

## THIRD DIVISION

[ G.R. NO. 127857, June 20, 2006 ]

**PASTOR DE JESUS, PETITIONER, VS. HONORABLE COURT OF APPEALS, RONALDO, ALICIA, FLORANTE, NELSON, BELLAFLOR, MARIO, ARNOLFO, JOCELYN AND GODFREY, ALL SURNAMED DE JESUS, ALL REPRESENTED BY RONALDO DE JESUS, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

In this Petition<sup>[1]</sup> for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Pastor de Jesus assails the Decision<sup>[2]</sup> dated 11 September 1996 of the Court of Appeals in C.A. G.R. CV No. 47008 and its Resolution<sup>[3]</sup> dated 15 January 1997. The challenged Decision affirmed in part the Decision<sup>[4]</sup> dated 28 October 1994 of the Regional Trial Court of Tabuk, Kalinga Apayao, Branch 25 in Special Civil Action Case No. 44 entitled, "*Ronaldo, Alicia, Florante, Nelson, Bellaflor, Mario, Arnolfo, Jocelyn, and Godfrey, all surnamed De Jesus, all represented by Ronaldo De Jesus v. Pastor De Jesus.*" The trial court declared null and void the Extrajudicial Settlement with Simultaneous Sale of Rights and Interests in the Estate of a Deceased Person (Deed of Sale) dated 13 September 1979 and directed the partition of the real property subject of the litigation in *pro indiviso* equal shares among Pastor de Jesus, respondents-all surnamed de Jesus (respondents de Jesus)-and Consolacion Resurreccion de Jesus Abando (Consolacion).

The factual and legal antecedents culled from the decision of the Court of Appeals follow.

Herein respondents de Jesus, in their capacity as legal heirs and successors-in-interest to the property inherited by their late father Fermin de Jesus (Fermin) filed a petition before the trial court on 3 June 1991, seeking the partition of a parcel of land left by their deceased grandparents.

From the pleadings and evidence presented by the parties, the following facts were established: that respondents de Jesus, namely Ronaldo, Alicia, Florante, Nelson, Bellaflor, Mario, Arnolfo, Jocelyn, and Godfrey, all surnamed de Jesus, represented by Ronaldo de Jesus (Ronaldo), are the legitimate children of Fermin; that Pastor de Jesus is their uncle, being the brother of Fermin; that the parties are all residents of Bulanao, Tabuk, Kalinga-Apayao; that the spouses Juan and Eustaquia de Jesus were the parents of Fermin, Consolacion and Pastor de Jesus from whom they inherited through intestate succession the parcel of land in dispute consisting of more or less five (5) hectares located in Ipil, Bulanao, Tabuk, Kalinga-Apayao and covered by Tax Declaration No. 16100; that Juan de Jesus died on 7 December 1964 while Fermin died on 24 September 1979; that as of the filing of the petition, the title to the property remained in the name of Juan de Jesus.

Mainly in dispute is the claim of respondents de Jesus that ownership of the said property had never been transferred to anyone and/or partitioned among the legal heirs thereto, and that as legitimate children of Fermin and by right of representation under the law of intestate succession, they are entitled to their rightful share of the estate left by their grandfather Juan de Jesus.

Pastor de Jesus contended that respondents de Jesus are no longer entitled to their father's share in the subject property as the latter has already sold to Pastor de Jesus his property right along with only sister Consolacion for a consideration of P10,000.00. This is evidenced by the notarized Deed of Sale dated 13 September 1979, which respondent admits has not yet been registered with the Registry of Deeds. Pastor de Jesus prayed, among others, for the dismissal of the petition for lack of factual and legal basis.

The trial court ordered the Deed of Sale to be submitted to the NBI for examination in order to determine its genuineness and due execution.

Respondents de Jesus presented as witnesses Alicia de Jesus Oakes, Ronaldo de Jesus and the NBI Handwriting Expert Zenaida Torres. Their rebuttal witnesses were Ronaldo and Maura Maramag de Jesus (Maura).

On the other hand, Pastor de Jesus's witnesses were his sister Consolacion, Atty. Marcos C. Diasen, Jr., Zenaida Tuazon and himself.

After trial, the trial court rendered its decision on 28 October 1994, disposing as follows:

WHEREFORE, judgment is hereby rendered as follows:

1. Declaring null and void Extra-judicial Settlement with Simultaneous Sale of Estate of Deceased Person dated September 13, 1979;
2. Directing the Partition of Lot 769, Pls-93 covered by Original Certificate of Title No. P-131 under the registered name of the late Juan de Jesus;
3. Appointing commissioners to make partition over Lot 769, Pls-93 covered by Original Certificate of Title No. P-131 of decedent Juan de Jesus, namely: (a) The Clerk of Court of RTC, Branch 25; (b) The Municipal Treasurer of the Municipality of Tabuk; and (c) The Municipal Assessor of the Municipality of Tabuk, in the Province of Kalinga-Apayao, and for said commissioners to submit a report of Partition not later than December 30, 1994;
4. Directing Respondents to pay Petitioners the sum of THIRTY THOUSAND PESOS (P30,000.00) by way of attorney's fees; and to pay costs.

Let a copy of this decision be furnished the Register of Deeds of Kalinga-Apayao.

SO ORDERED.<sup>[5]</sup>

Aggrieved, Pastor de Jesus interposed an appeal before the Court of Appeals claiming that the trial court erred: (1) in not giving weight to the evidence he offered to prove that the Deed of Sale was duly executed by the heirs of Juan de Jesus; (2) in relying on the testimony of the expert witness than on the testimonies of disinterested and knowledgeable witnesses asserting the genuineness of the signatures; and (3) in declaring, without substantial basis, null and void the Deed of Sale.<sup>[6]</sup>

The Court of Appeals found Pastor de Jesus's appeal to be devoid of merit. It shared the lower court's observations: that a mere look at the signature above the name Fermin de Jesus<sup>[7]</sup> evinces a disparity of the signature with that appearing on page two (2) of the Deed of Sale;<sup>[8]</sup> that despite the assertion of petitioners Alicia de Jesus Oakes and Ronaldo de Jesus that the signature on page two (2) of the questioned document is that of their father's, it cannot be better than or absolute as the conclusions found by expert witness Zenaida Torres that the signature on the second page of the Deed of Sale and by standard signatures "were not written by one and the same person;" and that since the genuineness of the signature becomes the crux of the proceedings, a closer examination of the questioned signature and the circumstances then prevailing becomes of utmost necessity. The Court of Appeals thus declared that there is sufficient evidence to warrant the declaration of Fermin's signature as a forgery.<sup>[9]</sup>

However, even without the testimony of the handwriting expert, the appellate court ruled that there are valid reasons to doubt the due execution of the document in question.<sup>[10]</sup>

It observed that the testimony of Consolacion on the physical condition of Fermin was fraught with contradictions and inconsistencies seriously eroding her credibility. Consolacion testified that Fermin had been admitted to various hospitals and was eventually released because his illness was already beyond treatment or hopeless yet she insisted that Fermin was still strong. Consolacion contradicted herself when she testified that Fermin was fetched with a wheelchair when they alighted from the helicopter on their way to the medicare room. This shows that Fermin not only could not withstand the rigors of long travel, as pointed out by the trial court, but could not also walk by himself. This affirms Maura's testimony that Fermin was already very weak and very thin when he arrived in the Kalinga-Apayao Hospital, which is why he had to be carried on a stretcher to the emergency room and later on bodily carried to his bed when he went home. Under these given facts, Consolacion's uncorroborated claim that Fermin was strong and that she saw him seated in the balcony when she fetched the latter to go to the notary public, is unworthy of belief.<sup>[11]</sup>

The appellate court likewise ruled that Pastor de Jesus's credibility was not impressive. During the pre-trial conference, Pastor de Jesus admitted being in possession of the original copy of the Deed of Sale but when later pressed to produce the original, his reply was that Fermin left him only a duplicate copy.<sup>[12]</sup>

In conclusion, the Court of Appeals stated that the rule that "a notarized document is admissible in evidence without proof of its due execution and is conclusive as to

the truthfulness of its contents" is not absolute and may be rebutted by evidence to the contrary, which respondents de Jesus were able to present convincingly in the case at bar. The appellate court thus declared that the notarized Deed of Sale is null and void. Inconsistently, however, it declared the same valid and binding with regard to Pastor de Jesus and his sibling Consolacion. The Court of Appeals disposed as follows:

WHEREFORE, in view of all the foregoing, the decision of the court *a quo* is AFFIRMED with the modification that the Extrajudicial Settlement with Simultaneous Sale of Estate of Deceased Person dated September 13, 1979 is declared NULL AND VOID only insofar as the one-third (1/3) share of Fermin de Jesus is concerned.

No costs.

SO ORDERED.<sup>[13]</sup>

With the denial of his motion for reconsideration,<sup>[14]</sup> Pastor de Jesus filed the instant petition wherein he argues in the main that the testimony of the parties and their witnesses to a notarized agreement, including that of the notary public who notarized the same, should be given more weight than the opinion of an expert witness denying the authenticity of a signature on the document.

In addition, Pastor de Jesus asserts in his Supplemental Petition for Review on Certiorari<sup>[15]</sup> that the presumption of regularity of notarized documents has not been rebutted in the case at bar. Hence, the appellate court erred in declaring the subject document as null and void.

In their Comment,<sup>[16]</sup> respondents de Jesus maintain that the instant petition is but a reiteration of Pastor de Jesus's brief before the appellate court and that there is nothing new in the points raised therein. They further contend that the document entitled "Extrajudicial Settlement with Simultaneous Sale of Rights and Interests in the Estate of a Deceased Person" suffers from grave infirmities such that it cannot be considered as a duly executed document.<sup>[17]</sup>

The petition is without merit.

At the outset, it should be stressed that under Rule 45 of the 1997 Rules of Civil Procedure, only questions of law may be raised in a petition for review on certiorari, the reason being that the Court is not a trier of 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.<sup>[18]</sup>

It is not the function of this Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.<sup>[19]</sup>

The theory advanced by respondents de Jesus that Fermin's signatures on the Deed of Sale is a forgery involves a question of fact previously raised and satisfactorily ruled upon by the two lower courts. Generally, findings of fact of the Court of