

SECOND DIVISION

[G.R. No. 152266, July 02, 2010]

HEIRS OF PEDRO DE GUZMAN, PETITIONERS, VS. ANGELINA PERONA AND HEIRS OF ROSAURO DE GUZMAN; BATAAN DEVELOPMENT BANK; AND REPUBLIC PLANTERS BANK, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision^[1] and Resolution^[2] of the Court of Appeals (CA), dated May 30, 2001 and January 25, 2002, respectively, in CA-G.R. CV No. 46144.

The antecedent facts are as follows:

On April 15, 1985, Pedro de Guzman filed a Complaint with application for temporary restraining order and preliminary injunction against respondents before the Regional Trial Court (RTC) of Bataan docketed as Civil Case No. 5247. He sought reconveyance of a parcel of land measuring about 300 square meters from the heirs of Rosauro de Guzman and his surviving spouse, Angelina Perona.

Pedro alleged that through unlawful machination, fraud, deceit, and evident bad faith, respondent spouses Rosauro and Angelina caused the cancellation of Original Certificate of Title (OCT) No. 10075 and subdivided the said property into three (3) parcels of land covered by separate Transfer Certificate of Titles in their name.

Records show that OCT No. 10075^[3] was issued by the Office of the Register of Deeds for the Province of Bataan on July 25, 1933, containing an area of 3,242 square meters, more or less, half of which was registered under the name of Andrea de Guzman, and the other half in the names of Servando de Guzman's children, namely, Pablo (married to Amelia Alarcon), Jose, Canuto, Cirilo, Leopoldo, David and Maximino.

In 1942, Andrea, Cirilo, Leopoldo and David died intestate. On July 26, 1950, a petition for the issuance of a new owner's duplicate of OCT No. 10075 was filed by Jose de Guzman, one of the registered owners, due to the loss of the owner's copy of OCT No. 10075. Pursuant to the Order^[4] of the Court of First Instance of Bataan, dated August 22, 1950, the Register of Deeds of Bataan was directed to issue a new owner's duplicate of OCT No. 10075. Thereafter, by virtue of an Extrajudicial Settlement of Estate^[5] executed on October 16, 1952 by Pablo, Jose, Canuto, Veronica Cruz (surviving spouse of Cirilo and in her capacity as legal administratrix of their minor children, Ernesto, Rosauro and Mercedita), Rogelio and Maximino, wherein they agreed to divide and adjudicate among themselves, in equal parts, the

property covered by OCT No. 10075, the latter title was canceled and TCT No. T-3885 was issued in its stead. TCT No. T-3885 was later on divided into three parcels of land covered by TCT Nos. 78181, 78182 and 78183.

TCT No. 78181,^[6] registered in the name of the spouses Rosauro and Angelina, was mortgaged by the said Spouses to Bataan Development Bank (BD Bank) on March 25, 1980.^[7] Due to the failure of the Spouses to pay their indebtedness to BD Bank, the mortgaged property was foreclosed and sold to the bank as the highest bidder.

TCT No. 78182,^[8] also registered in the name of the spouses Rosauro and Angelina, was sold by the said Spouses to a certain Carlito Pangilinan and Candida Ramos by virtue of a *Kasulatan ng Bilihang Tuluyan*,^[9] dated August 12, 1982. By virtue of the sale, TCT No. 78182 was canceled and superseded by TCT No. 105347.

TCT No. 78183^[10] in the name of Pablo, Canuto, Ernesto, Rosauro, Mercedita, Rogelio and Maximino, all surnamed De Guzman, was canceled and superseded by TCT No. T-92048^[11] and registered in the name of the spouses Rosauro and Angelina. TCT No. 92048 was mortgaged by Rita A. Paguio, attorney-in-fact of the spouses Rosauro and Angelina,^[12] to Republic Planters Bank (RP Bank) on August 11, 1982.^[13]

Pedro alleged that he is the grandson of one Zacarias de Guzman who is the brother of one Servando de Guzman. Servando is the grandfather of Rosauro. In other words, Pedro's father (Ildefonso) and Rosauro's father (Cirilo) are first cousins. Zacarias, Servando, and Andrea were siblings.

Pedro, allegedly acting in behalf of his co-heirs, maintained that he is entitled to share in the estate of Andrea. He claimed that, during the lifetime of Andrea, the house which he occupied had already been adjudicated in his favor. He said that he took care of Andrea, who died in his own house. He prayed that he be recognized as the owner and legitimate possessor of a parcel of land, containing an area of 300 square meters, where his house stands. He alleged that BD Bank accepted the land as collateral from the spouses Angelina and Rosauro without conducting the necessary investigation and verification of the actual status of the land. He further prayed for the cancellation of the corresponding title or titles issued, which may affect the area where his house stands. He, likewise, prayed for payment of damages.

Respondent Angelina and the heirs of Rosauro did not answer the complaint despite service of summons, hence, they were declared in default. In its Answer,^[14] BD Bank alleged that Pedro's complaint stated no cause of action, as there was no clear allegation that the parcel of land covered by TCT No. 78181 is the same parcel of land over which he has some right or interest. It also failed to show that Pedro was an heir of Andrea and that he was acting in behalf of his co-heirs. RP Bank, in its defense,^[15] alleged that Pedro had no cause of action against the bank. The bank acted in good faith and exercised due diligence and verified that the mortgagor has a good title over the property covered by TCT No. 92048.

In its Decision^[16] dated April 14, 1994, the RTC dismissed the complaint. Aggrieved

by the Decision, Pedro filed a Notice of Appeal,^[17] which the CA dismissed in a Resolution dated May 30, 2001, for lack of merit. A motion for reconsideration was filed, which the CA denied in a Resolution dated January 25, 2002.

Pedro died in the interim, thus, his heirs and successors-in-interest (herein petitioners) elevated the case to this Court *via* Petition for Review on *Certiorari*^[18] under Rule 45 of the Rules of Court, with the following issues:

A. THE COURT OF APPEALS ERRED IN NOT RULING THAT THE PETITIONERS HAVE ACQUIRED THE LAND COVERED BY TCT NO. 78181 AGAINST ANGELINA PERONA AND HEIRS OF ROSAURO DE GUZMAN THRU ORAL PARTITION.

B. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE RESPONDENT BANKS ARE MORTGAGEES IN BAD FAITH.

In the present case, petitioners allege that Pedro acquired the property subject of this case covered by TCT No. 78181 through oral partition. They maintain that respondent BD bank is a mortgagee in bad faith. They, likewise, said that Pedro acquired ownership over the property by virtue of a document executed by Andrea transferring ownership of the property to him. Finally, they are asking for the reconveyance of a parcel of land where Pedro's house is situated.

In its Comment, respondent BD Bank alleges that the issue on whether or not it is a mortgagee in bad faith is a question of fact, and it is not proper for appeal under Rule 45 which deal only with questions of law.

The petition lacks merit.

The petitioner raises two issues in this case, however, upon perusal of the petition, the only issue in this case is whether or not respondent BD Bank is a mortgagee in bad faith.

Petitioners' allegation that their predecessor Pedro acquired the land covered by TCT No. 78181 by means of oral partition cannot be taken cognizance by this Court. This allegation was never raised before the RTC. In the trial court, Pedro's theory was that the property subject of this case was adjudicated to him by virtue of a document executed by Andrea in his favor. Well settled is the rule that issues and arguments not brought before the trial court cannot be raised for the first time on appeal. Basic considerations of due process impel this rule.^[19]

Pedro also claims that Andrea transferred to him the parcel of land measuring about 300 square meters, where his house was erected. However, as correctly pointed out by the CA, this claim was not substantiated by evidence.

Records show that Pedro only paid the real property taxes over the properties on March 13, 1984 and January 16, 1985.^[20] Prior to 1984, he never paid any taxes over the property which he alleged as his. The Court, therefore, finds that Pedro's payment of real estate taxes in 1984 and 1985 was only an afterthought to give a semblance of his alleged right over the property, and in preparation for the filing of