

## FIRST DIVISION

[ G. R. No. 123935, December 14, 2001 ]

**LEONCIO AND ENRIQUETA, BOTH SURNAME BARRERA,  
PETITIONERS, VS. COURT OF APPEALS AND ROSENDO C.  
PALABASAN, RESPONDENTS.**

### DECISION

**PARDO, J.:**

#### The Case

In this petition for *certiorari*,<sup>[1]</sup> petitioners seek to annul the decision of the Court of Appeals<sup>[2]</sup> affirming the decision of the Regional Trial Court,<sup>[3]</sup> Makati, Branch 66, as well as its resolution<sup>[4]</sup> denying reconsideration thereof.

#### The Facts

Azalia Salome (Salome) owned a house and lot located at No. 2641 Bonifacio St., Bangkal, Makati City, covered by Transfer Certificate of Title No. 61772. Salome mortgaged the property to Country Bankers Insurance and Surety Company to secure a P10,000.00 loan.

On July 1, 1966, Salome sold the property to Rosendo C. Palabasan.<sup>[5]</sup> Transfer Certificate of Title No. 61772 was cancelled and a new one, Transfer Certificate of Title No. 167387,<sup>[6]</sup> was issued in the name of Rosendo C. Palabasan and Bella S. Palabasan.

On April 19, 1989, Leoncio and Enriqueta Barrera (spouses Barrera) filed with the Regional Trial Court, Makati City, Branch 138, a complaint<sup>[7]</sup> against Palabasan for reconveyance with damages. They alleged that they had been in possession of the property since 1962 by virtue of a Deed of Sale with Assumption of Mortgage which was not notarized; that Salome executed a notarized Deed of Sale with Assumption of Mortgage in their favor on March 31, 1966; that, pursuant to this notarized deed, they settled Salome's obligations with the Country Bankers Insurance and Surety Company; that they tried to redeem the property but were not able to do so because Palabasan had done so and the title to the property was released to Palabasan; that in 1970, they signed a blank document which was supposed to become Palabasan's authority to sell the land for them; that in 1975, they were surprised to learn that the blank document which they had signed turned out to be a contract of lease wherein they were the lessees and Palabasan was the lessor of the property; and that Palabasan registered the property in his name and was able to secure Transfer Certificate of Title No. 167387.

In his answer to the complaint, Palabasan asserted that he bought the property

from Salome on June 30, 1966, after he had paid the obligation of Salome with Country Bankers Insurance and Surety Company; that he had been issued Transfer Certificate of Title No. 167387 in his name after he had the deed of sale registered; that the spouses Barrera were in possession of the property as lessees of Salome; and that a contract of lease was executed by and between the spouses Barrera and Palabasan in 1970. Consequently, he claimed that the spouses Barrera had no legal right to claim reconveyance of the property in question.

On February 23, 1993, after trial, the lower court rendered a decision<sup>[8]</sup> declaring Palabasan to have validly acquired title to the property in question. The trial court, ruling that the case is one of double sale of an immovable, applied the second paragraph of Article 1544<sup>[9]</sup> of the Civil Code.

In time, the spouses Barrera appealed<sup>[10]</sup> the decision to the Court of Appeals.<sup>[11]</sup>

On October 25, 1995, the Court of Appeals promulgated a decision affirming *in toto* the decision of the trial court. The appellate court, however, found Article 1544 of the Civil Code inapplicable to the case as there was no sale between the spouses Barrera and Salome because Salome's testimony given in a previous case<sup>[12]</sup> to this effect was stricken off the record since she died prior to cross-examination; the testimony of Cenon Mateo, the common-law husband of Salome showed that he was not aware of the transaction entered into on March 31, 1966; and counsel for spouses Barrera admitted that the sale transaction in 1962 did not materialize as the property was mortgaged to Country Bankers Insurance and Surety Company.

On December 4, 1995, the spouses Barrera filed a motion for reconsideration<sup>[13]</sup> of the decision; however, on February 21, 1996, the Court of Appeals denied the same.<sup>[14]</sup>

Hence, this petition.<sup>[15]</sup>

### The Issues

The issues raised are: whether respondent Palabasan is the owner of the property in question; and whether there was double sale of an immovable property covered by Article 1544 of the Civil Code.

### The Court's Ruling

The petition is without merit.

An action for reconveyance of a property is the sole remedy of a landowner whose property has been wrongfully or erroneously registered in another's name after one year from the date of the decree so long as the property has not passed to an innocent purchaser for value.<sup>[16]</sup> The action does not seek to reopen the registration proceedings and set aside the decree of registration but only purports to show that the person who secured the registration of the property in controversy is not the real owner thereof.<sup>[17]</sup> Fraud may be a ground for reconveyance. For an action for reconveyance based on fraud to prosper, the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of

fraud.<sup>[18]</sup>

It must be stressed that mere allegations of fraud are not enough. Intentional acts to deceive and deprive another of his right, or in some manner, injure him, must be specifically alleged and proved.<sup>[19]</sup> The burden of proof rests on petitioners; this, the petitioners failed to do.

Petitioners offered no proof that there was misrepresentation or concealment in the registration of the deed that led to the issuance of Transfer Certificate of Title No. 167387. With the presumption of regularity in the performance of official functions, the claim of petitioners that the issuance of Transfer Certificate of Title No. 167387 was tainted with fraud must fail.

As to proof of title to the property, respondent Palabasan offered the following: Transfer Certificate of Title No. 167387,<sup>[20]</sup> Tax Declaration No. 03251,<sup>[21]</sup> the Deed of Absolute Sale<sup>[22]</sup> dated June 30, 1966, executed by Salome in favor of respondent Palabasan, the Contract of Lease,<sup>[23]</sup> with respondent Palabasan as the lessor and petitioner Leoncio Barrera as the lessee, and the decision of the Court of First Instance, Pasig, Branch XIX in Civil Case No. 38608,<sup>[24]</sup> finding respondent Palabasan to be the lawful owner of the property covered by Transfer Certificate of Title No. 167387.

On the other hand, petitioner spouses Barrera only have the Deed of Absolute Sale with Assumption of Real Estate Mortgage<sup>[25]</sup> evidencing a transaction which occurred in 1962, a Deed of Sale with Assumption of Mortgage<sup>[26]</sup> dated March 31, 1966 and the testimonies of Cenon Mateo<sup>[27]</sup> and petitioner Leoncio Barrera.<sup>[28]</sup> The spouses Barrera attempted to offer in evidence the transcript of stenographic notes taken of the testimony of Salome in Civil Case No. 14009.<sup>[29]</sup> Respondent objected to the offer which opposition the trial court sustained.<sup>[30]</sup>

We find respondent Palabasan to be the owner of the property.

The decision of the then Court of First Instance, Pasig, Branch XIX in Civil Case No. 38608, promulgated on September 4, 1981<sup>[31]</sup> and reinstated on August 10, 1990,<sup>[32]</sup> finding respondent Palabasan to be the lawful owner of the property covered by Transfer Certificate of Title No. 167387 may not be invoked in this case since said decision had become stale.<sup>[33]</sup>

Article 1144(3) of the Civil Code provides that an action upon a judgment must be brought within ten years from the time the right of action accrues.

On the other hand, Section 6, Rule 39, Revised Rules of Court, states:

"A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations."

The rule is that the court could issue a writ of execution by motion within five (5) years from finality of the decision.<sup>[34]</sup> A writ of execution issued after the expiration of that period is null and void.<sup>[35]</sup> There is a need for the interested party to file an independent action for revival of judgment. The judgment may be enforced after the lapse of this period and before the same is barred by the statute of limitations, by instituting an ordinary civil action.<sup>[36]</sup> "The reason is that after the lapse of the five-year period, the judgment is reduced to a mere right of action, which judgment must be enforced, as all other ordinary actions, by the institution of a complaint in the regular form. Such action must be filed within ten (10) years from the date the judgment became final."<sup>[37]</sup>

The decision having become stale, "any action to enforce or revive it has prescribed."<sup>[38]</sup>

This notwithstanding, the greater weight of evidence lies in favor of respondent Palabasan's claim of ownership over the land. Surely, Transfer Certificate of Title No. 167387 and Tax Declaration No. 03251 which respondent Palabasan offered in evidence is more convincing than petitioners' evidence.

The certificate of title issued is an absolute and indefeasible evidence of ownership of the property in favor of the person whose name appears therein. It is binding and conclusive upon the whole world.<sup>[39]</sup>

Anent the question of whether this case is one of double sale, suffice it to say that there is no sufficient proof on the sale between Salome and petitioners. There is no double sale that would warrant the application of Article 1544 of the Civil Code.

As mentioned at the outset, the evidence petitioners adduced to prove the sale was the notarized deed executed on March 31, 1966. However, a perusal of the deed would show that the sale is conditioned on the payment by the petitioners of Salome's obligation with the Country Bankers Insurance and Surety Company under the contract of mortgage.

Petitioners submitted no evidence to show that they complied with the condition given. Hence, there was no consummation of the contract which would transfer ownership of the property to the petitioners. All that they presented was the self-serving testimony of petitioner Leoncio Barrera<sup>[40]</sup> to the effect that the obligations were paid by them. Notable is Cenon Mateo's testimony that he has no knowledge of any transaction entered into by Salome on March 31, 1966.<sup>[41]</sup>

Likewise, there is no sufficient evidence to show that the earlier transaction in 1962 ever materialized. The testimony of Salome in Civil Case No. 14009 confirming the existence of this transaction is inadmissible for lack of cross-examination. Likewise, the Deed of Absolute Sale with Assumption of Real Estate Mortgage<sup>[42]</sup> not having been notarized, its genuineness and due execution will have to be proven. In this case, the petitioners only presented the testimony of petitioner Leoncio Barrera and Cenon Mateo, which are, again, self-serving assertions if not corroborated by any other evidence. Notable is the counsel of petitioners own admission that "the said transaction however did not in any way materialize for the reason that the property, subject of the transaction was mortgaged to Country Bankers and Surety Company."