

THIRD DIVISION

[G.R. NO. 156705, September 30, 2005]

SOCORRO TAOPO BANGA, PETITIONER, VS. SPOUSES JOSE AND EMELINE BELLO, RESPONDENTS.

DECISION

CARPIO MORALES, J.:

Spouses Socorro Taopo Banga and Nelson Banga (Nelson) acquired, among other things, a real property located at 459 Boni Avenue, Mandaluyong City (the property) covered by Transfer Certificate of Title (TCT) No. 62530.^[1]

On June 19, 1987, Nelson, as mortgagor, with the consent of his wife-herein petitioner Socorro Taopo Banga, executed a Deed of Real Estate Mortgage^[2] in favor of respondent Jose V. Bello V (Jose) over the property as security for a loan in the amount of P200,000.00 extended by Jose to Nelson.

On July 28, 1987, Nelson and Jose executed an "Amendment to the Real Estate Mortgage"^[3] increasing the loan to P300,000.00.

Still later or on September 1, 1989, Nelson and Jose executed a "Second Amendment of Real Estate [Mortgage]"^[4] which further increased the loan to P500,000.00.

It appears that a Deed of Absolute Sale^[5] was executed by Nelson purportedly on December 11, 1989 and with the marital consent of petitioner, covering the property in favor of Jose for a consideration of P300,000.00. TCT No. 62530 was later cancelled and in its stead TCT No. 3294^[6] was issued in the name of Jose.

The real estate mortgage, its two amendments, as well as the Deed of Absolute Sale were notarized by one Teodorico L. Baltazar (Baltazar) in the presence of two witnesses.

Petitioner later filed a complaint^[7] before the Regional Trial Court (RTC) of Pasig, for declaration of nullity with damages against her husband Nelson from whom she claims to have been separated since 1989 and herein respondents spouses Jose and Emeline Bello, alleging that Nelson and respondent Jose, "in criminal conspiracy with notary public [Baltazar] and two (2) instrumental witnesses, criminally made it appear that . . . [petitioner] consented to the absolute sale . . ."; that the signature in the deed of sale appearing above the name "Socorro T. Banga" is not hers; and that she never appeared before Baltazar on December 11, 1989 or any date thereafter to acknowledge having participated in the execution of the deed of absolute sale.

And petitioner questioned as "unconscionably low" the consideration of P300,000.00 for the sale of the property which is situated in a commercial district.

Petitioner thus prayed that judgment be rendered:

1. declaring void the "Deed of Absolute Sale" of December 11, 1989;
2. declaring void and/or canceling Transfer Certificate of Title No. 3294 (in the names of [respondents]-spouses Bello) from the Registry of Deeds of Mandaluyong, Metro Manila;
3. ordering . . . Nelson F. Banga, Jose V. Bello V and Emeline B. Bello solidarily liable to pay in favor of herein [petitioner] the following sums of money:
 - a. P500,000.00 as moral damages;
 - b. Exemplary damages, to be fixed by this Honorable Court, but no less than P50,000.00;
 - c. P200,000.00, as and for attorney's fees;
 - d. P50,000.00, as litigation expenses;
 - e. Costs of suit.

x x x

(Underscoring supplied)

In their Answer with Counterclaim,^[8] herein respondents spouses Bello alleged that petitioner has no cause of action against them; that the deed of sale was personally and voluntarily executed by petitioner and her husband in the presence of the witnesses before the notary public and her signature appearing thereon is genuine and authentic; and that the consideration for the sale is the fair and reasonable value of the property as it is "not only based on the amount provided in the deed of sale but [on] considerations in (sic) real estate mortgage and amendments [thereto]"

In Nelson's Answer with Counterclaim and Crossclaim^[9] against Jose, he claimed that, among other things, the deed of sale was actually a third amendment to the mortgage which he and petitioner executed and was actually an equitable mortgage for which no consideration was involved; he had already paid in full their principal indebtedness to respondents in the amount of P652,000.00, plus the amount of P187,500.00, in the form of guarantee checks; and the cancellation of TCT No. 62530 was done without his consent and against his actual and real agreement with respondents.

In its Pre-Trial Order of November 28, 1990,^[10] Branch 71 of the Pasig RTC stated the issues of the case as follows:

- 1) Whether the deed of sale is binding, valid, effective and genuine;
- 2) Whether the said deed of sale expresses the true and real agreement of the parties;
- 3) Whether the alleged consideration of P300,000.00 as appearing in the

deed of absolute sale covering a prime lot in Mandaluyong of 126 square meters is adequate or not; and

4) Whether or not the signature of Socorro Banga in the deed of sale is genuine or not.

In its Order^[11] of January 12, 1994, however, the trial court, noting that petitioner "has not come forward with evidence to indicate that [her signature on the deed of absolute sale] is a forgery . . . despite great lapse of time," considered her to have waived the presentation of evidence of falsification of her signature. It thus defined the remaining principal issue to be whether the deed of absolute sale expresses the true intention of the parties.

Upon the said "principal issue" then, the trial court, holding in the negative, found that the true intent of the parties was to merely guarantee the loan extended to Nelson.

The trial court arrived at its decision in light of the following observations:

A cursory glance at the duplicate original of the Deed of Absolute Sale (Exhibits 1, 1-A-Bello) will readily show that on page 1 thereof, the date "11th" (day of) "Dec. 1989"; and the Residence Certificates of defendant Nelson F. Banga, plaintiff and defendant Jose V. Bello for the year 1989, such as: "RCNo. 63315794, Mand, MM, 1/17/89"; "RC NO. B63315794, Mand, MM 1/17/89"; and "RC 09499689J, Mand, MM 3/6/89" on page 2 thereof, respectively, including the date "11th" (day of) December, 1989" had been typed on two different dates. Defendant Bello admitted this fact. Although defendant Bello contends that the Deed of Absolute Sale was executed by the parties and notarized by Notary Public Teodorico L. Baltazar on December 11, 1989, the Court believes that said Deed of Absolute sale was prepared in 1987 and was signed by defendant Banga on June 19, 1987 when he executed the Deed of Real Estate Mortgage for P200,000.00 on June 19, 1987 also acknowledged before the same Notary Public Teodorico L. Baltazar.

If the Deed of Absolute Sale were actually prepared and signed on December 11, 1989, as defendant Bello insists, there is no need to type the date "11th" (day of) "Dec. 1989" on page 1 and the date "11th" (day of) "December, 1989" and the 1989 residence certificates on page 2 on different dates. And, there is no point also in typing the residence certificates of defendant Banga, plaintiff and defendant Bello which were issued in 1987 including their tax account numbers or TAN. Besides, what firmly convinces the Court to believe that the Deed of Absolute Sale was prepared and executed on June 19, 1987 is the fact that in the acknowledgment portion of the document found on page 2, the number "7" in "Series of 1987", was superimposed with the number "9". And, the name of the Notary Public "TEODORICO L. BALTAZAR", the date of his notarial commission, "ptr" and "TAN" were all insertions which were typed only on December 11, 1989.^[12]

On respondents' claim that the consideration for the sale of the property was P300,000.00, the trial court found it "preposterous" in light of the amount of

P500,000.00 for which the property was mortgaged.

The trial court thus disposed:

WHEREFORE, the judgment is hereby rendered in favor of [petitioner] and against [Nelson and respondents]:

1. Declaring the Deed of Absolute Sale dated December 11, 1989 as NULL and VOID ab initio.
2. Canceling Transfer of Certificate of Title No. 3294, Registry of Deeds of Mandaluyong, Metro Manila (now City of Mandaluyong).
3. Ordering [respondent] Jose V. Bello V to pay [petitioner] the amount of P50,000.00 as exemplary damages.
4. Ordering [respondent] Jose V. Bello V and Nelson F. Banga to pay, jointly and severally, [petitioner] the amount of P50,000.00 as and by way of attorney's fees.
5. Ordering [respondent] Jose V. Bello V and Nelson F. Banga to pay, jointly and severally, the costs of suit.

Counterclaims filed by [respondent] Jose V. Bello V and Nelson F. Banga against [petitioner] are DISMISSED. Crossclaim filed by Banga against [respondent] Bello is DISMISSED. (Underscoring supplied)

Respondents thereupon appealed to the Court of Appeals faulting the trial court in:

I

. . . DECLARING VOID AB INITIO THE DEED OF SALE DATED DECEMBER 11, 1989.

II

. . . NOT ORDERING [PETITIONER] AND HER HUSBAND, NELSON BANGA, TO PAY THEIR MORTGAGE INDEBTEDNESS TO [RESPONDENTS].

III

. . . HOLDING THAT [RESPONDENTS] ACTED WITH GROSS NEGLIGENCE AMOUNTING TO BAD FAITH.

IV

. . . ORDERING [RESPONDENTS] TO PAY EXEMPLARY DAMAGES TO [PETITIONER]^[13] (Underscoring supplied)

Nelson did not appeal the trial court's decision.

By Decision^[14] dated December 13, 2002, the appellate court granted the appeal of respondents, it holding that:

The document denominated as Deed of Absolute Sale dated December 11, 1989 executed between [respondent] Bello and Banga, with the marital consent of the latter's wife Socorro, indicates in certain terms, the object, the cause and the consideration of the contract of sale. The instrument was duly notarized and signed in the presence of two (2) witnesses. As the language of the written contract of sale between the parties is clear and unambiguous, it must be taken to mean that which, on its face, it purports to mean. And unless some good reason can be assigned to show that the words used should be understood in a different sense, the contract must stand.

Moreover, the deed of sale involved in the instant controversy is a notarized document. Being a public instrument, it has in its favor the presumption of regularity, and to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant. Other than the bare allegations of [petitioner] that the deed of sale is fictitious, no convincing proof was adduced to overcome the presumption of validity as to its authenticity and due execution. As complainant, plaintiff had the burden of proving that contrary to the recital in the deed of sale, she never appeared before the notary public and acknowledged the deed to be her voluntary act. It is worth mentioning that the deed of sale and the real estate mortgage previously executed between the parties was notarized by the same notary public, Atty. Teodorico Baltazar, further supporting the validity of the deed of sale.

Likewise, the allegation of forgery of the signature of [petitioner] was not sufficiently proven during trial. No expert witness was even presented to make an examination of petitioner's signatures in the deed of sale to ascertain whether or not the same are fictitious when compared with her specimen signatures. The prevailing rule in our jurisdiction is that whoever alleges forgery has the burden of proving the same, for forgery cannot be presumed but should be proved by clear and convincing evidence.

Our courts have consistently denied relief to a party who seeks to avoid the performance of an obligation voluntarily assumed because they turned out to be disastrous or unwise contracts, even if there was a mistake of law or fact. The claim of the [petitioner] that the consideration for the sale is grossly inadequate and therefore passes no title to [respondent] does not suffice to render the contract void . While [petitioner] testified during the April 4, 1991 hearing that the prevailing market value of the property is ten to fifteen thousand per square meter, no evidence was presented, such as that of an independent real estate appraiser, to substantiate her claim. Consonant with the rule that gross inadequacy of price would not nullify the sale, the deed of sale subject of the instant controversy must be upheld.

To support [respondent] Bello's right to the property arising from the contract of sale between the parties, TCT No. 3294 was issued by the