368 Phil. 1

FIRST DIVISION

[G.R. No. 124605, June 18, 1999]

ENRIQUITO SERNA AND AMPARO RASCA, PETITIONERS, VS. COURT OF APPEALS, SANTIAGO FONTANILLA, AND RAFAELA RASING, RESPONDENTS.

D E C I S I O N

PARDO, J.:

The petition for review on *certiorari* before us seeks to review the decision of the Court of Appeals,[1] which affirmed that of the Regional Trial Court, Alaminos, Pangasinan,[2] declaring respondents as the absolute an lawful owners of the land covered by Original Certificate of Title No. 139 of the Registry of Deeds of Pangasinan.

The antecedent facts are as follows:

Dionisio Fontanilla had four (4) children, namely, Rosa, Antonio, Jose and Lorenza, all surnamed Fontanilla. Rosa married Estanislao Pajaro and their union produced Fructoso and Paciencia. Lorenza married Alberto Rasca and they had a daughter, petitioner Amparo Rasca (married to Enriquito Serna). Jose had a son, respondent Santiago Fontanilla (married to Rafaela Rasing). Hence, the parties involved are first cousins.

Dionisio Fontanilla was the original owner and possessor of a parcel of land, containing an area of twelve thousand five hundred eight square meters (12,508 sq. m.), located in Barangay Lucap, Alaminos, Pangasinan.[3]

In 1921, the property was declared in his name for taxation purposes. In the same year, Turner Land Surveying Company surveyed the land for Dionisio Fontanilla, with the agreement that the cost of survey would be paid upon approval of the plan by the Bureau of Lands. On March 2, 1923, the Bureau of Lands approved the survey plan.

In 1938, for failing to pay the survey costs and to prevent foreclosure, Dionisio Fontanilla sold the land to his daughter, Rosa Fontanilla. In 1939, Rosa began paying the real estate property tax thereon.

On August 21, 1955, for a consideration of one thousand seven hundred pesos (P1,700.00), Rosa sold the land to her nephew, respondent Santiago Fontanilla, evidenced by a notarized deed of absolute sale, signed by Rosa. The instrument was not registered.

In 1955, respondents constructed their house of strong materials on the lot in question, which was completed in 1957.

On December 16, 1957, Rosa's heirs, Estanislao Pajaro and his two (2) children, Fructoso and Paciencia, executed another deed of absolute sale over the same land in favor of respondent Santiago Fontanilla.

In 1978, respondents went to the United States to visit their daughter Mila Fontanilla Borillo. They stayed there until 1981.

On December 20, 1978, taking advantage of respondents' absence from the country, petitioners Enriquito and Amparo Serna applied to the land registration court of Pangasinan for registration[4] of the said parcel of land in their name.

In 1979, the land registration court approved the application, and pursuant to Decree N-176768, the Register of Deeds of Pangasinan issued Original Certificate of Title No. 139 to petitioners. On January 10, 1980, the title was transcribed in the registration book of the register of Deeds of Pangasinan.

On May 27, 1981, respondents filed with the Court of First Instance, Branch XIII, Alaminos, Pangasinan, an action for reconveyance with damages, and sought the annulment of O.C.T. No. 139.[5]

In the trial court, petitioners admitted that Dionisio Fontanilla originally owned the land in dispute. However, they claimed that in 1978 they bought the property for three thousand pesos (P3,000.00) from Lorenza Fontanilla-Rasca. Lorenza, in turn, traced her title from her husband, Alberto Rasca.

Petitioner Amparo said that when Dionisio failed to pay the survey costs in 1921, Turner Land Surveying Company took the property in question as payment for services. Her father, Alberto Rasca, redeemed the property from Turner evidenced by a deed of sale, which, however, Amparo could not produce in court. When her father died, Santiago Fontanilla borrowed from her mother the deed covering the transfer of the property, which Santiago did not return. She said that the property was first declared in Alberto's name for taxation purposes in 1951. Later, the property was ceded to her.

After due trial and consideration of the evidence presented before the trial court and in the land registration case, on June 5, 1992, the trial court rendered judgment in favor of the plaintiffs (herein respondents) spouses Santiago Fontanilla and Rafaela Rasing, decreeing:

> "WHEREFORE, judgment is hereby rendered:
>
> "(a) Declaring the plaintiffs as the absolute and legal owners of the land in question particularly described and bounded and stated in paragraph two (2) of the complaint;
>
> "(b) Ordering the defendants to Transfer and Recover [sic] Original Certificate of Title No. 139 to the plaintiffs;
>
> "(c) Ordering the defendants to pay plaintiffs the amount of P5,000.00 as attorney's fees;

"(d) Ordering the defendants to pay the plaintiffs the amount of P5,000.00 as exemplary damages;

"(e) And to pay the costs, without pronouncement as to moral damages.

"Done at Alaminos, Pangasinan, this 5th day of August, 1992.

"(t/s) Vivencio A. Bantugan
"Judge"[6]

From the decision of the trial court, both parties appealed to the Court of Appeals. Respondents questioned the court *a quo's* failure to grant their claim for moral damages. On the other hand, petitioners claimed that the trial court committed serious error in the appreciation of facts and application of law and Jurisprudence.

On August 22, 1995, the Court of Appeals rendered decision affirming that of the trial court.

In a resolution dated February 26, 1996,[7] the Court of Appeals denied petitioners' motion for reconsideration.

Hence, this petition for review.

Petitioners submit these issues for resolution: (1) whether or not the appealed decision is supported by evidence; (2) whether or not the decision is in accordance with law and Jurisprudence.[8]

The first issue is factual, which we cannot review on appeal.[9] However, petitioners make an issue of the fact that the judge who penned the decision was not the one who presided over the proceedings.

"We have ruled in *People vs. Rayray,*[10] that the fact that the judge who heard the evidence is not himself the one who prepared, signed and promulgated the decision constitutes no compelling reason to jettison his findings and conclusions, and does not *per se* render his decision void. While it is true that the trial Judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision. For a judge who was not present during the trial can rely on the transcript of stenographic notes taken during the trial as basis of his decision. Such reliance does not violate substantive and procedural due process."[11]

As a general rule, findings of fact of the Court of Appeals are binding and conclusive upon us, and we will not normally disturb such factual findings. This is because in an appeal by *certiorari* to this Court, only questions of law may be raised.[12] And "for a question to be one of law it must involve no examination of the probative value of the evidence presented by the litigants or any of them."[13] "To reiterate the distinction between the two types of questions: there is a question of law in a given case when the doubt or difference arises as to what the law is pertaining to a certain state of facts, and there is a question of fact when the doubt arises as to the truth