656 Phil. 205

THIRD DIVISION

[G.R. No. 191889, January 31, 2011]

SPS. IRENEO T. FERNANDO (SUBSTITUTED BY THEIR HEIRS, RONALDO M. FERNANDO, CONCORDIA FERNANDO-JAYME, ESMERALDA M. FERNANDO, ANTONETTE M. FERNANDO-REGONDOLA, FERDINAND M. FERNANDO, AND JEAN MARIE FERNANDO-CANSANAY), AND MONSERRAT MAGSALIN FERNANDO, PETITIONERS, VS. MARCELINO T. FERNANDO, RESPONDENT.

MATIAS I. FERNANDO AND PANFILO M. FERNANDO,[1] IN THEIR CAPACITY AS ADMINISTRATORS [OF THE ESTATE] OF THE LATE JULIANA T. FERNANDO, RESPONDENTS-INTERVENORS.

D E C I S I O N

CARPIO MORALES, J.:

The spouses Ireneo[2] T. Fernando and Monserrat Magsalin Fernando (petitioners) and Irineo's sisters Juliana T. Fernando (Juliana) and Celerina T. Fernando (Celerina) were the registered co-owners in pro-rata shares – 1/3 each - of three parcels of land located in Quezon City, designated as Lot Nos. 22, 24 and 26, all of Block 329 and each containing an area of 264 square meters, more or less. Lot No. 22 was covered by Transfer Certificate of Title (TCT) No. RT-7108 (141363),[3] while Lot Nos. 24 and 26 were covered by TCT No. RT-7109 (141364),[4] both issued by the Register of Deeds for Quezon City.

Marcelino T. Fernando (respondent) is the full-blood brother of petitioner Ireneo, Juliana and Celerina. Celerina died on April 28, 1988,[5] single, without issue and without leaving any will, while Juliana passed away on December 1, 1998,[6] likewise single and without issue. Juliana purportedly executed a holographic will.

It appears that on November 3, 1994, Ireneo and Juliana presented a document before the Register of Deeds of Quezon City, denominated as Deed of Partition with Sale[7] (the deed) dated October 27, 1994 and notarized on even date by Notary Public Jesus M. Bautista, allegedly executed by petitioners, Juliana and Celerina wherein they partitioned equally among themselves the aforementioned properties, thereby terminating their co-ownership. Under the deed, Lot No. 22 would be allotted to petitioners; Lot No. 24 to Juliana; and Lot No. 26 to Celerina. Still in the same deed, Juliana agreed to sell Lot No. 24 to petitioners for the sum of P300,000.00.

TCT Nos. 120654 and 120655[8] covering Lot Nos. 22 and 24, respectively, were thereupon issued on November 3, 1994 by the Register of Deeds for Quezon City in

the name of petitioners, while TCT No. 120656[9] was issued in the name of Celerina.

On December 10, 1997, respondent caused the annotation of an Affidavit of Adverse Claim on petitioners' and Celerina's respective TCTs, claiming a right and interest over the properties, being one of the heirs of his late sister Celerina.

Respondent later filed on February 22, 2000 a complaint[10] for annulment of the deed and the derivative TCTs against petitioners and the Register of Deeds of Quezon City before the Regional Trial Court (RTC) of Quezon City, docketed as Civil Case No. Q-00-40041, alleging that Celerina's signatures on the deed of partition was a forgery as she had passed away on April 28, 1988, before the deed was purportedly executed in 1994, and that the purported sale by Juliana of her share over Lot No. 24 in favor of petitioners was simulated and fictitious due to lack of any valid consideration, which questioned acts had effectively deprived him of his right of pre-emption or redemption as Celerina's heir under Article 1620 of the Civil Code [sic].

Respondent thus prayed for, *inter alia*, the cancellation and invalidation of the deed and the questioned TCTs, and the revival of TCT Nos. RT-7108 (141363) and RT-7109 (141364).

Respondent was later appointed administrator of the intestate estate of Celerina on December 21, 2001.[11]

On January 30, 2002, intervenors Matias Fernando and Procilo Fernando, who had earlier been appointed special co-administrators[12] of Juliana's estate by the Quezon City RTC, Br. 95, filed their complaint-in-intervention. Claiming an interest in the outcome of respondent's complaint for annulment, they echoed respondent's claim that, among other things, the sale of Juliana's share to petitioners was fictitious, citing lack of any consideration, and thus prayed for its reconveyance to Juliana's estate.

Petitioners, denying respondent's allegations by way of Answer *Ad Cautelam*[13] dated May 11, 2002 with Compulsory Counterclaim, asserted in the main that the deed was actually executed sometime in 1986 during the lifetime of Celerina and held in safekeeping by one of the parties but it was belatedly notarized on October 27, 1994 before it was presented to the Register of Deeds; and that Juliana left a holographic will which is the subject of probate proceedings[14] before Br. 95 of the Quezon City RTC.

At the witness stand, respondent confirmed the material allegations of his complaint.[15] Petitioners, on the other hand, presented Monserrat Fernando (Monserrat), Ireneo's widow, who declared that, among other things, she was present when the deed was signed by Ireneo, Juliana and Celerina in 1986, and that by agreement, it remained in Juliana's safekeeping until it was notarized on October 27, 1994.[16]

On cross-examination, Monserrat maintained that the deed was signed in Juliana's house, but she could not recall the witnesses to the document; that at the time

Juliana signed the deed, it was still undated and the entries on page 3 (the notarial page) were, with respect to the date and the community tax certificates of the parties, still blank; and that she (Monserrat) appeared before the notary public but she could not remember if her husband did.

Monserrat further testified that she did not know if the typewriter used in preparing the deed was different from that used in typing the notarial date (October 27, 1994) as well as the figures "P300,000.00" and the words "THREE HUNDRED THOUSAND PESOS" representing the consideration for the sale of Juliana's share to Irineo; and that Ireneo issued a check-payment drawn on his account in favor of Juliana, albeit she (Monserrat) could not produce the check.[17]

By Decision[18] of April 13, 2005, Branch 220 of the Quezon City RTC dismissed both the complaint and the complaint-in-intervention. And, on the Counterclaim, the trial court ordered respondent to pay petitioners moral damages and attorney's fees.

In sustaining the validity of the deed, the trial court ratiocinated that since there appeared to be no dispute as to the genuineness of Celerina and Juliana's signatures, the notarization of the document at a later date did not render it void or without legal effect, but merely opened the notary public to prosecution for possible violation of notarial laws.

The trial court added that both respondent and intervenors, not being compulsory heirs of either Celerina or Juliana, were not entitled to any legitime and thus could not assail the sale made by Juliana in favor of her brother Ireneo, which sale was proven to have been duly supported by valuable consideration.[19]

On appeal, the Court of Appeals *reversed* the trial court's decision. It held that the deed is void in light of the clear forgery of the signature of Celerina who could not have given her consent thereto more than six years *after* her death. The appellate court reasoned:

> Celerina T. Fernando, who admittedly died on April 28, 1988, could not have possibly "affixed" her "signature" to the document on October 27, 1994; neither could she have secured the misrepresented Community Tax Certificate No. 6720337 from Manila on January 6, 1994; and worsely, she could not have "personally appeared" before Notary Public Jesus M. Bautista on "October 27, 1994" and "acknowledged before (him) that the same was executed of (her) own free act and deed." Especially that Monserrat, a signatory who insists that the deed was in truth executed in 1986, did not adduce evidence to such effect, other than her bare testimony. She did not even proffer any explanation why the correct date was not made part of the assailed deed.
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> The discrepancy in the date of execution and notarization of the deed and the date of death of supposed signatory Celerina are too glaring for Us to overlook and gloss over, moreso, that the evidence offered in opposition thereto is merely Monserrat's bare testimony.[20] (underscoring supplied)

Thus the appellate court disposed in its Decision[21] of January 6, 2010:

> WHEREFORE, the instant appeal is GRANTED. Setting aside the assailed April 31, 2005 Decision of the RTC, judgment is hereby rendered:
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> 1) Declaring the Deed of Partition with Sale dated October 27, 1994 as NULL and VOID;
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> 2) Declaring further Transfer Certificate of Title Nos. 120654 and 120655 issued in the name of Ireneo T. Fernando and Transfer Certificate of Title No. 120655 issued in the name of Celerina T. Fernando as NULL and VOID;
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> 3) Directing the Register of Deeds of Quezon City to revive TCT Nos. RT-7108 and RT-7109 and accordingly issue transfer of title over the three lots as now co-owned by Irineo T. Fernando married to Monserrat M. Fernando, Juliana T. Fernando and Celerina T. Fernando; and
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> 4) Ordering the defendants-appellees to pay plaintiff-appellant P100,000.00 as moral damages, P50,000.00 as exemplary damages and P50,000.00 as attorney's fees.
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> SO ORDERED. (underscoring supplied)

Reconsideration of the appellate court's Decision having been denied by Resolution[22] of April 13, 2010, petitioners filed the present petition for review on certiorari, contending that the appellate court:

> . . . disregarded the trial court's factual findings on the authenticity of Celerina's signature as based on the eyewitness account of Monserrat, who also signed the subject deed, and failed to take into account their explanation on the date of execution of the instrument;
>
> . . . failed to recognize that the deed of partition with sale executed by the parties in 1986 does not require notarization for the same to be valid, binding and enforceable, even granting that a notarial defect– arising from Celerina's failure to appear before the Notary Public–exists; and
>
> . . . erred in upholding respondent's legal personality to question the validity of the deed of partition with sale.[23]

The principal issue â”€ whether the deed is genuine â”€ involves a question of fact.

While it is settled that petitions for review on certiorari under Rule 45 are limited to questions of law as the Court is not a trier of facts, the rule admits of exceptions including when the factual findings of the trial and appellate courts are conflicting, in which event this Court may still pass on the same.[24]