

ONG CHING PO, YU SIOK LIAN, DAVID ONG AND JIMMY ONG, PETITIONERS, VS. COURT OF APPEALS AND SOLEDAD PARIAN, RESPONDENTS.

G.R. Nos. 113472-73. December 20, 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 of the Decision of the Court of Appeals dated July 15, 1993, which dismissed the petition for certiorari in CA-G.R. CV Nos. 28391-92.

I

On July 23, 1947, Ong Joi Jong sold a parcel of land located at Fundidor Street, San Nicolas to private respondent Soledad Parian, the wife of Ong Yee. The latter, the brother of petitioner Ong Ching Po, died in January 1983; while petitioner Ong Ching Po died in October 1986. The said sale was evidenced by a notarized Deed of Sale written in English. Subsequently, the document was registered with the Register of Deeds of Manila, which issued Transfer Certificate of Title No. 9260 dated September 2, 1947 in the name of private respondent.

According to private respondent, she entrusted the administration of the lot and building to petitioner Ong Ching Po when she and her husband settled in Iloilo. When her husband died, she demanded that the lot be vacated because she was going to sell it. Unfortunately, petitioners refused to vacate the said premises.

On March 19, 1984, private respondent filed a case for unlawful detainer against petitioner Ong Ching Po before the Metropolitan Trial Court of Manila, Branch 26. The inferior court dismissed her case. The dismissal was affirmed by the Regional Trial Court, Branch 10, Manila. The decision of the Regional Trial Court was, in turn, affirmed by the Court of Appeals, which dismissed the petition. The decision of the Court of Appeals became final and executory.

Petitioners, on the other hand, claimed that on July 23, 1946, petitioner Ong Ching Po bought the said parcel of land from Ong Joi Jong. The sale was evidenced by a photo copy of a Deed of Sale written in Chinese with the letter head "Sincere Trading Co." (Exh. "B"). An English translation of said document (Exh. "C") reads as follows:

Deed of Sale

I, Ong Joi Jong, a party to this Deed of Sale hereby sell in absolutely (sic) manner a lot located on No. 4 Fundidor Street, San Nicolas an (sic) area consisting 213 square meters including a one-storey house erected thereon unto Mr. Ong Ching Po for the sum of P6,000.00 the receipt of which is hereby acknowledged by me and consequently I have executed and signed the government registered title (sic) the said lot inclusive of the house erected thereon, now belong (sic) to Mr. Ong Ching Po unequivocally. And the purpose of this document is to precisely serve as proof of the sale.

Addendum: I have acceded to the request of Mr. Ong Ching Po into signing another document in favor of Soledad Parian (She is the Filipino wife of Ong Yee, brother of Ong Ching Po) for the purpose of facilitating the issuance of the new title by the City Register of Deeds and for the reason that he is not yet a Filipino. I certify to the truthfulness of this fact.

Lot Seller: Ong Joi Jong"

(Exhibits for the plaintiff, p. 4)

On December 6, 1983, petitioner Ong Ching Po executed a Deed of Absolute Sale conveying to his children, petitioners Jimmy and David Ong, the same property sold by Ong Joi Jong to private respondent in 1947. On December 12 1985, petitioners Ong Ching Po, Jimmy Ong and David Ong filed an action for reconveyance and damages against private respondent in the Regional Trial Court, Branch 53, Manila, docketed as Case No. 85-33962.

On July 26 1986, private respondent filed an action for quieting of title against petitioners Ong Ching Po and his wife, petitioner Yu Siok Lian, in the Regional Trial Court, Branch 58, Manila, docketed as Civil Case No. 86-36818. Upon her motion, the case was consolidated with Civil Case No. 85-33962. On May 30, 1990, the trial court rendered a decision in favor of private respondent. On appeal by petitioners to the Court of Appeals, the said court affirmed the decision of the Regional Trial Court.

Hence, this petition.

II

According to petitioners, the Court of Appeals erred:

- (1) When it gave full faith and credit to the Deed of Sale (Exh. "A") in favor of private respondent, instead of the Deed of Sale (Exh. "B" and its translation, Exh. "C") in favor of petitioner Ong Ching Po.
- (2) When it concluded that the acts of petitioners were not acts of ownership; and
- (3) When it ruled that no express nor implied trust existed between petitioners and private respondent (Rollo, pp. 17-18).

As stated by petitioners themselves, what is in dispute "xxx is not so much as to which between Exhibit "A" and Exhibit "B" is more weighty, but whether this document is what it purports to be (i.e., a deed of conveyance in favor of Soledad Parian [private respondent]) or it was only resorted to or executed as a subterfuge because the real buyer (Ong Ching Po) was an alien and it was agreed upon between Ong Ching Po and his brother (Ong Yee, Soledad Parian's husband) that the land be registered in the name of Soledad Parian in order to avoid legal complications and to facilitate registration and transfer and that the said title would be transferred by Soledad to Ong Ching Po or his successors-in-interest and that she would be holding the title in trust for him" (Rollo, pp. 19-20).

We cannot go along with the claim that petitioner Ong Ching Po merely used private respondent as a dummy to have the title over the parcel of land registered in her name because being an alien he was disqualified to own real property in the Philippines. To sustain such an outrageous contention would be giving a high premium to a violation of our nationalization laws.

Assuming that Exhibit "B" is in existence and that it was duly executed, still petitioners cannot claim ownership of the disputed lot by virtue thereof.

Section 5, Article XIII of the 1935 Constitution provides, as follows:

"Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

Section 14, Article XIV of the 1973 Constitution provides, as follows:

"Save in cases of hereditary succession, no private land shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands in the public domain."

Section 7, Article XII of the 1987 Constitution provides:

"Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands in the public domain."

The capacity to acquire private land is made dependent upon the capacity to acquire or hold lands of the public domain. Private land may be transferred or conveyed only to individuals or entities "qualified to acquire lands of the public domain" (II Bernas, *The Constitution of the Philippines* 439-440 [1988 ed.]).

The 1935 Constitution reserved the right to participate in the "disposition, exploitation, development and utilization" of all "lands of the public domain and other natural resources of the Philippines" for Filipino citizens or corporations at least sixty percent of the capital of which was owned by Filipinos. Aliens, whether individuals or corporations, have been disqualified from acquiring public lands; hence, they have also been disqualified from acquiring private lands.

Petitioner Ong Ching Po was a Chinese citizen; therefore, he was disqualified from acquiring and owning real property. Assuming that the genuineness and due execution of Exhibit "B" has been established, the same is null and void, it being contrary to law.

On the other end of the legal spectrum, the deed of sale executed by Ong Joi Jong in favor of private respondent (Exh. "A") is a notarized document.

To remove the mantle of validity bestowed by law on said document, petitioners claim that private respondent admitted that she did not pay anything as consideration for the purported sale in her favor. In the same breath, petitioners said that private respondent implied in her deposition that it was her husband who paid for the property. It appears, therefore, that the sale was financed out of conjugal funds and that it was her husband who handled the transaction for the purchase of the property. Such transaction is a common practice in Filipino-family affairs.

It is not correct to say that private respondent never took possession of the property. Under the law, possession is transferred to the vendee by virtue of the notarized deed of conveyance. Under Article 1498 of the Civil Code of the Philippines, "when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred." If what petitioners meant was that private respondent never lived in the building constructed on said land, it was because her family had settled in Iloilo.

There is no document showing the establishment of an express trust by petitioner Ong Ching Po as trustor and private respondent as trustee. Not even Exhibit "B" can be considered as such a document because private respondent, the registered owner of the property subject of said "deed of sale," was not a party thereto. The oral testimony to prove the existence of the express trust will not suffice. Under Article 1443 of the Civil Code of the Philippines, "No express trust concerning an immovable or any interest therein may be proved by parole evidence."

Undaunted, petitioners argue that if they cannot prove an express trust in writing, they can prove an implied trust orally. While an implied trust may be proved orally (Civil Code of the Philippines, Art. 1457), the evidence must be trustworthy and received by the courts with extreme caution, because such kind of evidence may be easily fabricated (*Salao v. Salao*, 70 SCRA 65 [1976]). It cannot be made to rest on vague and uncertain evidence or on loose, equivocal or indefinite declarations (Cf. *De Leon v. Molo-Peckson, et al.*, 116 Phil. 1267 [1962]). Petitioners do not claim that Ong Yee was not in a financial position to acquire the land and to introduce the improvements thereon. On the other hand, Yu Siok Lian, the wife of petitioner Ong Ching Po, admitted in her testimony in court that Ong Yee was a stockholder of Lam Sing Corporation and was engaged in business.

The Court of Appeals did not give any credence to Exhibit "B" and its translation, Exhibit "C", because these documents had not been properly authenticated.

Under Section 4, Rule 130 of the Revised Rules of Court:

"Secondary Evidence when Original is lost or destroyed. When the original writing has been lost or destroyed, or cannot be produced in court, upon proof of its execution and lost or destruction, or unavailability, its contents may be proved by a copy, or by a recital of its contents in some authentic document, or by the recollection of the witnesses."

Secondary evidence is admissible when the original documents were actually lost or destroyed. But prior to the introduction of such secondary evidence, the proponent must establish the former existence of the document. The correct order of proof is as follows: existence; execution; loss; contents. This order may be changed if necessary in the discretion of the court (*De Vera v. Aguilar*, 218 SCRA 602 [1993]).

Petitioners failed to adduce evidence as to the genuineness and due execution of the deed of sale, Exhibit "B".

The due execution of the document may be established by the person or persons who executed it; by the person before whom its execution was acknowledged; or by any person who was present and saw it executed or who after its execution, saw it and recognized the signatures; or by a person to whom the parties to the instrument had previously confessed the execution thereof (*De Vera v. Aguilar*, *supra*).

Petitioner Yu Siok Lian testified that she was present when said document was executed, but the trial court rejected her claim and held:

"If it is true that she was present, why did she not sign said document, even merely as a witness? Her oral testimony is easy to concoct or fabricate. Furthermore, she was married only on September 6, 1946 to the plaintiff, Ong Ching Po, in Baguio City where she apparently resided, or after the deed of sale was executed. The Court does not believe that she was present during the execution and signing of the deed of sale involved therein, notwithstanding her pretensions to the contrary" (Decision p. 6, Records p. 414).

As to the contention of petitioners that all the tax receipts, tax declaration, rental receipts, deed of sale (Exh. "B") and transfer certificate of title were in their possession, private respondent explained that she and her husband entrusted said lot and building to petitioners when they moved to Iloilo.

As observed by the Court of Appeals:

"We find, however, that these acts, even if true, are not necessarily reflective of dominion, as even a mere administrator or manager may lawfully perform them pursuant to his appointment or employment" (Rollo, p. 10).

It is markworthy that all the tax receipts were in the name of private respondent and her husband. The rental receipts were also in the name of her husband.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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