597 Phil. 227

SECOND DIVISION

[G.R. No. 142309, January 30, 2009]

JUAN DELA RAMA AND EUGENIA DELA RAMA, PETITIONERS, VS. OSCAR PAPA AND AMEUERFINA PAPA, RESPONDENTS.

D E C I S I O N

TINGA, J.:

This petition allows us to reiterate some of the basic rules concerning the notarization of deeds of conveyance involving real property. Such rules are important because an improperly notarized document cannot be considered a public document and will not enjoy the presumption of its due execution and authenticity.

I.

Petitioner spouses Juan and Eugenia dela Rama were the registered owners of a parcel of land situated in Calamba, Laguna, covered by Transfer Certificate of Title (TCT) No. 91166 issued by the Registry of Deeds of Laguna. The property was acquired for P96,000.00 by way of sale from Canlubang Sugar Estate (CSE), as evidenced by a notarized Absolute Deed of Sale dated 10 July 1980 executed by Juan dela Rama and CSE, as represented by Jesus de Veyra. Eugenia dela Rama also affixed her signature as proof of her marital consent.[1]

According to Juan dela Rama, he became a resident of the United States by 1984 and would acquire American citizenship by 1989.[2] In 1992, petitioners through their representative, were reminded to pay the realty tax on the property, only to be informed by the assessor's office that their title to the property had in fact been cancelled, and a new title, TCT No. 102128, issued in favor of respondents Oscar and Ameorfina Papa.[3]

Until 31 July 1985, Oscar Papa had been the Assistant Vice- President and Head of Marketing of the Laguna Estate Development Corporation (LEDC), a marketing arm of CSE and the entity through which the property had earlier been marketed and sold to petitioners. The property was transferred to and retitled in the name of the spouses Papa pursuant to a notarized Deed of Absolute Sale dated 29 March 1985, covering the subject property, and identifying petitioners as the vendors and respondents as the vendees. The 1985 deed of sale bears the signatures of petitioners and respondents, at least two witnesses (whose identities are not spelled out or otherwise ascertainable on the face of the document), and the notarial signature and seal of Atty. William Gumtang. The new title in the name of respondents was issued on 21 June 1985.

Articulating the primary claim that their signatures on the 1985 deed of sale were forged, petitioners filed a complaint with the Regional Trial Court of Calamba, Branch 92, for "Cancellation of Title Obtained Under Forged Deed of Sale."[4] They prayed

for the declaration of nullity of the 1985 deed of sale, the corresponding cancellation of TCT No. 102128 in the name of respondents and the issuance of a new one in their names. Respondents counterposed in their Answer with Compulsory Counterclaim:[5] (1) that the 1985 deed of sale had been duly executed; (2) that laches had barred the complaint since they had obtained title and physical possession as far back as 1985; (3) that they had every reason to believe that the person from whom they purchased the property was duly authorized to sell the same given that such person was in possession of the owner's duplicate TCT; and (4) that their purchase of the property was in good faith and for value, thus even assuming that the forgery occurred, the action should be directed against those who perpetrated the fraud.

During pre-trial, the following factual matters were stipulated upon: (1) that Juan dela Rama was the registered owner of the property covered by TCT No. T-91166, which was subsequently cancelled; (2) that TCT No. 102128 was issued in the name of respondents after they acquired the same for P96,000.00; (3) that from 1974 to 1985 or thereabouts Oscar Papa was employed or connected with LEDC, holding the position of Head of Marketing; (4) that LEDC was a developer and marketing arm of CSE; and (5) that LEDC had developed the residential subdivision where the subject property is located.

Petitioner Juan dela Rama and respondent Oscar Papa both testified in court. Dela Rama claimed having religiously paid the property taxes since 1980. He denied that he or his wife executed the 1985 deed of sale or any other document that conveyed their interests or rights over the property. He even denied having met Papa before he testified in court in 1995. Dela Rama also explained that he had purchased the property in 1980 while a student at New York University, and that he had been a permanent resident of California since 1984, and a United States citizen since 1989.

Oscar Papa testified that he was connected with LEDC from 1974 to 1985, where he marketed residential, industrial and agricultural lots which belonged to the Canlubang Sugar Estates. He claimed not to recall who had offered to him to buy the subject property, and that he had never met Juan Dela Rama. He also admitted signing the deed of sale, such document being witnessed by two staff members of LEDC, but he did not see dela Rama sign the same document. Neither could he remember signing the deed of sale in front of the notary public who notarized the document.

Papa claimed that in real estate transactions, it was standard practice that the buyer first sign the document before the seller did so. He also claimed that it was likewise standard practice in the real estate industry that the buyer and seller did not necessarily have to meet face to face. Respondent further alleged that at the time of the transaction, "sales of real property was (*sic*) very bad with several owners trying to sell back their property even at a price less than the purchase price," as this came shortly after the assassination of Senator Benigno Aquino, Jr.

On 26 June 1986, the RTC promulgated a Decision[6] annulling the deed of sale, cancelling respondents' title and reinstating petitioners' title to the subject property. The RTC said that the facts and evidence presented indicated "preponderating evidence that the plaintiffs' signatures in the deed of sale x x x are not their signatures,"[7] such conclusion being corroborated by the admission of Papa that he

did not see petitioners sign the deed of sale. The RTC also disbelieved respondents' contention that it was standard practice in real estate transactions for the buyer to first affix his signature before the seller; noting that "[i]t must be that before a buyer would part with his money, he will first see to it that the sellers [*sic*] signatures were already affixed and if possible, affixed in his presence."[8]

The RTC did not consider respondents as buyers in good faith, given their dubious assertion that it was typical that the buyer signs the deed of sale before the seller, as well as such circumstances like the failure of respondents to ever pay real estate taxes on the property and to assert possession or occupancy over the property. Accordingly, it held that the cancellation of respondents' title was proper. In addition, the RTC discounted the claim of defendants that laches and estoppel had set in to bar the action, pointing out that under Section 47 of Pres. Decree No. 1529, "no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession," and that under Article 1410 of the Civil Code, "[t]he action of defense for the declaration of the inexistence of a contract does not prescribe."[9]

Respondents appealed to the Court of Appeals. On 7 September 1999, the appellate court rendered a Decision reversing the RTC and upholding the validity of the deed of sale.[10]

The Court of Appeals considered the pivotal issue as whether the signatures of the petitioners on the deed of sale were indeed forged, and ultimately concluded that there was no such evidence to support the finding of forgery. It was observed that the burden of proving the forgery fell upon the petitioners, yet they failed to present convincing evidence to establish the forgery. The only evidence presented to establish the forgery was the oral testimony of Juan dela Rama himself, which according to the Court of Appeals, was self-serving. The RTC was chided for not applying Section 22 of Rule 132 of the Rules of Evidence, which provided in clear terms how handwriting must be proved. It was pointed out that the Rule required that the handwriting of a person be proved "by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person."[11]

Moreover, the Court of Appeals cited that neither one of the dela Ramas was confronted with their signatures in the challenged deed of sale. Nor did they positively and unequivocally declare that the signatures were not theirs or that these were forged.

II.

Hence, this petition for review. Petitioners devote considerable effort in highlighting facts and admissions elicited from Oscar Papa himself to cast doubt on the validity of the deed of sale. Yet it would be impertinent on our part to immediately dwell on such evidentiary matters without first contending with the legal arguments cited by the Court of Appeals in dismissing the complaint. While this Court is generally not a trier of fact, there are recognized exceptions to that rule, such as when the findings of fact are conflicting, or when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would

justify a different conclusion.[12]

The petition hinges on a factual question-whether the signatures of the petitioners as appearing on the deed of sale were forged. The Court of Appeals correctly observed that petitioners had the *onus probandi* to establish such forgery. In concluding that petitioners failed to discharge such burden, the appellate court cited the rule upholding the presumption of regularity of a notarized document. Applying that rule, it is necessary that the forgery must be established not merely by preponderance of evidence, but by clear, positive and convincing evidence, and the Court of Appeals appears to have applied that more exacting standard.

However, petitioners point out that respondent Papa had admitted before the Court that he did not sign the deed of sale in front of the Notary Public. Based on the transcript of Papa's testimony before the RTC,[13] it is clear at least that the witness could not attest to the fact that he had signed the document in front of the Notary Public.

> Atty. Lizares:
>
> Do you recall Mr. Witness if you sign[ed] this document in front of a Notary Public?
>
> [Papa]:
>
> No[,] sir.
>
> Atty. Lizares:
>
> Do you know this Mr. William Gumtang?
>
> Witness:
>
> Yes
>
> Atty. Lizares:
>
> How do you know him Mr. Witness?
>
> Witness:
>
> Atty. Gumtang is one of the Notary Public of CSE.
>
> Atty. Lizares:
>
> He is one of the Notary Public of CSE?
>
> Witness:
>
> Yes[,] sir.
>
> Atty. Lizares:
>
> So you do not recall if you signed this in front of Atty. Gumt[a]ng?

Witness:

I do not recall.

The deed was purportedly notarized by Atty. William Gumtang, who was personally known to Papa as he was one of the notaries public of CSE.[14] Had Atty. Gumtang testified that Papa had signed the deed of sale in his presence, Papa's memory lapse would have had less relevance. Yet Atty. Gumtang was never called on as a witness for the defense, nor was any other step taken by the respondents to otherwise establish that Papa had signed the deed of sale in front of the notary public.

A.

Papa's admissions, refreshing in their self-incriminatory candor, bear legal significance. With respect to deeds of sale or conveyance, what spells the difference between a public document and a private document is the acknowledgment in the former that the parties acknowledging the document appear before the notary public and specifically manifest under oath that they are the persons who executed it, and acknowledge that the same are their free act and deed. The Court, through Chief Justice Davide, had previously explained:

> A *jurat* which is normally in this form:
>
> Subscribed and sworn to before me in _____, this _____ day of _____, affiant having exhibited to me his Community (before, Residence) Tax Certificate No. _____ issued at _____ on _____.

"is that part of an affidavit in which the officer certifies that the instrument was sworn to before him. It is not a part of a pleading but merely evidences the fact that the affidavit was properly made (Young vs. Wooden, 265 SW 24, 204 Ky. 694)." The *jurat* in the petition in the case also begins with the words "subscribed and sworn to me."

To subscribe literally means to write underneath, as one's name; to sign at the end of a document. To swear means to put on oath; to declare on oath the truth of a pleading, etc. Accordingly, in a jurat, the affiant must sign the document in the presence of and take his oath before a notary public or any other person authorized to administer oaths.

As to acknowledgment, Section 1 of Public Act No. 2103 provides:

> (a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law