were living at the trial of this case, namely, Tomasa and Juan. According to Tomasa, neither she nor her brothers and sisters appeared before notary public Nicolas Destua on May 13, 1935, much less thumbmarked and/or signed the deed of sale (Exh. "W"). But could the lone testimony of Tomasa overcome the probative value of a public instrument? The rule is well settled that clear and positive evidence is necessary to destroy the credence of a public instrument, especially so where, like in the instant case, the notary public who ratified the deed of sale (Exh. "D") took the witness stand and categorically declared that—

"Those are the genuine thumbmarks of Tomas, Antonia Juan, Juliana and Tomasa and this signature is the signature of Clemente Mahilum." (t.s.n., p. 31, Estadillo)."

"And according to the plaintiff, only Clemente Mahilum affixed his signature on the document, and they simply thumbmarked the same (t.s.n., p. 9 Estadillo). For these reasons, the lone testimony of Tomasa Mahilum is insufficient to destroy the probative value of the public document (Exh. "D") which, according to the trial court, came into existence only in 1941, a conclusion that is not correct. For Juan Mahilum, Juliana Mahilum and Tomasa Mahilum (three surviving children of the late Pedro Mahilum) alleged in their complaint for "Annulment of Contract of Definite Sale", dated March 11, 1955 filed in the Court of First Instance of Occidental Negros against Gorgonia Flora Vda. de Sotes (herein plaintiff) —

"That the defendant (Gorgonia Flora Vda. de Sotes) on May 13, 1935, fraudulently taking advantage of the illiteracy or incapacity of the plaintiff and their brothers and sisters, Tomas, Clemente and Antonia who were then living, induced them to sign a certain writing, which writing the defendant, in conspiracy with Notary Public, Nicolas D. Destua * * *, falsely and fraudulently represented to be an acknowledgment of debt of plaintiffs' father, Pedro Mahilum, but which is in fact a Definite Contract of Sale of Lot No. 2195 as aforesaid;"

"As the document (Exh. "D") which, according to the court below came into existence only 1941, is dated May 13, 1935, and entitled "Deed of Definite Sale," we can safely say that it is the very document referred to in the aforequoted portion (Par. 5) of the complaint (Exh. "Y"). For this reason, the lower court incurred an error when it stated that the deed of sale (Exh. "D") came into existence only 1941. The trial court likewise erred when it declared that no tax declaration was available when the deed of sale (Exh. "D") was executed on May 13, 1935, for the first tax declaration Exhibit "A" was issued only in 1941. In the first place, tax declaration No. 4995 (Exh. "A") was subscribed and sworn to on Sept. 19, 1940, but the tax thereunder was to begin in 1941. Note that tax declaration No. 4995 (Exh. "A") cancelled tax declaration No. 4232 in the name of Gorgonia Flora (herein plaintiff) who paid the corresponding taxes in 1936 for the land therein described and declared, identified as "Cadastral Lot -Nº 2195—part", the very land of the deceased Pedro Mahilum. Similarly, in 1938, 1939, plaintiff had paid realty tax under tax declaration No. 4232 (Pis. see Exhs. "C-1" & "C-2").

"True enough that the deed of sale (Exh. "D") was not registered for twenty years, but such fact does not destroy its efficacy and the party in whose favor it was executed is not either barred from registering it now. For these reasons as well as those that have been pointed out above, we hold and declare that the document (Exh. "D") is not fictitious and fraudulent.

"We are not, however, inclined to condemn defendants to pay any damages to plaintiff in their attempt to assert their right of ownership over the portion of land in question that stemmed from the clean title of their predecessor in interest, Pedro Mahilum."

Three errors are assigned by petitioners, namely:

"(1) The Court of Appeals erred in not holding that the deed of sale (Exh. "D") is inadmissible in evidence because it lacks the necessary documentary stamps.

(2) The Court of Appeals erred in not holding that the deed of sale (Exh. "D") could not validly convey registered land because it is not signed by two disinterested witnesses.

(3) The Court of Appeals erred in not holding that the Original Title No. RO-6024 of the herein petitioners over Lot No. 2195 of San Carlos Cadastre is conclusive evidence of ownership."

The first assignment of error is without merit. Exhibit D is a duplicate copy of the original, signed and/or thumbmarked by the parties and acknowledged before notary public Nicolas D. Destua. The stamps referred to by petitioners (and required by Section 238 of the Internal Revenue Code so that a public document may be admitted as evidence) are supposed to be, and as a matter of practice actually are, affixed to the original or first copy of the document and not to any of the duplicates or carbon copies thereof. There is no evidence whatsoever that such practice was not observed in regard to the deed of sale involved in this case, and consequently the presumptions that official duty has been regularly performed, that private transactions have been fair and regular, and that the regular course of business has been followed, must be applied (Sec. 69 (q), Rule 123; now Sec. 5, Rule 131). The burden is upon those who seek to destroy this presumption to do so by convincing proof.

With respect to the contention that Exhibit D should not have been admitted as evidence because it is only a copy and the nonproduction of the original has not been explained, it should be pointed out that said exhibit is itself a signed carbon copy or duplicate executed at the same time as the original. This is what is known as duplicate original, and it may be introduced in evidence without accounting for the nonproduction of the other copies.

The second assignment of error is likewise without merit. The requirement of two witnesses to the execution of an instrument, as provided for in Section 127 of Act 496, was complied with in Exhibit D. The notary public himself, Nicolas D. Destua, signed the instrument as such witness, together with his wife, and there is nothing in the law which prohibits a notary public from acting in that capacity.

Under the third assignment of error petitioners claim that Original Certificate of Title No. RO-6024 is conclusive evidence of ownership. This is of course not disputed, as the registered owner of the land was the deceased Pedro Mahilum, who was succeeded by his children and heirs upon his death in 1934. These are the persons who sold the land in question to herein respondent in 1935. The fact that the deed of sale has not been registered since then does not destroy its efficacy insofar as they and their own privies are concerned. They delivered possession to said respondent, as found by the Court of Appeals; and no superior rights of third persons have intervened.

The decision of the Court of Appeals is affirmed, with costs against petitioners-appellants.

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

Judgment affirmed.

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