

## THIRTEENTH DIVISION

[ CA-G.R. CV NO. 96576, November 25, 2014 ]

**TEODORA VDA. DE AGRAVANTE (SUBSTITUTED BY JEAN M. GERONIMO), PLAINTIFF-APPELLEE, VS. FELICIDAD MEDINA, DEFENDANT-APPELLANT.**

**FELICIDAD MEDINA, THIRD-PARTY PLAINTIFF-APPELLANT,**

**SHIRLEY MOLL, THIRD-PARTY DEFENDANT-APPELLEE.**

### D E C I S I O N

**SADANG, J.:**

Appealed to this Court is the Decision<sup>[1]</sup> dated January 12, 2011 of the Regional Trial Court of Pili, Camarines Sur, Branch 31, in Civil Case No. P-2367.

#### *Antecedents of the Appeal*

Plaintiff-appellee Teodora Vda. De Agravante (hereafter, Teodora), filed a Complaint for annulment of deed of sale with damages in the lower court, docketed as Civil Case No. P-2367. Teodora is the maternal grandmother of Shirley Moll (Shirley), Gilda Medina Roque (Gilda), Jean Medina Geronimo (Jean), and the deceased Ernesto "Joker" Medina (Ernesto).

In her Complaint,<sup>[2]</sup> Teodora alleged that she is the registered owner of a parcel of land in Hanawan, Ocampo, Camarines Sur covered by Transfer Certificate of Title (TCT) No. 1216 of the Register of Deeds of Camarines Sur.<sup>[3]</sup> Sometime in November 2003, her owner's duplicate title was stolen by unidentified persons from the wooden cabinet where she kept it and she could not find it despite earnest efforts to that end. In June 2004, she secured, through a representative, a certified copy of TCT No. 1216 and she discovered that an adverse claim was annotated thereon by Ernesto's widow, Felicidad Pascual-Medina (Felicidad) on May 7, 2004 based on a deed of absolute sale allegedly executed by Teodora in favor of Ernesto. On June 21, 2004, Teodora filed a petition for the issuance of a new owner's copy of TCT No. 1216 but Felicidad opposed the petition claiming that she has the owner's copy and the deed of absolute sale executed by Teodora. Teodora alleged that she did not sell her land to Ernesto and the undated deed of absolute sale is forged and void *ab initio*. She claimed that due to the fictitious sale, she suffered humiliation, sleepless nights and mental anguish which entitles her to moral and actual damages.

Felicidad filed an Answer<sup>[4]</sup> averring that the lot covered by TCT No. 1216 was validly and voluntarily sold by Teodora to Ernesto on July 24, 1998 under a Deed of Absolute Sale.<sup>[5]</sup> She alleged that the complaint was instigated by Shirley who took

advantage of Teodora's diminished physical and mental condition. Teodora is 93 years old and blind and cannot read or write and had shown signs of senility.

Felicidad filed a motion for leave of court to file a third-party complaint against Shirley and the motion was granted in the Order<sup>[6]</sup> dated November 12, 2004.

In her Third Party Complaint,<sup>[7]</sup> Felicidad reiterated Shirley's having instigated the case. She alleged that after the burial of Ernesto in 1993, Shirley was seen taking the deceased's personal belongings without her permission. Before the death of Ernesto, Shirley asked for the owner's copy of the title so she can use it as collateral for a loan but Ernesto refused. It was common knowledge in the family that the land had been sold to Ernesto and title thereto was in his possession but Shirley feigned ignorance thereof and caused the filing of a notice of loss in the Register of Deeds of Camarines Sur stating that the title was stolen by unidentified persons. Seven months after the alleged loss, or on June 17, 2004, Shirley reported it to the Ocampo Police Station, which is not the normal reaction of a prudent person. Felicidad alleged that due to the malicious filing of the complaint she is entitled to moral and exemplary damages and attorney's fees.

Shirley filed an Answer to the Third Party Complaint<sup>[8]</sup> alleging that: she did not instigate the complaint, the filing thereof being the personal decision of Teodora; Ernesto and Felicidad are not husband and wife; she did not borrow the title from Ernesto and no one in the family knew of the alleged sale to him; Teodora asked her to file the notice of loss in the Register of Deeds and to report the loss to the Ocampo Police Station because she was the one taking care of Teodora; she attended the cremation of her brother Ernesto and immediately went home to Bicol in the evening, hence, it was impossible for her to ransack his personal belongings. Shirley prayed for actual, moral and exemplary damages and attorney's fees.

Before Shirley filed her answer, Teodora, on motion, was allowed to give an oral deposition on April 27, 2005. She affirmed her allegations in her Complaint and maintained that she did not execute the deed of sale in favor of Ernesto or appear before the notary public. Teodora also testified that she sold the land to David Young (Young).<sup>[9]</sup>

On April 28, 2006, Teodora died.<sup>[10]</sup> The lower court named Jane<sup>[11]</sup> Medina-Geronimo as substitute plaintiff in lieu of Teodora.<sup>[12]</sup>

At the trial, the testimonies of the instrumental witnesses, Eduardo Medina (Medina) and Guillermo Carbonell (Carbonell), were offered to buttress the allegations of Teodora in her Complaint. Medina testified that he and Ernesto appeared before the notary public but Teodora and Carbonell did not.<sup>[13]</sup> Carbonell denied that he appeared before the notary public.<sup>[14]</sup> However, Medina and Carbonell admitted that they signed the document but they did not bother to know or understand the contents thereof.<sup>[15]</sup>

On the other hand, Felicidad offered her and the testimonies of notary public Nyorlito Galvan (Atty. Galvan), Norman Medina (Norman), Gilda Roque (Gilda), and SPO2 Honesto Olaguer.

Felicidad insisted that Teodora had sold the land to Ernesto and delivered the title to him. Atty. Galvan testified that Teodora and her witnesses appeared before him and he explained the nature of the document to Teodora before she affixed her thumbmark thereon. He stated that he cannot recall if Ernesto also appeared before him and he cannot recall if Medina and Carbonell are the same persons who appeared as witnesses. Norman, Ernesto's son, testified that during a family gathering he heard Shirley state that because Ernesto had died the land automatically goes to Felicidad. Gilda testified that Ernesto had told her that Teodora had sold the land to him and she (Gilda) even accompanied him when he withdrew the purchase money from the bank. Gilda also testified that Shirley wanted to borrow the title to be used as collateral for a loan but Ernesto refused the request. SPO2 Olaguer testified on the report in the police blotter of the alleged loss of the title.

On January 12, 2011, the lower court rendered its Decision in favor of Teodora. The *fallo* reads:

WHEREFORE, all the foregoing considered, the undated Deed of Absolute Sale purportedly executed by the late original plaintiff, Teodora Vda. De Agravante in favor of her late grandson, Ernesto Medina, the husband of herein defendant and Third Party Plaintiff, Felicidad Medina, is hereby declared null and void and without force and effect.

The Register of Deeds of Camarines Sur is hereby ordered to cancel the affidavit of adverse claim inscribed at the back of the Transfer Certificate of Title No. 1216 on file with said office.

Likewise, the Third Party Complaint, having not proved by preponderance of evidence is hereby DISMISSED.

No pronouncement as to costs.

SO ORDERED.<sup>[16]</sup>

Hence, this appeal by Felicidad raising the following issues:<sup>[17]</sup>

- 1) WHETHER OR NOT THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN NOT FINDING THAT TEODORA LIED WHEN SHE ALLEGED THAT TCT 1216 WAS STOLEN FROM HER HOUSE IN NOVEMBER 2003 WHICH STORY WAS LATER CHANGED DURING HER TESTIMONY IN OPEN COURT THAT THE TCT WAS "ENTRUSTED" TO ERNESTO.
- 2) WHETHER OR NOT THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ITS ASSUMPTION OF BAD FAITH ON THE PART OF ERNESTO ONLY ON THE BASIS OF TESTIMONIES OF EDUARDO AND GUILLERMO WHICH WERE GIVEN AFTER THE DEATH OF ERNESTO.
- 3) WHETHER OR NOT THE TRIAL COURT COMMITTED

REVERSIBLE ERROR IN GIVING MORE WEIGHT IN THE TESTIMONY OF TEODORA OVER THE TESTIMONY OF NOTARY PUBLIC ATTY. NYORLITO GALVAN.

- 4) WHETHER OR NOT THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN CONCLUDING THAT NO CONSIDERATION WAS GIVEN BY ERNESTO IN PAYMENT FOR THE LAND.
- 5) WHETHER OR NOT THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN CONCLUDING THAT THE ACT OF TEODORA IN SELLING THE DISPUTED PROPERTY TO DAVID IS PROOF THAT SHE IS STILL THE OWNER OF THE SAME; AND
- 6) WHETHER OR NOT THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN TAKING AS EVIDENCE FOR THE PLAINTIFF IN THE COMPLAINT FOR ANNULMENT OF SALE THE TESTIMONIES OF SHIRLEY MOLL AND DAVID YOUNG DESPITE THE FACT THAT THEIR TESTIMONIES WERE NOT OFFERED, NOR ADMITTED, IN THE COMPLAINT FOR ANNULMENT OF SALE.

As to her Third-Party Complaint, Felicidad raises these issues:<sup>[18]</sup>

- 1) WHETHER OR NOT THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN NOT CONSIDERING THE FACT THAT SHIRLEY MOLL MADE FALSE REPORT TO THE POLICE THAT TCT 1216 WAS STOLEN AND ALLOWING TEODORA VDA. DE AGRAVANTE USE THE POLICE REPORT SUPPORT HER COMPLAINT FOR ANNULMENT OF SALE;
- 2) WHETHER OR NOT THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING THE 3RD PARTY COMPLAINT DESPITE THE OVERWHELMING EVIDENCE PROVING THAT SHIRLEY MOLL KNOWINGLY GAVE FALSE STORY ABOUT THE "ROBBERY IN THE HOUSE OF TEODORA IN NOVEMBER 2003" WHICH REPORT WAS REITERATED IN SUPPORT OF THE COMPLAINT FOR ANNULMENT OF SALE.

### ***RULING***

Essentially, the issue in this appeal revolves on the validity of the notarized deed of absolute sale over the land covered by TCT No. 1216 purportedly executed by Teodora in favor of Ernesto.

Basic is the rule that the burden of proof lies in the party who alleges a fact in issue. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law.<sup>[19]</sup> Considering that Teodora claims that she did not execute the deed of sale in question, the burden is on her to prove her allegation.

Article 1305 of the Civil Code states that "a contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." For a contract to be valid, it must have three essential elements: a) consent of the contracting parties; b) object certain which is the subject matter of the contract; and c) cause of the obligation which is established. The requisites of consent are: 1) it should be intelligent or with an exact notion of the matter to which it refers; (2) it should be free; and (3) it should be spontaneous.<sup>[20]</sup>

Further, Article 1330 of the Civil Code provides that "a contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable." Fraud exists only when, through insidious words or machinations, the other party is induced to act and without which, the latter would not have agreed.<sup>[21]</sup> In this jurisdiction, fraud is never presumed - *fraus est idiosa et non praesumenda*.<sup>[22]</sup> It must be proven by clear and convincing evidence and not mere preponderance of evidence.<sup>[23]</sup> It must be stressed that mere allegations of fraud are not enough. Intentional acts to deceive and deprive another of his right, or in some manner injure him, must be specifically alleged and proved.<sup>[24]</sup>

In this case, the lower court ruled that it is not controverted that the thumbmarks on the deed of sale are Teodora's. In fact, Teodora's counsel admitted that the thumbmarks are hers when the appellants sought expert opinion thereon.<sup>[25]</sup> The lower court also ruled that it is not controverted that the signatures on the deed are those of the instrumental witnesses, Eduardo Medina and Guillermo Carbonell. The evidence shows that said witnesses admitted their signatures.<sup>[26]</sup>

Nonetheless, the lower court found that the sale is null and void for the following reasons: 1) Teodora's filing of a petition for the issuance of a new owner's duplicate title shows that she was not aware of the sale to Ernesto; 2) the testimonies of Medina and Carbonell that they signed the deed of sale as witnesses without bothering to read its contents upon the understanding that it was only an arrangement between a grandmother and her grandson were not controverted; 3) the testimony of Shirley that Teodora was still of sound mind despite her old age, illness, and blindness was not controverted, however, "while Teodora's mind may have been sound when she affixed her thumbmark on the document due to old age, the same may have already been degenerating, such that, her being of old age coupled with her blindness, may have become susceptible to surreptitious machinations;" 4) Teodora's testimony that she did not appear before the notary public is supported by Medina's testimony to that effect; 5) although the deed of sale states a purchase price of P150,000.00, there is no showing that Teodora received said consideration; 6) Teodora's act of selling the land to Young proves that she was unaware that the document that bears her thumbmarks was really a deed of absolute sale.

We are not convinced that Teodora had successfully discharged her burden of proving that she did not execute the deed of sale.

To reiterate, there is no question that Teodora had thumbmarked the deed of sale and that the witnesses thereto had signed it. There being no evidence to the contrary, it must be presumed that Teodora was of sound mind when she affixed her