

FIRST DIVISION

[G.R. NO. 146556, April 19, 2006]

**DANILO L. PAREL, PETITIONER, VS. SIMEON B. PRUDENCIO,
RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on *certiorari* filed by Danilo Parel (petitioner) which seeks to set aside the Decision^[1] dated March 31, 2000 of the Court of Appeals (CA) which reversed the Decision of the Regional Trial Court (RTC), Branch 60, Baguio, in Civil Case No. 2493-R, a case for recovery of possession and damages. Also assailed is CA Resolution^[2] dated November 28, 2000.

On February 27, 1992, Simeon Prudencio (respondent) filed a complaint for recovery of possession and damages against petitioner with the RTC Baguio alleging that: he is the owner of a two-storey residential house located at No. 61 Forbes Park National Reservation near Department of Public Service (DPS) compound, Baguio City; such property was constructed solely from his own funds and declared in his name under Tax Declaration No. 47048; he commenced the construction of said house in 1972 until its completion three years later; when the second floor of said house became habitable in 1973, he allowed petitioner's parents, Florentino (now deceased) and Susan Parel, to move therein and occupy the second floor while the construction of the ground floor was on-going to supervise the construction and to safeguard the materials; when the construction of the second floor was finished in 1975, respondent allowed petitioner's parents and children to transfer and temporarily reside thereat; it was done out of sheer magnanimity as petitioner's parents have no house of their own and since respondent's wife is the older sister of Florentino, petitioner's father; in November 1985, respondent wrote Florentino a notice for them to vacate the said house as the former was due for retirement and he needed the place to which petitioner's parents heeded when they migrated to U.S. in 1986; however, without respondent's knowledge, petitioner and his family unlawfully entered and took possession of the ground floor of respondent's house; petitioner's refusal to vacate the house despite repeated demands prompted respondent to file the instant action for recovery of possession. Respondent also asked petitioner for a monthly rental of P3,000.00 from April 1988 and every month thereafter until the latter vacates the said premises and surrender possession thereof; and for moral and exemplary damages, attorney's fees and cost of suit.

Petitioner filed his Answer with Counterclaim alleging that: his parents are the co-owners of the said residential house, i.e., the upper story belongs to respondent while the ground floor pertains to petitioner's parents; he is occupying the ground floor upon the instruction of his father, Florentino, with respondent's full knowledge; his parents spent their own resources in improving and constructing the said two-storey house as co-owners thereof; the late Florentino was an awardee of the land

on which the house stands and as a co-owner of the house, he occupied the ground floor thereof; the demand to vacate was respondent's attempt to deprive petitioner's parents of their rights as co-owner of the said house; that respondent had filed ejectment case as well as criminal cases against them involving the subject house which were all dismissed. Petitioner asked for the dismissal of the complaint and prayed for damages and attorney's fees.

After trial on the merits, the RTC rendered a Decision^[3] dated December 15, 1993, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court hereby declares that the house erected at No. 61 DPS Compound, Baguio City is owned in common by the late Florentino Parel and herein plaintiff Simeon Prudencio and as such the plaintiff cannot evict the defendant as heirs of the deceased Florentino Parel from said property, nor to recover said premises from herein defendant.

Likewise, the plaintiff is ordered to:

- (a) pay the defendant in the total sum of P20,000.00 for moral and actual damages;
- (b) pay the defendant P20,000.00 in Attorney's fees and P3,300.00 in appearance fees;
- (c) pay the costs of this suit.^[4]

The RTC found the following matters as conclusive: that petitioner's father was an allocatee of the land on which the subject house was erected, as one of the lowly-paid government employees at that time when then Mayor Luis Lardizabal gave them the chance to construct their own house on said reservation; that respondent failed to show proof of any contract, written or oral, express or implied, that the late Florentino and his family stayed on the house not as co-owners but as mere lessees, nor any other proof that would clearly establish his sole ownership of the house; and, that the late Florentino was the one who gathered the laborers for the construction of the house and paid their salaries. Thus, the RTC ruled that co-ownership existed between respondent and petitioner's father, Florentino.

The RTC concluded that respondent and petitioner's father agreed to contribute their money to complete the house; that since the land on which said house was erected has been allocated to petitioner's father, the parties had the understanding that once the house is completed, petitioner's father could keep the ground floor while respondent the second floor; the trial court questioned the fact that it was only after 15 years that respondent asserted his claim of sole ownership of the subject house; respondent failed to disprove that petitioner's father contributed his own funds to finance the construction of the house; that respondent did not question (1) the fact that it was the deceased Florentino who administered the construction of the house as well as the one who supplied the materials; and (2) the fact that the land was in Florentino's possession created the impression that the house indeed is jointly owned by respondent and Florentino.

The RTC did not give credence to the tax declaration as well as the several documents showing the City Assessor's assessment of the property all in respondent's name since tax declarations are not conclusive proof of ownership. It

rejected the affidavit executed by Florentino declaring the house as owned by respondent saying that the affidavit should be read in its entirety to determine the purpose of its execution; that it was executed because of an advisement addressed to the late Florentino by the City Treasurer concerning the property's tax assessment and Florentino, thought then that it should be the respondent who should pay the taxes; and that the affidavit cannot be accepted for being hearsay.

Aggrieved by such decision, respondent appealed to the CA. In a Decision dated March 31, 2000, the CA reversed the trial court and declared respondent as the sole owner of the subject house and ordered petitioner to surrender possession of the ground floor thereof to respondent immediately. It also ordered petitioner to pay respondent a monthly rental of P2,000.00 for use or occupancy thereof from April 1988 until the former actually vacates the same and the sum of P50,000.00 as attorney's fees and cost of suit.

The CA found as meritorious respondent's contention that since petitioner failed to formally offer in evidence any documentary evidence, there is nothing to refute the evidence offered by respondent. It ruled that the trial court's statement that "defendants" occupancy of the house is due to a special power of attorney executed by his parents most specially the deceased Florentino Parel who is in fact a co-owner of said building' is wanting of any concrete evidence on record; that said power of attorney was never offered, hence, could not be referred to as petitioner's evidence to support his claim; that except for the bare testimonies of Candelario Regua, the carpenter-foreman, that it was Florentino who constructed the house and Corazon Garcia, the former barangay captain, who testified that the lot was allocated to petitioner's father, there was no supporting document which would sufficiently establish factual bases for the trial court's conclusion; and that the rule on offer of evidence is mandatory.

The CA found the affidavit dated September 24, 1973 of Florentino, petitioner's father, stating that he is not the owner of the subject house but respondent, as conclusive proof of respondent's sole ownership of the subject house as it is a declaration made by Florentino against his interest. It also found the tax declarations and official receipts representing payments of real estate taxes of the questioned property covering the period 1974 to 1992 sufficient to establish respondent's case which constitute at least proof that the holder has a claim of title over the property.

Petitioner's motion for reconsideration was denied in a Resolution dated November 28, 2000.

Hence, the instant petition for review on certiorari with the following Assignment of Errors:

1. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING RESPONDENT AS THE OWNER OF THE BUILDING AT 61 FORBES PARK NATIONAL RESERVATION, NEAR DPS COMPOUND, BAGUIO CITY, NOTWITHSTANDING THE FINDING OF THE REGIONAL TRIAL COURT OF CO-OWNERSHIP BETWEEN THE LATE FLORENTINO PAREL AND RESPONDENT;

2. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ORDERING PETITIONER TO SURRENDER POSSESSION OF THE GROUND FLOOR OF THE SUBJECT BUILDING TO RESPONDENT;
3. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ORDERING PETITIONER TO PAY RESPONDENT P2,000.00/MONTH FOR USE OR OCCUPANCY OF THE SUBJECT PREMISES FROM APRIL 1988 UNTIL PETITIONER ACTUALLY VACATES THE SAME;
4. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ORDERING PETITIONER TO PAY TO RESPONDENT P50,000.00 ATTORNEY'S FEES AND COSTS OF SUIT;
5. THE HONORABLE COURT OF APPEALS ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.^[5]

Petitioner concedes that while his former counsel failed to make a formal offer of his documentary evidence before the trial court and that the court shall consider no evidence which has not been formally offered, he maintains that the said rule is not absolute, citing the case of *Bravo, Jr. v. Borja*;^[6] that his documentary evidence which were not formally offered in evidence were marked during the presentation of the testimony of petitioner's witnesses and were part of their testimonies; that these evidence were part of the memorandum filed by him before the trial court on July 12, 1993.

Petitioner insists that even in the absence of the documentary evidence, his testimony as well as that of his witnesses substantiated his claim of co-ownership of the subject house between his late father and respondent as found by the trial court.

Petitioner argues that the CA erred in finding the affidavit of petitioner's father declaring respondent as owner of the subject house as conclusive proof that respondent is the true and only owner of the house since the affidavit should be read in its entirety to determine the purpose for which it was executed.

Petitioner further contends that since he had established his father's co-ownership of the subject house, respondent has no legal right to eject him from the property; that he could not be compelled to pay rentals for residing in the ground floor of the subject house; that respondent should bear his own expenses and be adjudged liable for damages which petitioner sustained for being constrained to litigate.

The principal issue for resolution is whether petitioner was able to prove by preponderance of evidence that his father was a co-owner of the subject two-storey residential house.

The issue raised by petitioner is mainly factual in nature. In general, only questions of law are appealable to this Court under Rule 45. However, considering that the findings of the RTC and CA are contradictory, the review of the case is in order.^[7]

We agree with the CA that respondent had shown sufficient evidence to support his complaint for recovery of possession of the ground floor of the subject house as the

exclusive owner thereof. Respondent presented the affidavit dated September 24, 1973 executed by Florentino and sworn to before the Assistant City Assessor of Baguio City, G.F. Lagasca, which reads:

I, FLORENTINO PAREL, 42 years of age, employee, and residing at Forbes Park, Reservation No. 1, after having been sworn to according to law depose and say:

That he is the occupant of a residential building located at Forbes Park, Reservation No. 1, Baguio City which is the subject of an advicement addressed to him emanating from the Office of the City Assessor, Baguio City, for assessment and declaration for taxation purposes;

That I am not the owner of the building in question;

That the building in question is owned by Mr. Simeon B. Prudencio who is presently residing at 55 Hyacinth, Roxas District, Quezon City.

Further, affiant say not.^[8] (Underscoring supplied)

Section 38 of Rule 130 of the Rules of Court provides:

SEC. 38. *Declaration against interest.* - The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to the declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors-in-interest and against third persons.

The theory under which declarations against interest are received in evidence notwithstanding they are hearsay is that the necessity of the occasion renders the reception of such evidence advisable and, further that the reliability of such declaration asserts facts which are against his own pecuniary or moral interest.^[9]

The affiant, Florentino, who died in 1989 was petitioner's father and had adequate knowledge with respect to the subject covered by his statement. In said affidavit, Florentino categorically declared that while he is the occupant of the residential building, he is not the owner of the same as it is owned by respondent who is residing in Quezon City. It is safe to presume that he would not have made such declaration unless he believed it to be true, as it is prejudicial to himself as well as to his children's interests as his heirs.^[10] A declaration against interest is the best evidence which affords the greatest certainty of the facts in dispute.^[11] Notably, during Florentino's lifetime, from 1973, the year he executed said affidavit until 1989, the year of his death, there is no showing that he had revoked such affidavit even when a criminal complaint for trespass to dwelling had been filed by respondent against him (Florentino) and petitioner in 1988 regarding the subject house which the trial court dismissed due to the absence of evidence showing that petitioner entered the house against the latter's will and held that the remedy of respondent was to file an action for ejectment;^[12] and even when a complaint for unlawful detainer was filed against petitioner and his wife also in 1988 which was subsequently dismissed on the ground that respondent's action should be an *accion*