

FIRST DIVISION

[G.R. No. 174937, June 13, 2012]

JOVINA DABON VDA. DE MENDEZ, PETITIONER, VS. COURT OF APPEALS AND SPOUSES MINEO AND TRINIDAD B. DABON, RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

"[C]ertiorari is not a substitute for a lost appeal x x x."^[1]

This Petition for *Certiorari*^[2] under Rule 65 of the Rules of Court assails the Decision^[3] dated May 8, 2006 and the Resolution^[4] dated September 12, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 76612.

Factual Antecedents

On June 19, 1995, petitioner Jovina Dabon Vda. De Mendez filed a Complaint^[5] for Nullity of Deed of Sale, Transfer Certificate of Title, Tax Declaration and other relevant documents, and Reconveyance of property with damages, docketed as Civil Case No. MAN-2445, against respondent-spouses Mineo and Trinidad Dabon before the Regional Trial Court (RTC) of Mandaue City, Branch 56.

Petitioner, in her complaint, alleged that she is the registered owner of a paraphernal property situated in *Barangay* Ibabao, Mandaue City, containing an area of 174 square meters, covered by Transfer Certificate of Title No. 9408;^[6] that she never sold the subject property to respondent-spouses;^[7] and that her signature in the Deed of Absolute Sale^[8] dated July 15, 1982 was forged.^[9] Petitioner further claimed that sometime in 1982, due to financial difficulties and the illness of her youngest son, she mortgaged her property to Banco Cebuano to secure a P20,000.00 loan.^[10] When her property was about to be foreclosed by the bank, she borrowed P20,000.00 from her first cousin, respondent Mineo.^[11] Respondent Mineo agreed and a few days later asked his sister, Gloria Singson (Gloria), to deliver the money to the bank.^[12] After paying the bank, Gloria went to petitioner's house and asked her to sign some papers, including a receipt confirming the loan.^[13] Later, petitioner's eldest daughter went to respondent Mineo to pay the P20,000.00 loan.^[14] He, however, refused to accept the same, demanding instead P50,000.00.^[15]

Respondent-spouses filed their Answer,^[16] contending that there was a valid sale as evidenced by the Deed of Absolute Sale signed by petitioner on July 15, 1982 before Notary Public Bienvenido N. Mabanto, Jr. (Notary Public Mabanto).^[17] They narrated

that after petitioner signed the Deed of Absolute Sale, they paid the amount of P20,000.00 to the bank in order to prevent the foreclosure of the subject property; [18] and that since then, they have been paying the taxes for the said property. [19]

During trial, petitioner presented the testimony of Romeo Varona, a Document Examiner of the Philippine National Police (PNP) Crime Laboratory Service, who affirmed that petitioner's signature in the Deed of Absolute Sale dated July 15, 1982 is a forgery. [20] To refute this, respondent Mineo, in addition to his testimony, offered the testimonies of Gloria, who was a witness to the execution of the Deed of Absolute Sale, and Notary Public Mabanto before whom the deed was acknowledged. [21]

Ruling of the Regional Trial Court

On July 31, 2002, the RTC rendered a Decision [22] in favor of respondent- spouses. It ruled that petitioner's cause of action had prescribed since an action for reconveyance of a parcel of land based on implied or constructive trust prescribes in 10 years. [23] As to the issue of forgery, the RTC gave more credence to the testimony of Notary Public Mabanto, who stated under oath that petitioner appeared before him to affirm the execution of the Deed of Absolute Sale, than that of petitioner's expert witness, who found the signature in the Deed of Absolute Sale to be a forgery. [24] The RTC disregarded the finding of the expert witness because it was based merely on conjectures and observations. [25] It pointed out that during the hearing, the expert witness admitted that a person's signature varies according to his position when affixing the same. [26] Thus, the RTC decreed:

Foregoing considered[,], the Court rules in favor of Defendant[s] both [on] grounds of Prescription and its findings that the Deed of Absolute Sale was duly executed.

SO ORDERED. [27]

Ruling of the Court of Appeals

Both parties appealed the Decision.

On May 8, 2006, the CA denied both appeals. Not only did the CA agree with the RTC that there was no forgery, [28] but it also ruled that petitioner failed to overcome the presumption of authenticity and due execution of the notarized Deed of Absolute Sale. [29] With regard to respondent-spouses' appeal, the CA found them not entitled to moral and exemplary damages as well as attorney's fees considering that the same were never discussed by the RTC. [30] Thus, the CA disposed:

WHEREFORE, prescinding from all the foregoing, both appeals are **DENIED**. The decision dated July 31, 2002 of the court a quo in Civil Case no. Man-2445 is **AFFIRMED**.

Costs against plaintiff-appellant.

SO ORDERED.^[31]

Petitioner moved for reconsideration, which was denied by the CA in a Resolution^[32] dated September 12, 2006.

Issues

Hence, this petition raising the following issues:

WHETHER RESPONDENT [CA], IN DENYING PETITIONER'S APPEAL AND AFFIRMING THE DECISION OF THE TRIAL COURT AND LIKEWISE IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION OF THE SAID DECISION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, OR IN EXCESS THEREOF:

1. IN NOT PASSING UPON PETITIONER'S FIRST ASSIGNED ERROR IN HER APPEAL THAT PETITIONER'S ACTION HAD NOT PRESCRIBED IN LIGHT OF PRIVATE RESPONDENT'S ADMISSION THAT PETITIONER HAS BEEN IN ACTUAL, CONTINUOUS AND PEACEFUL POSSESSION OF THE PROPERTY AND PAYING TAXES THEREFOR UP TO THE PRESENT THEREBY TOTALLY DISREGARDING RELEVANT LAW[S] AND JURISPRUDENCE;
2. IN AFFIRMING THE DECISION OF THE TRIAL COURT THAT THE QUESTIONED DEED OF ABSOLUTE SALE WAS DULY EXECUTED DESPITE THE OVERWHELMING AND ABUNDANT EXPERT EVIDENCE CLEARLY PROVING THAT THE ALLEGED SIGNATURE OF PETITIONER THEREON IS A FORGERY, THEREBY DISREGARDING RELEVANT LAWS AND JURISPRUDENCE;
3. IN NOT RULING THAT AN IMPLIED TRUST WAS CREATED ARISING FROM THE FRAUDULENT PURCHASE OF THE PROPERTY THEREBY DISREGARDING RELEVANT LAWS AND JURISPRUDENCE;
4. IN HOLDING THAT PETITIONER DID NOT REBUT THE NOTARY PUBLIC'S TESTIMONY CONCERNING THE QUESTIONED DEED OF SALE;
5. FINALLY, IN DENYING PETITIONER'S APPEAL AND IN AFFIRMING THE DECISION OF THE TRIAL COURT IN FAVOR OF PRIVATE RESPONDENTS.^[33]

Petitioner's Arguments

Petitioner claims that she is the absolute and lawful owner of the subject property, which she inherited from her father.^[34] She insists that she has been in actual,

continuous, and peaceful possession of the same and has been paying taxes thereon.^[35] Thus, being in possession of the subject property, her action to recover title and possession of the same is imprescriptible.^[36] Petitioner further claims that she did not sell her property to respondent Mineo but only borrowed money from him.^[37] She contends that the CA erred in disregarding the testimony of the expert witness, who found her signature in the Deed of Absolute Sale to be a forgery,^[38] and in relying on the self-serving statements of the notary public who, as expected, would affirm the genuineness of the disputed Deed of Absolute Sale so as not to incriminate himself.^[39]

Respondent-spouses' Arguments

Respondent-spouses, on the other hand, pray for the outright dismissal of the instant petition on the ground that petitioner, in filing a petition under Rule 65 of the Rules of Court, availed of the wrong remedy.^[40] Petitioner should have filed a petition under Rule 45 within 15 days from notice of the denial of her motion for reconsideration with the CA.^[41] In any case, respondent-spouses maintain that there was a valid sale between the parties.^[42]

Our Ruling

The petition must fail.

Petitioner availed of the wrong remedy

Under the Rules of Court, the proper remedy of a party aggrieved by a judgment, final order, or resolution of the CA is to file with the Supreme Court a verified petition for review on *certiorari* under Rule 45 within 15 days from notice of the judgment, final order, or resolution appealed from.^[43]

Obviously, petitioner, in filing a petition for *certiorari* under Rule 65 of the Rules of Court, availed of the wrong remedy.

Unlike a petition for review on *certiorari* under Rule 45, which is a continuation of the appellate process over the original case, a special civil action for *certiorari* under Rule 65 is an original or independent action^[44] based on grave abuse of discretion amounting to lack or excess of jurisdiction.^[45] It will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.^[46] As such, it cannot be a substitute for a lost appeal, especially if such loss or lapse was due to one's own negligence or error in the choice of remedies.^[47]

In this case, the remedy of appeal was available; thus, the filing of petition for *certiorari* was inapt. Petitioner should have filed a petition under Rule 45 within 15 days from receipt of the Resolution dated September 12, 2006, denying her motion for reconsideration.

While in certain cases we have considered petitions erroneously filed under Rule 65 as filed under Rule 45, we cannot do so in this case because the petition was filed beyond the 15-day reglementary period.^[48] Records show that petitioner filed her