

GEORGIA G. TUMANG, PETITIONER, VS. HON. COURT OF APPEALS AND SPOUSES DANIEL DEL MUNDO, JR. AND HAYDEE T. DEL MUNDO, RESPONDENTS.*G.R. No. 82072. April 17, 1989*

Ponente: FELICIANO, J.

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The present petition seeks a review of the Resolution dated 18 November 1987 of the Court of Appeals in C.A.-G.R. No. 03201, specifically the portion thereof granting the respondent spouses' motion for new trial.

On 22 January 1979, petitioner Georgia Tumang commenced action against respondent spouses Daniel and Haydee Del Mundo in the Regional Trial Court of Baguio City, to annul certain documents of sale covering her interest in a lot situated at No. 7 Military Cut-Off Road, Baguio City. The complaint, docketed as Civil Case No. 3484, alleged that petitioner was the registered owner of the mentioned lot covered by Original Certificate of Title No. T-1289; that as an act of accommodation for the benefit of respondent spouses Haydee del Mundo and Daniel Del Mundo (who are petitioner's sister and brother-in-law, respectively), petitioner executed two (2) deeds of sale over her nine-tenth (9/10) interest in the property and a document confirming the sale of such interest, all of which instruments were executed without any consideration moving from respondent spouses to petitioner; that the accommodation was intended to enable respondent Daniel del Mundo, an employee of the Bureau of Internal Revenue, to "puff up" his personal holdings so he could comply with the government's policy requiring its employees to make full disclosure of all their properties; that respondent spouses breached her trust when they had caused the registration of the lot, and issuance of Transfer Certificate of Title No. T-27584, to include their own names as co-owners (1/10 for petitioner and 9/10 for respondent spouses); that the respondents, despite several demands, refused to return her property.

Respondent spouses, in their answer, contended that the deeds of sale were not without any consideration; that since the execution of the questioned documents, they have been in possession of the land and been paying realty taxes thereon; that it was petitioner who had formally requested the Register of Deeds of Baguio City to cancel her title and to issue another and new title in their (petitioner and respondent spouses) names. Respondents filed a counterclaim for damages.

On 10 May 1984, the Regional Trial Court of Baguio City, Branch 4, rendered a Decision in favor of petitioner and against respondent spouses, the dispositive part of which reads:

"WHEREFORE, this court renders judgment in favor of plaintiff, and against defendants, as follows:

A. Declaring null and void -

1. The deed of sale, dated December 28, 1973, conveying 40% of plaintiff's rights and interest over the 700-square meter lot, as well as improvements thereon, at No. 7 Military Cut-Off, Baguio City (Exhibit B);
2. The second deed of sale, dated May 27, 1975, conveying 85% of plaintiff's rights and interests over a

1,000-square meter lot as Res. Sec. A, more particularly described in T.S.A. V-1791, Baguio City (Exhibit C);

3. The 'Ratification and Confirmation of the Sale of Undivided Interests in a Parcel of Land' dated June 14, 1977, in lieu of Original Certificate of Title No. P-1289.

B. Ordering defendants to reconvey to plaintiff their 9/10 share over the parcel of land covered by Transfer Certificate of Title No. T-27584 immediately upon the finality of the decision. Their failure to do so will cause this court to direct the Acting Clerk of Court to execute the corresponding deed of conveyance in favor of plaintiff; and

C. Ordering plaintiff and defendants to surrender to the court the co-owner's duplicate copy of Transfer Certificate of Title No. T-27584, likewise immediately upon the finality of the decision, failing which, the said co-owner's duplicate copy of the title shall be rendered automatically null and void. In either case, the Register of Deeds shall thereafter cancel Transfer Certificate of Title No. T-27584, and issue a new title in the name of plaintiff as the sole owner of the subject lot, as well as improvements thereon."^[1]

On appeal, the Court of Appeals affirmed in toto the appealed judgment in a Decision promulgated on 8 October 1986.

Respondent spouses immediately filed a Motion for Reconsideration and for New Trial alleging that the Court of Appeals' decision was based on insufficient evidence and was contrary to law; that new evidence consisting of receipts signed by petitioner apparently showing that she had received various sums of money totalling P69,992.00 from respondent spouses as consideration for the transactions here involved, were discovered after trial which are material and relevant to the case.

In a Resolution dated 18 November 1987, the Court of Appeals denied respondents' Motion for Reconsideration but granted the request for a new trial holding that

"[t]here is sufficient ground for new trial of the case. It is not seriously disputed that the receipts constituting the new evidence were discovered after the trial of the case has been concluded. Likewise, these receipts could not have been discovered earlier despite appellants' reasonable diligence in searching for the same. The receipts bear the signature of plaintiff-appellee Georgia Tumang and same appear to be in her own handwriting. They purport to establish the consideration for the transaction of the parties. Needless to state, their reception as evidence could change the complexion of the case.

IN VIEW WHEREOF, defendants-appellants' motion for reconsideration is denied for lack of merit. Their motion for new trial is however granted and consequently the case is remanded to the trial court for further proceedings.

SO ORDERED."^[2] (Underscoring supplied)

Petitioner's subsequent motion for reconsideration of the above resolution was denied for lack of merit in a minute resolution dated 4 February 1988.

Hence, this Petition.

Petitioner argues that respondent Court of Appeals erred in regarding the receipts as "newly discovered evidence" and in allowing new trial on this ground.

A motion for new trial upon the ground of newly discovered evidence, is properly granted where there is concurrence of the following requisites, namely: a) the evidence had been discovered after trial; b) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and c) the evidence is material, and not merely corroborative, cumulative, or impeaching and is of such weight that if

admitted, would probably alter the result.[3]

Petitioner does not dispute that the receipts which respondents intend to submit as new evidence were found subsequent to the trial. Petitioner, however, chiefly argues that the receipts do not constitute newly discovered evidence but are merely "forgotten evidence," being already in existence during trial and which could have been discovered and there presented by the respondents had they exercised due diligence in searching for such receipts.

Newly discovered evidence, under prevailing jurisprudence, need not be newly created evidence; newly discovered evidence, in other words may and does commonly refer to evidence already in existence prior or during the trial but which could not have been secured and presented during the trial despite reasonable diligence on the part of the litigant offering it or his counsel.[4] Newly discovered evidence, again, is not limited to evidence which, though already in existence before or during trial was not known to the offering litigant. So-called "forgotten" evidence may, upon the other hand, be seen to refer to evidence already in existence or available before or during trial, which was known to and obtainable by the party offering it and,[5] which could have been presented and offered in a seasonable manner were it not for the oversight or forgetfulness of such party or his counsel.[6]

In order that a particular piece of evidence may be properly regarded as "newly discovered" for purposes of a grant of new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it: what is essential is, rather, that the offering party had exercised reasonable diligence in seeking to locate such evidence before or during trial but had nonetheless failed to secure it. Thus, a party who, prior to the trial had, no means of knowing that a specific piece of evidence existed and was in fact obtainable, can scarcely be charged with lack of diligence. It is commonplace to observe that the term "diligence" is a relative and variable one, not capable of exact definition and the contents of which must depend entirely on the particular configuration of facts obtaining in each case.

In the case at bar, the receipts which the Court of Appeals considered newly discovered evidence were found by respondent Daniel del Mundo, according to his affidavit of merit attached to the Motion for Reconsideration and for New Trial.[7] on 4 October 1986 in their residence at No. 3905 Marigold Road, Parañaque, Metro Manila, when, in the course of "a general cleaning and re-arrangement" of their house necessitated by floods caused by heavy rains, he happened to look into an old desk in his "study cubicle." He sorted out various items "such as old cards, letters, memorabilia, pamphlets, brochures, and similar miscellaneous things accumulated through the years." He found in "the bottom back portion of a drawer in said desk an old envelope containing "a bunch of documents" among which, it turned out, were the receipts issued by petitioner Dr. Georgia Tumang to respondent spouses. The latter had "believed these receipts to have been lost and no longer existing," having been unable, to locate them "despite diligent effort(s) to search all documents and files in our possession."

We agree with the Court of Appeals that the receipts submitted by the respondent spouses are properly regarded as newly discovered evidence warranting the grant of a new trial. The receipts, previously thought lost and gone forever and found in the "bottom back portion" of a drawer in an old and unused desk, could hardly have been located with the exercise of average or reasonable diligence; indeed, it was in the course of a "general (house) cleaning and re-arrangement" of the respondents' house that they were found once again. This is what the Court of Appeals in effect held. We think that the respondent spouses' explanation has the ring of truth; it certainly is entirely plausible. It seems quite reasonable to assume that the respondents would have exerted all efforts to locate the receipts earlier; it was clearly in their interest and to their advantage to have presented them during the trial had they in fact been effectively available to them at that time, since the receipts appear to contradict petitioner's express denial of receipt of any money in connection with the transfer of 9/10 of her interest in the property involved. The receipts also appear to support respondent spouses' defense that the three (3) documents nullified by

the trial court were not simulated merely to avoid possible anti-corruption charges against respondent Daniel del Mundo but had in fact been executed for value. The receipts are, in other words, apparently of such import that a reasonably prudent man would have most diligently searched for them.

There is no question then that the receipts involved are material and relevant to the issue of lack of consideration, and could possibly effect a change in the result reached by the trial court.

Finally, we note that the grant or denial of a new trial is generally speaking addressed to the sound discretion of the court, a discretion which cannot be interfered with unless a clear abuse thereof is shown.[8] Petitioner has not shown such an abuse here. On the contrary, it appears to us that the interests of substantial justice would best be served by remanding, as the Court of Appeals did, the case to the trial court for a new trial, where the precise import of the receipts may be litigated. Petitioner does not dispute the authenticity of her signature on the receipts; however, she argues that, the moneys receipted for were only received "in trust" for the maintenance and educational expenses of respondents' children who were then attending school in Baguio. The question of whether the sums of money were actually received "in trust" for some unrelated-purpose, or whether they had been received in payment for the sale of the property involved, can only be properly threshed out in a new trial.

ACCORDINGLY, the Petition is DENIED and the Court of Appeals' Resolution dated 18 November 1987 is hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 28.

[2] Id., pp. 69-73.

[3] Section 1 (b), Rule 37 of the Revised Rules of Court; *People v. Aleman*, 102 SCRA 765 (1981); *People v. Llamasa* 91 SCRA 364 (1979); and *People v. Mangulabnan*, 99 Phil. 992 (1956).

[4] *People v. Ventura*, 115 Phil. 718 (1962).

[5] *Bersabal v. Bernal*, 13 Phil. 463 (1909).

[6] *Manila Railroad v. Mitchel*, 49 Phil. 801 (1926).

[7] The affidavit of merit is quoted in full in the Court of Appeals' Resolution dated 18 November 1987; Rollo, pp. 70-72.

[8] *Republic v. Vda, de Castellvi*, 58 SCRA 337 (1974).

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