

## THIRD DIVISION

[ G.R. No. 200013, January 14, 2015 ]

**BETTY GEPULLE-GARBO, REPRESENTED BY ATTORNEY-IN-FACT,  
MINDA G. ROSALES(NOW REPRESENTED BY HER NEW  
ATTORNEY-IN-FACT, GARY LLOYD G. ROSALES), PETITIONER,  
VS. SPOUSES VICTOREY ANTONIO GARABATO AND JOSEPHINE  
S. GARABATO, RESPONDENTS.**

### DECISION

**VILLARAMA, JR., J.:**

Before us is a petition<sup>[1]</sup> for review on certiorari seeking to reverse and set aside the May 20, 2011 Decision<sup>[2]</sup> and January 5, 2012 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 87912 affirming the August 7, 2006 Decision<sup>[4]</sup> of the Regional Trial Court (RTC) of Pasay City, Branch 108 dismissing the petition<sup>[5]</sup> for cancellation of certificate of title filed by petitioner Betty Gepulle-Garbo against respondents Victorey and Josephine Garabato, for insufficiency of evidence.

The facts of the case follow.

Nick Garbo<sup>[6]</sup> (Nick) was married to Eduviges Garabato (Eduviges) sometime before 1978. During their marriage, they had a daughter named Florence Garabato (Florence) who in turn had a son out of wedlock, respondent Victorey Antonio Garabato (Victorey). During the subsistence of Nick and Eduviges' marriage, Nick cohabited with petitioner Betty Gepulle-Garbo (Betty).

On June 17, 1977, a Deed of Sale<sup>[7]</sup> was executed between Eduviges and Florence whereby the former sold to the latter a 303-square meter parcel of land, covered by Transfer Certificate of Title (TCT) No. 17986, in Pasay City. The deed of sale was signed by Nick Garbo.

On May 12, 1978, Eduviges passed away. Three months after, on August 12, 1978, Nick married Betty. On October 26, 1988, Florence registered the property in her name and was issued TCT No. 126959.<sup>[8]</sup> Florence died on March 4, 1992 while Nick died on February 28, 1996.

In 1996, respondent Victorey, married to co-respondent Josephine, registered the subject property in his name by virtue of a Deed of Sale<sup>[9]</sup> executed by Florence in his favor. On October 15, 1996, respondent was issued TCT No. 136900.<sup>[10]</sup>

On August 2, 2001, petitioner filed a petition<sup>[11]</sup> for cancellation of TCT No. 136900 against respondents. She impugns the validity of the June 17, 1977 Deed of Sale on the ground that the signatures of Nick and Eduviges were forged by Florence.

Petitioner also assailed the deed of sale between Florence and Victorey.

Petitioner claimed that Nick had previously sought the examination of his alleged signature on the June 17, 1977 Deed of Sale by the National Bureau of Investigation (NBI). The NBI examiner allegedly found that the questioned signature and the standard signatures of Nick were not written by one and the same person. Petitioner further alleged that Nick had filed a criminal complaint for falsification against Florence though the case was dismissed due to lack of probable cause. In addition, petitioner averred that on February 6, 1993, Nick wrote a letter<sup>[12]</sup> to respondent Victorey reminding him that the subject property was his despite the transfer of title. Petitioner prayed for the cancellation of TCT No. 136900 and the issuance of a new certificate of title in her name.

Victorey and Josephine denied the allegation of forgery. They raise that the action had prescribed and/or barred by laches. Further they claimed that Betty has no cause of action as the subject property is the paraphernal property of Eduviges. Lastly, they assert that the sale was regular, valid and genuine. They asserted that the signatures appearing on the deeds of sale are true and genuine signatures of the parties including Nick Garbo.<sup>[13]</sup>

During the trial, petitioner asserted that Nick left real properties including the property covered by TCT No. 136900. She claimed that by virtue of a holographic will<sup>[14]</sup> executed by Nick on December 30, 1980, the subject property was bequeathed to her. In the same will, he disinherited his daughter, Florence. Petitioner admitted that the said holographic will was never probated.

In addition, to support her claim that Florence is not entitled to the property, she presented an Agreement of Partition<sup>[15]</sup> where Florence is one of the parties. Petitioner contended that Florence is thus not entitled to the subject property since she already received her share. Petitioner also admitted that said agreement was never signed by Florence.

Petitioner presented as witness, Mr. Bienvenido Albacea, a handwriting expert and retired employee of the NBI, who at the time of the conduct of the examination of the subject deed of sale was a Document Examiner II of the NBI. Albacea stated that in 1992, he was requested to examine the signatures of Nick appearing in the deeds of sale dated June 17, 1977 and June 15, 1977 and compared it with the specimen signatures appearing in the Alien Registration Form No. 3,<sup>[16]</sup> a document<sup>[17]</sup> from the Treasurer's Office of Pasay City and several receipts<sup>[18]</sup> issued by Nick to his lessees. After he conducted an examination of the signatures in these documents, he concluded that the questioned and the standard signatures of Nick were not written by one and the same person.

Petitioner also presented as witness Mr. Reynaldo Buenaventura who testified that he has leased the subject property since 1972 and has paid the rent to petitioner.

On the other hand, respondent Victorey denied that Florence forged the signature of Nick Garbo. He admitted that he purchased the property from Florence for a valid consideration and registered it late because he had no money. Respondent Victorey presented a document entitled Affidavit of Waiver<sup>[19]</sup> dated June 17, 1977 executed

by Nick stating that Eduviges acquired a parcel of land covered by TCT No. 17986 and that Nick did not contribute a single centavo to buy the parcel of land. It further stated that Nick waived all his rights, title and interest and possession to land in favor of his wife, Eduviges.

In its August 7, 2006 Decision,<sup>[20]</sup> the RTC dismissed the complaint for cancellation of title filed by petitioner. The dispositive portion of the decision states, to wit:

WHEREFORE, PREMISES CONSIDERED, after study of the evidence presented, this Court finds that plaintiff failed to prove by a preponderance of evidence her cause of action. Accordingly, the complaint for cancellation of certificate of title is hereby DISMISSED for insufficiency of evidence.

Defendant's counterclaim is dismissed for lack of merit.

No pronouncement as to costs.

SO ORDERED.<sup>[21]</sup>

The RTC held that petitioner failed to prove that the signatures of Nick and Eduviges Garbo were forgeries. The RTC did not give credence to the testimony of Albacea, holding that courts are not bound by expert testimonies and that the relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide. There was no evidence presented to prove Nick's ownership over the subject land. The RTC also noted that from the time the assailed deed of sale and the affidavit of waiver were executed on June 17, 1977 until the subject property was registered in Florence Garabato's name on October 26, 1988, Nick never instituted a civil case to question the alleged forgery by his daughter. It was only after Nick's death that petitioner filed the civil suit.

The RTC, likewise, did not find any legal ground to declare the deed of sale between Florence and respondent Victorey invalid. Petitioner merely questioned the validity of the deed of sale without any allegations. Petitioner failed to present any evidence to show why said document should be nullified.

On appeal, the CA affirmed the RTC ruling that petitioner failed to prove by clear, positive and convincing proof of forgery in Nick's signature in the deed of sale. The CA also held that Mr. Albacea's opinion as to the truth or falsity of the signature of Nick Garbo is not binding and conclusive upon the court since the request for examination of the deed of sale was not upon the order of the trial court but at the instance of the petitioner. Such examination brings suspicion as to the bias or prejudice of the examining party. Moreover, while it was concluded that there was variance in the compared signatures, such mere variance cannot be considered conclusive proof that the signature was forged. The CA also emphasized that the deed of sale being a notarized document bears the presumption of regularity in its execution.

As to the deed of sale between Florence and Victorey, the CA agreed with the trial court that aside from presenting the xerox copy of the deed of sale, petitioner failed to present any evidence to show why said document should be nullified. The appellate court stated that petitioner merely questioned the fact that the document

was notarized long after the death of Florence. However, the fact that the document was notarized long after Florence's death does not mean that her signature was a forgery, absent any evidence showing such.

Hence, this petition.

Petitioner insists that the signatures of Nick and Eduviges Garbo on the June 17, 1977 Deed of Sale executed in favor of Florence were forged. To support her claim, petitioner reproduced for reference the signatures of Nick in the earlier deed of sale dated June 15, 1977 and compared it with Nick's signature in the assailed Deed of Sale and the Affidavit of Waiver both dated June 17, 1977. She pointed out that Nick's signatures in the three documents are congruent and exactly alike in all details and are products of a tracing process from his alleged signature in the Deed of Sale dated June 15, 1977. As evidence, petitioner presented the findings of the handwriting expert, Bienvenido Albacea in the Questioned Documents Report No. 109-292<sup>[22]</sup> dated February 26, 1992 stating that the questioned and the standard signatures of Nick Garbo were not written by one and the same person. In addition, petitioner avers that since 1972, Nick was the one collecting the rentals on the subject premises and after his death, herein petitioner.

Petitioner also asserts that a close comparison of the alleged signature of Eduviges Garbo in the questioned Deed of Sale dated June 17, 1977 and her alleged signature in the Deed of Sale dated June 15, 1977 would show that the said two signatures are exactly alike in all details which would also show that the alleged signature of Eduviges Garbo in the questioned Deed of Sale dated June 17, 1977 is a product of a tracing process from that of her alleged signature in the June 15, 1977 Deed of Sale and which would show by clear and convincing evidence that the alleged signature of Eduviges Garbo in the questioned Deed of Sale dated June 17, 1977 is fake or a forgery.

Petitioner also assailed the validity of the subsequent deed of sale executed between Florence and respondent Victorey and notarized in 1996. Petitioner claims that the said deed of sale although notarized is a mere private document because Florence could not appear before the notary public in 1996 because she died in 1992.

Respondents assert that in a petition for review on certiorari, only questions of law may be raised by the parties and passed upon by this Court. Respondents submit that the trial court and the CA did not err in their observation that there is nothing in petitioner's testimony which showed forgery committed by the respondents. Respondents aver that the CA did not err when it found failure on the part of the petitioner to meet the criteria for determining whether a signature was forged. Respondents stress that Albacea who though claimed to have found variance in the compared signatures did not however point out distinguishing marks, characteristics and discrepancies in and between the genuine and false specimens of writing which would ordinarily escape notice or detection by an untrained observer. According to respondents, petitioner failed to present evidence or justification to show why the subject document should be nullified.

The Court is essentially presented the question of whether the signatures of Nick and Eduviges appearing on the instruments were forged.

Petition is without merit.