

EIGHTEENTH DIVISION

[CA-G.R. CV. No. 02808, July 31, 2014]

**CORAZON APELO JOINED BY HER HUSBAND MANUEL APELO,
PLAINTIFFS-APPELLANTS, VS. SPOUSES BUEN PEDREGOSA, AND
NORA PEDREGOSA, DEFENDANTS-APPELLEES.**

D E C I S I O N

INGLES, G. T., J.:

THE CASE

This is an appeal filed under Rule 41 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse and set aside the Decision^[1] dated September 30, 2008, of the Regional Trial Court, 6th Judicial Region, Branch 15, Roxas City, in Civil Case No. V-104-04 directing the dismissal of the Complaint for Declaration of Nullity of deed of absolute sale of a parcel of land, Deed of Adjudication with Absolute Sale, Tax Declaration No. 85-4676^[2] and damages and ordering plaintiffs-appellants to pay defendants-appellees moral damages, actual damages and attorney's fees.

THE FACTS

The subject property is a parcel of land designated as Lot No. 713-B of the Ivisan Cadastre, Ivisan, Capiz consisting of 18,446.35 square meters under Tax Declaration No. 85-4676 in the name of defendants-appellees.

Plaintiffs-appellants spouses Manuel and Corazon Apelo are the parents of defendant-appellee Nora Apelo Pedregosa married to Buen Pedregosa. Plaintiffs-appellants and their children Rogero and Nicolas Apelo are in actual possession of the subject lot where their houses are built.

Plaintiff-appellant Corazon Apelo acquired ownership of Lot 713 through inheritance from her mother, Rosario Ulla who acquired the same from her own mother, Felicidad Berame. She owns one-third of Lot 713 while her brother and sister, namely, Pedro Valcarcel and Merced Valcarcel own one-third share each. With her siblings now deceased, their children now own said shares.

Years ago, the heirs of Pedro Valcarcel sold their one-third share to Merced Valcarcel, which makes the heirs of the latter now owners of two-third of the subject land. Subsequently, Lot 713 was subdivided into two parts – Lot 713-A and Lot 173-B. Lot 713-A belongs to the heirs of Merced Valcarcel while Lot 713-B belongs to plaintiff-appellant Corazon Apelo.

Sometime in August, 2004, plaintiff-appellants discovered that defendants-appellees spouses simulated a document entitled Deed of Absolute Sale of a parcel of land dated January 15, 1978 whereby they made it appear that plaintiff-appellant Corazon Apelo sold, ceded and conveyed by way of absolute sale all her rights, interests consisting of one-third portion to defendant-appellee Buen Pedregosa, his

heirs and successors-in-interest. Around the same time, plaintiff-appellants also found out that another document, a Deed of Adjudication with absolute sale dated June 25, 2004 was also falsified to make it appear that plaintiff-appellant Corazon without the conformity of her husband, sold and conveyed by way of absolute sale unto defendant-appellee Buen Pedregosa married to Nora Pedregosa her entire share in Lot 713-B. Plaintiff-appellants likewise discovered that defendants-appellees caused to be declared for taxation purposes, Tax Declaration No. 05-0317 covering Lot 713-B in the name of Buen Pedregosa.

To protect her interest over Lot 713-B, plaintiff-appellant Corazon filed with the Office of the Register of Deeds of Capiz a Notice of Adverse Claim on September 24, 2004. Plaintiffs-appellants and their children Roger and Nicolas are in actual occupation of the property where they built their houses thereon.

On November 10, 2004, plaintiffs-appellants filed a Complaint^[3] for Declaration of Nullity of deed of absolute sale of a parcel of land, Deed of Adjudication with Absolute Sale, Tax Declaration No. 85-4676 and damages against defendants-appellees with the Regional Trial Court, Sixth Judicial Region, Branch 15, Roxas City in Civil Case No. V-104-04. In their complaint, plaintiffs-appellants alleged that they have been in open and continuous possession over said property from time immemorial and that defendants-appellees have not possessed the same even for a single day. Neither did defendants-appellees exercise any right of ownership thereon. Likewise, plaintiffs-appellants claimed that they did not receive the purchase price as consideration for the sale of the subject lot as stated in the Deed of Absolute Sale of a parcel of land. Plaintiffs-appellants asseverated that the Deed of Absolute Sale, as well as the Deed of Adjudication with Absolute Sale were forgeries since they did not affix their signatures thereto. Because of the unlawful acts of the defendants-appellees, plaintiffs-appellants prayed for the award of moral damages, actual damages and attorney's fees as well as litigation expenses. Plaintiffs-appellants asked for the declaration of the nullity of the Deed^[4] of Absolute Sale dated January 15, 1978, Deed^[5] of Adjudication with Absolute Sale dated June 25, 2004 and Tax Declaration^[6] No. 05-317.^[7]

Defendants-appellees filed their Answer^[8] alleging that Corazon Apelo was then owner of one-third of Lot 713 until it was sold to them on January 15, 1978 via Deed of Absolute Sale. Defendants-appellees maintained that the Deed of Absolute Sale is valid and legal being a public document and duly notarized. Likewise, they claimed that the Deed of Adjudication with absolute sale is also valid and legal being voluntarily signed by the parties and notarized. Defendants-appellees argued that the non-conformity of Manuel Apelo in the second deed is not material because said deed merely confirms the prior sale between the parties. According to defendants-appellees, plaintiffs-appellants and defendants-appellees originally stayed together in one house in Loctugan, Roxas City but in 1980, after their purchase of the subject lot, the plaintiffs-appellants constructed their own house on Lot 713-B. From that time until the present, defendants-appellees have cultivated the land, planted trees thereon and other agricultural products on the vacant portion of the land. Defendants-appellees also contended that Corazon Apelo signed four times on the notarized documents while Manuel Apelo signed twice thereon showing clearly that plaintiffs-appellants received the consideration for the sale of the subject lot.

In their counter-claim, defendants-appellees averred that they are entitled to damages because of the frivolous suit filed against them. They also asseverated that

plaintiffs-appellants have no cause of action against them warranting the dismissal of the instant complaint. Defendants-appellees thus prayed for the award of actual and moral damages, as well as attorney's fees and litigation expenses.

Trial ensued. Both parties presented their respective documentary and testimonial evidence. For the plaintiffs-appellants, both of them testified, as well as Atty. Blas Nolasco, Clerk of Court, RTC, Capiz and Miguel Diaz, Jr. of the Register of Deeds, Capiz. On the other hand, both defendants-appellees testified in their favor.

On September 30, 2008, the Regional Trial Court, Sixth Judicial Region, Branch 15, Roxas City rendered a Decision^[9] against plaintiffs-appellants, the dispositive portion whereof reads as follows:

"WHEREFORE, foregoing premises considered, Judgment is hereby rendered in favor of the defendants and against the plaintiffs.

1. Dismissing the complaint.

2. Ordering the plaintiffs to pay defendants damages the latter prayed for in the counterclaim to wit:

(a) P50,000.00 as moral damages.

(b) P20,000.00 as actual or compensatory damages

© P20,000.00 as attorney's fees.

Costs against plaintiffs.

SO ORDERED."

Aggrieved, plaintiffs-appellants come to this Court, assigning the following errors, to wit:

"I.

THE COURT A QUO ERRED IN DISMISSING THE COMPLAINT DESPITE CLEAR AND CONVINCING PROOF THAT APPELLANTS' SIGNATURES ON EXHIBITS "S" AND "C" WERE FALSIFIED; and

II.

THE COURT A QUO ERRED IN AWARDING DAMAGES IN FAVOR OF THE APPELLEES."

OUR RULING

I.

Validity of Deed of Absolute Sale of a parcel of land and Deed of Adjudication with absolute sale

It is the submission of plaintiffs-appellants that the court a quo erred in holding that the assailed documents - Deed of Absolute Sale and Deed of Adjudication with absolute sale, being notarial documents enjoy the presumption of regularity in their execution and thus, their validity should be upheld. Plaintiffs-appellants point out that the signatures embodied on said documents are not theirs or were falsified. They vehemently deny appearing before the notary public who notarized said documents. Plaintiffs-appellants aver that the established rule is that the person

who has in his possession the falsified documents and made use of the same is the author of the forgery or falsification. It was also established by evidence that defendants-appellees are the possessors of the falsified documents. Relying on *People vs Vilorio, 1 Phil 682*, plaintiffs-appellants posit that the testimony of an expert witness is not indispensable in determining the authenticity or genuineness of a person's signature on a document and that it is sufficient that the person whose signature purportedly appears thereon deny under oath his signature, said denial being *prima facie* evidence of falsification. Thus, plaintiffs-appellants assert that the presumption that official acts of a notary public have been properly performed applies only when there is no evidence to the contrary. However, when there is evidence to the contrary such as denial in open court, the presumption of regularity in the performance of official duties of a notary public does not apply. Otherwise stated, plaintiffs-appellants insist that their open court testimonies denying the signatures on the subject documents as theirs and non-appearance before the notary public are affirmative evidence of forgery and in effect, the presumption of regularity of official acts of a notary public cannot apply in this case.

Plaintiffs-appellants' argument is bereft of merit.

The main issue for resolution in this case is the validity of the assailed Deed of Absolute Sale of a portion of a parcel of land dated January 15, 1978 as well as the Deed of Adjudication with absolute sale dated June 25, 2004, involving Lot 713-B. Also assailed is the Tax Declaration No. 05-0317 covering the same lot. Plaintiffs-appellants deny that they executed the assailed documents and that the signatures affixed thereon are not theirs.

Records show that both documents are public documents, being notarized by notaries public. "Notarization of a private document converts it into a public instrument making it admissible in court without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face."^[10] "As public documents, these are prima facie evidence of the facts therein expressed and being notarized documents, these have in their favor the presumption of regularity, and to overcome the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise the document should be upheld."^[11] Plaintiffs-appellants have failed to show that such contradictory evidence exists in this case.

In ***Aznar Brothers Realty vs Court of Appeals, GR No. 128102, March 7, 2000***, the Supreme Court shed light on this matter, thus:

xxx It is worthy to note that the Extrajudicial Partition with Deed of Absolute Sale is a notarized document. As such, it has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of authenticity and is entitled to full faith and credit upon its face. He who denies its due execution has the burden of proving that contrary to the recital in the Acknowledgment he never appeared before the notary public and acknowledged the deed to be his voluntary act. It must also be stressed that whoever alleges forgery has the burden of proving the same. Forgery cannot be presumed but should be proved by clear and convincing evidence. Private respondents failed to discharge this burden of proof; hence, the presumption in favor of the questioned deed stands. (underscoring ours)

Plaintiffs-appellants assert that the signatures on the assailed documents are forgeries. We reject such claim. It bears stressing that forgery is not presumed. Forgery must be proved with clear and convincing evidence.^[12] Whoever alleges it has the burden of proving the same.^[13]

Under the Rules of Court, the genuineness of a handwriting may be proved by the following: (1) A witness who actually saw the person writing the instrument; (2) A witness familiar with such handwriting and who can give his opinion thereon, such opinion being an exception to the opinion rule; (3) A comparison by the court of the questioned handwriting and admitted genuine specimen thereof; and (4) Expert evidence.

In the case at bar, it appears that plaintiffs-appellants failed to submit sufficient evidence to prove that these documents are forgeries. They merely deny the validity of said documents and therefore heavily rely on bare, self-serving allegations. Plaintiff-appellant Manuel testified that by merely comparing his alleged genuine signature in his voter's certificate with his purported signature in the alleged Deed of Absolute Sale, the glaring dissimilarities can be readily seen. He asserts that this disparity proves that he did not sign said document. The court a quo correctly noted that plaintiffs-appellants did not exert their best efforts to have the original Deed of Absolute Sale and Deed of Adjudication presented in court so that these could be examined by experts. In short, plaintiffs-appellants failed to discharge their burden of proving forgery.

We adopt the findings of the court a quo on this score, thus:

"Except from the bare denials that defendants ever set a foot on the subject property, the plaintiffs do not have concrete evidence to support such denial. Had defendants not purchased the property from them validly as embodied in Exh "B" (Exh. "1" for defendants) the nagging question on why the plaintiffs have not produced any piece of document showing that they ever have the subject property declared for taxation purposes in their names or at least in the name of Corazon Apelo or a single receipt from the municipal treasurer of the place showing that plaintiffs once upon a time has paid realty tax thereon remains and unavoidably cast doubt on the veracity of their claims. Twenty-four long years of possessing the property and paying its taxes after having declared the same in their names without the plaintiffs questioning such or without any plausible explanation given by plaintiffs on the reason why they never paid a single tax on the property during this long long period of time, would render nugatory plaintiffs' claim of ownership of the property or their alleged lack of knowledge of the means by which defendant acquired ownership of or title thereto, much less, defendants' alleged fictitious acquisition thereof."

Indeed, there is no competent proof that plaintiffs-appellants declared the land in their name for taxation purposes or paid its taxes due thereon. While tax receipts and declarations are not incontrovertible evidence of ownership, they constitute, at the least, proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes not only manifests one's sincere and honest desire to obtain title to the property, but also announces an adverse claim against the State and all other interested parties with an intention to contribute needed revenues to the government. Such an act strengthens one's *bona*