

## THIRD DIVISION

[ G.R. No. 190875, June 13, 2012 ]

**ANICETO BANGIS SUBSTITUTED BY HIS HEIRS, NAMELY: RODOLFO B. BANGIS, RONNIE B. BANGIS, ROGELIO B. BANGIS, RAQUEL B. QUILLO, ROMULO B. BANGIS, ROSALINA B. PARAN, ROSARIO B. REDDY, REYNALDO B. BANGIS, AND REMEDIOS B. LASTRE, PETITIONERS, VS. HEIRS OF SERAFIN ADOLFO, JR., AND ELEUTERIO ADOLFO REP. BY HIS HEIRS, NAMELY: MILAGROS, JOEL, MELCHOR, LEA, MILA, NELSON, JIMMY AND MARISSA, ALL SURNAMED ADOLFO, RESPONDENTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this Petition for Review on Certiorari under Rule 45 of the Rules of Court is the March 30, 2009 Decision<sup>[1]</sup> of the Court of Appeals Mindanao Station (CA) and its December 2, 2009 Resolution<sup>[2]</sup> in CA-G.R. CV No. 00722-MIN which declared that the transaction between the parties was a mortgage, not a sale, and ordered petitioners to surrender the possession of the disputed lot upon respondents' full payment of their indebtedness.

#### **THE ANTECEDENT FACTS**

The spouses Serafin, Sr. and Saludada<sup>[3]</sup> Adolfo were the original registered owners of a 126,622 square meter lot covered by Original Certificate of Title (OCT) No. P-489 issued on December 15, 1954 (derived from Homestead Patent No. V-34974), located in Valencia, Malaybalay, Bukidnon. This property was mortgaged to the then Rehabilitation Finance Corporation (now Development Bank of the Philippines or DBP) on August 18, 1955,<sup>[4]</sup> and upon default in the payment of the loan obligation, was foreclosed and ownership was consolidated in DBP's name under Transfer Certificate of Title (TCT) No. T-1152.<sup>[5]</sup> Serafin Adolfo, Sr., however, repurchased the same and was issued TCT No. 6313<sup>[6]</sup> on December 1, 1971, a year after his wife died in 1970.

Sometime in 1975, Serafin Adolfo, Sr. (Adolfo) allegedly mortgaged the subject property for the sum of P12,500.00 to Aniceto Bangis (Bangis) who immediately took possession of the land.<sup>[7]</sup> The said transaction was, however, not reduced into writing.<sup>[8]</sup>

When Adolfo died, his heirs, namely, Luz Adolfo Bannister, Serafin Adolfo, Jr. and Eleuterio Adolfo (Heirs of Adolfo), executed a Deed of Extrajudicial Partition dated December 24, 1997 covering the subject property and TCT No. T-65152<sup>[9]</sup> was issued to them. On May 26, 1998, the said property was subdivided and separate

titles were issued in names of the Heirs of Adolfo, as follows: TCT Nos. T-66562 and T-66563 for Luz Adolfo Banester<sup>[10]</sup>; TCT Nos. T-66560 and T-66561 in the name of Serafin Adolfo, Jr.; and TCT Nos. T-66564 and T-66565 in favor of Eleuterio Adolfo.<sup>[11]</sup>

In June 1998, the Heirs of Adolfo expressed their intention to redeem the mortgaged property from Bangis but the latter refused, claiming that the transaction between him and Adolfo was one of sale. During the conciliation meetings in the barangay, Bangis' son, Rudy Bangis, showed them a copy of a deed of sale and a certificate of title to the disputed lot.<sup>[12]</sup> The parties having failed to amicably settle their differences, a certificate to file action<sup>[13]</sup> was issued by the barangay.

### **THE PROCEEDINGS BEFORE THE RTC**

On July 26, 2000, the Heirs of Adolfo filed a complaint<sup>[14]</sup> before the Regional Trial Court (RTC) for annulment of deed of sale and declaration of the purported contract of sale as antichresis, accounting and redemption of property and damages against Bangis, docketed as Civil Case No. 2993-00. The complaint was amended on September 11, 2001 to include a prayer for the cancellation of TCT No. T-10567 and the tax declarations in the name of Bangis in view of the manifestation<sup>[15]</sup> filed by Ex-Officio Register of Deeds, Atty. Phoebe Loyola Toribio of the Registry of Deeds, Malaybalay City which states that the said title was of "dubious" origin since there was no deed of conveyance upon which the said transfer certificate of title was based and that its derivative title, TCT No. T-10566, does not exist in the files of the Registry of Deeds.<sup>[16]</sup> On November 12, 2001, the complaint was again amended to reflect the other certificates of titles issued in the names of the Heirs of Adolfo and the amount of P12,500.00 representing the mortgage debt,<sup>[17]</sup> followed by another amendment on October 13, 2003 to include the allegation that they have partitioned the subject lot on December 24, 1997 and that no copy of the supposed deed of sale in favor of Bangis can be found in the records of the Provincial Assessor's Office and the Registrar of Deeds. They further prayed, in the alternative, to be allowed to redeem the subject lot under the Homestead Law and that Bangis be ordered to indemnify them: (a) P50,000.00 each as moral damages; (b) 20% of the value of the property as attorney's fees; and (c) P50,000.00 as litigation expenses as well as the costs of suit.<sup>[18]</sup>

In his Answer with Counterclaim,<sup>[19]</sup> Bangis claimed to have bought the subject property from Adolfo for which TCT No. T-10567<sup>[20]</sup> was issued. He also alleged to have been in open and adverse possession of the property since 1972 and that the cause of action of the Heirs of Adolfo has prescribed. On November 11, 2001, Bangis died and was substituted in this suit by his heirs, namely, Rodolfo B. Bangis, Ronie B. Bangis, Rogelio B. Bangis, Raquel B. Quillo, Romulo B. Bangis, Rosalina B. Paran, Rosario B. Reddy, Reynaldo B. Bangis and Remedios B. Lastre (Heirs of Bangis).<sup>[21]</sup>

During the trial, one of the Heirs of Bangis, Rodolfo Bangis, presented a photocopy of an Extra-Judicial Settlement with Absolute Deed of Sale dated December 30, 1971<sup>[22]</sup> for the purpose of proving the sale of the subject lot by Adolfo and his heirs in favor of his predecessors-in-interest, Aniceto Bangis and Segundino Cortel, for the sum of P13,000.00. He also presented a Promissory Note<sup>[23]</sup> of even date

purportedly executed by Bangis and Segundino Cortel undertaking to pay the balance of the purchase price in the amount of P1,050.00.<sup>[24]</sup> Both documents were notarized by Atty. Valentin Murillo who testified to the fact of their execution.<sup>[25]</sup> Rodolfo Bangis likewise testified that they have been paying the taxes due on the property and had even used the same as collateral for a loan with a bank.<sup>[26]</sup>

On rebuttal, one of the Heirs of Adolfo, Luz Adolfo Bannister, denied the due execution and genuineness of the foregoing Extra-Judicial Settlement with Absolute Deed of Sale alleging forgery.<sup>[27]</sup>

On December 29, 2005, the RTC rendered a Decision<sup>[28]</sup> in favor of the Heirs of Adolfo, the dispositive portion of which reads:

WHEREFORE, the preponderance of evidence being strongly in favor of the plaintiffs and against the defendants, decision is hereby rendered:

1. Declaring the contract between the plaintiffs and defendants as a mere mortgage or antichresis and since the defendants have been in the possession of the property in 1975 up to the present time enjoying all its fruits or income, the mortgaged loan of P12,000.00 is deemed fully paid;
2. Ordering the defendants to deliver the possession of the property in question and all the improvements thereon to the plaintiffs peacefully;
3. Declaring TCT No. 10567 in the name of Aniceto Bangis as NULL AND VOID AB INITIO and directing the Office of the Register of Deeds to cause its cancellation from its record to avoid confusion regarding the ownership thereof; and
4. Declaring all the transfer certificates of title issued in favor of the plaintiffs namely, Luz Adolfo-Bannister, Serafin Adolfo, Jr. and Eleuterio Adolfo, as above-mentioned as the ones valid and issued in accordance with PD 1529.

SO ORDERED.

Aggrieved, the Heirs of Bangis appealed the foregoing disquisition to the Court of Appeals (CA).

### **THE CA RULING**

In its assailed Decision, the CA affirmed the RTC finding that the contract between the parties was a mortgage, not a sale. It noted that while Bangis was given possession of the subject property, the certificate of title remained in the custody of Adolfo and was never cancelled. The CA also ordered the Heirs of Adolfo to pay the Heirs of Bangis the mortgage debt of P12,500.00<sup>[29]</sup> with twelve (12%) percent interest reckoned from 1975 until 1998 and to deliver to them the possession of the property upon full payment.<sup>[30]</sup> It, however, deleted the RTC order directing the Register of Deeds to cancel TCT No. T-10567 in the name of Bangis for being a

collateral attack proscribed under PD 1529.<sup>[31]</sup>

Dissatisfied, the Heirs of Bangis filed a Motion for Reconsideration<sup>[32]</sup> arguing that the CA erred in disregarding their testimonial and documentary evidence, particularly, the Extra-Judicial Settlement with Absolute Deed of Sale (Exh. 2) which purportedly established the sale in favor of their predecessor-in-interest, Aniceto Bangis. The said motion was, however, denied in the Resolution<sup>[33]</sup> dated December 2, 2009.

### **THE ISSUE BEFORE THE COURT**

Hence, the instant petition for review on certiorari based on the lone assignment of error<sup>[34]</sup> that the transaction between the parties was one of sale and not a mortgage or antichresis. In support, petitioner Heirs of Bangis maintain that the CA erred in not giving probative weight to the Extra-Judicial Settlement with Absolute Deed of Sale<sup>[35]</sup> which supposedly bolsters their claim that their father, Aniceto Bangis, bought the subject parcel of land from Adolfo. Hence, the corresponding title, TCT No. T-10567, issued as a consequence should be respected.

On their part, respondent Heirs of Adolfo averred that no reversible error was committed by the CA in upholding that no sale transpired between the parties' predecessors-in-interest. Moreover, petitioners' TCT No. T-10567 was not offered in evidence and worse, certified as of dubious origin per the Manifestation of the Registrar of Deeds.<sup>[36]</sup>

### **THE COURT'S RULING**

The petition must fail.

At the outset, it should be emphasized that a petition for review on *certiorari* under Rule 45 of the Rules of Court involves only questions of law and not of facts. A question of law exists when there is doubt as to what the law is on a given set of facts while a question of fact arises when there is doubt as to the truth or falsity of the alleged facts.<sup>[37]</sup>

The Heirs of Bangis, in insisting that both the RTC and the CA erroneously disregarded the evidence of sale they presented, are effectively asking the Court to re-evaluate factual issues which is proscribed under Rule 45. "Such questions as to whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact."<sup>[38]</sup>

Nonetheless, the Court perused the records and found substantial evidence supporting the factual findings of the RTC, as affirmed by the CA, that the nature of the transaction between the parties' predecessors-in-interest was a mortgage and not a sale. Thus, the maxim that factual findings of the trial court when affirmed by the CA are final and conclusive on the Court<sup>[39]</sup> obtains in this case.

### **THERE WAS NEITHER AN**

## **ANTICHRESIS NOR SALE**

For the contract of antichresis to be valid, Article 2134 of the Civil Code requires that "the amount of the principal and of the interest shall be specified in writing; otherwise the contract of antichresis shall be void." In this case, the Heirs of Adolfo were indisputably unable to produce any document in support of their claim that the contract between Adolfo and Bangis was an antichresis, hence, the CA properly held that no such relationship existed between the parties. [40]

On the other hand, the Heirs of Bangis presented an Extra-Judicial Settlement with Absolute Deed of Sale dated December 30, 1971<sup>[41]</sup> to justify their claimed ownership and possession of the subject land. However, notwithstanding that the subject of inquiry is the very contents of the said document, only its photocopy<sup>[42]</sup> was presented at the trial without providing sufficient justification for the production of secondary evidence, in violation of the best evidence rule embodied under Section 3 in relation to Section 5 of Rule 130 of the Rules of Court, to wit:

SEC. 3. Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (1) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (2) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (3) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (4) When the original is a public record in the custody of a public officer or is recorded in a public office.

SEC. 5. When original document is unavailable. - When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its content in some authentic document, or by the testimony of witnesses in the order stated.

The bare testimony of one of the Heirs of Bangis, Rodolfo Bangis, that the subject document was only handed<sup>[43]</sup> to him by his father, Aniceto, with the information that the original thereof "could not be found"<sup>[44]</sup> was insufficient to justify its admissibility. Moreover, the identification made by Notary Public Atty. Valentin