

SEGUNDINO TORIBIO, EUSEBIA TORIBIO, AND THE HEIRS OF OLEGARIO TORIBIO, REPRESENTED BY HIS WIDOW, ADELA DE LOS REYES, PETITIONERS, VS. THE HON. JUDGE ABDULWAHID A. BIDIN, IN HIS ...

G.R. No. 57821. January 17, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition is premised on the interpretation and application of Sections 7 and 8, Rule 8 of the Revised Rules of Court on actionable documents, which state:

"SEC. 7. Action or defense based on document. - Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

"SEC. 8. How to contest genuineness of such documents. - When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but this provision does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused."

The present controversy stems from a complaint filed by the petitioners against private respondents Dalmacio Ramos and Juanito Camacho.

Engracio Francisco and Juliana Esteban were the registered owners of a parcel of land in Zamboanga. At the death of said spouses, they were survived by their ten (10) children who inherited their estate in equal pro indiviso shares. Subsequently, the property was subdivided among the heirs and a portion designated as Lot No. 1943-B was allotted to the heir Justa Francisco. Justa died and was survived by her eight (8) children namely: Dionisio, Eufemia, Alfonso, Rafael, Petrona, Olegario, Segundino and Eusebia, all surnamed Toribio, who inherited her estate in equal pro indiviso shares. Three of the eight heirs, Eufemia, Alfonso and Petrona, sold their shares in the property to Ramon Ledesma. Rafael also sold his share to Dionisio who, in turn, sold the same to Ramon Ledesma. Thus, the latter acquired four (4) shares out of eight (8) shares, or a 1/2 pro indiviso share of Lot 1943-B.

Subsequently, Dionisio sold his own hereditary share in the aforesaid estate of his mother to Juanito Camacho, who by said sale acquired a 1/8 pro indiviso share of the property.

The three other heirs, petitioners Segundino, Eusebia and Olegario alleging that their shares had never been sold nor in any wise transferred or disposed to others filed a case against herein private respondents for recovery of hereditary rights. How Juanito Camacho, who was entitled to only a total area of 931 square meters, nor, how one

Dalmacio Ramos, Jr., acquired 1/4 share of the property was allegedly not known to them.

In their answer, the defendants-respondents alleged that the shares of plaintiffs-petitioners had likewise been sold to Dionisio Toribio, their brother, who, in turn, sold the same to Juanito Camacho and Dalmacio Ramos. The alleged sale from petitioners to Dionisio and the sale from Dionisio to the respondents were evidenced by deeds of sale, xerox copies of which were appended to and made an integral part of the respondents' partition agreement between the respondents and also a xerox copy of the respondents' transfer certificates of title.

While testifying during the trial, Eusebia Toribio was asked whether she executed any sale of her share in the parcel of land in litigation. The counsel for private respondents objected, raising the proper mode of contesting the genuineness of an actionable document pursuant to Sections 7 and 8, Rule 8 of the Revised Rules of Court. The trial court sustained the objection.

Petitioners, thereupon, filed a constancia with a motion for reconsideration stating that the documents submitted by the respondents were merely evidentiary in nature, not a cause of action or defense, the due execution and genuineness of which they had to prove. They alleged that the subject of litigation was the hereditary shares of plaintiffs-petitioners, not any document. They stated that the defense consisting mainly of transfer certificates of titles in the respondents' names originating from the sale from petitioners to Dionisio and from the latter to the respondents were merely evidentiary in nature. They argued that a simple specific denial without oath is sufficient. The court denied the motion for reconsideration. The documents attached to the respondents' answer and made an integral part thereof were declared to be the very foundation or basis of the respondents' defense and not merely evidentiary in nature. Hence, this petition for review on certiorari.

The initial issue brought before us is whether or not the deeds of sale allegedly executed by the petitioners in favor of their brother Dionisio Toribio and appended to the respondents' answer are merely evidentiary in nature or the very foundation of their defense which must be denied under oath by the petitioner.

The records show that the deeds of sale are actionable documents.

Jurisprudence has centered mainly on a discussion of actionable documents as basis of a plaintiff's cause of action. Little has been said of actionable documents being the foundation of a defense. The Rule, however, covers both an action or a defense based on documents.

The situation obtaining in the case at bar is not a common one. The usual case is between plaintiff and defendant where, the latter, as his defense, would present a document to which both parties are parties and which states that the former relinquishes his rights to the defendant. In the case at bar, we have a situation where the defendant presented a document in his defense, a document to which the plaintiff is a party but to which defendant is not. Thus, the question arises as to whether or not the document is included as a necessary part of the defense so as to make it actionable.

The petitioners alleged in their complaint that their shares in the inheritance left by their mother were never sold nor in any wise transferred or disposed to others.

The defendants, in their answers, declare:

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"x x x that the hereditary shares of plain-tiffs OLEGARIO TORIBIO, SEGUNDINO TORIBIO and EUSEBIA TORIBIO were likewise sold, transferred and conveyed, first in favor of DIONISIO TORIBIO by virtue of two (2) deeds of sale executed in due form on October 24, 1964 and November 2, 1964, respectively, and thereafter, by DIONISIO TORIBIO in favor of defendants JUANITO A. CAMACHO and DALMACIO C. RAMOS, JR., on November 11, 1964 as adverted to in the preceding paragraph, as will be discussed further in

the specific and/or affirmative defenses hereunder;

xxx xxx xxx

"As heretofore alleged, the hereditary shares of all the plaintiffs herein in and over Lot 1943-B were all sold, transferred and conveyed in favor of DIONISIO TORIBIO---plaintiffs OLEGARIO TORIBIO and SEGUNDINO TORIBIO on October 24, 1964 and that of plaintiff EUSEBIA TORIBIO on November 2, 1964, by virtue of two (2) deeds of sale all of which were acknowledged before Notary Public for and within the City of Zamboanga, Atty. Armando B. Torralba and entered as Doc. No. 6, Page No. 3, Book No. IX, Series of 1964, respectively, in his notarial register, xerox copies of which are appended hereto to form integral part hereof as Annexes "1" & "2", respectively."

From the foregoing, it is clear that the respondents anchor their defense on the deeds of sale by virtue of which the hereditary rights of all the petitioners over Lot 1943-B were sold, transferred, and conveyed in favor of their brother, Dionisio Toribio, who in turn, sold the same to herein respondents. The deed of sale executed by the petitioners in favor of their brother Dionisio is an essential and indispensable part of their defense to the allegation that the petitioners had never disposed of their property.

The following question furnishes an absolute test as to the essentiality of any allegation: Can it be made the subject of a material issue? In other words, if it be denied, will the failure to prove it decide the case in whole or in parts? If it will not, the fact is not essential. It is not one of those which constitute the cause of action, defense, or reply (Sutherland's Code of Pleading, Practice and Forms, p. 82). A fact is essential if it cannot be stricken out without leaving the statement of the cause of action or defense insufficient.

Apart from alleging that the documents in this case are merely evidentiary, the petitioners also point out that the deeds of sale purportedly executed by them were in favor of their brother, Dionisio, who in turn executed deeds of sale in favor of the respondents. Under this circumstance, does the genuineness and due execution of the deeds evidencing the two transactions have to be denied under oath?

The deed of sale executed by Dionisio Toribio in favor of the respondents, by itself, would be insufficient to establish a defense against the petitioners' claims. If the petitioners deny that they ever sold their shares in the inherited lot to their brother Dionisio, a failure to prove the sale would be decisive. For if it can be shown that no conveyance of the property was executed by the petitioners, then Dionisio Toribio had no right to convey what did not belong to him. The respondents could acquire only the rights that Dionisio had over the disputed property. The genuineness and due execution of the deed between the co-heirs is also elemental to the defense of the respondents. The first deeds of sale, to which the respondents were not parties but which they seek to enforce against the parties are also actionable documents.

The petitioners further alleged that this case falls under the exception to Section 8, Rule 8 which provides:

SECTION 8. x x x but this provision does not apply when the adverse party does not appear to be a party to the instrument.

As early as *Lim-Chingco v. Terariray* (5 Phil. 120), this Court gave the reason for the rule on contesting actionable documents. The purpose is:

"Reasonably construed, the purpose of the enactment (sec. 103) appears to have been to relieve a party of the trouble and expense of proving in the first instance an alleged fact, the existence or non-existence of which is necessarily within the knowledge of the adverse party, and of the necessity (to his opponent's case) of establishing which such adverse party is notified by his opponent's pleading."

This being so, the documents have to be treated in like manner. The petitioners are themselves parties to the deeds of sale which are sought to be enforced against them. The complaint was filed by the petitioners. They filed suit to

recover their hereditary properties. The new owners introduced deeds of sale as their main defense. In other words, the petitioners brought the issue upon themselves. They should meet it properly according to the Rules of Court.

Sections 7 and 8 of Rule 8, therefore, apply. The proper procedure was for the petitioners to specifically deny under oath the genuineness and due execution of the questioned deeds of sale and to set forth what they claim to be the facts. However, the oversight or negligence of petitioners' counsel in not properly drafting a reply to the answer and an answer to the counter claim is not necessarily fatal to their cause.

The facts of the case and equitable considerations constrain us to grant the petition and to set aside the questioned order of the respondent court.

As stated earlier, the reason for the rule is to enable the adverse party to know beforehand whether he will have to meet the issue of genuineness or due execution of the document during trial. (In re Dick's Estate, 235 N.W. 401). While mandatory, the rule is a discovery procedure and must be reasonably construed to attain its purpose, and in a way as not to effect a denial of substantial justice. The interpretation should be one which assists the parties in obtaining a speedy, inexpensive, and most important, a just determination of the disputed issues.

Paragraphs 11 and 13 of the petitioners' complaint reads:

xxx xxx xxx

"11. That the share of herein Plaintiffs were never sold or in any wise transferred or disposed to others;

xxx xxx xxx

"13. That just how and by what means Defendant; JUANITO CAMACHO was able to acquire the total area of 931 square meters, is not known; however, the acquisition might have been effected, the same was in fraud of herein plaintiffs; and so with the share of Defendant, DALMACIO C. RAMOS, Jr., herein Plaintiffs, jointly and/or severally, do not know the person; and, however he might have acquired the said share of ONE-FOURTH (1/4) of the property, was not from either, much less all, of the Plaintiffs;

xxx xxx xxx

The complaint was verified under oath by the petitioners.

The petitioners' counsel was obviously lulled into complacency by two factors. First, the plaintiffs, now petitioners, had already stated under oath that they never sold, transferred, or disposed of their share in the inheritance to others. Second, the usual procedure is for a defendant to specifically deny under oath the genuineness and due execution of documents set forth in and annexed to the complaint. Somehow, it skipped counsel's attention that the rule refers to either an action or a defense based upon a written instrument or document. It applies to both plaintiffs and defendants.

Under the facts of this case, the private respondents were placed on adequate notice by Paragraph 11 of the verified complaint that they would be called upon during trial to prove the genuineness or due execution of the disputed deeds of sale.

Moreover, the heirs of Olegario Toribio, his widow and minor children represented by their mother, are among the plaintiffs-petitioners. They are not parties to the deeds of sale allegedly executed by their father, aunt, and uncle. They are not required to deny the deeds of sale under oath. The private respondents will still have to introduce evidence to establish that the deeds of sale are genuine and that they were truly executed by the parties with authority to dispose of the disputed property.

It bears repeating that rules of procedure should be liberally construed to the end that substantial justice may be

served. As stated in *Pongasi v. Court of Appeals* (71 SCRA 614):

"We repeat what We said in *Obut v. Court of Appeals, et al.*, supra, that 'what should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities.'

"In dispensing justice Our action must reflect a deep insight into the failings of human nature, a capability for making allowances for human error and/or negligence, and the ability to maintain the scales of justice happily well-balanced between these virtues and the application of the law."

An interpretation of a rule of procedure which would not deny to the petitioners their rights to their inheritance is warranted by the circumstances of this case.

WHEREFORE, the order of the respondent court dated July 20, 1981 is hereby REVERSED and SET ASIDE. The Regional Trial Court which took over the cases of the respondent court is ordered to receive the petitioners' evidence regarding the genuineness and due execution of the disputed deeds of sale.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, and De la Fuente, JJ., concur.

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