

THIRD DIVISION

[G.R. No. 139500, July 27, 2000]

**LEOPOLDO DALUMPINES PETITIONER, VS. COURT OF APPEALS,
(FIRST DIVISION), AND DOMINGO ESTOYA, RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

Before us is a Petition for Review on *Certiorari* seeking the reversal of the December 10, 1998 Decision^[1] and July 9, 1999 Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 41661. The Court of Appeals (CA) set aside the Decision^[3] of the Regional Trial Court (RTC) of Himamaylan, Negros Occidental, Branch 56, in Civil Case No. 460 reversing the Decision^[4] of the Municipal Trial Court (MTC) of Hinigaran in Civil Case No. MTC-159 for ejectment.

The CA narrated the factual antecedents of this case as follows:

"On August 25, 1989, Atty. Oscar M. Lagtapon, a notary public for the past 27 years (pp. 4 and 8, tsn, October 25, 1994; pp. 65 and 69, Rollo) prepared and notarized two documents, viz: a "Deed of Absolute Sale" and a "Declaration of Heirship and Deed of Absolute Sale" (pp. 4-5 and 12, tsn, October 25, 1994; pp. 65-66 and 73, Rollo). The first document, the "Deed of Absolute Sale" stated that Primitiva Estoya, Saturnina Estoya, Alfonso Estoya and Domingo Estoya are the owners of Lot 725 of the Cadastral Survey of Hinigaran, Negros Occidental covered by Transfer Certificate of Title No. T-78497 (pp. 87 and 171, Rollo). It further stated that the owners of said Lot 725 are selling a half portion thereof to the heirs of Norberto Gerial for a consideration of P6,000.00 (Ibid). The Estoyas did not affix their respective signatures above their respective names as vendors on the deed, but affixed their respective signatures on the acknowledgment portion written thereafter (Ibid).

The second document, the "Declaration of Heirship and Deed of Absolute Sale", on the other hand, stated that Norberto Gerial was the owner of Lot No. 725 of the Cadastral Survey of Hinigaran, Negros Occidental which was covered by Transfer Certificate of Title No. T-78497 (p. 88, Rollo). Said document further stated that Norberto Gerial, having died intestate, was succeeded by his heirs Moises Gerial, Pastor Gerial, Bernardo Gerial, Maximina Gerial-Borbon and Jocelyn Pescador Abada to the ownership of said land (pp. 88-89, Rollo). Said document also stated that the heirs of Norberto Gerial are selling Lot 725 to Leopoldo Dalumpines for a consideration of P12,000.00 (Ibid). Both vendors and vendee affixed their respective signatures on the document (Ibid).

On the basis of both the "Deed of Absolute Sale" and the "Declaration of

Heirship and Deed of Absolute Sale", Transfer Certificate of Title No. T-78497 covering Lot 725 was cancelled, and in lieu thereof, Transfer Certificate of Title No. T-151598 was issued in the name of Leopoldo Dalumpines (p. 168, Rollo).

Armed with his new transfer certificate of title over Lot 725, Dalumpines on July 14, 1994, filed a complaint for unlawful detainer with the Municipal Trial Court of Hinigaran, Negros Occidental against Domingo Estoya who was occupying a portion of Lot 725 for residential purposes since his birth (pp. 32-34 and 96, Rollo). The complaint was docketed as Civil Case No. MTC-159 (p. 48, Rollo).

Suspicious of the two documents which facilitated the cancellation of Transfer Certificate of Title No. T-78497 and the corresponding issuance of Transfer Certificate of Title No. T-151598 in the name of Dalumpines, the contents of which contradicted each other (pp. 6-7 of MTC Decision; pp. 53-54, Rollo), the Municipal Trial Court rendered decision on November 22, 1995 holding that Estoya "cannot be ejected from the premises in question" (p. 7 of MTC Decision; p. 54, Rollo). The decretal portion of said decision reads:

"WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered against the plaintiff and in favor of the defendant as follows:

1. The plaintiff is ordered to pay defendant P10,000.00 as attorney's fee and appearance fee at P500.00 per court appearance;
2. The plaintiff is ordered to pay defendant P5,000.00 by way of litis expenses;

Cost against the plaintiff.

SO ORDERED." (pp. 7-8 of MTC Decision; pp. 54-55, Rollo)

Dalumpines appealed the Municipal Trial Court's decision to the Regional Trial Court of Himamaylan, Negros Occidental (p. 57, Rollo). His appeal was docketed as Civil Case No. 460 (p. 56, Rollo). On August 2, 1996, Branch 56 thereof rendered decision reversing the decision appealed from as follows:

"WHEREFORE, in view of all the foregoing, the appealed decision is hereby REVERSED and SET ASIDE and a new one is rendered in favor of the plaintiff-appellant, as follows:

- 1.1. Defendant-appellee is hereby ordered to vacate the premises of Lot 725, Hinigaran Cadastre;
2. Defendant-appellee is ordered to pay plaintiff-appellant the amount of P5,000.00 for attorney's fee plus P500.00 for every court appearance.

3. Costs against defendant-appellee.

SO ORDERED." (p. 7 of RTC Decision; p. 62, Rollo)"^[5]

On appeal, the Court of Appeals set aside the decision of the RTC and reinstated that of the MTC for the following reasons:

"Petitioner Domingo Estoya argues that contrary to the respondent court's finding, the "Deed of Absolute Sale" prepared and notarized by Atty. Oscar M. Lagtapon, is invalid and could not have transferred ownership over Lot 725 in favor of the heirs of Norberto Gerial, the reason therefor being the Estoyas' failure to affix their respective signatures to the "Deed of Absolute Sale" which manifests the fact that they did not consent to the sale of one-half portion of Lot 725 in favor of Norberto Gerial's heirs (pp. 21-27, Rollo). Per Article of the New Civil Code which states:

"A contract which is the direct result of a previous illegal contract, is also void and inexistent." petitioner therefore concludes that respondent Dalumpines could not have acquired ownership over Lot 725 from Norberto Gerial's heirs by way of the "Declaration of Heirship and Deed of Absolute Sale" (pp. 27-28, Rollo).

In his comment to the petition for review, Dalumpines stands pat on the validity of the "Deed of Absolute Sale" which facilitated the transfer of the title to Lot 725 in his name (pp. 153-164, Rollo).

The Court agrees with petitioner. The decision under review must be set aside and the Municipal Trial Court's decision reinstated.

The basis of Dalumpines' right of possession over Lot 725 is the transfer certificate of title in his name which covers it. It is however, obvious from the evidence on record that said title was secured through fraud and misrepresentation perpetrated by then heirs of Norberto Gerial, with the complicity of the notary public Oscar M. Lagtapon, and with the full knowledge of respondent Dalumpines.

It is true that the case at bar is not the proper forum in which Dalumpines' title over Lot 725 can be attacked, but in the face of the aforesaid facts, the Court can determine whether or not he has a right to possess the property.

The question that keeps nagging on the court's mind is why would the notary public prepare and notarize two documents purporting to convey Lot 725, with each document containing statements that are contrary to each other? And both documents were even prepared and notarized on the same day, August 25, 1989. Thus, the "Deed of Absolute Sale" states that the owners of Lot 725 were the Estoyas who sold half thereof to the heirs of Norberto Gerial. The "Declaration of Heirship and Deed of Absolute Sale" on the other hand, stated that Norberto Gerial was the owner of Lot 725 which his heirs acquired by way of succession when he died intestate. Also, the "Deed of Absolute Sale" states that the heirs of

Norberto Gerial acquired ownership of half a portion of Lot 725 by way of sale, while the "Declaration of Heirship and Deed of Absolute Sale" stated that they acquired ownership over the entire Lot 725 by way of succession. These contrary statements certainly cast serious doubts on the veracity of both documents.

The truth is, Norberto Gerial never owned Lot 725 as stated in the "Declaration of Heirship and Deed of Absolute Sale", because his heirs had to buy only a half portion thereof from the Estoyas as stated in the "Deed of Absolute Sale". And assuming that the "Deed of Absolute Sale" were intrinsically and extrinsically valid, Norberto's heirs can only transfer ownership of a half portion of Lot 725 to Dalumpines by way of sale since they bought only a half-portion thereof from the Estoyas. But Transfer Certificate of Title No. T-151598 states that Dalumpines is the owner of the entire Lot 725 of the Cadastral Survey of Hinigaran (p. 168, Rollo). How then was he able to acquire ownership of the other half of Lot 725?

Norberto's heirs did not convey title to the entire Lot 725 to Dalumpines per the "Declaration of Heirship and Deed of Absolute Sale" because they are not and never were the owners of the lot in question.

The Court rules that Dalumpines has derived his alleged possessory right from a questionable, if not inexistent right of ownership over Lot 725. He cannot, by the simple expedient of a complaint for unlawful detainer, wrest possession thereof from petitioner Estoya."^[6]

and disposed as follows:

"WHEREFORE, as prayed for in the instant petition for review, the Decision dated August 2, 1996 rendered by public respondent Regional Trial Court of Himamaylan, Negros Occidental, Branch 56 in Civil Case No. 460 is hereby REVERSED and SET ASIDE and the decision dated November 22, 1995 rendered by the Municipal Trial Court of Hinigaran, Negros Occidental in Civil Case No. MTC-159 is hereby reinstated.

SO ORDERED."^[7]

The Court of Appeals denied reconsideration in its Resolution of July 9, 1999.

Hence, the present petition for review on *certiorari* where petitioner raises the following issues for consideration of this Court:

I

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS ERRED IN DISREGARDING THE TESTIMONY OF NOTARY PUBLIC ATTY. OSCAR LAGTAPON AND GIVING CREDENCE TO THE TESTIMONY OF PRIVATE RESPONDENT DOMINGO ESTOYA.

II

WHETHER OR NOT THE COURT OF APPEALS HAS ERRED IN HOLDING