

## FIRST DIVISION

[ G.R. No. 123908, February 09, 1998 ]

**LEON CO, PETITIONER, VS. COURT OF APPEALS AND BENITO NGO, RESPONDENTS.**

### DECISION

**BELLOSILLO, J.:**

This is a petition for review on *certiorari* of the Resolution of 18 August 1995 of respondent Court of Appeals<sup>[1]</sup> in CA-G.R. CV No. 38012 reversing its previous Decision of 14 September 1994 which affirmed the finding of the trial court that there was a contract of sale between petitioner and private respondent.

On 3 September 1976 private respondent Benito Ngo purchased from Nazario Gonzales a parcel of land known as Lots Nos. 7-A and 7-B, Psd-05-000239, with an area of 155 square meters, which forms part of a bigger area covered by OCT No. RO-16 (1355) situated in Iriga City. As Benito Ngo had earlier acquired the adjacent portions known as Lots

Nos. 7-C, 7-D and 7-E also from Gonzales, the entire Lot No. 7 was subsequently segregated from OCT No. RO-16 (1355). On 15 September 1976 TCT No. 91 was issued over Lot No. 7 in the name of private respondent Benito Ngo.

On 3 November 1976 Antonio Ong, claiming to have purchased Lots Nos. 7-A and 7-B from Nazario Gonzales through his attorney-in-fact Rustica Gonzales Rivera, filed an action against Benito Ngo with the then Court of First Instance of Camarines Sur for annulment of sale, reconveyance and damages.

On 11 March 1979 the Filipino-Chinese Chambers of Commerce of Naga City and of Iriga City held a joint meeting to amicably settle certain controversies among their members. However, only the dispute between Antonio Ong and Benito Ngo was taken up in that meeting. A consensus was reached that the litigated area should be divided between Ong and respondent Ngo so that Lot No. 7-A would go to Ong and Lot No. 7-B to Ngo. Antonio Ong was not satisfied with the proposal as he claimed to have bought the whole property for P60,000.00. To appease Ong, his uncle Jorge Ong agreed to give him P30,000.00 to compensate for half of the purchase price he had paid for the property. With regard to Lot No. 7-B, which was leased by a certain Ong To, the Chambers jointly issued a resolution to the effect that Ong To should give up his occupancy for a compensation of P40,000.00; that Buenaventura and Melecio Ngo, brothers of Benito Ngo, should each give Ong To P15,000.00, while petitioner Leon Co, brother-in-law of Benito Ngo, would pay P10,000.00 to Ong To who would vacate Lot No. 7-B and deliver it to Benito Ngo.

Thereafter, on 23 April 1979 Antonio Ong and Benito Ngo assisted by their respective counsel executed an amicable settlement which provided that Lot No. 7-A would belong to Antonio Ong and Lot No. 7-B to Benito Ngo. The amicable settlement was submitted to the trial court for approval. However, before the same could be approved,

a complaint-in-intervention was filed by petitioner Leon Co alleging that in the joint conference between the Filipino-Chinese Chamber of Commerce of Naga City and the Filipino-Chinese Chamber of Commerce of Iriga City it was agreed that Lot No. 7-B would go to him after paying respondent Benito Ngo ₱49,500.00 for the lot. Respondent Ngo vehemently denied having entered into such agreement, much less having received any amount therefor.

On the basis of the memorandum and affidavits submitted by petitioner Leon Co, over the objection of respondent Benito Ngo, the trial court rendered a decision ordering Benito Ngo to reconvey Lot No. 7-B to Leon Co, plus damages.

On appeal, the Intermediate Appellate Court declared the decision of the trial court null and void for being violative of procedural due process and remanded the case to the lower court for trial on the merits.

After the remand of the case to the court *a quo*, respondent Benito Ngo sought inhibition of Judge Ulysses Salvador of the Regional Trial Court of Iriga City alleging bias in favor of petitioner Leon Co. The motion to inhibit was denied by the presiding judge who eventually, after a protracted trial, sustained the claim of Leon Co that Benito Ngo had verbally sold to him Lot No. 7-B sometime in August 1976 for ₱49,500.00 thus -

x x x judgment is hereby rendered declaring the intervenor, Leon Co, the true and lawful owner of Lot 7-B which is the eastern half of the land described in the Deed of Sale (Exhibit 9) now covered by TCT No. 91 in the name of Benito Ngo (Exhibit 11) ordering defendant Benito Ngo to execute the appropriate Deed of Sale of said property in favor of Leon Co and to vacate the same and peacefully deliver the possession thereof to Leon Co, and further ordering defendant to pay Leon Co the following sums: (a) ₱1,000,000.00 for moral damages; (b) ₱50,000.00 for attorney's fees; (c) ₱1,000.00 a month by way of rental for the use of the land from June 15, 1979 until the same is actually delivered to the intervenor; and, (d) costs.

On appeal by respondent Ngo, the Court of Appeals rendered its Decision modifying the judgment of the Regional Trial Court by reducing the moral damages from ₱1,000,000.00 to ₱100,000.00 and affirming the rest of the decision *in toto*.

Upon motion for reconsideration by respondent Ngo, the Court of Appeals reversed itself by ordering the dismissal of the complaint-in-intervention of petitioner.

Petitioner moved to reconsider the above resolution but his motion was denied. Hence, this petition alleging that the Court of Appeals erred: (a) in reversing its prior decision of 14 September 1994 and concluding that there was bias on the part of the trial court in the assessment of the evidence; (b) in ignoring the glaring inconsistencies in the testimony of respondent Ngo; and, (c) in declaring that there was no evidence of sale of the subject property between petitioner and private respondent.<sup>[2]</sup>

Petitioner argues that respondent appellate court deviated from its duty by intruding into the province of the trial court which is in a much better position to assess the credibility of witnesses. Petitioner contends that the appellate court failed to appreciate the credible testimonies of his witnesses which jibe with the documentary evidence showing that a contract of sale existed between the parties. Petitioner also faults the appellate court for not considering the glaring inconsistencies and contradictions in the pleadings and testimony of private respondent Ngo who failed to overcome the evidence presented by petitioner that there was an agreement to sell the property.

We cannot sustain petitioner. The rule that the factual findings of the trial court are entitled to great weight and respect on appeal is neither absolute nor inflexible. One of the exceptions to the rule is where substantial facts and circumstances have been overlooked which, if properly considered, would justify a different conclusion or alter the result of the case.

Notwithstanding the affirmance by respondent appellate court in its earlier decision of the factual findings of the trial court, it reversed itself after a reexamination of the record independent of the assessment of the evidence by the trial court. Respondent court ruled that certain facts have been overlooked resulting in a misappreciation of the documentary and testimonial evidence.<sup>[3]</sup>

In claiming that respondent Ngo sold the property to petitioner, the latter alleged in his complaint-in-intervention -

5. With the combined efforts of all the above-mentioned parties, an amicable settlement was finally reached by the litigants under the following terms and conditions:

(a) The land in question between Antonio Ong and Benito Ngo in Civil Case No. IR 545 shall be divided into two (2) equal parts; one-half thereof to be given to plaintiff Antonio Ong and the other half to defendant Benito Ngo.

(b) The portion adjudicated to Benito Ngo shall be given by the latter to intervenor Leon Co who had already paid the amount of ₱49,500.00. This arrangement was made in order that said Leon Co shall have a lot wherein to run his business in lieu of the parcel of land he is presently occupying as lessee which is the subject matter of the litigation in Civil Case No. IR-317 between him and Segundina Nacario;

(c) Leon Co, in turn, shall deliver to Segundina Nacario the said parcel of land he now occupies as lessee thereof first from the original owner, Nazario Gonzales and lastly from Rustica Gonzales who inherited the said property from Nazario Gonzales;

X X X X

6. The foregoing agreement was formally reduced in writing and signed by the interested parties in the presence of the officers of the Chinese Chambers of Commerce who also signed the same in attestation thereof;

X X X

Petitioner presented as sole documentary basis of the alleged sale of the property the Minutes of the special meeting of the Filipino- Chinese Chambers of Commerce held on 11 March 1979 -

Minutes of the special meeting of the Rinconada-Iriga City, Filipino-Chinese Chamber of Commerce, with the invited participation of the Naga City Filipino-Chinese Chamber of Commerce, held in the assembly place of the former located in the Rinconada Allied Cultural School on March 11, 1979 at 12:00 noon with the attendance of Benito Dy Chio, Luis Recato, Ramon Dy Prieto, Dy Eng Chiong, Antonio Ong, Lau Siu, Leon Co, members of the executive committee of the Naga City FCCC and Benito S. Ngo, Lao Siu, Ong To, members from the Rinconada, Iriga City, FCCC.

Chairman: Vicente Kho Shim