

## SECOND DIVISION

**[ G.R. NO. 161223, September 12, 2005 ]**

**VIRGILIO A. CADUNGOG, PETITIONER, VS. JOCELYN O. YAP,  
RESPONDENT.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 72761 which reversed and set aside the Decision of the Regional Trial Court (RTC) of Oslob, Cebu, Branch 62, in Civil Case No. OS-96-46.

#### The Antecedents

Franklin Ong and his sister, Jocelyn Ong-Yap, are first cousins of Virgilio Cadungog. Cresenciano Ong Aranas, the Municipal Mayor of Ginatilan, Cebu, from 1955 to 1978,<sup>[2]</sup> is their uncle.

On August 17, 1979, Virgilio executed a Deed of Sale with Right of Repurchase<sup>[3]</sup> in which he sold to his cousin, Franklin Ong, the following six parcels of land located in Ginatilan, Cebu for P7,144.28:

Parcel Number	Tax Dec. No.	Area
1	000821	1,170 square meters
2	4978	1,444 square meters
3	29586	4,257 square meters
4	5478	1,140 square meters
5	5486	980 square meters
6	5486	1,020 square meters

Parcel Nos. 5 and 6 are located in Sitio Cayam, Ginatilan, Cebu.<sup>[4]</sup>

Under the deed, Virgilio had the right to repurchase the property within 10 years from the said date.<sup>[5]</sup>

Virgilio failed to redeem the property. Nevertheless, upon the prodding of Franklin, Virgilio, who was merely a letter-carrier, executed a Deed of Absolute Sale<sup>[6]</sup> in favor of Jocelyn in which it appears that he sold Parcel Nos. 1, 2 and 3 for the price of P5,000.00. Virgilio declared therein that he inherited Parcel Nos. 2 and 3 from his mother, Soledad, who inherited the same from her parents, Jose Aranas and Basilia Rocaberte, under a Deed of Partition executed by their heirs. Franklin signed as one of the witnesses to the deed.<sup>[7]</sup>

On December 23, 1996, Cresenciano Ong executed a Deed of Absolute Sale of Parcel No. 2 in favor of the APC Group, Inc. for P32,380.00. Cresenciano declared that he was the sole and absolute owner, in fee simple, of the said lot.<sup>[8]</sup> On January 23, 1997, Virgilio executed a Deed of Absolute Sale of Parcel No. 1 in favor of the APC Group, Inc. for P35,400.00, alleging therein that he was the sole and exclusive owner of the property.<sup>[9]</sup>

When Franklin learned of the said sales, he objected. Virgilio, thus, delivered to Franklin Check No. 0000997<sup>[10]</sup> dated May 24, 1997, drawn and issued by Cresenciano against his account with the Prudential Bank, in the amount of P25,000.00. Virgilio also delivered to Franklin Check No. 0000999<sup>[11]</sup> drawn and issued by Cresenciano against his account with the same bank in the amount of P25,000.00. On May 26, 1997, Franklin signed Receipts dated May 25 and 26, 1997, embodied in a piece of paper.<sup>[12]</sup> In the Receipt dated May 26, 1997, Franklin acknowledged to have received the P25,000.00 check "representing full payment for the refund of the lot sold in Ginatilan."<sup>[13]</sup>

When Jocelyn learned that Virgilio had sold Parcel No. 1 to the APC Group, Inc., she filed a criminal complaint for estafa against him. After the requisite preliminary investigation, an Information for estafa was filed against Virgilio with the RTC.

By way of riposte, Virgilio filed a Complaint before the RTC, on December 8, 1998, against Jocelyn for the declaration of nullity of the September 30, 1991 Deed of Absolute Sale. He alleged therein that he had executed the subject deed in favor of Jocelyn only because her brother, Franklin, had requested him to do so "to lessen Jocelyn's tax liability in Canada." He also alleged that he agreed to execute the deed on the belief that it would not be notarized, as no consideration was involved. He further claimed that he informed Franklin's emissary (who brought the deed for his signature) that he owned Parcel No. 1, Cresenciano owned Parcel No. 2, and he did not know who owned Parcel No. 3. To his surprise, Jocelyn filed a criminal complaint for *estafa* against him before the Provincial Prosecutor's Office, and later an Information before the RTC of Oslob, Cebu. He further claimed that he and his wife signed a one-page document; the acknowledgment page was merely added to it, as it, in fact, did not contain their signatures.

Virgilio further stated that his uncle, Cresenciano Ong, sold Parcel No. 2, one of the lots included in the Deed of Sale dated September 30, 1991, to the APC Group, Inc. He himself then sold Parcel No. 1, with an area of 1,770 square meters, to the same vendee for P35,400.00.

Virgilio prayed for the following reliefs:

WHEREFORE, in view of the foregoing premises, it is most respectfully prayed of this Honorable Court that after notice and hearing judgment be rendered in favor of plaintiff and against the defendant declaring the aforesaid Deed of Absolute Sale as null and void from the very beginning for being without consideration and the defendant be ordered to pay the plaintiff the following:

P200,000.00                      – as moral damages;

100,000.00	- as exemplary damages;
20,000.00	- as attorney's fee plus P1,500.00 per court appearance;
10,000.00	- as litigation expenses;

Other reliefs and remedies consistent with justice and equity are likewise prayed for.<sup>[14]</sup>

In her answer with special and affirmative defenses, Jocelyn averred that the Deed of Absolute Sale dated September 30, 1991 was genuine, and reflected the true and correct intention of Virgilio as the vendor. She pointed out that the document was notarized, a public document which carried evidentiary weight. She further alleged that Virgilio had, in fact, previously sold the questioned lots through a Deed of Sale with Right of Repurchase in favor of her brother Franklin. Her brother then told her that, since Virgilio could no longer repurchase the subject properties, "it would be better for him to execute a Deed of Absolute Sale in her favor." She denied Virgilio's allegations that the subject deed was fictitious, and averred that it was genuine in all respects and amply supported by valuable consideration.

Jocelyn further averred that the filing of the instant case was a subterfuge or a mere afterthought on the part of Virgilio, as a defense in the criminal case for *estafa* she had filed against him. Moreover, Virgilio was in estoppel, and could not now be heard to negate the contents of the deed of absolute sale which he had previously executed in her favor.

Alleging that the complaint was filed in evident gross bad faith and that she suffered untold mental anguish, sleepless nights, anxiety and besmirched reputation, Jocelyn prayed that the case be dismissed, and that the following amounts in damages be awarded to her: P500,000.00 as moral damages; P100,000.00 as exemplary damage; P50,000.00 as attorney's fees; and P100,000.00 as actual litigation expenses.<sup>[15]</sup>

### **The Testimonies of the Witnesses**

Cresenciano Ong Aranas testified that he was the owner of Parcel No. 2, which Virgilio had sold to Jocelyn. The said lot was part of a bigger parcel, with an area of 1,619 square meters situated in Malatbo, Ginatilan Cebu. He sold the said lot on December 23, 1996 to the APC Group, Inc., a mining company, for P32,380.00 as evidenced by a Deed of Absolute Sale.<sup>[16]</sup> He admitted that he allowed Virgilio to include the said lot in the Deed of Sale with Right of Repurchase which Virgilio executed in favor of Franklin on August 17, 1979. He, however, admitted that he did not execute any document authorizing Virgilio to sell Parcel No. 2 since the latter was his nephew.<sup>[17]</sup>

Upon Virgilio's prodding, he issued two checks: Check No. 0000997<sup>[18]</sup> for P25,000.00 on May 24, 1997, and Check No. 0000999<sup>[19]</sup> for P25,000.00 on May 26, 1997. These checks were issued to redeem Parcel Nos. 1, 2 and 3, the lots subject of the Deed of Sale dated September 30, 1991.<sup>[20]</sup> Franklin signed receipts for said checks.<sup>[21]</sup>

Ricardo Acojedo, caretaker of Virgilio's properties and that of the Yap siblings, testified that he was in Virgilio's house when a certain Emok Dacillo brought a deed of sale to be signed by Virgilio and his wife. He saw the couple sign the document, but did not get to read it. There was no other person who signed the document. After Virgilio said "the document should not be notarized," he immediately handed it over to Emok.<sup>[22]</sup>

Virgilio testified that he and his wife, Rebecca, were in their house on the last week of September 1991, when Emok, an emissary of Franklin, arrived. Emok showed him the Deed of Absolute Sale dated September 30, 1991, and told him that Franklin wanted him and Rebecca to sign the deed. He read the document and was sure that it consisted of only one page. He told the emissary that he was the owner of Parcel No. 1; Parcel No. 2 was in the name of his uncle, Cresenciano; while the records of Parcel No. 3 could no longer be found at the Municipal Assessor's Office. Nevertheless, he and his wife signed the deed. He also claimed that he was able to repurchase the lots subject of the Deed of Sale with Right of Repurchase on May 26, 1997 for P50,000.00 at the house of his aunt, Tasiana Belarmino.

Virgilio admitted, however, that at the time he made the two payments, the period to repurchase the subject parcels of land had already expired.<sup>[23]</sup>

The defendant did not testify in her behalf. Atty. Emmanuel P. Rama testified for the defendant and declared that he notarized the subject deed, which to his knowledge was prepared by Franklin Ong. He was then in the office of his brother, who was the Vice-Governor of Cebu, when Franklin and Virgilio and his wife, Rebecca, arrived to have the deed notarized.<sup>[24]</sup> However, Virgilio, his wife, and the witnesses to the deed failed to sign on the left margin of its second page.

Franklin, a bachelor of laws graduate, testified that he was employed as an Interpreter in Branch 14 of the Court of First Instance of Cebu;<sup>[25]</sup> he prepared the deed of sale with right of repurchase which Virgilio executed on August 17, 1979 and the September 30, 1991 Deed of Absolute Sale which Virgilio and his wife executed.<sup>[26]</sup> According to him, the lots subject of the complaint, together with the other lots sold under the first deed of sale, were not repurchased by Virgilio.<sup>[27]</sup>

Franklin further narrated that sometime in 1991, Virgilio sought financial help because his house was about to be foreclosed by the Development Bank of the Philippines. He then gave P7,000.00 to Virgilio, and suggested that Parcel Nos. 1, 2 and 3 be sold to Jocelyn to augment his contribution. Franklin, however, agreed to buy Parcel Nos. 5 and 6 and inquired from Jocelyn if she was interested to buy Parcel Nos. 1, 2 and 3; Jocelyn replied that she was.<sup>[28]</sup> He then prepared a Deed of Absolute Sale over Parcel Nos. 1, 2 and 3, which Virgilio and his wife signed on September 30, 1991 before Notary Public Emmanuel P. Rama.<sup>[29]</sup> Virgilio agreed to sell the three lots for P5,000.00 only because the said amount was in addition to the P7,144.28 paid for the six parcels of land earlier sold to Franklin in 1979.<sup>[30]</sup> Franklin claimed he gave the P5,000.00 purchase price of the property to Virgilio on September 30, 1991.<sup>[31]</sup>

Franklin declared that the receipts<sup>[32]</sup> for P50,000.00 which he signed (and which Virgilio adduced in evidence) were refunds for Parcel Nos. 5 and 6 which he bought

from Virgilio and later sold by the latter to the APC Group, Inc.; they were not payments for the repurchase of the six parcels of land subject of the first sale as Virgilio claimed.<sup>[33]</sup> After Jocelyn purchased Parcel Nos. 1, 2 and 3, their sister Loreta and their mother took charge and administered the property, and paid the realty taxes thereon.<sup>[34]</sup>

Taciana Aranas Belarmino, an aunt of Virgilio, Franklin and Jocelyn, testified that she and her son, Fermin Belarmino, as well as her brother Cresenciano, witnessed Franklin sign the receipts dated May 25 and 26, 1997, for the total amount of P50,000.00, in their house. The payment was made to redeem Parcel Nos. 5 and 6, which Virgilio sold to the APC Group, Inc.<sup>[35]</sup> Franklin demanded P200,000.00, but Virgilio had only P50,000.00, (inclusive of the P25,000.00 Virgilio borrowed from Cresenciano).<sup>[36]</sup>

By way of rebuttal, Virgilio presented Federico Erac, the Postmaster of Ginatilan, who testified that he (Virgilio) was a letter-carrier and was at his place of work at the post office on September 30, 1991; hence, he could not have signed the Deed of Absolute Sale of Parcel Nos. 1, 2 and 3 in favor of Jocelyn in the Office of the Vice-Governor on the said date before Notary Public Emmanuel Rama.<sup>[37]</sup> He adduced in evidence his daily time record for September 30, 1991.<sup>[38]</sup>

After the trial, the court rendered judgment in favor of Virgilio. The *fallo* of the decision reads:

WHEREFORE, the Deed of Absolute Sale dated September 30, 1991 allegedly executed by plaintiff in favor of defendant is declared NULL and VOID.

SO ORDERED.<sup>[39]</sup>

The trial court held that, since Franklin failed to consolidate his title to the parcels of land following the lapse of the 10-year period for Virgilio to redeem the same, the period for redemption was deemed extended until the said lots were repurchased on May 25 and 26, 1997, upon payment of P50,000.00 to Franklin. The trial court ruled that there was a need for Franklin to consolidate the title over the parcels of land by court proceedings. It also held that the Deed of Absolute Sale dated September 30, 1991 had no consideration because the P5,000.00 stated therein, as the price of the property, was insufficient. Since the deed was not supported by any consideration, it was null and void.

Jocelyn appealed the decision to the CA, assailing the trial court's ruling on the following grounds:

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The Honorable Trial Court erred in ruling that there was no action on the part of the defendant-appellant to consolidate the title in her name when plaintiff-appellee failed to repurchase the properties subject matter of the deed of sale with right to repurchase executed on August 17, 1979.

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