

SECOND DIVISION

[G.R. No. 163745, August 24, 2007]

**FERNANDO GO, PETITIONER, VS. THE COURT OF APPEALS,
PILAR LIM AND HENRY LIM, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This is a petition for review on certiorari seeking to nullify the Resolutions dated January 23, 2004^[1] and May 26, 2004^[2] of the Court of Appeals in CA-G.R. SP No. 81488. The appellate court dismissed petitioner's petition for certiorari assailing the Resolutions of the Department of Justice (DOJ), which directed the City Prosecutor of Quezon City to withdraw the information for *estafa* through falsification of public document against respondents.

On November 26, 2002, petitioner Fernando Go filed two complaint-affidavits^[3] for *estafa* and falsification against respondents Pilar and Henry Lim, petitioner's sister and nephew, respectively. Petitioner alleged that his mother, Laureana Lu, possessed a parcel of land in Cotabato City for which she applied for a Miscellaneous Sales Patent. Since Laureana and Fernando resided elsewhere, Laureana allowed Pilar to occupy the property.^[4]

On March 18, 1976, Original Certificate of Title (OCT) No. P-136 was issued to Laureana. Fernando claimed that Pilar received the title but did not turn it over to Laureana. Instead, Pilar made Laureana sign a Waiver of Rights on July 28, 1976 wherein Laureana waived her right to the application in favor of Henry. Then on August 6, 1976, Pilar made Fernando and his siblings execute a Waiver^[5] where they waived their rights to Laureana's application and interposed no objection to her waiver in favor of Henry. Respondents also made Laureana sign a Last Will and Testament on September 14, 1976 where she bequeathed the property to Henry. Then on October 4, 1976, respondents made Laureana execute a Deed of Absolute Sale over the property in favor of Henry.

Fernando argued that the four documents were executed through deceit and manipulations. Respondents had deceived his siblings and him that Laureana's application could not be approved and the only way the property could be titled was to transfer it to Henry. Fernando also claimed that he learned of the issuance of OCT No. P-136 only on March 2, 1998 after the City Treasurer of Cotabato City informed him of the tax arrears. On January 15, 2001, title to the property was transferred to Henry.

In their defense, Pilar claimed that she occupied the property with the consent of Laureana and Fernando since 1957. She added that Fernando was fully aware of Laureana's application and even witnessed the execution of the Waiver of Rights which was notarized by Atty. Edward P. David. Clearly, it was impossible that

Fernando learned of the issuance of OCT No. P-136 only in 1998. Respondents also presented Atty. David's affidavit where he affirmed the due execution of the Waiver of Rights, Waiver, and Last Will and Testament, as well as the sound mental condition of Laureana then. Respondents further asserted that Laureana voluntarily executed the Last Will and Testament and the Deed of Sale since she wanted Pilar and her family to have the property.^[6]

After preliminary investigation, the City Prosecutor of Quezon City charged respondents with *estafa* through falsification of public document under Article 171, par. 3 of the Revised Penal Code, as follows:

That on or about March 2, 1998, in Quezon City Philippines, the said accused, both private individuals, conspiring and confederating with one another, did then and there willfully, unlawfully and feloniously defraud Fernando Go in the manner following the said accused with intent to cause damage forged and falsified a Waiver dated August 6, 1976 involving a parcel of land located in Barrio Monday, Cotabato City more particularly described in OCT P-136 and registered in the name of Laureana Lu mother of said Fernando Go and accused Pilar Lim, said Waiver is notarized and entered in the Notarial Register of Edward P. David, a Notary Public of Quezon City, as Doc. No. 9361, Page 92, Book No. V, Series of 1976 and therefore a public document by then and there attributing to said Fernando Go that he consents to the transfer of said title in favor of accused Henry Lim when in truth and in fact as Pilar and Henry Lim knew such was not the case in that the document was caused to be prepared only to facilitate the processing of miscellaneous sales application numbered V-57816 in the Bureau of Lands; that once the said document was prepared Pilar and Henry Lim then falsely manifested and represented to the Register of Deeds of Cotabato City that OCT P-136 be cancelled and a new TCT No. T-41312 was issued in the name of accused Henry Lim who thereafter caused the property to be subdivided and sold to the damage and prejudice of the said Fernando Go.^[7]

The case was docketed as Criminal Case No. 03-118643 and raffled to the Regional Trial Court of Quezon City, Branch 223. Respondents filed an Urgent Motion for Reinvestigation with Motion to Suspend Proceedings and to Hold the Issuance of Warrants of Arrests in Abeyance. The trial court denied the motion and found probable cause to issue warrants for respondents' arrest.

Respondents then moved for reconsideration of the City Prosecutor's resolution. As the motion remained unresolved, they appealed to the DOJ contending that the crime had prescribed, and that the finding of probable cause was contrary to law and the evidence on record.

On October 9, 2003, the DOJ ordered the City Prosecutor to move for the withdrawal of the information before the trial court.^[8] It ruled that: *first*, the documents presented by respondents bore the presumption of genuineness and due execution since they were notarized. The notary public^[9] affirmed their truthfulness and due execution while the National Bureau of Investigation (NBI)^[10] confirmed that no alteration or intercalation was made thereon.

Second, the crime had prescribed. Petitioner's purported discovery of the deceit only in 1998 was unlikely since he participated in the execution of the documents. The DOJ also noted that the crime charged was punishable by reclusion temporal so that at the most, the prescriptive period is twenty years. The waivers and the title were executed in 1976; thus, the filing of the complaint-affidavits in 2002 was beyond the prescriptive period. Further, since Laureana passed away only in 1983, there was the possibility that she informed her children about the transfer of title while she was still alive.

The trial court allowed the withdrawal of the information on December 2, 2003.^[11] Petitioner filed a petition for certiorari with the Court of Appeals, which was dismissed in this wise:

As filed, the present petition for certiorari is infirmed with deficiencies, to wit:

1. Copies of the assailed Resolutions of the Department of Justice dated October 9, 2003 and November 21, 2003 and the Order of the Regional Trial Court dated December 2, 2003 attached to the petition are mere plain photocopies (Sec. 3, Rule 46, Rules of Court).
2. The verification and certification of non-forum shopping attached to the petition does not fully comply with Section 4 as amended by A.M. No. 00-2-10-SC, Rule 7, *ibid.*, because it does not give the assurance that the allegations of the petition are true and correct based on authentic records.
3. No copy of the petition has been served on the Office of the Solicitor General which represents the Secretary of Justice on appeal.

WHEREFORE, the petition is hereby **DISMISSED**.

SO ORDERED.^[12]

Hence, this petition where petitioner alleges that the Court of Appeals erred when it:

I

... ILLEGALLY AMENDED, WITHOUT AUTHORITY, THE RULES OF COURT BY CHANGING THE WORD "OR" TO "AND" IN A.M. NO. 00-02-10-SC, SUBSTANTIALLY DEFEATING THE RIGHT OF HEREIN PETITIONER;

II

... ILLEGALLY AMENDED, WITHOUT AUTHORITY, SEC. 3, RULE 46 IN RELATION TO RULE 65, BY INSERTING ANOTHER REQUIREMENT NOT FOUND THEREIN;

III

... DISREGARDED JURISPRUDENCE WHEN IT DISMISSED PETITIONER'S