

ANGELITA LOPEZ, REPRESENTED BY PRISCILLA L. TY AS HER ATTORNEY-IN-FACT, PETITIONER, VS. COURT OF APPEALS, REGIONAL TRIAL COURT OF QUEZON CITY (BRANCH 103) AND ANTONIO MURILLO, R...

G.R. No. 77008. December 29, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In this petition for review of the decision of the Special 5th Division of the Court of Appeals (CA) promulgated September 30, 1986[1] the issue posed is whether a special power of attorney executed in a foreign country is admissible in evidence as a public document in our courts.

On June 5, 1984 petitioner Angelita Lopez who is a Filipino citizen residing in Norway, represented by her alleged attorney-in-fact Priscilla L. Ty filed an action for ejectment against private respondent in the Metropolitan Trial Court of the Metropolitan Manila in Quezon City docketed as Civil Case No. 0045993. Mrs. Ty presented to the inferior court a special power of attorney authorizing her to prosecute the case in behalf of petitioner which appears to have been executed by petitioner before a city judge-notary public of Oslo, Norway. It was duly admitted by the Court.

On November 25, 1984 said Court rendered a judgment in favor of petitioner finding the ejectment of private respondent from the subject premises as warranted.[2]

Private respondent appealed to the Regional Trial Court (RTC) of Quezon City assailing among others the authority of Mrs. Ty to bring the action on the ground that the special power of attorney she submitted is inadmissible in evidence unless its due execution and its authenticity is first proved, which was docketed as Q-44813. In its decision of November 15, 1985, said court reversed the judgment of the inferior court holding that the questioned special power of attorney is inadmissible in evidence inasmuch as it is due execution and authenticity was not proved. Thus the court concluded that the suit was not instituted by the real party-in-interest nor by his duly authorized representative.[3] A motion for reconsideration of the decision filed by petitioner was denied in an order of June 10, 1986.[4]

Petitioner elevated the case to the Court of Appeals by way of a petition for certiorari but which was treated as a petition for review which was docketed as CA-G.R. No. SP-09452. In a decision of September 30, 1986, the appellate court denied the petition for lack of merit,[5] a pertinent portion of which reads as follows:

"What militates more against the posture of the petitioner is that the action was not filed by the proper party.

"The real party in-interest here is Angelita Lopez who turned out to be the registered owner. The action was filed by an attorney-in-fact under a supposed special power of attorney. The due execution of (the) said special power of attorney was not established. An action can be filed only by the real party in-interest. An attorney-in-fact has no interest in the litigation (Arroyo vs. Graneda, 18 Phil. 484).

"xxx." (Emphasis supplied)

In a dissenting opinion of Mr. Justice Bienvenido Ejercito he espoused the view that the special power of attorney being a public document duly executed before a notary public, its authenticity need not be proved.[6]

Hence this petition.

On February 9, 1987, the Court issued a temporary restraining order enjoining the respondents from enforcing the decision and the order of the Regional Trial Court dated November 15, 1985 and June 10, 1986 respectively.[7]

In a resolution of April 8, 1987, the Court gave due course to the petition.[8] Thereafter the parties submitted their respective memorandum.

Mrs. Priscilla L. Ty, the supposed attorney-in-fact, contends that inasmuch as the special power of attorney in question is notarized, it is a public document which should be admitted in evidence without need of authentication and/or proof of due execution. On the other hand, the private respondent argues that the same cannot be considered as a public document because its authenticity has not been proved by Mrs. Ty in accordance with the procedure prescribed under the Rules of court.

Is the special power of attorney relied upon by Mrs. Ty a public document? We find that it is. It has been notarized by a notary public or by a competent public official with all the solemnities required by law of a public document.[9] When executed and acknowledged in the Philippines, such a public document or a certified true copy thereof is admissible in evidence.[10] Its due execution and authentication need not be proven unlike a private writing.[11]

Section 25, Rule 132 of the Rules of Court provides -

Sec. 25. Proof of public or official record. -- An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office."

From the foregoing provision, when the special power of attorney is executed and acknowledged before a notary public or other competent official in a foreign country, it cannot be admitted in evidence unless it is certified as such in accordance with the foregoing provision of the rules by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of his office. A city judge-notary who notarized the document, as in this case, cannot issue such certification.

Considering that the record of the case does not disclose any compliance with the provisions of Section 25, Rule 132 of the Rules on the part of the petitioner, the special power of attorney in question is not admissible in evidence. As such, Mrs. Priscilla L. Ty cannot lawfully prosecute the case against the private respondents in the name of her principal as her authority through a special power of attorney had not been duly established in evidence. The litigation was not commenced by the real party-in-interest or by one duly authorized by the said party.

This being so, the Metropolitan Trial Court, the Regional Trial Court and the Court of Appeals never acquired jurisdiction over the person of the real party-in-interest -- Angelita Lopez. For lack of the requisite jurisdiction, all the proceedings in the said courts are null and void ab initio.[12] All proceedings therein should be and are hereby

set aside.

Accordingly, it is Our considered opinion, and We so hold, that a special power of attorney executed before a city judge-public notary in a foreign country, without the certification or authentication required under Section 25, Rule 132 of the Rules of Court, is not admissible in evidence in Philippine courts.

WHEREFORE, in view of the foregoing, the entire proceedings in the Metropolitan Trial Court (Civil Case No. 00459930), the Regional Trial Court (Civil Case No. Q-44813) and the Court of Appeals (Case No. CA-G.R.SP No. 09452) are hereby declared null and void and the case is DISMISSED without costs. The temporary restraining order issued on February 9, 1987 is hereby lifted.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Paras, JJ., concur.

[1] At the time of the promulgation of the Decision, the Special Fifth Division of the Court of Appeals was composed of Justice Jorge R. Coquia as Chairman and Justices Carolina Grino-Aquino, Jose A. R. Melo, Bienvenido C. Ejercito and Antonio M. Martinez as members. Justice Coquia wrote the Decision. Justice Ejercito submitted a dissenting opinion.

[2] Pages 39 to 41, Rollo.

[3] Pages 42 to 47, Rollo.

[4] Page 52, Rollo.

[5] Pages 34 to 39, Rollo.

[6] Pages 21 to 28, Rollo.

[7] Page 73, Rollo.

[8] Page 118, Rollo.

[9] *Cacnio v. Baens*, 5 Phil. 742 (1906).

[10] *Anlillon v. Barcelona*, 37 SCRA 148; Section 25, Rule 132, Rules of Court; *U.S. vs. Enriquez*, 1 Phil. 241.

[11] Section 21, Rule 132, Rules of Court.

[12] *People v. Navarro*, 63 SCRA 264, 274 (1975).

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