

## SECOND DIVISION

[ G.R. No. 189647, February 06, 2012 ]

**NANCY T. LORZANO, PETITIONER, VS. JUAN TABAYAG, JR.,  
RESPONDENT.**

### D E C I S I O N

**REYES, J.:**

#### **Nature of the Petition**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Nancy T. Lorzano (petitioner) assailing the Court of Appeals (CA) Decision<sup>[1]</sup> dated March 18, 2009 and Resolution<sup>[2]</sup> dated September 16, 2009 in CA-G.R. CV No. 87762 entitled "*Juan Tabayag, Jr. v. Nancy T. Lorzano.*"

#### **The Antecedent Facts**

The instant case stemmed from an amended complaint<sup>[3]</sup> for annulment of document and reconveyance filed by Juan Tabayag, Jr. (respondent) against the petitioner, docketed as Civil Case No. Ir-3286, with the Regional Trial Court (RTC) of Iriga City.

The petitioner and the respondent are two of the children of the late Juan Tabayag (Tabayag) who died on June 2, 1992. Tabayag owned a parcel of land situated in Sto. Domingo, Iriga City (subject property). Right after the burial of their father, the petitioner allegedly requested from her siblings that she be allowed to take possession of and receive the income generated by the subject property until after her eldest son could graduate from college. The petitioner's siblings acceded to the said request.

After the petitioner's eldest son finished college, her siblings asked her to return to them the possession of the subject property so that they could partition it among themselves. However, the petitioner refused to relinquish her possession of the subject property claiming that she purchased the subject property from their father as evidenced by a Deed of Absolute Sale of Real Property<sup>[4]</sup> executed by the latter on May 25, 1992.

The respondent claimed that their father did not execute the said deed of sale. He pointed out that the signature of their father appearing in the said deed of sale was a forgery as the same is markedly different from the real signature of Tabayag.

Further, the respondent asserted that the said deed of sale was acknowledged before a person who was not a duly commissioned Notary Public. The deed of sale was acknowledged by the petitioner before a certain Julian P. Cabañes (Cabañes) on

May 25, 1992 at Iriga City. However, as per the Certification<sup>[5]</sup> issued by the Office of the Clerk of Court of the RTC on May 16, 2002, Cabañes has never been commissioned as a Notary Public for and in the Province of Camarines Sur and in the Cities of Iriga and Naga.

The respondent alleged that the petitioner purposely forged the signature of Tabayag in the said deed of sale to deprive him and their other siblings of their share in the subject property. He then averred that the subject property was already covered by Original Certificate of Title (OCT) No. 1786<sup>[6]</sup> issued by the Register of Deeds of Iriga City on January 9, 2001 registered under the name of the petitioner. OCT No. 1786 was issued pursuant to Free Patent No. 051716 which was procured by the petitioner on June 24, 1996.

For her part, the petitioner maintained she is the owner of the subject parcel of land having purchased the same from Tabayag as evidenced by the May 25, 1992 deed of sale. Further, the petitioner asserted that the respondent failed to establish that the signature of Tabayag appearing on the said deed of sale was a forgery considering that it was not submitted for examination by a handwriting expert.

### **The RTC Decision**

On April 28, 2006, the RTC rendered an Amended Decision<sup>[7]</sup> the decretal portion of which reads:

WHEREFORE, Judgment is hereby rendered[:]

- a. Declaring the supposed Deed of Sale null and void and of no legal effect;
- b. Ordering the [petitioner] to reconvey to the heirs of the late Juan Tabayag, Sr. the land subject matter of this case[;]
- c. Declaring the property described in the complaint and in the spurious deed of sale to be owned in common by the heirs of Juan Tabayag, Sr. as part of their inheritance from said Juan Tabayag, Sr[.];
- d. Ordering [petitioner] to pay plaintiff the sum of One Hundred Thousand Pesos (P100,000.00) by way of moral damages;
- e. Ordering defendant to pay plaintiff the attorney's fees in the sum of Fifteen Thousand Pesos (P15,000.00), based on quantum meruit;
- f. Dismissing the counterclaim for lack of merit[;]
- g. Costs against the defendant.

SO ORDERED.<sup>[8]</sup>

The RTC opined that a cursory comparison between the signature of Tabayag appearing on the said deed of sale and his signatures appearing on other documents would clearly yield a conclusion that the former was indeed a forgery. Moreover, the RTC asserted that the nullity of the said May 25, 1992 deed of sale all the more becomes glaring considering that the same was purportedly acknowledged before a

person who is not a duly commissioned Notary Public.

### **The CA Decision**

Thereafter, the petitioner appealed the decision with the CA. On March 18, 2009, the CA rendered the assailed decision affirming *in toto* the RTC decision.<sup>[9]</sup> The CA held that the testimony of a handwriting expert in this case is not indispensable as the similarity and dissimilarity between the questioned signature of Tabayag as compared to other signatures of the latter in other documents could be determined by a visual comparison.

Further, the CA upheld the award of moral damages and attorney's fees in favor of the respondent as the petitioner's conduct caused "great concern and anxiety" to the respondent and that the latter had to go to court and retain the services of counsel to pursue his rights and protect his interests.

Undaunted, the petitioner instituted the instant petition for review on *certiorari* before this Court asserting the following: (1) the questioned signature of Tabayag in the May 25, 1992 deed of sale could not be declared spurious unless first examined and declared to be so by a handwriting expert; (2) considering that the subject property was registered under the petitioner's name pursuant to a free patent, reconveyance of the same in favor of the respondent is improper since only the Government, through the Office of the Solicitor General (OSG), could assail her title thereto in an action for reversion; and (3) the respondent is not entitled to an award for moral damages and attorney's fees.

In his Comment,<sup>[10]</sup> the respondent claimed that the issues raised in the instant petition are factual in nature and, hence, could not be passed upon by this Court in a petition for review on *certiorari* under Rule 45. Likewise, the respondent asserted that the petitioner's free patent, having been issued on the basis of a falsified document, does not create a right over the subject property in her favor.

### **Issues**

In sum, the threshold issues for resolution are the following: (a) whether the lower courts erred in declaring the May 25, 1992 deed of sale a nullity; (b) whether an action for reconveyance is proper in the instant case; and (c) whether the respondent is entitled to an award of moral damages and attorney's fees.

### **The Court's Ruling**

#### **First and Third Issues: Nullity of the Deed of Sale and Award of Moral Damages and Attorney's Fees**

This Court shall jointly discuss the *first* and *third issues* as the resolution of the same are interrelated.

Primarily, Section 1, Rule 45 of the Rules of Court categorically states that the petition filed shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or

falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.<sup>[11]</sup>

That the signature of Tabayag in the May 25, 1992 deed of sale was a forgery is a conclusion derived by the RTC and the CA on a question of fact. The same is conclusive upon this Court as it involves the truth or falsehood of an alleged fact, which is a matter not for this Court to resolve.<sup>[12]</sup> Where a petitioner casts doubt on the findings of the lower court as affirmed by the CA regarding the existence of forgery is a question of fact.<sup>[13]</sup>

In any case, the CA aptly ruled that a handwriting expert is not indispensable to prove that the signature of Tabayag in the questioned deed of sale was indeed a forgery. It is true that the opinion of handwriting experts are not necessarily binding upon the court, the expert's function being to place before the court data upon which the court can form its own opinion. Handwriting experts are usually helpful in the examination of forged documents because of the technical procedure involved in analyzing them. But resort to these experts is not mandatory or indispensable to the examination or the comparison of handwriting. A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity.<sup>[14]</sup>

For the same reason, we would ordinarily disregard the petitioner's allegation as to the propriety of the award of moral damages and attorney's fees in favor of the respondent as it is a question of fact. Thus, questions on whether or not there was a preponderance of evidence to justify the award of damages or whether or not there was a causal connection between the given set of facts and the damage suffered by the private complainant or whether or not the act from which civil liability might arise exists are questions of fact.<sup>[15]</sup>

Essentially, the petitioner is questioning the award of moral damages and attorney's fees in favor of the respondent as the same is supposedly not fully supported by evidence. However, in the final analysis, the question of whether the said award is fully supported by evidence is a factual question as it would necessitate whether the evidence adduced in support of the same has any probative value. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them.<sup>[16]</sup>

Nevertheless, a review of the amount of moral damages actually awarded by the lower courts in favor of the respondent is necessary.

Here, the lower courts ordered the petitioner to pay the respondent moral damages in the amount of P100,000.00. We find the said amount to be excessive.

Moral damages are not intended to enrich the complainant at the expense of the defendant. Rather, these are awarded only to enable the injured party to obtain "means, diversions or amusements" that will serve to alleviate the moral suffering that resulted by reason of the defendant's culpable action. The purpose of such

damages is essentially indemnity or reparation, not punishment or correction. In other words, the award thereof is aimed at a restoration within the limits of the possible, of the spiritual *status quo ante*; therefore, it must always reasonably approximate the extent of injury and be proportional to the wrong committed.<sup>[17]</sup>

Accordingly, the amount of moral damages must be reduced to P30,000.00, an amount reasonably commensurate to the injury sustained by the respondent.

### **Second Issue: Propriety of the Reconveyance of the Subject Property to the Heirs of the late Juan Tabayag**

The petitioner asserted that the CA erred in not finding that her ownership over the subject property was by virtue of a free patent issued by the government and, thus, even assuming that the subject deed of sale is invalid, her title and ownership of the subject property cannot be divested or much less ordered reconveyed to the heirs of Tabayag.

Simply put, the petitioner points out that the subject property, being acquired by her through a grant of free patent from the government, originally belonged to the public domain. As such, the lower courts could not order the reconveyance of the subject property to the heirs of Tabayag as the latter are not the original owners thereof. If at all, the subject property could only be ordered reverted to the public domain.

### **An issue cannot be raised for the first time on appeal as it is already barred by *estoppel*.**

This Court notes that the foregoing argument is being raised by the petitioner for the first time in the instant petition. It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, **administrative agency or quasi-judicial body**, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by *estoppel*.<sup>[18]</sup>

Accordingly, the petitioner's attack on the propriety of the action for reconveyance in this case ought to be disregarded. However, in order to obviate any lingering doubt on the resolution of the issues involved in the instant case, this Court would proceed to discuss the cogency of the petitioner's foregoing argument.

### **Title emanating from a free patent fraudulently secured does not become indefeasible.**

The petitioner asserts that the amended complaint for annulment of document, reconveyance and damages that was filed by the respondent with the RTC is a collateral attack on her title over the subject property. She avers that, when the said amended complaint was filed, more than a year had already lapsed since OCT No. 1786 over the subject property was issued under her name. Thus, the petitioner maintains that her title over the subject property is already indefeasible and, hence, could not be attacked collaterally.