

FIRST DIVISION

[G.R. No. 122973, July 18, 2000]

**DIONISIO C. LADIGNON, PETITIONER, VS. COURT OF APPEALS
AND LUZVIMINDA C. DIMAUN, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

The instant Petition for Review seeks to set aside the December 11, 1995 Decision of respondent Court of Appeals in CA-G.R. CV No. 38183 which reversed the May 20, 1992 Decision of the Regional Trial Court of Quezon City, Branch 85 in Civil Case No. Q-90-5871.

The case originates from a Complaint for Declaration of Nullity of Conveyance and Recovery of Possession and Damages,^[1] filed on May 12, 1990 by private respondent against petitioner, Richard C. Tong, Jose Porciuncula, Jr. and Litogo Company, Inc. In the Complaint, private respondent alleged that petitioner, a relative by affinity, offered his services as lawyer to mediate between her and the relatives of her adoptive mother with respect to inheritance she was expecting to receive from her adoptive parents.

Private respondent claimed that petitioner made her sign a Petition^[2] for the reconstitution of Transfer Certificate of Title No. 240724, covering an eight hundred fifty nine and seven/tenths (859.7) square meter parcel of land located in Talayan, Quezon City, registered under her name and that of her adoptive mother, Ligaya Flores Collantes. Said Petition was, however, dismissed on August 28, 1989 for her failure to appear at the scheduled hearing. Private respondent claims that she did not know of such dismissal, neither of the fact that Transfer Certificate of Title No. 240724 was superseded by Transfer Certificate of Title No. 383675 of the Registry of Deeds of Quezon City, in her name alone.

Attached to private respondent's Complaint was a copy of a Deed of Absolute Sale which appears to have been executed by her as vendor and by Litoco Co., Inc., represented by its President, Richard Tong, as vendee. Subject of the said sale was the Talayan property. Under the terms of the Deed, the purchase price of the sale was P800,000.00, receipt of which was therein specifically acknowledged by the vendor. The Deed, dated May 12, 1989, was duly notarized in Manila on the same date as Document No. 267, Page No. 55, Book No. VI, Series of 1989 of the notarial books of Notary Public Elsa R. Reblora.

Private respondent denied having received the purchase price therefor, nor having signed the same, insisting that her alleged signatures thereon are falsified or forged. Thus, she prayed for the declaration of nullity of the said Deed of Absolute Sale and for the defendants therein to be ordered to surrender possession of the lot covered thereby as well as the owner's duplicate copy of TCT No. 38365. Private respondent

also sought P50,000.00 in moral damages, P30,000.00 as attorney's fees, exemplary and nominal damages, litigation expenses and costs of suit.

During pre-trial, the parties agreed to limit the issues to the following -

"1.....Whether the signatures of plaintiff on the Deed of Absolute Sale (Exhibit "F") conveying the inherited property to defendants are forged/falsified or not;

2.....Whether the failure of plaintiff to reconstitute TCT No. 240724 covering the property subject matter hereof affects the issuance of TCT No. 383675 or not;

3.....Whether defendants should be held liable for damages to plaintiff for their wanton acts of depriving plaintiff of her inherited property."^[3]

The trial court found the evidence submitted by private respondent as insufficient to overturn the public document sought to be annulled. Thus, a Decision was rendered on May 20, 1992, in favor of petitioner, to wit -

"WHEREFORE, in the light of the foregoing, judgment is hereby rendered DISMISSING the complaint and, on the counterclaim, ordering the plaintiff to pay defendant Dionisio Ladignon the sum of P50,000.00 by way of moral and exemplary damages, and P25,000.00 as attorney's fees, plus costs.

The crossclaim of defendant Litogo Company, Inc. and Richard Tong against defendant Dionisio Ladignon is likewise DISMISSED.

SO ORDERED."^[4]

Private respondent appealed the decision to the Court of Appeals which reversed the trial court's decision dated May 20, 1992. In reversing the said judgment, respondent Court of Appeals relied on the following findings: First, that the authenticity of TCT No. 383675, which was the subject of the questioned deed, was highly questionable; and second, that the private respondent was shown to have no participation in the questioned deed of sale.

The dispositive portion of said Decision states:

"WHEREFORE, premises considered, the appeal is GRANTED being meritorious. Judgment appealed from is hereby REVERSED and judgment is hereby rendered as follows:

1).....The deed of sale of the Talayan property is declared NULL and VOID. Consequently, the entry in what purports to be TCT No. 383675 re said sale is also ANNULLED and CANCELLED;

2).....Ordering Ladignon to pay appellant Dimaun P50,000.00 by way of moral damages; P30,000.00 by way of attorney's fees; and P30,000.00 by way of exemplary damages;

3).....Ordering Litogo to surrender possession of the Talayan property to

appellant Dimaun;

4).....Ordering the Register of Deeds of Quezon City to cancel TCT No. 383675 which is hereby declared annulled and of no force and effect;

5).....Atty. Ladignon is ordered to return to Litogo Company the amount of P2,063,280.00 with interest at 6% per annum from May 12, 1989 until fully paid; and

6).....To pay the costs of suit.

SO ORDERED."^[5]

Hence, the instant petition for review based on the following grounds:

"I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING CREDENCE TO THE THEORY OF THE PRIVATE RESPONDENT WHEN THERE IS NO EVIDENCE EVER ADDUCED TO SUBSTANTIATE THE ASSEVERATION.

II

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION, TANTAMOUNT TO LACK OF JURISDICTION WHEN IT DISREGARDED JURISPRUDENTIAL EDICTS ON PRESUMPTIONS THAT PRIVATE TRANSACTIONS ARE FAIR AND REGULAR AND THAT DOCUMENTS EXECUTED BY THE PARTIES ARE VALID AND REGULAR.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE FACTUAL FINDINGS OF THE TRIAL COURT IN THE ABSENCE OF ANY SHOWING THAT THE LOWER COURT ABUSED ITS DISCRETION IN APPRECIATING THE EVIDENCE ADDUCED BY THE PARTIES.

IV

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT ACCUSED PETITIONER OF COMMITTING AN INFRACTION WHEN THE EVIDENCE ON RECORD DOES NOT SUPPORT THE CONCLUSION AND NO LESS THAN THE PROSECUTORIAL ARM OF THE GOVERNMENT DISMISSED THE COMPLAINT FILED BY THE PRIVATE RESPONDENT FOR WANT OF PROBABLE CAUSE."^[6]

It is evident that the instant Petition calls for a review of the facts of the case. On this matter, well-settled is the rule that in the exercise of the power to review, the findings of fact of the Court of Appeals are conclusive and binding on this Court. However, there are recognized exceptions among which is when the factual findings of the trial court and the appellate court are conflicting.^[7] The instant case falls

within this exception and we are thus constrained to examine the arguments presented by petitioner.

We note that the Deed of Absolute Sale being questioned is a public document, having been notarized by Atty. Elsa R. Reblora who appeared on the witness stand to testify on the due execution of the same.^[8]

As a public document, the subject Deed of Absolute Sale had in its favor the presumption of regularity, and to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise the document should be upheld.^[9]

It is also worth stressing that private respondent claim that her signature on the subject Deed of Absolute Sale is forged. As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.^[10]

Was the evidence presented by private respondent against the Deed of Absolute Sale clear, convincing and more than merely preponderant to overcome both the presumption of regularity attached to public documents and to meet the stringent requirements to prove forgery?

Far from being clear and convincing, all private respondent had to offer by way of evidence was her mere denial that she had signed the same. Such mere denial will not suffice to overcome the positive value of the subject Deed, a notarized document. Indeed, even in cases where the alleged forged signature was compared to samples of genuine signatures to show its variance therefrom, this Court still found such evidence insufficient, to wit --

"Petitioner contends that his signature on the power of attorney was falsified. He also alleges that the same was not duly notarized for as testified by Atty. Tubig himself, he did not sign thereon nor was it ever recorded in his notarial register. To bolster his argument, petitioner had presented checks, marriage certificate and his residence certificate to prove his alleged genuine signature which when compared to the signature in the power of attorney, showed some difference.

We found, however, that the basis presented by the petitioner was inadequate to sustain his allegation of forgery. Mere variance of the signatures cannot be considered as conclusive proof that the same were forged. Forgery cannot be presumed (*Tenio-Obsequio vs. Court of Appeals*, G.R. 107967, March 1, 1994). Petitioner, however, failed to prove his allegation and simply relied on the apparent difference of the signatures. His denial had not established that the signature on the power of attorney was not his.

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Documents acknowledged before a notary public have the evidentiary weight with respect to their due execution. The questioned power of attorney and deed of sale, were notarized and therefore, presumed to be