

## SECOND DIVISION

[ G.R. No. 150155, September 01, 2004 ]

**SPOUSES RAMON AND FELICISIMA DIOSO, PETITIONERS, VS.  
SPOUSES TOMAS AND LEONORA CARDEÑO, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

Before us is a petition for review on certiorari filed by the Spouses Ramon and Felicisima Dioso, seeking the reversal of the Court of Appeals' Resolution<sup>[1]</sup> dated September 28, 2001 in CA-G.R. CV No. 63265, denying their motion for reconsideration/new trial. In the assailed resolution, the appellate court, likewise, reiterated its Decision dated May 9, 2001 substantially affirming the decision of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 31, dismissing the petitioners' complaint for specific performance and/or easement of right of way.

The factual antecedents of the case are as follows:

Lot 248-A, the property subject of the complaint for specific performance and/or easement of right of way, is one of three sublots of Lot 248 located along F. Gomez St., Sta. Rosa, Laguna. Lot 248-A has a total area of 222 square meters and was originally owned by Magno Eraña, the father of petitioner Felicisima Eraña Dioso, respondent Leonora Eraña Cardeño and their other sisters, namely, Natividad, Julieta and Encarnacion. Upon Magno Eraña's death, Lot 248-A was adjudicated in favor of respondent Leonora Eraña Cardeño, *et al.*<sup>[2]</sup>

Lot 248-A was later on partitioned into two, whereby the outer portion along F. Gomez St. became the property of the respondents, Spouses Tomas and Leonora Eraña Cardeño. The respondents built a house thereon sometime in 1972. The interior portion of Lot 248-A became the property of Encarnacion Eraña Javel (now deceased), one of the sisters of respondent Leonora Cardeño and petitioner Felicisima Dioso. Subsequently, Encarnacion sold her portion to Felicidad Legaspi who, in turn, sold the same to the petitioners, Spouses Ramon and Felicisima Dioso.

The petitioners had also built a house of light materials on the adjacent land, Lot 248-B, then owned by Frisco Eraña. There is an existing pathway or alley on this lot which the petitioners use as their outlet to F. Gomez St. After they bought Encarnacion's property, the petitioners wanted to construct a new house at the interior portion of Lot 248-A. They then demanded that they be given a right of way or an outlet to F. Gomez St., claiming that they were entitled thereto under the *Pinanumpaang Salaysay* executed between respondent Leonora Cardeño and Encarnacion Javel, the petitioners' predecessor-in-interest, on May 29, 1977. The said document states in part:

Na, kami ang siyang nagmamay-ari ng loteng may numirong 248-A na may sukat [na] 222 square meters. Na, ang nasabing lote ay nasa tabi ng kamalig ni G. AVEL SILVA sa daang Gov. F. Gomez ng bayang ito;

Na, ako (ENCARNACION E. JAVEL) ay pumapayag na ang nasabing lote ay hatiin at ang harapan ng nasabing lote ay pinaubaya ko na sa aking kapatid na si LEONORA E. CARDEÑO at ang likuran ng lote ay sa akin;

Na, ako (LEONORA E. CARDEÑO) bilang pagbibigay sa akin ng aking kapatid (ENCARNACION E. JAVEL) na mapunta sa akin ang harapan ng nasabing lote ay binibigyan ko naman ng daang tao sa tagiliran nitong lote upang madaanan ng aking kapatid patungo sa likuran ng nasabing lote na kanyang kaparte;

Dahil sa ako (LEONORA E. CARDEÑO) ay walang kaukulang salapi para mabili ang kaparti ng aking kapatid na si ENCARNACION E. JAVEL sa nasabing lote ay binibigyan ko siya (ENCARNACION E. JAVEL) ng karapatan na maipagbili niya ang kanyang kaparti ng nasabing lote na may numirong 248-A na may sukat na 111 square meters.<sup>[3]</sup>

When the respondents refused to give them the right of way, the petitioners filed with the RTC of San Pedro, Laguna, Branch 31, a complaint for specific performance and/or easement of right of way with damages, docketed as Civil Case No. B-4515. The petitioners prayed that the respondents be directed to comply with or perform their obligation under the *Pinanumpaang Salaysay* and grant the petitioners a right of way, and to pay them damages.

In their answer to the complaint, the respondents specifically denied the genuineness and due execution of the *Pinanumpaang Salaysay*, alleging that it was falsified. According to the respondents, respondent Leonora Cardeño and Encarnacion Javel could not have claimed co-ownership over Lot 248-A to the exclusion of their other siblings as early as 1977 when the *Pinanumpaang Salaysay* was supposedly executed, because it was only on August 27, 1992 that the other siblings waived or renounced their shares over the said property in favor of respondent Leonora Cardeño and Encarnacion Javel. The respondents, thus, urged the trial court to dismiss the complaint.

After due proceedings, the trial court rendered its Decision<sup>[4]</sup> dated April 23, 1999 and ruled in favor of the respondents. The trial court held that the petitioners' evidence did not support their claim that respondent Leonora Cardeño and Encarnacion Javel executed the *Pinanumpaang Salaysay* or entered into an agreement granting the latter, the petitioners' predecessor-in-interest, a right of way. The trial court noted that the petitioners presented only a photocopy or machine copy of the purported document, and, during the trial, failed to lay the foundation or prepare the basis for the admission of secondary evidence to prove the contents thereof. Moreover, according to the trial court, even on the assumption that a voluntary easement of right of way existed on the respondents' property, the petitioners were obliged to pay them indemnity therefor. Since the petitioners were not willing to pay such indemnity, the trial court concluded that their action to compel the respondents to grant them a right of way must fail. The trial court, thus, dismissed the complaint and ordered the petitioners to pay the respondents the sum of ₱30,000 as attorney's fees.

Aggrieved, the petitioners elevated the case to the Court of Appeals (CA). After evaluation of the respective pleadings filed by the parties and the evidence on record, the CA rendered the Decision<sup>[5]</sup> dated May 9, 2001 substantially affirming that of the trial court's. The appellate court, however, deleted the attorney's fees awarded in favor of the respondents for lack of factual and legal justification.

Citing Section 3,<sup>[6]</sup> Rule 130 of the Rules of Court, the CA opined that the best evidence of the contents of a document is the original document itself; in the absence of a clear showing that the original writing has been lost or destroyed or cannot be produced in court, the photocopy submitted, in lieu thereof, must be disregarded, being unworthy of any probative value and being inadmissible in evidence.

The appellate court further cited Section 5<sup>[7]</sup> of the same Rule and observed that the petitioners failed to show proof as to the reasons for the unavailability of the original copy of the *Pinanumpaang Salaysay*. The petitioners' witness, Veneranda Legaspi, merely testified that she did not know why only a photocopy of the said document was given to her by her mother, Felicidad Legaspi, from whom the petitioners acquired the interior one-half portion of Lot 248-A.

The CA thus affirmed the finding of the RTC that the petitioners' claim of a right of way had no legal basis, in view of their failure to prove the due execution of the *Pinanumpaang Salaysay* under which respondent Leonora Cardeño allegedly granted a right of way in favor of the petitioners' predecessor-in-interest. Moreover, by the petitioners' refusal to pay indemnity to the respondents, the latter could not be compelled to grant them the voluntary easement of right of way. The dispositive portion of the appellate court's decision reads:

WHEREFORE, foregoing premises considered and pursuant to applicable jurisprudence and law on the matter, the decision dated April 23, 1999 of the court *a quo* is AFFIRMED with modification. The award of damages and attorney's fees is deleted. No costs.

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

Thereafter, the petitioners filed with the appellate court a motion for reconsideration/new trial, alleging that it erred in adopting the factual findings of the court *a quo*. According to the petitioners, the CA should have made its own findings of facts. The petitioners, likewise, submitted to the appellate court Tax Declaration No. 51637 for the year 1992 covering Lot 248-A in the name of respondent Leonora Cardeño where, at the dorsal portion thereof, the following annotation was written:

Revision of T.D. No. 15976 based in PINANUMPAANG SALAYSAY NG PAGHAHATI – pagbabahaging labas sa hukuman na may pagtalikod sa kabahagi.<sup>[9]</sup>

The petitioners alleged that this document was newly discovered evidence, the consideration of which could alter the outcome of the case. They also averred that the document proved the existence of the *Pinanumpaang Salaysay*. In their supplement to the motion for new trial, the petitioners additionally submitted a photocopy of the *Pinanumpaang Salaysay*, this time certified by the Municipal

Assessor of Sta. Rosa, Laguna as having been verified with the original document kept by Encarnacion Javel. The Municipal Assessor, likewise, certified that the *Pinanumpaang Salaysay* had been presented to the Office of the Municipal Assessor in connection with the issuance of respondent Leonora Cardeño's Tax Declaration Nos. 51637 and 51638 covering Lot 248-A. Also submitted by the petitioners was the affidavit of Magtanggol Yldeso, one of the witnesses to the *Pinanumpaang Salaysay*, attesting to the circumstances surrounding its execution and identifying the signatures appearing thereon.

However, in the assailed Resolution of September 28, 2001, the appellate court denied the petitioners' motion for reconsideration/new trial. In so ruling, the CA reasoned that the documents proffered by the petitioners, *i.e.*, Tax Declaration No. 51637, Yldeso's affidavit and the Municipal Assessor's certification, could not be considered as newly discovered evidence. According to the CA, had the petitioners exercised due diligence in securing these documents, they could have easily been made available at the time of the filing of the complaint or even before the case was elevated to it. The dispositive portion of the assailed CA resolution reads:

WHEREFORE, premises above considered, the motion for reconsideration/new trial is hereby DENIED and our May 9, 2001 Decision is REITERATED and AFFIRMED.

SO ORDERED.<sup>[10]</sup>

The petitioners now seek relief from this Court, alleging that the appellate court erred in denying their motion for reconsideration/new trial. They maintain that the CA should have admitted in evidence the photocopy of the *Pinanumpaang Salaysay* which was duly certified by the Municipal Assessor of Sta. Rosa as a faithful reproduction of the original document. After all, according to the petitioners, this document merely confirms the existence and due execution of the *Pinanumpaang Salaysay*, a photocopy of which was already made part of the records of the proceedings in the trial court.

According to the petitioners, the fact that respondent Leonora Cardeño's 1992 Tax Declaration which contained the annotation on the existence of the *Pinanumpaang Salaysay* was not presented as evidence during trial was excusable negligence on the part of their former counsel. The petitioners pray that this omission be excused and that they not be held bound thereby. Finally, the petitioners insist that they were able to establish by secondary evidence during trial the existence of the *Pinanumpaang Salaysay* and the fact of its loss or unavailability.

The preliminary issue that needs to be resolved by this Court is whether the appellate court committed a reversible error in denying the petitioners' motion for reconsideration/new trial.

On this score, we affirm the ruling of the Court of Appeals.

For newly-discovered evidence to be a ground for new trial, the concurrence of the following requisites must be established: (a) the evidence is discovered after trial; (b) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and (c) the evidence is material and not merely corroborative, cumulative or impeaching and is of such weight that if

admitted, would probably change the judgment.<sup>[11]</sup> In order that a particular piece of evidence may be regarded as “newly discovered” for purposes of granting a new trial, it is essential to show that the offering party exercised reasonable diligence in seeking to locate such evidence before or during trial, but had nonetheless failed to secure it.<sup>[12]</sup>

The newly discovered evidence submitted by the petitioners to the CA does not satisfy the foregoing requisites. Respondent Leonora Cardeño’s 1992 Tax Declaration already existed long before the petitioners filed their complaint in 1997. It must be stressed that the said tax declaration is a public document, and as such, the petitioners could have easily obtained a copy of the same and presented it during trial. The same holds true for the copy of the *Pinanumpaang Salaysay* which was certified by the Municipal Assessor of Sta. Rosa as a faithful reproduction of the original document kept by Encarnacion Javel.

Thus, the petitioners failed to establish the second requisite of the rule on newly discovered evidence. The documents belatedly submitted to the appellate court were already in existence at the time of trial. Had they exercised reasonable diligence, the petitioners could have discovered them and produced them during trial. Instead, they attribute the omission to the mistake or excusable negligence of their former counsel. Unfortunately for the petitioners, clients are generally bound by the mistakes, negligence and omission of their counsel.<sup>[13]</sup>

The petitioners argue that they were able to establish the existence of the *Pinanumpaang Salaysay* by secondary evidence, and the fact of the loss or unavailability of the original copy thereof despite the non-admission of the copy certified by the municipal assessor.

Anent this issue, we rule in favor of the petitioners.

Section 3,<sup>[14]</sup> Rule 130 of the Rules of Court, indeed, provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself. This rule, however, admits of exceptions, as Section 5 thereof further states that “[W]hen 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 contents in some authentic document, or by the testimony of witnesses in the order stated.”

The admission of secondary evidence in case of the loss or unavailability of the original document is thus warranted upon satisfactory proof of the following: (1) execution or existence of the original; (2) loss and destruction of the original or its non-production in court; and (3) unavailability of the original is not due to bad faith on the part of the offeror.<sup>[15]</sup> Proof of the due execution of the document and its subsequent loss would constitute the foundation for the introduction of secondary evidence.<sup>[16]</sup>

Admittedly, in this case, the original document of the *Pinanumpaang Salaysay* was not presented during trial. However, the petitioners presented a photocopy thereof, as well as testimonial evidence to prove its due execution and the loss or unavailability of the original document. Specifically, the existence and due