

**HERMENEGILDO AGDEPPA (SUBSTITUTED BY HIS HEIRS
MAGDALENA S. AGDEPPA, EMMANUEL S. AGDEPPA, NELIA A. UNISA,
MARILYN A. LEONES, EVANGELINE A. PIMENTEL, EDWIN S.
AGDEPPA, EDNA A. AB...**

G.R. No. 96770. March 30, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari of the December 17, 1990 decision of the Court of Appeals affirming with modification the May 12, 1989 decision of the Regional Trial Court of Ilocos Sur, Branch 24 at Cabugao, on the complaint for the partition of the properties of the late Rosario Igarta.

Rosario Igarta was one of the three daughters of the deceased Joaquin Igarta and Angela Gascon. Her two sisters were Carmen and Emiliana. Carmen married Maximo Agdeppa and they begot Hermenegildo and Jose. The latter died in 1954 leaving three sons named Joseph, Jefferson and Stevenson.

Rosario's other sister Emiliana married Fructuoso Ibe. The couple had three children: Benjamin, Lolita and Cesar.

On October 19, 1986, Rosario, an octogenarian, died single and without issue. At that time, her nearest relatives were her sister Emiliana Ibe and her nephew Hermenegildo Agdeppa as Carmen, the latter's mother, had predeceased Rosario. All the properties of Rosario were in the possession of the family of her sister Emiliana Ibe to the exclusion of the heirs of her other sister, Carmen. From time to time, however, Hermenegildo would get a share from the produce of the properties.

Hermenegildo thus expressed his desire to partition Rosario's estate in accordance with law but the Ibés adamantly objected. Hence, on January 27, 1987, Hermenegildo, together with the sons of his deceased brother Jose named Joseph, Jefferson and Stevenson Agdeppa, filed in the Regional Trial Court of Ilocos Sur, Branch 24 at Cabugao, a complaint against Emiliana Ibe, assisted by her husband Fructuoso Ibe, Benjamin Ibe and Ferdinand Ibe (Benjamin's son), for partition (Civil Case No. 300-KC) of Rosario's properties.

The complaint enumerated the following properties which are located in different barangays of Sinait, Ilocos Sur as subjects of the complaint for partition:

- (1) Parcel I, an unirrigated riceland and forest land in Balingasa with an area of 7,750 square meters and assessed at P780.00;
- (2) Parcel II, an irrigated riceland in Cadanglaan, with an area of 1,305 square meters and assessed at P470.00;
- (3) Parcel III, an unirrigated riceland at Zapat with an area of 594 square meters and assessed at P170.00;
- (4) Parcel IV, an unirrigated riceland in Paratong with an area of 2,037 square meters and assessed at P570.00;
- (5) Parcel V, a residential land in the poblacion (Namnama) with an area of 131 square meters and assessed at

P1,180.00;

(6) Parcel VI, an unirrigated riceland, tobacco land and forest land in Cortin, with an area of 36,271 and assessed at P4,540.00;

(7) Parcel VII, a residential land in the poblacion with an area of 275 square meters and assessed at P1,350.00;

(8) Parcel VIII, a sugar land with an area of 3,380 square meters and assessed at P680.00;

(9) Parcel IX, an unirrigated riceland, cornland, cogonland and "bushyland" with an area of 34,601 square meters and assessed at P6,550.00; and

(10) Parcel X, a cornland and a residential land with respective areas of 1,454 square meters and 100 square meters assessed at P470.00 and P600.00.

Parcels I, II, IV, V, VII and VIII were all declared in the name of Rosario Igarta for tax purposes. Parcel III was declared in the names of Rosario Igarta and Emiliana Igarta, Parcel IX in the names of Rosario, Higino and Fernando Igarta while Parcel X was in the name of Joaquin Igarta (Record, pp. 23-A and 23-B).

Subsequently, the plaintiffs filed a supplemental pleading enumerating the following properties which are also all located in Sinait, Ilocos Sur as included in the estate of Rosario Igarta:

(a) Cornland in Cortin, with an area of 1168 square meters and assessed at P230.00;

(b) Riceland in Sitio, with an area of 3740 square meters and assessed at P1,050.00;

(c) Cornland in Teppeng, with an area of 6023 square meters and assessed at P1,200.00;

(d) Riceland in Masadag, with an area of 578 square meters and assessed at P160.00;

(e) Riceland in Masadag, with an area of 1011 square meters and assessed at P280.00;

(f) Riceland in Masadag, with an area of 578 square meters and assessed at P160.00;

(g) Riceland in Nagbalioartian, with an area of 4040 square meters and assessed at P1,460.00; and

(h) Riceland in Nagbalioartian, with an area of 1330 square meters and assessed at P480.00.

Properties (a) to (b) were declared for tax purposes in the name of Joaquin Igarta while properties (c) to (h) were all declared in the names of Rosario Igarta and Emiliana Ibe.

In their answer to the complaint, the defendants alleged that some of the properties had been conveyed and transferred by Rosario to different recipients, to wit: Parcels IV, VI and XI to Benjamin Ibe; Parcels V and X to Ferdinand Ibe and Parcel VII to Corazon Ibe Lanario. Defendants did not object to the partition of Parcels I, II, III and VIII although they averred that Parcel III was co-owned by Emiliana Ibe and Rosario (*Ibid.*, pp. 8-9). With regard to the properties enumerated in the plaintiffs' supplemental pleading, the defendants stated that property "c" had been sold by Rosario to a third person and that properties "a", "d", "e", "f", "g" and "h" had been acquired by them from Rosario by virtue of a deed of conveyance. They admitted, however, that property "b" should be partitioned (*Ibid.*, p. 42).

In support of their claim, the defendants presented the following documents:

(1) A deed of quitclaim and transfer of ownership executed by Rosario Igarta on April 28, 1985 showing that Rosario conveyed and relin-quished her interests over four (4) parcels of land in favor of Benjamin Ibe and another parcel of land in favor of Ferdinand Ibe. This appears as Document No. 384, Page No. 78, Book No. II, Series of 1985 of the Notarial Registry of Ernesto S. Yalao (Exh. 1).

(2) A deed of quitclaim executed by Rosario Igarta ceding all her rights to three parcels of land to Benjamin Ibe and his children Corazon I. Lanario and Ferdinand Ibe. This appears as Document No. 157, Page 33, Book No. I, Series of 1985 also in the Notarial Registry of Ernesto S. Yalao, Municipal Trial Judge and Ex-Officio Notary Public (Exh. 2).

(3) A deed of absolute sale, appearing as Document No. 380, Page 78, Book II, Series of 1985 also of the Notarial Registry of Ernesto S. Yalao, showing that on April 28, 1985, Rosario Igarta sold to Benjamin Ibe the same parcel of land denominated as Parcel VI in the complaint in consideration of the amount of P50,000.00, (Exh. 3).

Another document, denominated as a deed of quitclaim was presented as Exh. 11 to show that on January 16, 1984, Rosario Igarta renounced all her rights and interests over properties "d", "e", "f", "g" and "h" of the supplemental pleading, in favor of Emiliana Ibe.

During the pendency of the case or on June 10, 1987, Emiliana Ibe died (Record, p. 33). She was therefore sub-stituted as party-defendant by her husband Fructuoso Ibe and their children Lolita and Cesar.

After trial on the merits, the lower court rendered its decision^[1] finding Exhs. 1, 2 and 3 to be defective as the residence certificate numbers appearing therein as that of Rosario Igarta actually belonged to three other persons indicated in the certification issued by the municipal treasurer of Sinait (Exh. F). The said certification states that Residence Certificate No.10529408 in the deed of absolute sale (Exh. 3) belonged to one David Arroccena; Residence Certificate No. 10529708 used in the deed of quitclaim and transfer of ownership (Exh. 1) was issued to Simeon Bautista, and Residence Certificate No. 10502786 in the deed of quitclaim (Exh. 2) was issued to Florante Rosal who, as a witness during the trial, admitted having prepared the questioned documents notarized by Atty. Ernesto Yalao.

The trial court also noted that Exhs. 1 and 3 conveying inter vivos certain properties of Rosario Igarta to Benjamin Ibe and his children, were executed "at different hours of the same day." In view thereof, the said court observed that the "situation does not seem to jibe with the ordinary and natural course of things because if it were true, as alleged, that the grantor freely, voluntarily and intelligently disposed of her properties in favor of the Ibés in more than one instance on the same day, the dispositions should have been embodied in only one document" (Decision, p. 8; Rollo, p. 28).

Another "badge of anomaly" that the trial court noted is that Parcel IV is the subject matter of both the deed of quitclaim and transfer of ownership of April 28, 1985 (Exh. 1) and the deed of quitclaim of December 20, 1985 (Exh. 2). These documents both have Benjamin Ibe as recipient of the subject properties. These findings led the trial court to conclude that there is a "clear, strong and convincing evidence to prove that the documents notarized by Atty. Yalao do not reflect the truth" (Ibid., p. 9).

The trial court, however, found as "lawful and regular" the deed of quitclaim executed on January 16, 1984 wherein Rosario renounced all her rights over the properties described as parcels "d", "e", "f", "g" and "h" in favor of her sister Emiliana Ibe because even the tax declarations indicate the co-ownership of Rosario and Emiliana over said properties. Thus, the trial court concluded, said properties were not part of Rosario's hereditary estate. However, Parcel No. III, which is also declared in the names of Rosario and Emiliana, must be deemed the former's exclusive property as it was not included in the deed of quitclaim. The trial court disposed of the case as follows:

"WHEREFORE, in the light of all the foregoing, judgment is hereby rendered:

"(1) Declaring all the parcels of land subject-matter of this suit, except Parcels 'c', 'd', 'e', 'f', 'g' and 'h' under the Supplemental Pleading, as comprising the hereditary estate of the deceased, Rosario Igarta;

"(2) Ordering the partition of the same, except those indicated above, between plaintiff Hermenegildo Agdeppa and defendant Benjamin Ibe, in representation of their parents, Carmen Igarta-Agdeppa and Emiliana Igarta-Ibe, respectively, in equal shares;

"(3) Declaring Parcels "d", "e", "f", "g" and "h" under the Supplemental Pleading, as the exclusive properties of the late Emiliana Igarta-Ibe, subject to such dispositions as the deceased owner might have made during her lifetime;

"(4) Ordering plaintiff Hermenegildo Agdeppa and defendant Benjamin Ibe to agree on the division of the properties subject of partition and to submit their written agreement to the Court, for confirmation, within thirty (30) days after the finality of this decision; otherwise, the Court shall appoint commissioners to make the partition pursuant to Section 3, Rule 69, of the Rules of Court;

"(5) Ordering the defendants, Benjamin Ibe and Ferdinand Ibe, to render an accounting of the fruits and income of the portions of the partible properties that may be allotted to plaintiff Hermenegildo Agdeppa, and to vacate the same in order that the said plaintiff may have peaceful possession thereof.

"No pronouncement as to costs, in the same manner that no damages and attorney's fees are awarded either under the complaint or under the counterclaim which is hereby dismissed for lack of merit.

"Let a copy of this decision be furnished the Revenue District Officer, Bureau of Internal Revenue, Vigan, Ilocos Sur, for a determination of the tax aspect of the case.

"SO ORDERED."

Only Hermenegildo Agdeppa appealed to the Court of Appeals as the lower court had ruled that his co-plaintiffs, Joseph, Jefferson and Stevenson, the sons of his brother Jose, "cannot be considered as heirs of the late Rosario Igarta because in the collateral line, representation takes place only in favor of the children of brothers and sisters (in this case, children of Carmen and Emiliana) whether they be of the full or half blood" (Ibid., p. 2, citing Art. 972, Civil Code). While the appeal was pending resolution before the Court of Appeals, Hermenegildo died on October 23, 1989.

On December 17, 1990, the Court of Appeals rendered its decision^[2] finding merit in the appeal. Giving full faith and credit to the documents involved, the Court of Appeals said:

"The proof adduced by plaintiff-appellees is not sufficient to overcome the presumption of regularity in favor of the questioned documents. Their attempt to show that the residence certificates appearing on said documents belonged to persons other than the late Rosario Igarta through the testimony of Mrs. Ester T. Ramos, Municipal Treasurer of Sinit, Ilocos Sur, and her Certification to that effect dated October 15, 1988 do not impress Us. The court a quo erred in considering said testimony and certification since they are merely secondary evidences, and plaintiff-appellees have not laid the basis for their presentation. The best evidence of the residence certificates are the residence certificates themselves. In lieu thereof, certified true copies of the residence certificates should have been presented since these are part of the public record.

"The presumption of validity of the questioned documents have not been overcome by the circumstances surrounding its execution. There is no showing that fraud, force or intimidation was perpetuated on Rosario Igarta in the preparation of the documents. Neither have plaintiff-appellees shown that the signature of Rosario Igarta appearing on said documents was forged. Forgery cannot be presumed. It must be proved. Faced with the fact that the signature of Rosario Igarta on said documents appears to be genuine, the provisions of said documents must be upheld.

"Thus, the court a quo erred in disregarding the dispositions contained in the questioned documents and ordering the partition of the properties covered thereby. The decision appealed from is hereby modified

declaring the aforementioned properties, Parcels IV, V, VI, VII, IX, X and one-half of Parcel III under paragraph 5 (a) of the Complaint and Parcel 'a' under the Supplemental Pleading, the exclusive properties of the late Emiliana Igarta-Ibe and therefore, not subject to partition. We note that defendant-appellants admitted the partible nature of one-half of Parcel III, and thus partition should take place only with regard to that half" (CA Decision, pp. 8-9, Rollo, pp. 51-52).

The heirs of Hermenegildo Agdeppa filed the instant petition for review on certiorari assailing the decision of the Court of Appeals for having set aside the findings of the lower court that the three documents which conveyed to the respondents Parcels IV, V, VI, IX and X and property "a" were irregular and not reflective of the truth, and for excluding from Rosario Igarta's estate Parcels IV, V, VI, VII, IX and X.

From the foregoing, the resolution of this case revolves around the issue of the validity of the documents executed by Rosario Igarta conveying certain properties belonging to her to the herein respondents.

In a petition for certiorari under Rule 45 of the Rules of Court like the instant petition, the jurisdiction of this Court is limited to the review of errors of law. The findings of fact of the Court of Appeals are conclusive upon this Court (*Ronquillo vs. Court of Appeals*, 195 SCRA 433 [1991]). However, there are exceptions to this rule such as when there is a conflict between the factual findings of the Court of Appeals and the trial court. The resolution of such conflict requires the review of the same factual findings by this Court (*Co vs. Court of Appeals*, 193 SCRA 198 [1991] citing *Raneses vs. IAC*, 187 SCRA 397 [1990] and *Remalante vs. Tibe*, 158 SCRA 138 [1988]). Thus, the divergent findings of the trial court and the Court of Appeals on the validity of the three documents executed by Rosario Igarta in favor of Benjamin Ibe and his children Ferdinand and Corazon, necessitate this Court's scrutiny.

The trial court's objections to the documents are based on its finding that residence certificates of other persons were used therein by Rosario Igarta. The plaintiffs (now appellants) tried to prove this through the rebuttal testimony of Mrs. Ester Y. Ramos, the Municipal Treasurer of Sinait. Mrs. Ramos admitted having signed the certification marked as Exh. F and which shows the names of the persons to whom the residence certificates appearing in the questioned documents were issued. According to Mrs. Ramos, the certification was based on the abstract of residence certificates because one of their office clerks, a certain Florida Ines, could not find the triplicates of the residence certificates subject of her certification (TSN, April 10, 1989, pp. 5-6). Mrs. Ramos had with her "the abstract where Mrs. Ines quoted the certification, but unluckily, the data are no longer available" meaning the pages of the abstract where the three (3) residence certificate numbers are found had been "lost" (*Ibid.*, pp. 8-9). Mrs. Ramos could not explain why and how they were lost (*Ibid.*, p. 9).

A residence certificate, being a receipt prescribed by the government to be issued upon receipt of money for public purposes (*Moran, Comments on the Rules of Court*, Vol. 6, 1980 ed., p. 101), is a public document. As such, presentation of the same document would suffice to prove its contents. As part of the public record, it may also be proved by the presentation of a copy attested by the officer having legal custody of the duplicates (Sec. 25, Rule 132, Rules of Court) if, as in this case, a certified copy of the residence certificate itself cannot be presented. Exhibit F, upon which the trial court relied in nullifying the questioned documents, is, as correctly pointed out by the Court of Appeals, merely a secondary evidence. It is even based on the lost pages of an abstract of the residence certificates issued by the municipal treasurer of Sinait. The evidentiary value of Exh. F. is therefore suspect.

The questioned deeds, being public documents as they are duly notarized (*Moran, Comments on the Rules of Court*, *supra*), therefore retain the presumption of validity in the absence of a full, clear and convincing evidence to overcome such presumption (*Favor vs. Court of Appeals*, 194 SCRA 308 [1991] citing *Antonio vs. Estrella*, 156 SCRA 68 [1987]). Merely preponderant evidence may not destroy such presumption because strong evidence

is required to prove a defect of a public instrument (Ibid.).

The petitioners never questioned the authenticity of the signature of Rosario Igarta on the documents. Their due execution has been amply proved below. The testimony of Florante Rosal who prepared them, was corroborated by Atty. Ernesto Yalao who notarized all three documents. Yalao, who was a citizens' attorney and who had become a municipal trial court judge by the time he notarized the December 20, 1985 document, testified that while he noticed that Rosario Igarta was a "little bit sickly" and thin when she signed the documents in his presence, she was mentally okay (TSN, September 13, 1988, p. 5).

Even the nagging doubts nurtured by the trial court appear more apparent than real upon a close examination of the testimonial evidence presented before it. Thus, the execution of two documents on the same day was explained by defense witness Florante Rosal. According to Rosal, who was an employee of the Citizens Legal Assistance Office, in April, 1985, Rosario Igarta requested him to accompany her to a lawyer "for purpose of drawing up a document." He accompanied her to the house of Atty. Ernesto Yalao who was then a citizens' attorney. Atty. Yalao, after having been informed of the purpose of Rosario Igarta's visit, told Rosal to prepare the documents promising that he would go over them later. Thus, Rosal who appears to have previous experience in drafting documents, prepared the document in his house (TSN, July 19, 1988, pp. 13-15).

Rosario Igarta then went to Rosal's house and, after the document was prepared, they went back together to the house of Atty. Yalao. The latter examined the document and asked Rosario if its contents were alright. Rosario, a former school teacher, said that the document was indeed alright and signed it. Rosal and a visitor of Atty. Yalao signed as witnesses in the document which, although written in English, was understood by Rosario as she was a former teacher (Ibid, pp. 15-19).

According to Rosal, after Atty. Yalao had delivered Exh. 1 to Rosario, the latter remarked that another document had to be prepared otherwise Benjamin Ibe would not give her any cash. So, in the afternoon, Rosal prepared Exh. 3 (Ibid., pp. 23-24) and it was notarized on the same day by Atty. Yalao. While on that day Rosario did not receive the consideration of the sale in Exh. 3 from Benjamin Ibe, the latter actually paid Rosario the P50,000.00 consideration of the sale at a much later date as the money had to come from Benjamin's younger brother in America (TSN, November 17, 1988, pp. 7-9).

With regard to the discrepancy in the residence certificate numbers, Rosal testified that Rosario did not show him her residence certificate but she only gave him a piece of paper containing its number (Ibid., p. 11). On why the two documents executed on April 28, 1985 bear two different residence certificate numbers both purportedly belonging to Rosario Igarta, Rosal admitted that he "might have committed a mistake" (Ibid., p. 26). This narration of facts had not been rebutted by the plaintiffs (now appellants) by evidence aside from Exh. F.

In the same manner, the deed of quitclaim and transfer of ownership of April 28, 1985 and the deed of quitclaim of December 20, 1985 may not be nullified just because they refer to the same Parcel IV with Benjamin Ibe as the reci-pient in both instances. That Rosario Igarta conveyed the same property to Benjamin Ibe in two different documents only shows that she favored Benjamin over Hermenegildo. There is un rebutted evidence that it was Benjamin who took care of Rosario. While Rosario Igarta had a house of her own, Benjamin would fetch her in the afternoon and accompany her back to the house in the morning from his own residence (TSN, November 17, 1988, pp. 1-2). Further, according to the deputy public land inspector who testified, Rosario Igarta even tried to delete the name of Hermenegildo from the space indicating her nearest relatives in her application for free patent over Lot 9796 (Exh. 8-a) because Rosario believed that Hermenegildo had "another woman in his life" (TSN, October 13, 1988, p. 9).

In *Gevero vs. Intermediate Appellate Court* (189 SCRA 201 [1990]), this Court held:

"x x x it has long been settled that a public document executed and attested through the intervention of the notary public is evidence of the facts in clear, unequivocal manner therein expressed. It has the presumption of regularity and to contradict all these, evidence must be clear, convincing and more than merely preponderant (*Rebuldela v. I.A.C.*, 155 SCRA 520-521 [1987]). Forgery cannot be presumed, it must be proven (*Siasat v. IAC*, No. 67889, October 10, 1985). Likewise, petitioners' allegation of absence of consideration of the deed was not substantiated. Under Art. 1354 of the Civil Code, consideration is presumed unless the contrary is proven."

Similarly, in the case at bar, no clear and convincing evidence had been adduced by petitioners to impugn the validity of the documents executed by Rosario Igarta. Consequently, the validity of the said documents must be, as they are hereby, upheld.

WHEREFORE, the decision of the Court of Appeals dated December 17, 1990 is Affirmed in toto.
SO ORDERED.

Feliciano, (Acting Chairman), Davide, Jr., Romero, and Melo, JJ., concur.

[*] Justice Hugo E. Gutierrez, Jr. is on terminal leave

[1] Penned by Judge Florencio A. Ruiz, Jr.

[2] Penned by Presiding Justice Rodolfo A. Nocon and concurred in by Justices Pedro A. Ramirez and Fernando A. Santiago.

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