

SECOND DIVISION

[G.R. No. 126881, October 03, 2000]

**HEIRS OF TAN ENG KEE, PETITIONERS, VS. COURT OF APPEALS
AND BENGUET LUMBER COMPANY, REPRESENTED BY ITS
PRESIDENT TAN ENG LAY, RESPONDENTS.**

DECISION

DE LEON, JR., J.:

In this petition for review on certiorari, petitioners pray for the reversal of the Decision^[1] dated March 13, 1996 of the former Fifth Division^[2] of the Court of Appeals in CA-G.R. CV No. 47937, the dispositive portion of which states:

THE FOREGOING CONSIDERED, the appealed decision is hereby set aside, and the complaint dismissed.

The facts are:

Following the death of Tan Eng Kee on September 13, 1984, Matilde Abubo, the common-law spouse of the decedent, joined by their children Teresita, Nena, Clarita, Carlos, Corazon and Elpidio, collectively known as herein petitioners HEIRS OF TAN ENG KEE, filed suit against the decedent's brother TAN ENG LAY on February 19, 1990. The complaint,^[3] docketed as Civil Case No. 1983-R in the Regional Trial Court of Baguio City was for accounting, liquidation and winding up of the alleged partnership formed after World War II between Tan Eng Kee and Tan Eng Lay. On March 18, 1991, the petitioners filed an amended complaint^[4] impleading private respondent herein BENGUET LUMBER COMPANY, as represented by Tan Eng Lay. The amended complaint was admitted by the trial court in its Order dated May 3, 1991.^[5]

The amended complaint principally alleged that after the second World War, Tan Eng Kee and Tan Eng Lay, pooling their resources and industry together, entered into a partnership engaged in the business of selling lumber and hardware and construction supplies. They named their enterprise "Benguet Lumber" which they jointly managed until Tan Eng Kee's death. Petitioners herein averred that the business prospered due to the hard work and thrift of the alleged partners. However, they claimed that in 1981, Tan Eng Lay and his children caused the conversion of the partnership "Benguet Lumber" into a corporation called "Benguet Lumber Company." The incorporation was purportedly a ruse to deprive Tan Eng Kee and his heirs of their rightful participation in the profits of the business. Petitioners prayed for accounting of the partnership assets, and the dissolution, winding up and liquidation thereof, and the equal division of the net assets of Benguet Lumber.

After trial, Regional Trial Court of Baguio City, Branch 7 rendered judgment^[6] on April 12, 1995, to wit:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

- a) Declaring that Benguet Lumber is a joint adventure which is akin to a particular partnership;
- b) Declaring that the deceased Tan Eng Kee and Tan Eng Lay are joint adventurers and/or partners in a business venture and/or particular partnership called Benguet Lumber and as such should share in the profits and/or losses of the business venture or particular partnership;
- c) Declaring that the assets of Benguet Lumber are the same assets turned over to Benguet Lumber Co. Inc. and as such the heirs or legal representatives of the deceased Tan Eng Kee have a legal right to share in said assets;
- d) Declaring that all the rights and obligations of Tan Eng Kee as joint adventurer and/or as partner in a particular partnership have descended to the plaintiffs who are his legal heirs.
- e) Ordering the defendant Tan Eng Lay and/or the President and/or General Manager of Benguet Lumber Company Inc. to render an accounting of all the assets of Benguet Lumber Company, Inc. so the plaintiffs know their proper share in the business;
- f) Ordering the appointment of a receiver to preserve and/or administer the assets of Benguet Lumber Company, Inc. until such time that said corporation is finally liquidated are directed to submit the name of any person they want to be appointed as receiver failing in which this Court will appoint the Branch Clerk of Court or another one who is qualified to act as such.
- g) Denying the award of damages to the plaintiffs for lack of proof except the expenses in filing the instant case.
- h) Dismissing the counter-claim of the defendant for lack of merit.

SO ORDERED.

Private respondent sought relief before the Court of Appeals which, on March 13, 1996, rendered the assailed decision reversing the judgment of the trial court. Petitioners' motion for reconsideration^[7] was denied by the Court of Appeals in a Resolution^[8] dated October 11, 1996.

Hence, the present petition.

As a side-bar to the proceedings, petitioners filed Criminal Case No. 78856 against Tan Eng Lay and Wilborn Tan for the use of allegedly falsified documents in a judicial proceeding. Petitioners complained that Exhibits "4" to "4-U" offered by the defendants before the trial court, consisting of payrolls indicating that Tan Eng Kee was a mere employee of Benguet Lumber, were fake, based on the discrepancy in the signatures of Tan Eng Kee. They also filed Criminal Cases Nos. 78857-78870 against Gloria, Julia, Juliano, Willie, Wilfredo, Jean, Mary and Willy, all surnamed

Tan, for alleged falsification of commercial documents by a private individual. On March 20, 1999, the Municipal Trial Court of Baguio City, Branch 1, wherein the charges were filed, rendered judgment^[9] dismissing the cases for insufficiency of evidence.

In their assignment of errors, petitioners claim that:

I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS NO PARTNERSHIP BETWEEN THE LATE TAN ENG KEE AND HIS BROTHER TAN ENG LAY BECAUSE: (A) THERE WAS NO FIRM ACCOUNT; (B) THERE WAS NO FIRM LETTERHEADS SUBMITTED AS EVIDENCE; (C) THERE WAS NO CERTIFICATE OF PARTNERSHIP; (D) THERE WAS NO AGREEMENT AS TO PROFITS AND LOSSES; AND (E) THERE WAS NO TIME FIXED FOR THE DURATION OF THE PARTNERSHIP (PAGE 13, DECISION).

II

THE HONORABLE COURT OF APPEALS ERRED IN RELYING SOLELY ON THE SELF-SERVING TESTIMONY OF RESPONDENT TAN ENG LAY THAT BENGUET LUMBER WAS A SOLE PROPRIETORSHIP AND THAT TAN ENG KEE WAS ONLY AN EMPLOYEE THEREOF.

III

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE FOLLOWING FACTS WHICH WERE DULY SUPPORTED BY EVIDENCE OF BOTH PARTIES DO NOT SUPPORT THE EXISTENCE OF A PARTNERSHIP JUST BECAUSE THERE WAS NO ARTICLES OF PARTNERSHIP DULY RECORDED BEFORE THE SECURITIES AND EXCHANGE COMMISSION:

- a. THAT THE FAMILIES OF TAN ENG KEE AND TAN ENG LAY WERE ALL LIVING AT THE BENGUET LUMBER COMPOUND;
- b. THAT BOTH TAN ENG LAY AND TAN ENG KEE WERE COMMANDING THE EMPLOYEES OF BENGUET LUMBER;
- c. THAT BOTH TAN ENG KEE AND TAN ENG LAY WERE SUPERVISING THE EMPLOYEES THEREIN;
- d. THAT TAN ENG KEE AND TAN ENG LAY WERE THE ONES DETERMINING THE PRICES OF STOCKS TO BE SOLD TO THE PUBLIC; AND
- e. THAT TAN ENG LAY AND TAN ENG KEE WERE THE ONES MAKING ORDERS TO THE SUPPLIERS (PAGE 18, DECISION).

IV

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE

WAS NO PARTNERSHIP JUST BECAUSE THE CHILDREN OF THE LATE TAN ENG KEE: ELPIDIO TAN AND VERONICA CHOI, TOGETHER WITH THEIR WITNESS BEATRIZ TANDOC, ADMITTED THAT THEY DO NOT KNOW WHEN THE ESTABLISHMENT KNOWN IN BAUGIO CITY AS BENGUET LUMBER WAS STARTED AS A PARTNERSHIP (PAGE 16-17, DECISION).

V

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS NO PARTNERSHIP BETWEEN THE LATE TAN ENG KEE AND HIS BROTHER TAN ENG LAY BECAUSE THE PRESENT CAPITAL OR ASSETS OF BENGUET LUMBER IS DEFINITELY MORE THAN P3,000.00 AND AS SUCH THE EXECUTION OF A PUBLIC INSTRUMENT CREATING A PARTNERSHIP SHOULD HAVE BEEN MADE AND NO SUCH PUBLIC INSTRUMENT ESTABLISHED BY THE APPELLEES (PAGE 17, DECISION).

As a premise, we reiterate the oft-repeated rule that findings of facts of the Court of Appeals will not be disturbed on appeal if such are supported by the evidence.^[10] Our jurisdiction, it must be emphasized, does not include review of factual issues. Thus:

Filing of petition with Supreme Court.-A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. *The petition shall raise only questions of law which must be distinctly set forth.*^[11] [italics supplied]

Admitted exceptions have been recognized, though, and when present, may compel us to analyze the evidentiary basis on which the lower court rendered judgment. Review of factual issues is therefore warranted:

- (1) when the factual findings of the Court of Appeals and the trial court are contradictory;
- (2) when the findings are grounded entirely on speculation, surmises, or conjectures;
- (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
- (4) when there is grave abuse of discretion in the appreciation of facts;
- (5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
- (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;
- (7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;

(8) when the findings of fact are themselves conflicting;

(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.^[12]

In reversing the trial court, the Court of Appeals ruled, to wit:

We note that the Court a quo over extended the issue because while the plaintiffs mentioned only the existence of a partnership, the Court in turn went beyond that by justifying the existence of a joint adventure.

When mention is made of a joint adventure, it would presuppose parity of standing between the parties, equal proprietary interest and the exercise by the parties equally of the conduct of the business, thus:

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We have the admission that the father of the plaintiffs was not a partner of the Benguet Lumber before the war. The appellees however argued that (Rollo, p. 104; Brief, p. 6) this is because during the war, the entire stocks of the pre-war Benguet Lumber were confiscated if not burned by the Japanese. After the war, because of the absence of capital to start a lumber and hardware business, Lay and Kee pooled the proceeds of their individual businesses earned from buying and selling military supplies, so that the common fund would be enough to form a partnership, both in the lumber and hardware business. That Lay and Kee actually established the Benguet Lumber in Baguio City, was even testified to by witnesses. Because of the pooling of resources, the post-war Benguet Lumber was eventually established. That the father of the plaintiffs and Lay were partners, is obvious from the fact that: (1) they conducted the affairs of the business during Kee's lifetime, jointly, (2) they were the ones giving orders to the employees, (3) they were the ones preparing orders from the suppliers, (4) their families stayed together at the Benguet Lumber compound, and (5) all their children were employed in the business in different capacities.

xxx xxx xxx xxx

It is obvious that there was no partnership whatsoever. Except for a firm name, there was no firm account, no firm letterheads submitted as evidence, no certificate of partnership, no agreement as to profits and losses, and no time fixed for the duration of the partnership. There was even no attempt to submit an accounting corresponding to the period after the war until Kee's death in 1984. It had no business book, no written account nor any memorandum for that matter and no license mentioning the existence of a partnership [citation omitted].

Also, the exhibits support the establishment of only a proprietorship. The