

TWENTY-THIRD DIVISION

[CA-G.R. CV NO. 02073-MIN, February 27, 2015]

VIRGILIO B. CRESPO,^[*] PLAINTIFF-APPELLEE, VS. VAN M. MENDOZA, DEFENDANT-APPELLANT.

D E C I S I O N

CONTRERAS, J.:

Addressed here is an Appeal^[1] from the Decision^[2] of the Regional Trial Court, Branch 26 of Surallah, South Cotabato granting Civil Case No. 747-B for Declaration of Nullity of Documents, Recovery of Ownership and Possession and Damages.

The antecedent facts are:

Appellee Virgilio B. Crespo filed on July 30, 2003, a complaint,^[3] docketed as Civil Case No. 747-B, against appellant Van M. Mendoza alleging that appellee is the true and lawful owner of the two (2) parcels of land designated as Lot No. 2846, Pls-214-D-1 and Lot No. 2847, Pls-214-D-10 (subject lots) with land area of 1000 square meters each, located in Barangay Rizal, Poblacion Banga, South Cotabato, and covered by tax declaration no. ARP No. 99-004-00662 in the name of appellee; that he neither sold, transferred, conveyed nor disposed of in any manner the subject lots to anybody particularly appellant; that sometime on April 20, 1998, appellant through malice and bad faith and employing false pretense, deceit and forgery, caused the execution of a Deed of Sale purportedly to show that appellant sold, transferred and conveyed the subject lands to appellant; that the existence of the deed of sale became known to appellee only in January 2003 when he was told that appellant was applying for the issuance of title over the subject lots; that the deed of sale was null and void, being fraudulent, falsified and fictitious as the signature of appellee thereon was a forgery; that appellee deserved to recover the ownership and possession of the subject lands but appellant refused to return the same; that earnest effort to amicably settle the controversy among themselves had already been resorted to but to no avail; that the matter was referred to the Barangay Lupon of Barangay Rizal, Poblacion Banga, South Cotabato, for conciliation but no settlement was reached; that appellant, taking advantage of appellee's indigence and inability to afford the services of a counsel, mischievously dared appellee to file a suit against him. Thenceforth, appellee asked PHP 50,000.00 as moral damages, PHP 20,000.00 as exemplary damages and PHP 10,000.00 for the expenses and costs of suits. Appellee prayed that the Deed of Absolute Sale dated April 20, 1998 and other documents and instruments made and executed pursuant thereto be declared null and void and that appellant be ordered to surrender to him the ownership and possession over the subject lots.

On September 29, 2003, appellant filed an Answer with Counterclaim.^[4] He denied the material allegations of appellee and at the same time raised his defenses that

the subject lots had been sold to him by appellee through his middlemen, his sister, Concepcion "Cacay" Crespo-Liboon (Cacay for brevity), and nephew, Edsel Miague (Edsel for brevity), who both acted as witnesses to the sale. The Deed of Sale was already prepared by appellee's counsel when it was presented by Cacay and Edsel to him. After their representations and assurances, appellant was then convinced to buy the subject lots at the total price of PHP 34,000.00. Appellant also denied that they had barangay conciliation. He had not received any notice to a conciliation proceeding. As counterclaims, appellant asked the lower court to make appellee pay the amount of PHP 10,000.00 as counsel's acceptance fee, PHP 25,000.00 as attorney's fees, PHP 1,000.00 as counsel's appearance fee per session, PHP 20,000.00 as litigation expenses, PHP 20,000.00 as moral damages and PHP 20,000.00 as exemplary damages. Appellant prayed that the complaint be dismissed for lack of evidence to show a cause of action and to uphold the validity of the deed of sale.

In the course of trial, appellee, to prove forgery and ownership over the subject lots, presented Declaration of Real Property Nos. 99-04-00658-99-004-00662, Machine copy of the assailed Deed of Absolute Sale bearing his (appellee) alleged forged signature, Certificate of Live Birth of Julie Malamid Crespo bearing his true signature, Joint Affidavit dated March 5, 1979 of appellee and his wife Norberta showing the signatures of the spouses, and his two (2) identification cards with his signatures on them.^[5] On the other hand, appellant failed to formally offer his exhibits.

Hence, after a trial, the lower court rendered the assailed Decision dated November 13, 2009, the dispositive portion of which reads, as follows:

WHEREFORE, premises considered and discussed, the court hereby renders its decision in favor of the plaintiff and against the defendant. The defendant is therefore ordered:

1. To vacate the premises and turn over possession of the property in question to the plaintiffs;
2. To pay plaintiffs the following:
 - a) FIVE THOUSAND PESOS (PHP 5,000.00) as actual expenses in filing the instant case; and
 - b) FIVE THOUSAND PESOS (PHP 5,000.00) as reimbursement of attorney's fees.

SO ORDERED.

Subsequently, appellant filed the instant appeal raising the following assignment of errors:^[6]

- I. THE HONORABLE TRIAL COURT ERRED IN FINDING THAT THE DEED OF SALE SUBJECT MATTER OF THIS CASE IS A FORGERY.
- II. THE HONORABLE TRIAL COURT ERRED IN FINDING THAT THE PLAINTIFF-APPELLEE OF THIS CASE HAD NO KNOWLEDGE OF THE TRANSACTION BETWEEN HIS NEPHEW AND THE DEFENDANT-

APPELLANT.

III. THE HONORABLE TRIAL COURT ERRED WHEN IT ORDERED THAT THE PERSON WHO ENTERS INTO A SALE TRANSACTION OVER A REAL PROPERTY MUST DIG DEEPER INTO THE OWNERSHIP OF THE REAL PROPERTY.

IV. THE HONORABLE TRIAL COURT ERRED WHEN IT DECIDED THAT THE DEFENDANT-APPELLANT IN THIS CASE IS IN CONNIVANCE WITH EDCEL MIAGUE IN THE SALE TRANSACTION SUBJECT OF THIS CASE.

In essence, the issues in the instant case are (1) whether the signature of appellee Virgilio B. Crespo on the Deed of Absolute Sale dated April 20, 1998 is a forgery; and (2) whether appellant is a buyer in good faith.

Appellant argues that appellee failed to present an expert witness to prove the alleged forgery.^[7]

It is a rule that forgery cannot be presumed and must be proved by clear, positive and convincing evidence. The burden of proof lies on the party alleging forgery.^[8] In this case, appellee presented several documents showing his real signature such as the Certificate of Live Birth of his daughter Julie Malamid Crespo, which was filed on March 27, 1979, Joint Affidavit dated March 5, 1979, and his Identification Cards issued by the South Cotabato I Electric Cooperative, Inc. and the Office of Senior Citizen Affairs. A comparison of appellee's signature on these documentary evidence with the allegedly forged signature on the Deed of Absolute Sale reveals that there is a great discrepancy in the way the signatures were written, the style and strokes. Even a layman can tell that the signature on the Deed of Absolute Sale was not made by appellee but by someone else. There was actually no imitation of appellee's signature. Hence, contrary to appellant's argument, there is no need to employ a handwriting expert to examine the signatures because the assailed signature is totally different from appellee's real signature.

The lower court is correct in formulating his ruling based only on the visual comparison of the signatures without the aid of a handwriting expert. In *Vicente Manzano, Jr. v. Marcelino Garcia*,^[9] the Supreme Court declared that:

It bears stressing that the trial court may validly determine forgery from its own independent examination of the documentary evidence at hand. This the trial court judge can do without necessarily resorting to experts, especially when the question involved is mere handwriting similarity or dissimilarity, which can be determined by a visual comparison of specimen of the questioned signatures with those of the currently existing ones. Section 22 of Rule 132 of the Rules of Court explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting "with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge."

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In the case at bar, however, the variance in the alleged signature of Garcia in the pacto de retro sale, on one hand, and in the evidence on