

## FIRST DIVISION

[ G.R. No. 158015, August 11, 2004 ]

**LAURA AND ERIBERTO BAUTISTA, PETITIONER, VS. HON. COURT OF APPEALS AND FERNANDO MORELOS, RESPONDENTS.**

### ***DECISION***

**YNARES-SATIAGO, J.:**

On appeal by Petition for Review on Certiorari under Rule 45 of the 1997 Rules on Civil Procedure is a Decision of the Court of Appeals in CA-G.R. CV No. 45549,<sup>[1]</sup> reversing and setting aside the judgment of the Regional Trial Court of Manila, Branch VII in Civil Case No. 83-17900<sup>[2]</sup> and entering a new one declaring the April 5, 1982 Deed of Absolute Sale between the late Cesar Morelos and Laura Bautista null and void.

The dispute involves a parcel of land situated along Maceda (formerly Washington) Street, Sampaloc, Manila, containing an area of approximately 105 square meters. This parcel of land was previously owned and registered in the name of the late Cesar Morelos under Transfer Certificate of Title No. 27604. Cesar is the uncle of petitioner Laura Morelos Bautista, being the brother of her mother, Rosario Morelos.<sup>[3]</sup>

Cesar, who was married to Rosario Duran, did not have any children. Rosario died in 1972. Cesar died of cardiac arrest on April 15, 1982. During his lifetime, Cesar sold and conveyed the above-mentioned parcel of land in favor of petitioner Laura Morelos Bautista, as evidenced by a "Deed of Absolute Sale" notarized by Luis M. de Guzman. Accordingly, Transfer Certificate of Title No. 254843 was issued in the name of petitioner Laura Bautista.<sup>[4]</sup>

Respondent Fernando Morelos, claiming to be the illegitimate child of Cesar Morelos with Angelina Lim-Gue, instituted a complaint for the declaration of nullity of sale and title with damages, docketed as Civil Case No. 83-17900, before the Regional Trial Court of Manila, Branch VII. At the trial, he presented testimonies of expert witnesses who claimed that the signature of Cesar Morelos on the Deed of Absolute Sale and the fingerprint appearing on his Residence Certificate were not his.<sup>[5]</sup>

Petitioners countered that the Deed of Absolute Sale was valid. The witness to the Deed, Carmelita Marcelino, testified that she saw Cesar Morelos and petitioner Laura Bautista sign the same.<sup>[6]</sup>

After hearing, the court *a quo* rendered judgment declaring the Deed of Sale dated April 5, 1982 executed between the late Cesar Morelos in favor of Laura Bautista valid, and dismissed for insufficient evidence the claims and counterclaims for damages of the parties.<sup>[7]</sup>

Respondent appealed to the Court of Appeals, which reversed and set aside the judgment of the trial court. The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the appealed decision is hereby REVERSED AND SET ASIDE. In lieu thereof, another one is entered declaring AS NULL AND VOID the Deed of Absolute Sale, dated April 5, 1982, executed between the late Cesar G. Morelos and defendant-appellee Laura R. Bautista. The Register of Deeds of Manila is DIRECTED to cause the cancellation of Transfer Certificate of Title No. 154043 in the name of defendant-appellee LAURA R. BAUTISTA and to issue another one in the name of the ESTATE OF CESAR G. MORELOS. Defendants-appellees are also directed to surrender possession of the disputed property to plaintiff-appellant.

SO ORDERED.<sup>[8]</sup>

Petitioners' motion for reconsideration was denied.

Hence, this petition for review on certiorari raising the following issues:

I.

WHETHER OR NOT THE TESTIMONIES OF EXPERT WITNESSES ARE CONCLUSIVE TO BE A STRONG BASIS TO NULLIFY A DULY EXECUTED AND NOTARIZED DEED OF ABSOLUTE SALE.

II.

WHETHER OR NOT THE DEED OF ABSOLUTE SALE (ANNEX "3") IS VALID.

III.

WHETHER OR NOT PRIVATE RESPONDENT HAS THE LEGAL PERSONALITY TO SEEK THE ANNULMENT OF THE DEED OF ABSOLUTE SALE.<sup>[9]</sup>

Petitioner asserts the validity of the Deed of Absolute Sale and invoke the testimony of Carmelita Marcelino, the instrumental witness to the signing of the document, who confirmed that it was the decedent Cesar Morelos who affixed his signature to the document.

On the other hand, respondent contends that the decedent's signature on the Deed was forged. He presented the testimony of Francisco Cruz, Jr., Chief Examiner of the PC-INP Crime Laboratory Service, that the signature of decedent on the questioned instrument, when compared to other documents bearing the authentic signature of Cesar Morelos, did not match and appeared to have been authored by a different person. Cruz, Jr. declared that the latest document bearing the genuine signature of the decedent is dated March 31, 1982, while the alleged forged signature was made on April 5, 1982, or a mere lapse of five days. According to him, it is not possible to have significant variation between the two signatures, considering the proximity of time when the signatures were affixed.<sup>[10]</sup>

Another witness, Major Braulio Monge, Chief of the Fingerprint Division of the PC-INP, testified that the thumbmark of Cesar Morelos appearing on the residence certificate indicated in the Deed of Absolute Sale, when compared to those affixed on previous residence certificates issued to the decedent, did not match and appears to be the thumbmark of another person.

Under Rule 132, Section 22 of the Rules of Court, the genuineness of handwriting may be proved in the following manner: (1) by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted or been charged; (2) by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party, against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

It is well-settled that a duly notarized contract enjoys the *prima facie* presumption of authenticity and due execution as well as the full faith and credence attached to a public instrument.<sup>[11]</sup> To overturn this legal presumption, evidence must be clear, convincing and more than merely preponderant to establish that there was forgery that gave rise to a spurious contract.

As a general rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence. The burden of proof lies on the party alleging forgery. In *Heirs of Severa P. Gregorio v. Court of Appeals*,<sup>[12]</sup> we held that due to the technicality of the procedure involved in the examination of the forged documents, the expertise of questioned document examiners is usually helpful; however, resort to questioned document examiners is not mandatory and while probably useful, they are not indispensable in examining or comparing handwriting.

Hence, a finding of forgery does not depend entirely on the testimony of handwriting experts. Although such testimony may be useful, the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny; he cannot rely on the mere testimony of the handwriting expert.<sup>[13]</sup>

The authenticity of signatures is not a highly technical issue in the same sense that questions concerning, *e.g.*, quantum physics or topology or molecular biology, would constitute matters of a highly technical nature. The opinion of a handwriting expert on the genuineness of a questioned signature is certainly much less compelling upon a judge than an opinion rendered by a specialist on a highly technical issue.<sup>[14]</sup>

In the case at bar, the presumption of validity and regularity prevails over allegations of forgery and fraud. As against direct evidence consisting of the testimony of a witness who was physically present at the signing of the contract and who had personal knowledge thereof, the testimony of an expert witness constitutes indirect or circumstantial evidence at best. Carmelita Marcelino, the witness to the Deed of Absolute Sale, confirmed the genuineness, authenticity and due execution thereof.<sup>[15]</sup> Having been physically present to see the decedent Cesar Morelos and petitioner Laura Bautista affix their signatures on the document, the weight of evidence preponderates in favor of petitioners.

Witness Francisco Cruz, Jr. failed to establish the fact that the signature on the Deed of Absolute Sale was not that of Cesar Morelos. He merely concluded that the