

## FOURTH DIVISION

[ CA-G.R. CV No. 95061, November 18, 2014 ]

**ASUNCION Y. DARAG, PLAINTIFF-APPELLEE, VS. ALFREDA TANAY COLICO AND DANILO COLICO, DEFENDANTS-APPELLANTS.**

### DECISION

**SORONGON, J.:**

Before Us is an Appeal<sup>[1]</sup> from the Decision<sup>[2]</sup> dated March 10, 2010 of the Regional Trial Court of Iriga City, Branch 60 in Civil Case No. IR-3435.

#### The Antecedent Facts

On February 3, 2004, plaintiff-appellee Asuncion Darag (Asuncion) together with Ponciano Darag filed a Complaint<sup>[3]</sup> for "Declaration of Ownership, Quieting of Title with Preliminary Injunction and Damages" against defendants-appellants Alfreda Tanay Colico and Danilo Colico (defendants-appellants) over a parcel of land more particularly described as follows:

"A parcel of residential land situated at Libliban, Agos, before now San Miguel, Bato, Camarines Sur, with approximate area of 384 sq. m., bounded on the North by herein plaintiff Asuncion Darag on the East by Pastor Abonita, on the South by Cecilio Sabas and on the West by plaintiff Asuncion Darag; Portion of the land declared in the name of Plaintiff Asuncion Darag under Tax Dec. No. 97-025-00282 and assessed at P13,898.00"

From the records we found that on April 26, 1962, Florentina Darag and Rosa Darag with the consent of their father Paulino Darag, sold their corresponding shares in the above-described residential lot to Asuncion Darag.<sup>[4]</sup>

During the lifetime of spouses Florentina Darag-Tanay and Martin Tanay ( parents of defendants-appellants) they asked Asuncion to allow them to construct a house on the subject lot to which Asuncion obliged considering that Florentina is the sister of her husband and on condition that they would leave when she needed the lot.

Florentina and Martin died sometime in 1987 and 1999, respectively. During their lifetime, however, their children visited them in the house the couple had constructed on the subject land. After Martin died, defendants-appellants occupied the said house and claimed ownership thereof. Asuncion insisted that the occupancy of Florentina and Martin was by her mere tolerance and liberality.

In their answer, defendants-appellants claim that they own the disputed lot and there has been no conveyance of any kind thereof by their parents. The subject lot had belonged to Paulino Darag married to Roqueza Relos. The said spouses have nine (9) children namely: Rosa, Florentina, Ponciano (*a.k.a.* Ray, the husband of Asuncion), Graciano, Leoncia, Pedro, Rita, Amaldo and Maria all surnamed Darag. All nine (9) siblings remain to be co-owners of the subject property because Paulino Darag's estate has never been settled nor sold to anyone.

By Decision dated March 10, 2010 the trial court disposed of the case in this wise:

**"WHEREFORE,** clearly finding preponderance of evidence in favor of the plaintiffs, judgment is hereby rendered declaring Asuncion Y. Darag married to Ponciano Darag as owner of the property described in paragraph 2 of the complaint. Their title thereto is, for all legal intents and purposes, hereby QUIETED.

Defendants are directed to peacefully vacate and surrender said landholding to the plaintiffs.

No damage and costs.

SO ORDERED."

In its decision, the court *a quo* opined:

The overall weight and credibility of the testimonies of the witnesses for the plaintiffs along with their documentary evidence greatly outweighs that of the defendants.

The five (5) Deeds of Sale in favor of plaintiff Asuncion Y. Darag are all duly notarized, the Deed of Sale executed by Florentina and Rosa Darag included. As a notarized document, it has in its favor the presumption of regularity and it carries evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face. (Ilao-Quinal, et al., vs. Mapile, G.R. No. 15087, October 25, 2005, citing De la Cruz vs. De La Cruz, G.R. No. 146222, January 15, 2004, 419 SCRA 648).

Defendants were the ones assailing the Deed of Sale executed by Florentina and Rosa Darag in favor of Asuncion Y. Darag because according to them, their parent Florentina never signed the document.

Forgery cannot be presumed. Under the Rules, defendants had the *onus probandi* to establish such a forgery. They tried but failed to overcome the presumption of regularity of the notarized document. The rules require that the forgery be established not merely by preponderance of evidence but by clear, positive and convincing evidence. (BPI vs. Casa Montessori International, G.R. No. 149507, May 28, 2004)

Defendants claimed that Florentina could not have signed the document simply because they were not aware of any such sale. This is not the kind of evidence that would prove forgery. They are plainly self-serving.

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Defendant Alfreda Colico herself said she does not know of any sale by her grandfather or her parents to Asuncion Darag. She claimed to have lived in Bato, Camarines Sur all her life but later admitted having lived in Manila and go back to Bato only after giving birth to her first born.

By contrast, plaintiff Asuncion Darag categorically declared that she was present when the deed of sale was executed by Florentina and Rosa Darag. She saw them sign/thumbmark the document before the notary public.

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Plaintiff Asuncion Darag has been paying the taxes on the land since 1970. Her payment of taxes is only consistent with the sales in her favor.

It needs no stressing that the tax declaration presented by the defendants dates back to the time prior to the sale by Florentina and Rosa Darag to plaintiff Asuncion Darag. This does not only militate against the claim of defendants that they own the subject land, this also bolsters the fact of sale by Florentina and Rosa Darag to Asuncion Darag with the consent of Paulino Darag.

Defendants posit that the sale by Florentina Darag to Asuncion Y. Darag is void because there was then no written partition or settlement of the estate of Paulino Darag up the present. They also hold that since there is no partition or settlement, the heirs of Paulino Darag, which includes them defendants, continue to co-own the bigger property to which the subject property is included. It is their opinion that there was no way for the plaintiff to be certain that the property described in paragraph 2 of the complaint is hers.

With defendants' assertion that there is no way who owns what in the property of Paulino Darag, it may be asked how defendants became so certain that the property they claim to be theirs in their answer is what their parents inherited from Paulino Darag. But this is hypothetical and a non-issue.

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Unsatisfied with the foregoing ruling of the trial court, defendants-appellants through this appeal alleged:

THE COURT A QUO GRAVELY ERRED IN DECLARING PLAINTIFF-APPELLEE ASUNCION DARAG AS THE LEGAL OWNER OF THE SUBJECT