

FIRST DIVISION

[G.R. NO. 146586, January 26, 2005]

**DEPARTMENT OF EDUCATION CULTURE AND SPORTS,
PETITIONER, VS. JULIA DEL ROSARIO, MARIA DEL ROSARIO,
PACENCIA DEL ROSARIO, AND HEIRS OF SANTOS DEL ROSARIO,
RESPONDENTS.**

DECISION

CARPIO, J.:

The Case

This is a petition for review^[1] to set aside the Decision^[2] dated 25 September 2000 and the Resolution dated 29 December 2000 of the Court of Appeals in CA-G.R. CV No. 43929. The Court of Appeals reversed the Decision^[3] dated 7 July 1993 of the Regional Trial Court of Bulacan, Branch 8, Malolos ("trial court") in Civil Case No. 70-M-92.

The Facts

On 14 February 1992, respondents Julia Del Rosario, Maria Del Rosario, Pacencia Del Rosario and the Heirs of Santos Del Rosario ("respondents") filed before the trial court a complaint for Recovery of Possession against petitioner Department of Education, Culture and Sports ("DECS"). Respondents alleged that they own a parcel of land with an area of 1,181 square meters ("Property") situated in Kaypombo,^[4] Sta. Maria, Bulacan. The Property was registered in 1976 in the name of respondents under Transfer Certificate of Title No. T-222432 of the Bulacan Register of Deeds. Respondents alleged that the Kaypombo Primary School Annex ("KPPS") under DECS was occupying a portion of the Property through respondents' tolerance and that of their predecessors-in-interest. Respondents further alleged that KPPS refused to vacate the premises despite their valid demands to do so.

In its Answer, DECS countered that KPPS's occupation of a portion of the Property was with the express consent and approval of respondents' father, the late Isaias Del Rosario ("Isaias"). DECS claimed that some time in 1959 Isaias donated a portion ("Donated Site") of the Property to the Municipality of Sta. Maria ("Municipality") for school site purposes. Atty. Ely Natividad, now a regional trial court judge ("Judge Natividad"), prepared the deed of donation and the acceptance. KPPS started occupying the Donated Site in 1962. At present, KPPS caters to the primary educational needs of approximately 60 children between the ages of 6 and 8. Because of the donation, DECS now claims ownership of the 650 square meter Donated Site. In fact, DECS renamed the school the Isaias Del Rosario Primary School.

During the pre-trial conference held on 3 September 1992, DECS admitted the

existence and execution of TCT No. T-222432 (Exhibit "A"), Tax Declaration No. 6310 (Exhibit "B"), and the tax receipts in respondents' names for the years 1991 and 1992 (Exhibits "B-1" and "B-2"). On the other hand, respondents admitted the existence of Judge Natividad's affidavit that he prepared the deed of donation (Exhibit "1") and the tax declaration for 1985 in the Municipality's name (Exhibit "2"). Since there was no dispute that the Property was registered in respondents' names, the parties agreed to a reverse trial with DECS presenting its evidence first to prove that there was a valid donation to the Municipality.

DECS presented three witnesses: Ricardo Nicolas, Vidal De Jesus and Judge Natividad, all residents of Kaypombo, Sta. Maria, Bulacan. The trial court summarized the witnesses' testimonies, thus:

Defendant, represented by the Office of the Solicitor General, proceeded to present as its first witness, Ricardo Nicolas, 78 years old, widower, housekeeper and residing at [K]aypombo, Sta. Maria, Bulacan, since 1953 up to the present. He testified that during the duration of his residency in [K]aypombo, he came across a public elementary school (KPPS); that as far as he knows, the land occupied by the primary school was formerly owned by Isaias del Rosario who donated said land to the people of Sta. Maria, Bulacan in 1959; that the act of donating said land was made during a political meeting in his residence by Isaias del Rosario and in the presence of the then incumbent mayor; he actually saw Isaias del Rosario and Mayor Ramos sign a document which is a deed of donation in favor of the Municipality of Sta. Maria; that the signing was made in the presence of Judge Natividad who was then a municipal councilor; that Isaias del Rosario is now dead but his death occurred long after the construction of the KPPS and that Isaias del Rosario even witnessed the construction of the primary school.

Vidal de Jesus, the second witness for the defense, 65 years old, married, a barangay councilman of Kaypombo, Sta. Maria, Bulacan, and presently residing at No. 437 Kaypombo, Sta. Maria, Bulacan, testified that as barangay councilman, he was aware of the land problem of KPPS; that in 1991, the barangay council and the children of Isaias del Rosario had a meeting in the presence of Judge Natividad, during which, the latter told the children of Isaias del Rosario that the land had been donated by their father. The children agreed but requested that the school be renamed after their father's name; that the barangay council tried to secure a copy of the deed of donation from the Municipality of Sta. Maria, but according to the people at the municipal hall, when they transferred to the new municipal building, the deed got lost, only they were able to get a copy of the tax declaration in the name of the municipality of Sta. Maria, Bulacan (Exh. "2"), a certification to that effect was issued by the municipal mayor (Exh. "3"). They went to the DECS office in Malolos, but could not likewise find a copy of the deed.

The last witness for the defense was Judge Eli Natividad, 63 years old, widower, resident of Kaypombo, Sta. Maria, Bulacan. He testified that KPPS is very near his house; that the land occupied by said school is formerly owned by Isaias del Rosario, a close relative; that as far as he knows, the municipality of Sta. Maria is now the owner of the land; that

when he was still one of the incumbent municipal councilors of Sta. Maria in 1961, his relative Isaias del Rosario went to his house and told him that he wanted to have a primary school in their place as he saw the plight of small pupils in their place; that the elementary school then existing was very far from their place and Isaias del Rosario wanted to have a primary school to help these pupils; that Isaias del Rosario was willing to donate a portion of the questioned lot for school site, so that said matter was relayed to the municipal council; he also testified that he prepared the deed of donation which was signed by Isaias del Rosario in his residence which was accepted by the municipality of Sta. Maria, Bulacan through a resolution signed in the office of the secretary and the municipal mayor; that a copy of said resolution could not be found due to the transfer of the municipal hall from the old to the new building.^[5]

Respondents presented two witnesses: Eugenia R. Ignacio and Maria Del Rosario-Esteban, daughters of the late Isaias. The trial court summarized their testimonies, as follows:

For the plaintiffs, Eugenia R. Ignacio, 59, residing at Kaypombo, Sta. Maria, Bulacan testified that she knows the plaintiffs as they are her brothers/sisters; that their father Isaias del Rosario died on April 18, 1966 long after the construction of the school and that she does not know everything about the donation because her father never informed them of his dealings and she did not inquire from him about the occupancy of the lot by the school.

Maria del Rosario-Esteban, 66, residing at Pulang-lupa, Pandi, one of the plaintiffs herein, testified that she knows the property in question and that they own it by virtue of succession and that she cannot recall how the school was constructed on the land; that her parents never donated any property because that is their only property. Also, she stated that their father told them that he just lent the property temporarily to the municipality and she never found any document conveying the lot in question to the municipality of Sta. Maria, Bulacan.^[6]

On 7 July 1993, the trial court rendered judgment dismissing respondents' complaint for recovery of possession as follows:

WHEREFORE, based on the foregoing premises, and for a much greater cause, the instituted complaint, for recovery of possession of 1,181 square meters of land in Kaypombo, Sta. Maria, Bulacan, covered by TCT No. T-222432 against the defendant is hereby DISMISSED without costs.
^[7]

The trial court explained its decision in this wise:

After a careful consideration of the facts at hand, taking into account the credibility and reasonableness of the testimonies of the witnesses, the court is of the opinion that the defense was able to prove the due execution of the deed of donation and its acceptance, as well as the loss of the same, in accordance with Rule 130[,] Sec. 4. It is recalled that Judge Eli Natividad, then a municipal councilor of Sta. Maria, testified that he was the person who prepared the deed of donation and later

notarized the same, and that said deed was duly executed and signed before him and in his presence. Likewise, he affirmed that the municipal board of Sta. Maria, Bulacan, passed a resolution accepting the deed of donation in favor of the said municipality. Noteworthy is the rule that a recantation/recollection of witness is a form of secondary evidence to prove the existence/content of a document. Since the loss of the deed subject matter of this case was likewise duly proved by the defense, exerting the best possible efforts to locate or secure a copy of the same and without bad faith on its part, this Court is bent to give a greater weight to the secondary evidence adduced by the defense vis-à-vis the title in the name of the plaintiff[s], most particularly in this case, where the plaintiffs failed to make it appear that other and more secondary evidence is known to the defendant and can be produced by them.

Further judging on the consistency, credibility and personality of the witnesses of the defense, notably Judge Eli Natividad who was then a municipal councilor of Sta. Maria at the time of the execution of the deed of donation and who is thus in a best position to testify on the matter, not to mention the fact that their testimonies were all under oath, the Court cannot avoid but give weight to their statements and declarations. The defense witnesses were not induced by ill motive to testify in favor of the DECS, considering that they will not derive any personal benefit, material or otherwise, from such an act. On the contrary, such act may be considered heroic, as it is a manifestation of a moral compulsion to help shed light to the truth.

On the part of the plaintiffs, it was testified to by Eugenia Ignacio that their father (donor) died on April 18, 1966, long after the school was constructed on the subject land with the occupation of the land by the school which continued up to the present, and even after the land was allegedly transferred by succession to the plaintiffs in 1976, it was only now that it comes to the mind of the plaintiffs to seek recovery of the possession of the same. This, among other things, may be taken to favor the stand of the defense that the land occupied by the school was in truth, donated to the municipality of Sta. Maria.^[8]

Respondents appealed to the Court of Appeals. On 25 September 2000, the Court of Appeals rendered judgment as follows:

WHEREFORE, premises considered, the appealed decision is REVERSED and another one entered ordering the defendant to vacate the subject premises.^[9]

The appellate court denied DECS' motion for reconsideration in the Resolution dated 29 December 2000. Hence, this petition.

The Court of Appeals' Ruling

The Court of Appeals held that DECS failed to prove the existence and due execution of the deed of donation as well as the Resolution of the municipal council accepting the donation. The Court of Appeals was not fully satisfied that DECS or the

Municipality had made a diligent search of the alleged "lost" deed of donation. Pertinent portions of the Court of Appeals' Decision read:

It is unfortunate that the Deed of Donation and the Resolution were not produced during the trial. The defendant alleged that these were lost when the Municipality transferred to a new building. The defendant resorted to proving the documents' existence through Sec. 5 of Rule 130 (B) of the Revised Rules on Evidence by relying on the testimony of the witnesses who were present during the execution of the lost documents.
xxx.

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The Court disagrees with the ruling of the lower court to the effect that the defendant was able to satisfy the foregoing requisites. The defense was not able to prove the due execution or existence of the deed of donation and the resolution, as well as the loss of these documents as the cause of their unavailability.

The Rule requires that the defendant must "*prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of the witnesses in the order stated*". However, the defendant proceeded with the last resort-testimony of the witnesses, without even showing any diligent effort to secure a copy of the deed of donation and the resolution. Note that Atty. Eli Natividad, then a municipal councilor of Sta. Maria, testified that he was the person who prepared the deed of donation and later notarized the same. He also affirmed that the municipal board of Sta. Maria, Bulacan passed a Resolution as he was a municipal councilor at that time such resolution was passed. *He testified that he furnished the municipal government, the Division Office of Education in Bulacan, the court of Sta. Maria a copy of the deed.* However, the defendant only submitted an affidavit showing that the deed can no longer be located in the municipal government. There was no evidence to show that the defendant looked for a copy from the Clerk of Court of Sta. Maria, Bulacan. If it is true that Atty. Natividad notarized the deed, he should have a copy of it. In fact, such act of notarizing the deed should have been in his notarial register. This notarial register was supposed to be forwarded to the Clerk of Court of the Court of First Instance of the province and later, to the Chief of the National Library.

"Before secondary evidence of a writing may be introduced on the ground that the instrument has been lost there must be proof that a diligent search has been made in the place where it is most likely to be found and that the search has not been successful."

In the case at bar, this Court is not fully satisfied that a search was made or that there was diligence in the search. The lower court erred in hastily concluding that the loss of the document was sufficiently established when in fact, the defendant did not look for it in the office of the Clerk of Court and the National Library. Since there was no diligent search, this Court finds it hard to believe the defendant's theory that such documents