

## SECOND DIVISION

[ G.R. No. 190846, February 03, 2016 ]

**TOMAS P. TAN, JR., PETITIONER, VS. JOSE G. HOSANA,  
RESPONDENT.**

### DECISION

**BRION, J.:**

Before us is a petition for review on *certiorari*<sup>[1]</sup> challenging the August 28, 2009 decision<sup>[2]</sup> and November 17, 2009 resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 88645.

#### The Facts

The respondent Jose G. Hosana (Jose) married Milagros C. Hosana (*Milagros*) on January 14, 1979.<sup>[4]</sup> During their marriage, Jose and Milagros bought a house and lot located at Tinago, Naga City, which lot was covered by Transfer Certificate of Title (*TCT*) No. 21229.<sup>[5]</sup>

On January 13, 1998, Milagros sold to the petitioner Tomas P. Tan, Jr. (Tomas) the subject property, as evidenced by a deed of sale executed by Milagros herself and as attorney-in-fact of Jose, by virtue of a Special Power of Attorney (SPA) executed by Jose in her favor.<sup>[6]</sup> The Deed of Sale stated that the purchase price for the lot was P200,000.00.<sup>[7]</sup> After the sale, TCT No. 21229 was cancelled and TCT No. 32568 was issued in the name of Tomas.<sup>[8]</sup>

On October 19, 2001, Jose filed a *Complaint for Annulment of Sale/Cancellation of Title/Reconveyance and Damages* against Milagros, Tomas, and the Register of Deeds of Naga City.<sup>[9]</sup> The complaint was filed before the Regional Trial Court (RTC), Branch 62, Naga City. In the complaint, Jose averred that while he was working in Japan, Milagros, without his consent and knowledge, conspired with Tomas to execute the SPA by forging Jose's signature making it appear that Jose had authorized Milagros to sell the subject property to Tomas.<sup>[10]</sup>

In his Answer, Tomas maintained that he was a buyer in good faith and for value.<sup>[11]</sup> Before he paid the full consideration of the sale, Tomas claimed he sought advice from his lawyer-friend who told him that the title of the subject lot was authentic and in order.<sup>[12]</sup> Furthermore, he alleged that the SPA authorizing Milagros to sell the property was annotated at the back of the title.<sup>[13]</sup>

Tomas filed a cross-claim against Milagros and claimed compensatory and moral damages, attorney's fees, and expenses, for litigation, in the event that judgment be rendered in favor of Jose.<sup>[14]</sup>

The RTC declared Milagros in default for her failure to file her answer to Jose's complaint and Tomas cross-claim.<sup>[15]</sup> On the other hand, it dismissed Tomas' complaint against the Register of Deeds since it was only a nominal party.<sup>[16]</sup>

After the pre-trial conference, trial on the merits ensued.<sup>[17]</sup>

Jose presented his brother, Bonifacio Hosana (*Bonifacio*), as sole witness. Bonifacio testified that he learned of the sale of the subject property from Milagros' son.<sup>[18]</sup> When Bonifacio confronted Milagros that Jose would get angry because of the sale, Milagros retorted that she sold the property because she needed the money. Bonifacio immediately informed Jose, who was then in Japan, of the sale.<sup>[19]</sup>

Jose was furious when he learned of the sale and went back to the Philippines. Jose and Bonifacio verified with the Register of Deeds and discovered that the title covering the disputed property had been transferred to Tomas.<sup>[20]</sup>

Bonifacio further testified that Jose's signature in the SPA was forged.<sup>[21]</sup> Bonifacio presented documents containing the signature of Jose for comparison: Philippine passport, complaint-affidavit, duplicate original of SPA dated 16 February 2002, notice of *lis pendens*, community tax certificate, voter's affidavit, specimen signatures, and a handwritten letter.<sup>[22]</sup>

On the other hand, Tomas submitted his own account of events as corroborated by Rosana Robles (*Rosana*), his goddaughter. Sometime in December 1997, Tomas directed Rosana to go to the house of Milagros to confirm if Jose knew about the sale transaction. Through a phone call by Milagros to Jose, Rosana was able to talk to Jose who confirmed that he was aware of the sale and had given his wife authority to proceed with the sale. Rosana informed Tomas of Jose's confirmation.<sup>[23]</sup>

With the assurance that all the documents were in order, Tomas made a partial payment of P350,000.00 and another P350,000.00 upon the execution of the *Deed of Absolute Sale* (Deed of Sale). Tomas noticed that the consideration written by Milagros on the Deed of Sale was only P200,000.00; he inquired why the written consideration was lower than the actual consideration paid. Milagros explained that it was done to save on taxes. Tomas also learned from Milagros that she needed money badly and had to sell the house because Jose had stopped sending her money.<sup>[24]</sup>

### **The RTC Ruling**

In its decision dated December 27, 2006,<sup>[25]</sup> the RTC decided in favor of Jose and nullified the sale of the subject property to Tomas. The RTC held that the SPA dated June 10, 1996, wherein Jose supposedly appointed Milagros as his attorney-in-fact, was actually null and void.

Tomas and Milagros were ordered to jointly and severally indemnify Jose the amount of P20,000.00 as temperate damages.<sup>[26]</sup>

## **The CA Ruling**

Tomas appealed the RTC's ruling to the CA.

In a decision dated August 28, 2009,<sup>[27]</sup> the CA affirmed the RTC ruling that the deed of sale and the SPA were void. However, the CA modified the judgment of the RTC: *first*, by deleting the award of temperate damages; and *second*, by directing Jose and Milagros to reimburse Tomas the purchase price of P200,000.00, with interest, under the principle of unjust enrichment. Despite Tomas' allegation that he paid P700,000.00 for the subject lot, the CA found that there was no convincing evidence that established this claim.<sup>[28]</sup>

Tomas filed a motion for the reconsideration of the CA decision on the ground that the amount of P200,000.00 as reimbursement for the purchase price of the house and lot was insufficient and not supported by the evidence formally offered before and admitted by the RTC. Tomas contended that the actual amount he paid as consideration for the sale was P700,000.00, as supported by his testimony before the RTC.<sup>[29]</sup>

The C A denied the motion for reconsideration for lack of merit" in a resolution dated November 17, 2009.<sup>[30]</sup>

## **The Petition**

Tomas filed the present petition for review on *certiorari* to challenge the CA ruling which ordered the reimbursement of P200,000.00 only, instead of the actual purchase price he paid in the amount of P700,000.00.<sup>[31]</sup>

Tomas argues that, *first*, all matters contained in the deed of sale, including the consideration stated, cannot be used as evidence since it was declared null and void; *second*, the deed of sale was not specifically offered to prove the actual consideration of the sale;<sup>[32]</sup> *third*, his testimony establishing the actual purchase price of P700,000.00 paid was uncontroverted;<sup>[33]</sup> and, *fourth*, Jose must return the full amount actually paid under the principle of *solutio indebiti*.<sup>[34]</sup>

Jose, on the other hand, argues that *first*, Jose is estopped from questioning the purchase price indicated in the deed of sale for failing to immediately raise this question; and *second*, the terms of an agreement reduced into writing are deemed to include all the terms agreed upon and no other evidence can be admitted other than the terms of the agreement itself.<sup>[35]</sup>

## **The Issues**

The core issues are (1) whether the deed of sale can be used as the basis for the amount of consideration paid; and (2) whether the testimony of Tomas is sufficient to establish the actual purchase price of the sale.

## **OUR RULING**

***We affirm the CA ruling and deny the petition.***

Whether Tomas paid the purchase price of P700,000.00 is a question of fact not proper in a petition for review on *certiorari*. Appreciation of evidence and inquiry on the correctness of the appellate court's factual findings are not the functions of this Court, as we are not a trier of facts.<sup>[36]</sup>

This Court does not address questions of fact which require us to rule on "the truth or falsehood of alleged facts,"<sup>[37]</sup> except in the following cases:

(1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.<sup>[38]</sup>

The present case does not fall under any of these exceptions.

Whether Tomas sufficiently proved that he paid P700,000.00 for the subject property is a factual question that the CA had already resolved in the negative.<sup>[39]</sup> The CA found Tomas' claim of paying P700,000.00 for the subject property to be unsubstantiated as he failed to tender any convincing evidence to establish his claim.

We uphold the CA's finding.

In civil cases, the basic rule is that the party making allegations has the burden of proving them by a preponderance of evidence.<sup>[40]</sup> Moreover, the parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent.<sup>[41]</sup>

Preponderance of evidence is the **weight, credit, and value** of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence."<sup>[42]</sup> Preponderance of evidence is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as it is worthier of belief than that which is offered in opposition thereto.<sup>[43]</sup>

We agree with the CA that Tomas' bare allegation that he paid Milagros the sum of P700,000.00 cannot be considered as proof of payment, without any other convincing evidence to establish this claim. Tomas' bare allegation, while uncontroverted, does not automatically entitle it to be given weight and credence.

It is settled in jurisprudence that one who pleads payment has the burden of proving it,<sup>[44]</sup> the burden rests on the defendant to prove payment, rather than on

the plaintiff to prove non-payment.<sup>[45]</sup> A mere allegation is not evidence,<sup>[46]</sup> and the person who alleges has the burden of proving his or her allegation with the requisite quantum of evidence, which in civil cases is preponderance of evidence.

***The force and effect of a void contract is distinguished from its admissibility as evidence.***

The next question to be resolved is whether the CA correctly ordered the reimbursement of P200,000.00, which is the consideration stated in the Deed of Sale, based on the principle of unjust enrichment.

The petitioner argues that the CA erred in relying on the consideration stated in the deed of sale as basis for the reimbursable amount because a null and void document cannot be used as evidence.

We find no merit in the petitioner's argument.

A void or inexistent contract has no force and effect from the very beginning.<sup>[47]</sup> This rule applies to contracts that are declared void by positive provision of law, as in the case of a sale of conjugal property without the other spouse's written consent.<sup>[48]</sup> A void contract is equivalent to nothing and is absolutely wanting in civil effects.<sup>[49]</sup> It cannot be validated either by ratification or prescription.<sup>[50]</sup> When, however, any of the terms of a void contract have been performed, an action to declare its inexistence is necessary to allow restitution of what has been given under it.<sup>[51]</sup>

It is basic that if a void contract has already "been performed, the restoration of what has been given is in order."<sup>[52]</sup> This principle springs from Article 22 of the New Civil Code which states that "every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same." Hence, the restitution of what each party has given is a consequence of a void and inexistent contract.

While the terms and provisions of a void contract cannot be enforced since it is deemed inexistent, it does not preclude the admissibility of the contract as evidence to prove matters that occurred in the course of executing the contract, *i.e.*, what each party has given in the execution of the contract.

Evidence is the *means* of ascertaining in a judicial proceeding *the truth respecting a matter of fact*, sanctioned by the Rules of Court.<sup>[53]</sup> The purpose of introducing documentary evidence is to ascertain the truthfulness of a matter at issue, which can be the entire content or a specific provision/term in the document.

The deed of sale as documentary evidence may be used as a means to ascertain the truthfulness of the consideration stated and its actual payment. The purpose of introducing the deed of sale as evidence is not to enforce the terms written in the contract, which is an obligatory force and effect of a valid contract. The deed of sale, rather, is used as a means to determine matters that occurred in the execution of such contract, *i.e.*, the determination of what each party has given under the void contract to allow restitution and prevent unjust enrichment.