717 Phil. 54

FIRST DIVISION

[G.R. No. 170604, September 02, 2013]

HEIRS OF MARGARITA PRODON, PETITIONERS, VS. HEIRS OF MAXIMO S. ALVAREZ AND VALENTINA CLAVE, REPRESENTED BY REV. MAXIMO ALVAREZ, JR., RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

The Best Evidence Rule applies only when the terms of a written document are the subject of the inquiry. In an action for quieting of title based on the *inexistence* of a deed of sale with right to repurchase that purportedly cast a cloud on the title of a property, therefore, the Best Evidence Rule does not apply, and the defendant is not precluded from presenting evidence other than the original document.

The Case

This appeal seeks the review and reversal of the decision promulgated on August 18, 2005,[1] whereby the Court of Appeals (CA) reversed the judgment rendered on November 5, 1997 by the Regional Trial Court (RTC), Branch 35, in Manila in Civil Case No. 96-78481 entitled *Heirs of Maximo S Alvarez and Valentina Clave, represented by Rev. Maximo S. Alvarez and Valentina Clave, represented by Rev. Maximo Alvarez, Jr. v. Margarita Prodon and the Register of Deeds of the City of Manila* dismissing the respondents' action for quieting of title.[2]

Antecedents

In their complaint for quieting of title and damages against Margarita Prodon,[3] the respondents averred as the plaintiffs that their parents, the late spouses Maximo S. Alvarez, Sr. and Valentina Clave, were the registered owners of that parcel of land covered by Transfer Certificate of Title (TCT) No. 84797 of the Register of Deeds of Manila; that their parents had been in possession of the property during their lifetime; that upon their parents' deaths, they had continued the possession of the property as heirs, paying the real property taxes due thereon; that they could not locate the owner's duplicate copy of TCT No. 84797, but the original copy of TCT No. 84797 on file with the Register of Deeds of Manila was intact; that the original copy contained an entry stating that the property had been sold to defendant Prodon subject to the right of repurchase; and that the entry had been maliciously done by Prodon because the deed of sale with right to repurchase covering the property did not exist. Consequently, they prayed that the entry be cancelled, and that Prodon be adjudged liable for damages.

The entry sought to be cancelled reads:

ENTRY NO. 3816/T-84797 – SALE W/ RIGHT TO REPURCHASE IN FAVOR OF: MARGARITA PRODON, SINGLE, FOR THE SUM OF P120,000.00, THE HEREIN REGISTERED OWNER RESERVING FOR HIMSELF THE RIGHTS TO REPURCHASE SAID PROPERTY FOR THE SAME AMOUNT WITHIN THE PERIOD OF SIX MONTH (*sic*) FROM EXECUTION THEREOF. OTHER CONDITION SET FORTH IN (DOC. NO. 321, PAGE 66, BOOK NO. VIII OF LISEO A. RAZON, NOT.PUB. OF MANILA)

DATE OF INSTRUMENT – SEPT. 9, 1975

DATE OF INSCRIPTION – SEPT. 10, 1975,
AT 3:42 P.M.[4]

In her answer,[5] Prodon claimed that the late Maximo Alvarez, Sr. had executed on September 9, 1975 the deed of sale with right to repurchase; that the deed had been registered with the Register of Deeds and duly annotated on the title; that the late Maximo Alvarez, Sr. had been granted six months from September 9, 1975 within which to repurchase the property; and that she had then become the absolute owner of the property due to its non-repurchase within the given 6-month period.

During trial, the custodian of the records of the property attested that the copy of the deed of sale with right to repurchase could not be found in the files of the Register of Deeds of Manila.

On November 5, 1997, the RTC rendered judgment,[6] finding untenable the plaintiffs' contention that the deed of sale with right to repurchase did not exist. It opined that although the deed itself could not be presented as evidence in court, its contents could nevertheless be proved by secondary evidence in accordance with Section 5, Rule 130 of the *Rules of Court*, upon proof of its execution or existence and of the cause of its unavailability being without bad faith. It found that the defendant had established the execution and existence of the deed, to wit:

> In the case under consideration, the execution and existence of the disputed deed of sale with right to repurchase accomplished by the late Maximo Alvarez in favor of defendant Margarita Prodon has been adequately established by reliable and trustworthy evidences (sic). Defendant Prodon swore that on September 9, 1975 she purchased the land covered by TCT No. 84747 (Exhibit 1) from its registered owners Maximo S. Alvarez, Sr. and Valentina Clave (TSN, Aug. 1, 1997, pp.5-7); that the deed of sale with right to repurchase was drawn and prepared by Notary Public Eliseo Razon (Ibid., p. 9); and that on September 10, 1975, she registered the document in the Register of Deeds of Manila (Ibid., pp.18-19).
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> The testimony of Margarita Prodon has been confirmed by the Notarial Register of Notary Public Eliseo Razon dated September 10, 1975 (Exhibit 2), and by the Primary Entry Book of the Register of Deeds of Manila (Exhibit 4).
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> Page 66 of Exhibit 2 discloses, among others, the following entries, to

wit: "No. 321; Nature of Instrument: Deed of Sale with Right to Repurchase; Name of Persons: Maximo S. Alvarez and Valentina Alvarez (ack.); Date and Month: 9 Sept." (Exhibit 2-a).

Exhibit 4, on the other hand, also reveals the following data, to wit: 'Number of Entry: 3816; Month, Day and Year: Sept. 10, 1975; Hour and Minute: 3:42 p.m.; Nature of Contract: Sale with Right to Repurchase; Executed by: Maximo S. Alvarez; In favor: Margarita Prodon; Date of Document: 9-9-75; Contract value: 120,000.' (Exhibit 4-a). Under these premises the Court entertains no doubt about the execution and existence of the controverted deed of sale with right to repurchase.[7]

The RTC rejected the plaintiffs' submission that the late Maximo Alvarez, Sr. could not have executed the deed of sale with right to repurchase because of illness and poor eyesight from cataract. It held that there was no proof that the illness had rendered him bedridden and immobile; and that his poor eyesight could be corrected by wearing lenses.

The RTC concluded that the original copy of the deed of sale with right to repurchase had been lost, and that earnest efforts had been exerted to produce it before the court. It believed Jose Camilon's testimony that he had handed the original to one Atty. Anacleto Lacanilao, but that he could not anymore retrieve such original from Atty. Lacanilao because the latter had meanwhile suffered from a heart ailment and had been recuperating.

Ruling of the CA

On appeal, the respondents assigned the following errors, namely:

A.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE DUE EXECUTION AND EXISTENCE OF THE QUESTIONED DEED OF SALE WITH RIGHT TO REPURCHASE HAS BEEN DULY PROVED BY THE DEFENDANT.

B.

THE TRIAL COURT GRAVELY ERRED IN ADMITTING THE PIECES OF EVIDENCE PRESENTED BY THE DEFENDANTS AS PROOFS OF THE DUE EXECUTION AND EXISTENCE OF THE QUESTIONED DEED OF SALE WITH RIGHT TO REPURCHASE.

C.

THE TRIAL COURT SERIOUSLY ERRED IN FINDING THAT THE QUESTIONED DEED OF SALE WITH RIGHT TO REPURCHASE HAS BEEN LOST OR OTHERWISE COULD NOT BE PRODUCED IN COURT WITHOUT THE FAULT OF THE DEFENDANT.

D.

THE TRIAL COURT GRAVELY ERRED IN REJECTING THE PLAINTIFFS'

CLAIM THAT THEIR FATHER COULD NOT HAVE EXECUTED THE QUESTIONED DOCUMENT AT THE TIME OF ITS ALLEGED EXECUTION.[8]

On August 18, 2005, the CA promulgated its assailed decision, reversing the RTC, and ruling as follows:

> The case of the *Department of Education Culture and Sports (DECS) v. Del Rosario* in GR No. 146586 (January 26, 2005) is instructive in resolving this issue. The said case held:
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> > "Secondary evidence of the contents of a document refers to evidence other than the original document itself. A party may introduce secondary evidence of the contents of a written instrument not only when the original is lost or destroyed, but also when it cannot be produced in court, provided there is no bad faith on the part of the offeror. However, a party must first satisfactorily explain the loss of the best or primary evidence before he can resort to secondary evidence. A party must first present to the court proof of loss or other satisfactory explanation for non-production of the original instrument. The correct order of proof is as follows: *existence, execution, loss, contents*, although the court in its discretion may change this order if necessary."
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> It is clear, therefore, that before secondary evidence as to the contents of a document may be admitted in evidence, the existence of [the] document must first be proved, likewise, its execution and its subsequent loss.
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> In the present case, the trial court found all three (3) prerequisites ha[ve] been established by Margarita Prodon. This Court, however, after going through the records of the case, believes otherwise. The Court finds that the following circumstances put doubt on the very existence of the alleged deed of sale. Evidence on record showed that Maximo Alvarez was hospitalized between August 23, 1975 to September 3, 1975 (Exhibit "K"). It was also established by said Exhibit "L" that Maximo Alvarez suffered from paralysis of half of his body and blindness due to cataract. It should further be noted that barely 6 days later, on September 15, 1975, Maximo Alvarez was again hospitalized for the last time because he died on October of 1975 without having left the hospital. This lends credence to plaintiffs-appellants' assertion that their father, Maximo Alvarez, was not physically able to personally execute the deed of sale and puts to serious doubt [on] Jose Camilion's testimony that Maximo Alvarez, with his wife, went to his residence on September 5, 1975 to sell the property and that again they met on September 9, 1975 to sign the alleged deed of sale (Exhibits "A" and "1"). The Court also notes that from the sale in 1975 to 1996 when the case was finally filed, defendant-appellee never tried to recover possession of the property nor had she shown that she ever paid Real Property Tax thereon. Additionally, the Transfer Certificate of Title had not been transferred in the name of the alleged present owner. These actions put to doubt the validity of the claim of ownership because their actions are contrary to that expected of

legitimate owners of property.

Moreover, granting, *in arguendo*, that the deed of sale did exist, the fact of its loss had not been duly established. In *De Vera, et al. v Sps. Aguilar* (218 SCRA 602 [1993]), the Supreme Court held that after proof of the execution of the Deed it must also be established that the said document had been lost or destroyed, thus:

> "After the due execution of the document has been established, it must next be proved that said document has been lost or destroyed. The destruction of the instrument may be proved by any person knowing the fact. The loss may be shown by any person who knew the fact of its loss, or by anyone who had made, in the judgment of the court, a sufficient examination in the place or places where the document or papers of similar character are usually kept by the person in whose custody the document lost was, and has been unable to find it; or who has made any other investigation which is sufficient to satisfy the court that the instrument is indeed lost.
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> However, all duplicates or counterparts must be accounted for before using copies. For, since all the duplicates or multiplicates are parts of the writing itself to be proved, no excuse for non-production of the writing itself can be regarded as established until it appears that all of its parts are unavailable (i.e. lost, retained by the opponent or by a third person or the like).
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> In the case at bar, Atty. Emiliano Ibasco, Jr., notary public who notarized the document testified that the alleged deed of sale has about four or five original copies. Hence, all originals must be accounted for before secondary evidence can be given of any one. This[,] petitioners failed to do. Records show that petitioners merely accounted for three out of four or five original copies." (218 SCRA at 607-608)

In the case at bar, Jose Camilion's testimony showed that a copy was given to Atty. Anacleto Lacanilao but he could not recover said copy. A perusal of the testimony does not convince this Court that Jose Camilion had exerted sufficient effort to recover said copy. x x x

x x x x

The foregoing testimony does not convince this Court that Jose Camilion had exerted sufficient effort to obtain the copy which he said was with Atty. Lacanilao. It should be noted that he never claimed that Atty. Lacanilao was already too sick to even try looking for the copy he had. But even assuming this is to be so, Jose Camilion did not testify that Atty. Lacanilao had no one in his office to help him find said copy. In fine, this Court believes that the trial court erred in admitting the secondary evidence because Margarita Prodon failed to prove the loss or destruction