

SPS. SEGUNDO DALION AND EPIFANIA SABESAJE-DALION, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND RUPERTO SABESAJE, JR., RESPONDENTS.

G.R. No. 78903. February 28, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition to annul and set aside the decision of the Court of Appeals rendered on May 26, 1987, upholding the validity of the sale of a parcel of land by petitioner Segundo Dalion (hereafter, “Dalion”) in favor of private respondent Ruperto Sabesaje, Jr. (hereafter, “Sabesaje”), described thus:

“A parcel of land located at Panyawan, Sogod, Southern Leyte, declared in the name of Segundo Dalion, under Tax Declaration No. 11148, with an area of 8947 hectares, assessed at P180.00, and bounded on the North, by Sergio Destriza and Titon Veloso, East, by Feliciano Destriza, by Barbara Bonesa (sic); and West, by Catalino Espina.” (pp. 36-37, Rollo)

The decision affirms in toto the ruling of the trial court^[1] issued on January 17, 1984, the dispositive portion of which provides as follows:

“WHEREFORE, IN VIEW OF THE FOREGOING, the Court hereby renders judgment.

(a) Ordering the defendants to deliver to the plaintiff the parcel of land subject of this case, declared in the name of Segundo Dalion previously under Tax Declaration No. 11148 and lately under Tax Declaration No. 2297 (1974) and to execute the corresponding formal deed of conveyance in a public document in favor of the plaintiff of the said property subject of this case, otherwise, should defendants for any reason fail to do so, the deed shall be executed in their behalf by the Provincial Sheriff or his Deputy;

(b) Ordering the defendants to pay plaintiff the amount of P2,000.00 as attorney’s fees and P500.00 as litigation expenses, and to pay the costs; and

(c) Dismissing the counter-claim.” (p. 38, Rollo)

The facts of the case are as follows:

On May 28, 1973, Sabesaje sued to recover ownership of a parcel of land, based on a private document of absolute sale, dated July 1, 1965 (Exhibit “A”), allegedly executed by Dalion, who, however denied the fact of sale, contending that the document sued upon is fictitious, his signature thereon, a forgery; and that subject land is conjugal property, which he and his wife acquired in 1960 from Saturnina Sabesaje as evidenced by the “Escritura de Venta Absoluta” (Exhibit “B”). The spouses denied claims of Sabesaje that after executing a deed of sale over the parcel of land, they had pleaded with Sabesaje, their relative, to be allowed to administer the land because Dalion did not have any means of livelihood. They admitted, however, administering since 1958, five (5) parcels of land in Sogod, Southern Leyte, which belonged to Leonardo Sabesaje, grandfather of Sabesaje, who died in 1956. They never received their agreed 10% and 15% — commission on the sales of copra and abaca, respectively.

Sabesaje's suit, they countered, was intended merely to harass, preempt and forestall Dalion's threat to sue for these unpaid commissions.

From the adverse decision of the trial court, Dalion appealed, assigning errors some of which, however, were disregarded by the appellate court, not having been raised in the court below. While the Court of Appeals duly recognizes Our authority to review matters even if not assigned as errors in the appeal, We are not inclined to do so since a review of the case at bar reveals that the lower court has judicially decided the case on its merits.

As to the controversy regarding the identity of the land, We have no reason to dispute the Court of Appeals' findings as follows:

"To be sure, the parcel of land described in Exhibit "A" is the same property deeded out in Exhibit "B". The boundaries delineating it from adjacent lots are identical. Both documents detail out the following boundaries, to wit:

"On the North — property of Sergio Destriza and Titon Veloso;

"On the East — property of Feliciano Destriza;

"On the South — property of Barbara Boniza; and

"On the West — Catalino Espina."

(pp. 41-42, Rollo)

The issues in this case may thus be limited to: a) the validity of the contract of sale of a parcel of land and b) the necessity of a public document for transfer of ownership thereto.

The appellate court upheld the validity of the sale on the basis of Secs. 21 and 23 of Rule 132 of the Revised Rules of Court.

"SEC. 21. Private writing, its execution and authenticity, how proved. — Before any private writing may be received in evidence, its due execution and authenticity must be proved either:

- (a) By anyone who saw the writing executed;
- (b) By evidence of the genuineness of the handwriting of the maker; or
- (c) By a subscribing witness.

xxx xxx xxx.

"SEC. 23. Handwriting, how proved. — The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person, and has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge." (Rule 132, Revised Rules of Court)

And on the basis of the findings of fact of the trial court as follows:

Here, people who witnessed the execution of subject deed positively testified on the authenticity thereof. They categorically stated that it had been executed and signed by the signatories thereto. In fact, one of such witnesses, Gerardo M. Ogsoc, declared on the witness stand that he was the one who prepared said deed of sale and had copied parts thereof from the “Escritura De Venta Absoluta” (Exhibit B) by which one Saturnina Sabesaje sold the same parcel of land to appellant Segundo Dalion. Ogsoc copied the boundaries thereof and the name of appellant Segundo Dalion’s wife, erroneously written as “Esmenia” in Exhibit “A” and “Esmena” in Exhibit “B”. (p. 41, Rollo)

xxx xxx xxx

"Against defendant’s mere denial that he signed the document, the positive testimonies of the instrumental witnesses Ogsoc and Espina, aside from the testimony of the plaintiff, must prevail. Defendant has affirmatively alleged forgery, but he never presented any witness or evidence to prove his claim of forgery. Each party must prove his own affirmative allegations (Section 1, Rule 131, Rules of Court). Furthermore, it is presumed that a person is innocent of a crime or wrong (Section 5 (a), *idem*), and defense should have come forward with clear and convincing evidence to show that plaintiff committed forgery or caused said forgery to be committed, to overcome the presumption of innocence. Mere denial of having signed does not suffice to show forgery.

"In addition, a comparison of the questioned signatures (Exhs. A-2 or Z and A-3) with the admitted signatures or specimens (Exhs. X and Y or 3-C) convinces the court that Exhs. A-2 or Z and A-3 were written by defendant Segundo Dalion who admitted that Exhs. X and Y or 3-C are his signatures. The questioned signatures and the specimens are very similar to each other and appear to be written by one person.

"Further comparison of the questioned signatures and the specimens with the signatures “Segundo D. Dalion” appeared at the back of the summons (p. 9, Record); on the return card (p. 25, *ibid.*); back of the Court Orders dated December 17, 1973 and July 30, 1974 and for October 7, 1974 (p. 54 & p. 56, respectively, *ibid.*), and on the open court notice of April 13, 1983 (p. 235, *ibid.*) readily reveal that the questioned signatures are the signatures of defendant Segundo Dalion.

"It may be noted that two signatures of Segundo D. Dalion appear on the face of the questioned document (Exh. A), one at the right corner bottom of the document (Exh. A?2) and the other at the left hand margin thereof (Exh. A-3). The second signature is already a surplusage. A forger would not attempt to forge another signature, an unnecessary one, for fear he may commit a revealing error or an erroneous stroke.” (Decision, pp. 10) (pp. 42-43, Rollo)

We see no reason for deviating from the appellate court’s ruling (p. 44, Rollo) as we reiterate that

“Appellate courts have consistently subscribed to the principle that conclusions and findings of fact by the trial courts are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons, since it is undeniable that the trial court is in a more advantageous position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case (*Chase v. Buencamino, Sr.*, G.R. No. L-20395, May 13, 1985, 136 SCRA 365; *Pring v. Court of Appeals*, G.R. No. L-41605, August 19, 1985, 138 SCRA 185)

Assuming authenticity of his signature and the genuineness of the document, Dalion nonetheless still impugns the validity of the sale on the ground that the same is embodied in a private document, and did not thus convey title or right to the lot in question since “acts and contracts which have for their object the creation, transmission, modification or extinction of real rights over immovable property must appear in a public instrument” (Art. 1358, par 1, NCC).

This argument is misplaced. The provision of Art. 1358 on the necessity of a public document is only for convenience, not for validity or enforceability. It is not a requirement for the validity of a contract of sale of a

parcel of land that this be embodied in a public instrument.

A contract of sale is a consensual contract, which means that the sale is perfected by mere consent. No particular form is required for its validity. Upon perfection of the contract, the parties may reciprocally demand performance (Art. 1475, NCC), i.e., the vendee may compel transfer of ownership of the object of the sale, and the vendor may require the vendee to pay the thing sold (Art. 1458, NCC).

The trial court thus rightly and legally ordered Dalion to deliver to Sabesaje the parcel of land and to execute the corresponding formal deed of conveyance in a public document. Under Art. 1498, NCC, when the sale is made through a public instrument, the execution thereof is equivalent to the delivery of the thing. Delivery may either be actual (real) or constructive. Thus, delivery of a parcel of land may be done by placing the vendee in control and possession of the land (real) or by embodying the sale in a public instrument (constructive).

As regards petitioners' contention that the proper action should have been one for specific performance, We believe that the suit for recovery of ownership is proper. As earlier stated, Art. 1475 of the Civil Code gives the parties to a perfected contract of sale the right to reciprocally demand performance, and to observe a particular form, if warranted, (Art. 1357). The trial court, aptly observed that Sabesaje's complaint sufficiently alleged a cause of action to compel Dalion to execute a formal deed of sale, and the suit for recovery of ownership, which is premised on the binding effect and validity inter partes of the contract of sale, merely seeks consummation of said contract.

“x x x. A sale of a real property may be in a private instrument, but that contract is valid and binding between the parties upon its perfection. And a party may compel the other party to execute a public instrument embodying their contract affecting real rights once the contract appearing in a private instrument has been perfected (See Art. 1357).

“x x x.” (p. 12, Decision, p. 272, Records)

ACCORDINGLY, the petition is DENIED and the decision of the Court of Appeals upholding the ruling of the trial court is hereby AFFIRMED. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[1] Presiding Judge, Lucio F. Saavedra, RTC, Br. XXIV, Maasin, Southern Leyte.

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