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SECOND DIVISION

[G.R. No. 129416, November 25, 2004]

ZENAIDA B. TIGNO, IMELDA B. TIGNO AND ARMI B. TIGNO, PETITIONERS, VS. SPOUSES ESTAFINO AQUINO AND FLORENTINA AQUINO AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

TINGA, J,:

The controversy in the present petition hinges on the admissibility of a single document, a deed of sale involving interest over real property, notarized by a person of questionable capacity. The assailed ruling of the Court of Appeals, which overturned the findings of fact of the Regional Trial Court, relied primarily on the presumption of regularity attaching to notarized documents with respect to its due execution. We conclude instead that the document has not been duly notarized and accordingly reverse the Court of Appeals.

The facts are as follow:

On 11 January 1980, respondent spouses Estafino and Florentina Aquino (the Aquinos) filed a complaint for enforcement of contract and damages against Isidro Bustria (Bustria).[1] The complaint sought to enforce an alleged sale by Bustria to the Aquinos of a one hundred twenty thousand (120,000) square meter fishpond located in Dasci, Pangasinan. The property was not registered either under the Land Registration Act or under the Spanish Mortgage Law, though registrable under Act No. 3344.[2] The conveyance was covered by a Deed of Sale dated 2 September 1978.

Eventually, Bustria and the Aquinos entered into a compromise agreement, whereby Bustria agreed to recognize the validity of the sale, and the Aquinos in turn agreed to grant to Bustria the right to repurchase the same property after the lapse of seven (7) years.

Upon submission, the Court of First Instance of Pangasinan, Branch VII, approved and incorporated the compromise agreement in a *Decision* which it rendered on 7 September 1981.

Bustria died in October of 1986.[3] On 1 December 1989, petitioner Zenaida B. Tigno (Tigno), in substitution of her deceased father Isidro Bustria,[4] attempted to repurchase the property by filing a *Motion for Consignation*. She deposited the amount of Two Hundred Thirty Thousand Pesos (P200,000.00) with the trial court, now Regional Trial Court (RTC), Branch 55 at Alaminos, Pangasinan. On 18 December 1989, the Aquinos filed an opposition, arguing that the right to repurchase was not yet demandable and that Tigno had failed to make a tender of

payment. In an *Order* dated 10 October 1999, the RTC denied the *Motion for Consignation*.[5]

In June of 1991, Tigno filed a *Motion for a Writ of Execution*, which was likewise opposed by the Aquinos, and denied by the RTC. Then, on 6 September 1991, Tigno filed an action for *Revival of Judgment*,[6] seeking the revival of the decision in Civil Case No. A-1257, so that it could be executed accordingly.[7] The Aquinos filed an answer, wherein they alleged that Bustria had sold his right to repurchase the property to them in a deed of sale dated 17 October 1985.[8]

Among the witnesses presented by the Aquinos during trial were Jesus De Francia (De Francia), the instrumental witness to the deed of sale, and former Judge Franklin Cariño (Judge Cariño), who notarized the same. These two witnesses testified as to the occasion of the execution and signing of the deed of sale by Bustria. Thereafter, in their *Formal Offer of Documentary Evidence*, the Aquinos offered for admission as their Exhibit No. "8," the deed of sale (*Deed of Sale*)[9] purportedly executed by Bustria. The admission of the *Deed of Sale* was objected to by Tigno on the ground that it was a false and fraudulent document which had not been acknowledged by Bustria as his own; and that its existence was suspicious, considering that it had been previously unknown, and not even presented by the Aquinos when they opposed Tigno's previous *Motion for Consignation*.[10]

In an *Order* dated 6 April 1994, the RTC refused to admit the *Deed of Sale* in evidence.[11] A *Motion for Reconsideration* praying for the admission of said exhibit was denied in an *Order* dated 27 April 1994.[12]

Then, on 18 August 1994, a *Decision* was rendered by the RTC in favor of Tigno. The RTC therein expressed doubts as to the authenticity of the *Deed of Sale*, characterizing the testimonies of De Francia and Cariño as conflicting.[13] The RTC likewise observed that nowhere in the alleged deed of sale was there any statement that it was acknowledged by Bustria;[14] that it was suspicious that Bustria was not assisted or represented by his counsel in connection with the preparation and execution of the deed of sale[15] or that Aquino had raised the matter of the deed of sale in his previous *Opposition to the Motion for Consignation*.[16] The RTC then stressed that the previous *Motion for Execution* lodged by Tigno had to be denied since more than five (5) years had elapsed from the date the judgment in Civil Case No. A-1257 had become final and executory; but the judgment could be revived by action such as the instant complaint. Accordingly, the RTC ordered the revival of the judgment dated 7 September 1981 in Civil Case No. A-1257.[17]

The Aquinos interposed an appeal to the Court of Appeals.[18] In the meantime, the RTC allowed the execution pending appeal of its *Decision*.[19] On 23 December 1996, the Court of Appeals Tenth Division promulgated a *Decision*[20] reversing and setting aside the RTC *Decision*. The appellate court ratiocinated that there were no material or substantial inconsistencies between the testimonies of Cariño and De Francia that would taint the document with doubtful authenticity; that the absence of the acknowledgment and substitution instead of a jurat did not render the instrument invalid; and that the non-assistance or representation of Bustria by

counsel did not render the document null and ineffective.[21] It was noted that a notarized document carried in its favor the presumption of regularity with respect to its due execution, and that there must be clear, convincing and more than merely preponderant evidence to contradict the same. Accordingly, the Court of Appeals held that the RTC erred in refusing to admit the *Deed of Sale*, and that the document extinguished the right of Bustria's heirs to repurchase the property.

After the Court of Appeals denied Tigno's *Motion for Reconsideration*,[22] the present petition was filed before this Court. Tigno imputes grave abuse of discretion and misappreciation of facts to the Court of Appeals when it admitted the *Deed of Sale*. He also argues that the appellate court should have declared the *Deed of Sale* as a false, fraudulent and unreliable document not supported by any consideration at all.

The general thrusts of the arguments posed by Tigno are factually based. As such, they could normally lead to the dismissal of this *Petition for Review*. However, while this Court is not ordinarily a trier of facts,[23] factual review may be warranted in instances when the findings of the trial court and the intermediate appellate court are contrary to each other.[24] Moreover, petitioner raises a substantial argument regarding the capacity of the notary public, Judge Cariño, to notarize the document. The Court of Appeals was unfortunately silent on that matter, but this Court will take it up with definitiveness.

The notarial certification of the *Deed of Sale* reads as follows:

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
PROVINCE OF PANGASINAN) S.S.
MUNICIPALITY OF ALAMINOS)

SUBSCRIBED AND SWORN TO before me this 17th day of October 1985 at Alaminos, Pangasinan both parties known to me to be the same parties who executed the foregoing instrument.

FRANKLIN
CARIÑO
Ex-Officio
Notary Public
Judge,
M.T.C.
Alaminos,
Pangasinan

There are palpable errors in this certification. Most glaringly, the document is certified by way of a *jurat* instead of an acknowledgment. A *jurat* is a distinct creature from an acknowledgment. An acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring it to be his act or deed; while a *jurat* is that part of an affidavit where the officer certifies that the same was sworn before him.[25] Under Section 127 of the Land Registration Act,[26] which has been replicated in Section 112 of Presidential Decree No. 1529,[27] the *Deed of Sale* should have been acknowledged before a notary public.[28]

But there is an even more substantial defect in the notarization, one which is determinative of this petition. This pertains to the authority of Judge Franklin Cariño to notarize the *Deed of Sale*.

It is undisputed that Franklin Cariño at the time of the notarization of the *Deed of Sale*, was a sitting judge of the Metropolitan Trial Court of Alaminos.[29] Petitioners point out, citing *Tabao v. Asis*,[30] that municipal judges may not undertake the preparation and acknowledgment of private documents, contracts, and other acts of conveyance which bear no relation to the performance of their functions as judges.[31] In response, respondents claim that the prohibition imposed on municipal court judges from notarizing documents took effect only in December of 1989, or four years after the *Deed of Sale* was notarized by Cariño.[32]

Respondent's contention is erroneous. Municipal Trial Court (MTC) and Municipal Circuit Trial Court (MCTC) judges are empowered to perform the functions of notaries public *ex officio* under Section 76 of Republic Act No. 296, as amended (otherwise known as the Judiciary Act of 1948) and Section 242 of the Revised Administrative Code.[33] However, as far back as 1980 in *Borre v. Moya*,[34] the Court explicitly declared that municipal court judges such as Cariño may notarize only documents connected with the exercise of their official duties.[35] The *Deed of Sale* was not connected with any official duties of Judge Cariño, and there was no reason for him to notarize it. Our observations as to the errant judge in *Borre* are pertinent in this case, considering that Judge Cariño identified himself in the *Deed of Sale* as "*Ex-Officio* Notary Public, Judge, MTC:"

> [A notary *ex officio*] should not compete with private law practitioners or regular notaries in transacting legal conveyancing business.
>
> In the instant case, it was not proper that a city judge should notarize documents involving private transactions and sign the document in this wise: "GUMERSINDO ARCILLA, Notary Public Ex-Officio, City Judge" (p. 16, Rollo, Annex D of Complaint). **In doing so, he obliterated the distinction between a regular notary and a notary *ex officio*.**[36]

There are possible grounds for leniency in connection with this matter, as Supreme Court Circular No. I-90 permits notaries public *ex officio* to perform any act within the competency of a regular notary public provided that certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit. Indeed, it is only when there are no lawyers or notaries public that the exception applies.[37] The facts of this case do not warrant a relaxed attitude towards Judge Cariño's improper notarial activity. There was no such certification in the *Deed of Sale*. Even if one was produced, we would be hard put to accept the veracity of its contents, considering that Alaminos, Pangasinan, now a city,[38] was even then not an isolated backwater town and had its fair share of practicing lawyers.

There may be sufficient ground to call to task Judge Cariño, who ceased being a judge in 1986, for his improper notarial activity. Perhaps though, formal sanction may no longer be appropriate considering Judge Cariño's advanced age, assuming

he is still alive.[39] However, this *Decision* should again serve as an affirmation of the rule prohibiting municipal judges from notarizing documents not connected with the exercise of their official duties, subject to the exceptions laid down in Circular No. 1-90.

Most crucially for this case, we should deem the *Deed of Sale* as not having been notarized at all. The validity of a notarial certification necessarily derives from the authority of the notarial officer. If the notary public does not have the capacity to notarize a document, but does so anyway, then the document should be treated as unnotarized. The rule may strike as rather harsh, and perhaps may prove to be prejudicial to parties in good faith relying on the proferred authority of the notary public or the person pretending to be one. Still, to admit otherwise would render merely officious the elaborate process devised by this Court in order that a lawyer may receive a notarial commission. Without such a rule, the notarization of a document by a duly appointed notary public will have the same legal effect as one accomplished by a non-lawyer engaged in pretense.

The notarization of a document carries considerable legal effect. Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity.[40] Thus, notarization is not an empty routine; to the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the public and the courts and administrative offices generally.[41]

On the other hand, what then is the effect on the *Deed of Sale* if it was not notarized? True enough, from a civil law perspective, the absence of notarization of the *Deed of Sale* would not necessarily invalidate the transaction evidenced therein. Article 1358 of the Civil Code requires that the form of a contract that transmits or extinguishes real rights over immovable property should be in a public document, yet it is also an accepted rule that the failure to observe the proper form does not render the transaction invalid. Thus, it has been uniformly held that the form required in Article 1358 is not essential to the validity or enforceability of the transaction, but required merely for convenience.[42] We have even affirmed that a sale of real property though not consigned in a public instrument or formal writing, is nevertheless valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale or real estate produces legal effects between the parties.[43]

Still, the Court has to reckon with the implications of the lack of valid notarization of the *Deed of Sale* from the perspective of the law on evidence. After all, the case rests on the admissibility of the *Deed of Sale*.

Clearly, the presumption of regularity relied upon by the Court of Appeals no longer holds true since the *Deed of Sale* is not a notarized document. Its proper probative value is governed by the Rules of Court. Section 19, Rule 132 states:

> Section 19. *Classes of documents*.—For the purpose of their presentation in evidence, documents are either public or private.