

**POLICARPIO CAYABYAB, PETITIONER, VS. THE HONORABLE
INTERMEDIATE APPELLATE COURT, FAUSTINO, GABRIEL, SOLEDAD
& FRANCISCA, ALL SURNAMED LANDINGIN AND AMPARO
FRANCISCO, RESPONDENTS.**

G.R. No. 75120. April 28, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to reverse and set aside (1) the decision of the Court of Appeals in AC-G.R. CV No. 03883, reversing the decision of the Regional Trial Court of Pangasinan, Branch XLII, Dagupan City, in Civil Case No. D--5101; and (2) its resolution denying the motion for reconsideration of the decision.

We deny the petition and affirm the decision and resolution of the Court of Appeals.

I

Respondents Gabriel, Soledad and Francisca, all surnamed Landingin, are children of respondent Faustino Landingin and the late Agapita Ferrer. Petitioner is the son of Agapita Ferrer by her first husband, Ludovico Cayabyab, while respondent Amparo Francisco is petitioner's niece, being the daughter of his sister, Nieves Cayabyab.

In their second amended complaint filed against petitioner before Branch VII of the Court of First Instance of Pangasinan docketed as Civil Case No. D-5101, private respondents asked for the annulment of the deeds of sale and the recovery of possession of four parcels of land with damages. Two of the parcels of land (Lots [a] and [d]) are situated in Dagupan City while the other two (Lots [b] and [c]) are situated in Barrio Botao, Sta. Barbara, Pangasinan.

Private respondents alleged that petitioner was able to obtain the signatures of Agapita Ferrer and respondent Faustino Landingin in the deeds of sale through fraud, undue influence and abuse of confidence. It was only in 1980, or three years thereafter, that they learned of said sales after respondent Gabriel Landingin received from petitioner a demand to vacate Lot (d) on which petitioner and private respondents all reside. According to private respondents, these lots form part of their inheritance as the compulsory heirs of Agapita Ferrer, to the exclusion of petitioner, who already received his share during Ferrer's lifetime.

In his answer, petitioner did not claim Lot (a) but alleged that he acquired by purchase one-third portion of Lots (b) and (c) by virtue of a Deed of Absolute Sale executed by respondent Faustino Landingin and Agapita Ferrer on March 21, 1973 and notarized before Notary Public Eduardo B. Siapno (Exh. "O"; Exh. "10"); the remaining two-thirds portion of Lots (b) and (c) by virtue of a Deed of Absolute Sale executed by respondent Faustino Landingin and Agapita Ferrer before Notary Public Juan S. Caguioa on April 21, 1977 (Exh. "P"; Exh. "9"); and

Lot (d) by virtue of a Deed of Absolute Sale executed by Agapita Ferrer with the marital consent of respondent Faustino Landingin on April 21, 1977 (Exh. "N"; Exh. "2").

On May 9, 1984, the trial court rendered judgment dismissing the complaint without pronouncement as to damages and costs.

Both parties appealed to the Intermediate Appellate Court, with private respondents questioning the merits of the decision and petitioner questioning the omission of an award for damages.

On October 7, 1985, the Intermediate Appellate Court rendered judgment reversing the questioned decision. It ordered the annulment of the deeds of sale over the subject lots and declared the heirs of Agapita Ferrer and respondent Faustino Landingin the owners and rightful possessors of the parcels of land in question. The dispositive portion of the decision reads as follows:

"WHEREFORE, in view of the improper appreciation of the facts by the Court a quo, which likewise misapplied the law involved therein, We hereby reverse and set aside the appealed decision and render another one annulling the deeds of sale executed on March 21, 1973 (Exh. 0 or 10) and on April 21, 1977 (Exh. P or 9 and Exh. N or 2), covering Parcels (b), (c) and (d) of the complaint, cancelling Transfer Certificate of Title No. 37058 (Exh. 4) and reinstating Transfer Certificate of Title No. 10018 (Exh. H), declaring the four (4) lands described in the complaint as owned by the heirs of Faustino Landingin and Agapita Ferrer. We hereby order the defendant to immediately surrender possession thereof to the plaintiffs. No damages and costs" (Rollo, p 71).

Hence, this recourse.

II

It is an established principle that the factual findings of the Court of Appeals are final and conclusive on this Court. However, where the findings of the Court of Appeals and the trial court are contrary to each other, we deem it necessary to review the records and the evidence of the instant case (*Gaw v. Intermediate Appellate Court*, 220 SCRA 405 [1993]; *Lauren v. Court of Appeals*, 184 SCRA 215 [1990]; *Valenzuela v. Court of Appeals*, 191 SCRA 1 [1990]). There is no dispute that the lands subject of this case, namely, Lots (a), (b), (c) and (d) formerly belonged to the conjugal partnership of respondent Faustino Landingin and Agapita Ferrer. The ownership over Lot (a) is, however, not being contested by petitioner and therefore respondents' claim that it is conjugal stands uncontradicted.

Petitioner's evidence show that: the one-third portion comprising 1,806 square meters each of Lots (b) and (c) were sold on March 21, 1973 by the spouses to petitioner for a consideration of P1,000.00 (Exh. "O"; Exh. "10"); the remaining two-thirds portion of the same lots comprising 3,612 square meters each were sold to petitioner on April 21, 1977 for a total consideration of P3,612.00 (Exh. "P"; Exh. "9"); and, on the same date, the spouses also sold Lot (d) to petitioner for a consideration of P5,000.00 (Exh. "N"; Exh. 2). All these transactions were evidenced by deeds of sale signed by respondent Faustino Landingin and thumbmarked by Agapita Ferrer, which were witnessed by two persons and acknowledged by the vendors before a notary public. The sale of Lot (d) was recorded on April 28, 1977 with the Register of Deeds, who cancelled TCT No. 10018 in the spouses' name and accordingly issued TCT No. 37058 in petitioner's name.

Petitioner claims that the sale of the subject lots to him is valid and binding as clearly evidenced by the deeds of sale which are public documents. According to him, private respondents' allegation of fraud, deceit and undue influence have not been established sufficiently and competently to rebut the presumption of regularity and due execution of the deeds of sale.

Indeed, the general rule is that whosoever alleges fraud or mistake in any transaction must substantiate his allegation, since it is presumed that a person takes ordinary care for his concerns and that private transactions have been fair and regular. This rule is especially applied when fraud or mistake is alleged to annul notarial documents which are clothed with the prima facie presumption of regularity and due execution (Revised Rules on Evidence, Rule 132 [B], Sec. 30).

Nevertheless, the general rule admits of exceptions, one of which is Article 1332 of the Civil Code which provides:

"When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former."

Under the foregoing provision, where a party to a contract is illiterate, or can not read nor understand the language in which the contract is written, the burden is on the party interested in enforcing the contract to prove that the terms thereof are fully explained to the former in a language understood by him (*Sales v. Court of Appeals*, 211 SCRA 858 [1992]; *Heirs of Enrique Zambales v. Court of Appeals*, 120 SCRA 897 [1983]; *Bunyi v. Reyes*, 39 SCRA 504 [1971]). In all contractual, property or other relations, where one of the parties is at a disadvantage on account of his physical, mental or other handicap, the courts must be careful and vigilant for his protection (Civil Code of the Philippines, Art. 24; *Rural Bank of Caloocan, Inc. v. Court of Appeals*, 104 SCRA 151 [1981]; *Tang v. Court of Appeals*, 90 SCRA 236 [1979]).

In the case at bench, both respondent Faustino Landingin and Agapita Ferrer were illiterate. The latter, in fact, could only thumbmark her signature on all the deeds of sale (Exhs. "2-B"; "9-D"; "10-C"); and although respondent Faustino Landingin may have affixed his signature to the deeds of sale, he could neither read nor write and actually lost the use of his right arm to paralysis in 1971 (TSN, September 10, 1981, pp. 4-5). To make matters worse, all the deeds were written in English while the spouses could speak and understand only the Pangasinense and Ilocano dialects (TSN, June 30, 1981, pp. 14-15; *Id.*, Sept. 10, 1981, pp. 4-6; *Id.*, Aug. 21, 1982, pp. 21-22).

Since fraud and undue influence in the execution of the subject deeds are alleged by respondents, the burden, under the circumstances, shifted to petitioner to prove that the contents thereof had been adequately explained to the vendors and that the latter fully understood the same (*Heirs of Enrique Zambales v. Court of Appeals*, *supra.*, at 904).

As very well found by the Court of Appeals, petitioner failed to discharge this burden.

The weight of the testimony of Dr. Cerezo is therefore undermined by this lapse on the part of petitioner. Only the two notaries public could be examined and cross-examined on the accuracy of their translation of the contents of the documents written in English into the dialect known to and understood by the vendors.

Fourth, the couple was not assisted by any of their children in the execution of the subject contracts. This circumstance is strange and highly suspicious. Magdalena, respondent Faustino Landingin's daughter by his first marriage, and Soledad Landingin were then living with their parents. Like Amparo Francisco, their step-niece, they actually assisted the couple in their correspondences and transactions (TSN, June 22, 1981, pp. 4, 15; *Id.*, June 30, 1981, p. 17; *Id.*, Sept. 10, 1981, pp. 3, 14; *Id.*, October 21, 1982, pp. 3-4). However, neither of the sisters nor Amparo was invited to act as an instrumental witness, much less informed of the execution of the contracts at petitioner's house which is merely one meter away from their house (TSN, Aug. 27, 1982, p. 18).

Fifth, there is no satisfactory showing that the consideration for the sale of the lots was ever paid to Agapita Ferrer

and respondent Faustino Landingin. Where it is claimed that the signature and thumbmark of the vendors were procured by the vendees through fraud, undue influence and abuse of confidence, a showing that valuable consideration passed hands and that the vendors benefitted therefrom, may help erase any thought that such sinister designs attended the transaction.

Indeed, all these facts and circumstances lend credence to the claim that the sale of the subject lots and the execution of the deeds of sale were done surreptitiously and in fraud of the couple and their heirs (*Aguinaldo v. Esteban*, 135 SCRA 645 [1985]).

WHEREFORE, the decision of the Court of Appeals is AFFIRMED and the petition is DENIED.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Kapunan, JJ., concur.

Bellosillo, J., no part.

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