386 Phil. 419

THIRD DIVISION

[G.R. No. 137944, April 06, 2000]

FERNANDA MENDOZA CEQUENA AND RUPERTA MENDOZA LIRIO, PETITIONERS, VS. HONORATA MENDOZA BOLANTE, RESPONDENT.

D E C I S I O N

PANGANIBAN, J.:

Tax receipts and declarations are *prima facie* proofs of ownership or possession of the property for which such taxes have been paid. Coupled with proof of actual possession of the property, they may become the basis of a claim for ownership. By acquisitive prescription, possession in the concept of owner -- public, adverse, peaceful and uninterrupted -- may be converted to ownership. On the other hand, mere possession and occupation of land cannot ripen into ownership.

The Case

Before us is a Petition for Review on *Certiorari* of the March 19, 1999 Decision[1] of the Court of Appeals[2] (CA) in CA-GR CV No. 43423. The assailed Decision disposed as follows:[3]

> "WHEREFORE, for all the foregoing, the decision of the trial court appealed from is *REVERSED* and *SET ASIDE*. In lieu thereof, judgment is hereby rendered declaring x x x Honorata Mendoza Bolante the rightful owner and possessor of the parcel of land which is the subject of this appeal."

The Facts

The Petition herein refers to a parcel of land situated in Barangay Bangad, Binangonan, Province of Rizal, having an area of 1,728 square meters and covered by Tax Declaration No. 26-0027.

The undisputed antecedents of this case are narrated by the Court of Appeals as follows:[4]

> "The facts not disputed revealed that prior to 1954, the land was originally declared for taxation purposes in the name of Sinforoso Mendoza, father of [respondent] and married to Eduarda Apiado. Sinforoso died in 1930. [Petitioners] were the daughters of Margarito Mendoza. On the basis of an affidavit, the tax declaration in the name of Sinforoso Mendoza of the contested lot was cancelled and subsequently declared in the name of Margarito Mendoza. Margarito and Sinforoso are brothers. [Respondent] is the present occupant of the land. Earlier, on

October 15, 1975, [respondent] and Miguel Mendoza, another brother of [petitioners], during the cadastral survey had a dispute on [the] ownership of the land.

"During the pre-trial conference, parties stipulated the following facts:

> '1) The land subject of the case was formerly declared for taxation purposes in the name of Sinforoso Mendoza prior to 1954 but is now declared in the name of Margarito Mendoza.
> 2) 'The parties agree[d] as to the identity of the land subject of instant case.
> '3) [Petitioners] are the daughters of Margarito Mendoza while the [respondent] is the only daughter of Sinforoso Mendoza.
> '4) Margarito Mendoza and Sinforoso Mendoza [were] brothers, now deceased.
> '5) During the cadastral survey of the property on October 15, 1979 there was already a dispute between Honorata M. Bolante and Miguel Mendoza, brother of [petitioners].
> 6) '[Respondent was] occupying the property in question.
>
> 'The only issue involved [was] who [was] the lawful owner and possessor of the land subject of the case.'

"After trial, the court *a quo* rendered its judgment in favor of [petitioners], the dispositive portion of which reads as follows:

> 'Wherefore, in view of the foregoing considerations, judgment is hereby rendered for the [petitioners] and against the [respondent]:
>
> '1. Declaring that the parcel of land situated in Bangad, Binangonan, Rizal covered by tax declaration no. 26-0027 in the name of Margarito Mendoza belong to his heirs, the [petitioners] herein;
> '2. Ordering [respondent] to vacate the property subject of the case and deliver possession thereof to the heirs of Margarito Mendoza.
> '3. Ordering the [respondent] to indemnify the [petitioners] in the sum of P10,000.00, as actual damages.
> '4. Ordering the [respondent] to pay the costs.'"

Ruling of the Court of Appeals

The Court of Appeals reversed the trial court because the genuineness and the due execution of the affidavit allegedly signed by the respondent and her mother had not been sufficiently established. The notary public or anyone else who had witnessed the execution of the affidavit was not presented. No expert testimony or competent witness ever attested to the genuineness of the questioned signatures.

The CA further ruled that the affidavit was insufficient to overcome the denial of respondent and her mother. The former testified that the latter, never having attended school, could neither read nor write. Respondent also said that she had never been called "Leonor," which was how she was referred to in the affidavit.

Moreover, the appellate court held that the probative value of petitioners' tax receipts and declarations paled in comparison with respondent's proof of ownership of the disputed parcel. Actual, physical, exclusive and continuous possession by respondent since 1985 indeed gave her a better title under Article 538 of the Civil Code.

Hence, this Petition.[5]

Issues

Insisting that they are the rightful owners of the disputed land, the petitioners allege that the CA committed these reversible errors:[6]

> "1. xxx [I]n not considering the affidavit as an exception to the general rule that an affidavit is classified as hearsay evidence, unless the affiant is placed on the witness stand; and
>
> "2. xxx [I]n holding that respondent has been in actual and physical possession, coupled with xxx exclusive and continuous possession of the land since 1985, which are evidence of the best kind of circumstance proving the claim of the title of ownership and enjoys the presumption of preferred possessor."

The Court's Ruling

The Petition has no merit.

First Issue:
Admissibility of the Affidavit

Petitioners dispute the CA's ruling that the affidavit was not the best evidence of their father's ownership of the disputed land, because the "affiant was not placed on the witness stand." They contend that it was unnecessary to present a witness to establish the authenticity of the affidavit because it was a declaration against respondent's interest and was an ancient document. As a declaration against interest, it was an exception to the hearsay rule. As a necessary and trustworthy document, it was admissible in evidence. And because it was executed on March 24, 1953, it was a self-authenticating ancient document.

We quote below the pertinent portion of the appellate court's ruling:[7]

> "While it is true that the affidavit was signed and subscribed before a notary public, the general rule is that affidavits are classified as hearsay evidence, unless affiants are placed on the witness stand (*People's Bank and Trust Company vs. Leonidas*, 207 SCRA 164). Affidavits are not considered the best evidence, if affiants are available as witnesses (*Vallarta vs. Court of Appeals*, 163 SCRA 587). The due execution of the

> affidavit was not sufficiently established. The notary public or others who saw that the document was signed or at least [could] confirm its recitals [were] not presented. There was no expert testimony or competent witness who attested to the genuineness of the questioned signatures. Worse, [respondent] denied the genuineness of her signature and that of her mother xxx. [Respondent] testified that her mother was an illiterate and as far as she knew her mother could not write because she had not attended school (p. 7, *ibid*). Her testimony was corroborated by Ma. Sales Bolante Basa, who said the [respondent's] mother was illiterate."

The petitioners' allegations are untenable. Before a private document offered as authentic can be received in evidence, its due execution and authenticity must be proved first.[8] And before a document is admitted as an exception to the hearsay rule under the Dead Man's Statute, the offeror must show (a) that the declarant is dead, insane or unable to testify; (b) that the declaration concerns a fact cognizable by the declarant; (c) that at the time the declaration was made, he was aware that the same was contrary to his interest; and (d) that circumstances render improbable the existence of any motive to falsify.[9]

In this case, one of the affiants happens to be the respondent, who is still alive and who testified that the signature in the affidavit was not hers. A declaration against interest is not admissible if the declarant is available to testify as a witness.[10] Such declarant should be confronted with the statement against interest as a prior inconsistent statement.

The affidavit cannot be considered an ancient document either. An ancient document is one that is (1) more than 30 years old, (2) found in the proper custody, and (3) unblemished by any alteration or by any circumstance of suspicion.[11] It must on its face appear to be genuine. The petitioners herein failed, however, to explain how the purported signature of Eduarda Apiado could have been affixed to the subject affidavit if, according to the witness, she was an illiterate woman who never had any formal schooling. This circumstance casts suspicion on its authenticity.

Not all notarized documents are exempted from the rule on authentication. Thus, an affidavit does not automatically become a public document just because it contains a notarial jurat. Furthermore, the affidavit in question does not state how the ownership of the subject land was transferred from Sinforoso Mendoza to Margarito Mendoza. By itself, an affidavit is not a mode of acquiring ownership.

Second Issue:
Preference of Possession

The CA ruled that the respondent was the preferred possessor under Article 538 of the Civil Code because she was in notorious, actual, exclusive and continuous possession of the land since 1985. Petitioners dispute this ruling. They contend that she came into possession through force and violence, contrary to Article 536 of the Civil Code.

We concede that despite their dispossession in 1985, the petitioners did not lose legal possession because possession cannot be acquired through force or violence.[12] To all intents and purposes, a possessor, even if physically ousted, is still