

**SPS. IRENEO T. FERNANDO (SUBSTITUTED BY THEIR HEIRS,
RONALDO M. FERNANDO, CONCORDIA FERNANDO-JAYME,
ESMERALDA M. FERNANDO, ANTONETTE M.
FERNANDO-REGONDOLA, FERDINAND M. FERNANDO...**

G.R. No. 191889. January 31, 2011

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The spouses Ireneo[2] T. Fernando and Monserrat Magsalin Fernando (petitioners) and Ireneo's sisters Juliana T. Fernando (Juliana) and Celerina T. Fernando (Celerina) were the registered co-owners in pro-rata shares – 1/3 each - of three parcels of land located in Quezon City, designated as Lot Nos. 22, 24 and 26, all of Block 329 and each containing an area of 264 square meters, more or less. Lot No. 22 was covered by Transfer Certificate of Title (TCT) No. RT-7108 (141363),[3] while Lot Nos. 24 and 26 were covered by TCT No. RT-7109 (141364),[4] both issued by the Register of Deeds for Quezon City.

Marcelino T. Fernando (respondent) is the full-blood brother of petitioner Ireneo, Juliana and Celerina. Celerina died on April 28, 1988,[5] single, without issue and without leaving any will, while Juliana passed away on December 1, 1998,[6] likewise single and without issue. Juliana purportedly executed a holographic will.

It appears that on November 3, 1994, Ireneo and Juliana presented a document before the Register of Deeds of Quezon City, denominated as Deed of Partition with Sale[7] (the deed) dated October 27, 1994 and notarized on even date by Notary Public Jesus M. Bautista, allegedly executed by petitioners, Juliana and Celerina wherein they partitioned equally among themselves the aforementioned properties, thereby terminating their co-ownership. Under the deed, Lot No. 22 would be allotted to petitioners; Lot No. 24 to Juliana; and Lot No. 26 to Celerina. Still in the same deed, Juliana agreed to sell Lot No. 24 to petitioners for the sum of P300,000.00.

TCT Nos. 120654 and 120655[8] covering Lot Nos. 22 and 24, respectively, were thereupon issued on November 3, 1994 by the Register of Deeds for Quezon City in the name of petitioners, while TCT No. 120656[9] was issued in the name of Celerina.

On December 10, 1997, respondent caused the annotation of an Affidavit of Adverse Claim on petitioners' and Celerina's respective TCTs, claiming a right and interest over the properties, being one of the heirs of his late sister Celerina.

Respondent later filed on February 22, 2000 a complaint[10] for annulment of the deed and the derivative TCTs against petitioners and the Register of Deeds of Quezon City before the Regional Trial Court (RTC) of Quezon City, docketed as Civil Case No. Q-00-40041, alleging that Celerina's signatures on the deed of partition was a forgery as she had passed away on April 28, 1988, before the deed was purportedly executed in 1994, and that the purported sale by Juliana of her share over Lot No. 24 in favor of petitioners was simulated and fictitious due to lack of any valid consideration, which questioned acts had effectively deprived him of his right of pre-emption or

redemption as Celerina's heir under Article 1620 of the Civil Code [sic].

Respondent thus prayed for, inter alia, the cancellation and invalidation of the deed and the questioned TCTs, and the revival of TCT Nos. RT-7108 (141363) and RT-7109 (141364).

Respondent was later appointed administrator of the intestate estate of Celerina on December 21, 2001.[11]

On January 30, 2002, intervenors Matias Fernando and Procilo Fernando, who had earlier been appointed special co-administrators[12] of Juliana's estate by the Quezon City RTC, Br. 95, filed their complaint-in-intervention. Claiming an interest in the outcome of respondent's complaint for annulment, they echoed respondent's claim that, among other things, the sale of Juliana's share to petitioners was fictitious, citing lack of any consideration, and thus prayed for its reconveyance to Juliana's estate.

Petitioners, denying respondent's allegations by way of Answer Ad Cautelam[13] dated May 11, 2002 with Compulsory Counterclaim, asserted in the main that the deed was actually executed sometime in 1986 during the lifetime of Celerina and held in safekeeping by one of the parties but it was belatedly notarized on October 27, 1994 before it was presented to the Register of Deeds; and that Juliana left a holographic will which is the subject of probate proceedings[14] before Br. 95 of the Quezon City RTC.

At the witness stand, respondent confirmed the material allegations of his complaint.[15] Petitioners, on the other hand, presented Monserrat Fernando (Monserrat), Ireneo's widow, who declared that, among other things, she was present when the deed was signed by Ireneo, Juliana and Celerina in 1986, and that by agreement, it remained in Juliana's safekeeping until it was notarized on October 27, 1994.[16]

On cross-examination, Monserrat maintained that the deed was signed in Juliana's house, but she could not recall the witnesses to the document; that at the time Juliana signed the deed, it was still undated and the entries on page 3 (the notarial page) were, with respect to the date and the community tax certificates of the parties, still blank; and that she (Monserrat) appeared before the notary public but she could not remember if her husband did.

Monserrat further testified that she did not know if the typewriter used in preparing the deed was different from that used in typing the notarial date (October 27, 1994) as well as the figures "P300,000.00" and the words "THREE HUNDRED THOUSAND PESOS" representing the consideration for the sale of Juliana's share to Ireneo; and that Ireneo issued a check-payment drawn on his account in favor of Juliana, albeit she (Monserrat) could not produce the check.[17]

By Decision[18] of April 13, 2005, Branch 220 of the Quezon City RTC dismissed both the complaint and the complaint-in-intervention. And, on the Counterclaim, the trial court ordered respondent to pay petitioners moral damages and attorney's fees.

In sustaining the validity of the deed, the trial court ratiocinated that since there appeared to be no dispute as to the genuineness of Celerina and Juliana's signatures, the notarization of the document at a later date did not render it void or without legal effect, but merely opened the notary public to prosecution for possible violation of notarial laws.

The trial court added that both respondent and intervenors, not being compulsory heirs of either Celerina or Juliana, were not entitled to any legitime and thus could not assail the sale made by Juliana in favor of her brother Ireneo, which sale was proven to have been duly supported by valuable consideration.[19]

On appeal, the Court of Appeals reversed the trial court's decision. It held that the deed is void in light of the clear forgery of the signature of Celerina who could not have given her consent thereto more than six years after her death. The appellate court reasoned:

Celerina T. Fernando, who admittedly died on April 28, 1988, could not have possibly "affixed" her "signature" to the document on October 27, 1994; neither could she have secured the misrepresented Community Tax Certificate No. 6720337 from Manila on January 6, 1994; and worsely, she could not have "personally appeared" before Notary Public Jesus M. Bautista on "October 27, 1994" and "acknowledged before (him) that the same was executed of (her) own free act and deed." Especially that Monserrat, a signatory who insists that the deed was in truth executed in 1986, did not adduce evidence to such effect, other than her bare testimony. She did not even proffer any explanation why the correct date was not made part of the assailed deed.

x x x x

The discrepancy in the date of execution and notarization of the deed and the date of death of supposed signatory Celerina are too glaring for Us to overlook and gloss over, moreso, that the evidence offered in opposition thereto is merely Monserrat's bare testimony.[20] (underscoring supplied)

Thus the appellate court disposed in its Decision[21] of January 6, 2010:

WHEREFORE, the instant appeal is GRANTED. Setting aside the assailed April 31, 2005 Decision of the RTC, judgment is hereby rendered:

- 1) Declaring the Deed of Partition with Sale dated October 27, 1994 as NULL and VOID;
- 2) Declaring further Transfer Certificate of Title Nos. 120654 and 120655 issued in the name of Ireneo T. Fernando and Transfer Certificate of Title No. 120655 issued in the name of Celerina T. Fernando as NULL and VOID;
- 3) Directing the Register of Deeds of Quezon City to revive TCT Nos. RT-7108 and RT-7109 and accordingly issue transfer of title over the three lots as now co-owned by Irineo T. Fernando married to Monserrat M. Fernando, Juliana T. Fernando and Celerina T. Fernando; and
- 4) Ordering the defendants-appellees to pay plaintiff-appellant P100,000.00 as moral damages, P50,000.00 as exemplary damages and P50,000.00 as attorney's fees.

SO ORDERED. (underscoring supplied)

Reconsideration of the appellate court's Decision having been denied by Resolution[22] of April 13, 2010, petitioners filed the present petition for review on certiorari, contending that the appellate court:

. . . disregarded the trial court's factual findings on the authenticity of Celerina's signature as based on the eyewitness account of Monserrat, who also signed the subject deed, and failed to take into account their explanation on the date of execution of the instrument;

. . . failed to recognize that the deed of partition with sale executed by the parties in 1986 does not require notarization for the same to be valid, binding and enforceable, even granting that a notarial defect— arising from Celerina's failure to appear before the Notary Public—exists; and

. . . erred in upholding respondent's legal personality to question the validity of the deed of partition with sale.[23]

The principal issue â”€ whether the deed is genuine â”€ involves a question of fact.

While it is settled that petitions for review on certiorari under Rule 45 are limited to questions of law as the Court is not a trier of facts, the rule admits of exceptions including when the factual findings of the trial and appellate courts are conflicting, in which event this Court may still pass on the same.[24]

The petition fails.

In ruling, by a one brief paragraph, in the affirmative on the issue of whether Celerina's and Juliana's signatures in the deed were genuine, the trial court did not provide sufficient legal or factual basis on how it arrived at its conclusion. It apparently contented itself with just declaring that "the deed . . . does not suffer from any legal infirmity" since there was allegedly no dispute as to the signatures thereon, and went on to opine that its notarization at a later date did not render the document void and without legal effect.[25]

Petitioners maintain that the deed was actually executed in 1986 when Celerina was still alive, but notarized only in 1994:

. . . a plain perusal of the Subject Deed will readily show that the font type used for the supposed date of execution of the deed as found in the body is different from the font type used for the rest of the deed but appears to be the very same font type used for the notarization. This further affirms that it was the Notary Public who inserted or caused to be inserted the date "October 27, 1994."... [26] (emphasis in the original; underscoring supplied)

Petitioners thus fault the notary public for making it appear that the date of execution of the deed was the same as the date of its notarization and for including the name of the already deceased Celerina in the Acknowledgment portion thereof.

A scrutiny of the deed reveals, however, several significant irregularities which belie petitioners' claim of its authenticity. Thus, while the entry "October 27, 1994" appearing on the date of execution (page 2) and on the Acknowledgment portion (page 3), the date of notarization, the parties' Community Tax Certificates, the Document, Page and Book Numbers appear to carry a different typeset - indicating the intervention of the notary public – from that employed in the body of the deed, the words "Series of 1994" as reflected in the Acknowledgment carry the same typeset used in the body of the document. Consider the following Acknowledgment:

x x x x

REPUBLIC OF THE PHILIPPINES)

QUEZON CITY) S. S.

BEFORE ME, a Notary Public for and in Quezon City, this Oct. 27, 1994 personally appeared:

JULIANA T. FERNANDO CTC#35411020A/QC/3.1.94

CELERINA T. FERNANDO CTC#6720337/Mla.1.20.94

IRENEO T. FERNANDO/MONSERRAT MAGSALIN CTC#2506693A/Mla./1.6.94

known to me to be the same persons who executed the foregoing instrument and acknowledged before me that the same was executed of their own free act and deed.

This instrument consists of three (3) pages, including this page, wherein the acknowledgment is written and has been signed by the parties and their instrumental witnesses on each and every page, refer to a Deed of Partition with Sale.

WITNESS MY HAND AND OFFICIAL SEAL on the date and place above-written.

10.27.94

Doc. No. xxxx

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Page No. xx 55

Book No. 13

Series of 1994[27] (emphasis supplied; underscoring in the original)

It is thus all too glaring that the deed could not have been, as advanced by petitioners, actually executed in 1986. For if indeed it was, and without belaboring the obvious, the entry for the notarial year after the words "Series of" should have been left in blank, consistent with the other entries which the notary public would fill in (upon notarization at a later date). Since the words "Series of 1994" and the contents of the deed were obviously prepared from the very same machine, it cannot be gainsaid that it was drafted/executed only in 1994 at which time Celerina could not have been a party thereto, she having passed away in 1988.

Whether the notary public was responsible for inserting October 27, 1994 as the date of the execution of the instrument is thus no longer material.

An examination of the signatures of both Juliana and Celerina on the bottom of page 2 of the deed reveals that their family name "Fernando" appears to have been written by one and the same hand which, to the Court's naked eye, is significant, taking note of the same style and flourish with which, particularly, the letters "F" and "D" were executed, thereby engendering further doubts as to the genuineness of the deed or the actual participation of the concerned parties.

As for petitioners' reliance on the testimony of Monserrat (Ireneo's widow), the same fails. Except for her claim that she was present when the document was signed by Ireneo, Juliana and Celerina in 1986, little else was offered by way of collaboration. Monserrat, on cross-examination, could not even recall the names of the witnesses to the deed or if they were present during its signing. She did not know who prepared the deed or if her husband Ireneo or Juliana appeared before the notary public. She could not advance any explanation why the deed was not dated at the time of its execution or why it was, by her claim, entrusted to Juliana for safekeeping. And she proffered no reason why she failed to present the check-payment for P300,000.00 for Lot No. 24.[28]

And it bears noting that petitioners never even bothered to present the notary public to testify on the circumstances surrounding the belated notarization of the deed.

In *Heirs of Rosa Dumaliang v. Serban*[29] where the therein petitioners-heirs similarly sought the annulment of a 1962 deed of extra-judicial settlement and sale upon a claim that the signatures of some of the heirs had been falsified and that the remaining signatories could not have signed the deed as they were already dead, this Court stressed in no uncertain terms that:

... if it is established that petitioners' consent was not given to the 1962 Deed of Extra-Judicial Settlement and Sale which became the basis for the issuance of the new title over the entire lot in respondent Damiano's name in 1965, the absence of such consent makes the Deed null and void ab initio and subject to attack anytime. It is recognized in our jurisprudence that a forged deed is a nullity and conveys no title. Article 1410 of the Civil Code clearly provides that an action to declare the inexistence of a void contract does not prescribe.

Likewise, we have consistently ruled that when there is a showing of such illegality, the property registered is deemed to be simply held in trust for the real owner by the person in whose name it is registered, and the former then has the right to sue for the reconveyance of the property. The action for the purpose is also imprescriptible, and as long as the land wrongfully registered under the Torrens system is still in the name of the person who caused such registration, an action in personam will lie to compel him to reconvey the property to the real owner.

If indeed petitioners' consent was not given, respondents could not have acquired ownership over the 56,804 sq

m lot by virtue of the 1962 Deed of Extra-Judicial Settlement and Sale. While a certificate of title was issued in respondents' favor, such title could not vest upon them ownership of the entire property; neither could it validate a deed which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has. (emphasis and underscoring supplied)

WHEREFORE, the petition is DENIED. The assailed January 6, 2010 Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Should be Procilo Fernando; vide note 12.

[2] Also interchangeably referred to in the records as Irineo.

[3] Records, Vol. 2, pp. 573-574.

[4] Id. at 575-576.

[5] Id. at 577.

[6] Id. at 584.

[7] Exhibit "D," id. at 578-580.

[8] Id. at 581-582.

[9] Id. at 583.

[10] Records, Vol. 1, pp. 1-7.

[11] Vide Order of the Quezon City RTC, Br. 220 in Sp. Proc. Case No. Q-00-42034, id. at 145-147.

[12] Vide Resolution of January 5, 2000 in Sp. Proc. No. Q-99-37053 issued by then (now Supreme Court Associate Justice) Judge Diosdado Peralta, Records, Vol. 2, pp. 370-371.

[13] Id. at 327-335.

[14] Vide note 12.

[15] TSN, August 26, 2003, September 25, 2003.

[16] TSN, January 22, 2004, pp. 1-12.

[17] Id. at 13-23.

[18] Rendered by Judge Jose G. Paneda, records, Vol. 2, pp. 689-694.

[19] Id. at 693-694.

[20] Vide note 21 at 189-190.

[21] Penned by Associate Justice Vicente S. E. Veloso with the concurrence of Associate Justices Amy C. Lazaro-Javier and Andres B. Reyes, Jr., CA rollo, pp. 177-195.

[22] Id. at 228-229.

[23] Rollo, pp. 26-27.

[24] B & I Realty Co., Inc. v. Caspe, G.R. No. 146972, January 29, 2008, 543 SCRA 1, 7 citing Baricuatro, Jr. v. Court of Appeals, 382 Phil. 15, 24; 325 SCRA 137, 145 (2000); Rosario v. PCI Leasing and Finance, Inc. G.R. No. 139233, November 11 2005, 474 SCRA 500, 506.

[25] Vide note 18 at 693.

[26] Rollo, p. 35.

[27] Vide note 7 at 580.

[28] TSN, January 22, 2004, pp. 1-23.

[29] G.R. No. 155133, February 21, 2007, 516 SCRA 343, 357-358 citing Salomon v. Intermediate Appellate Court, G.R. No. 70263, May 14, 1990, 185 SCRA 352, 363, Baranda v. Baranda, No. L-73275, May 20, 1987, 150 SCRA 59, 74, Director of Lands v. Addison, 49 Phil. 19 (1926).

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