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THIRD DIVISION

[G.R. No. 117384, October 21, 1998]

HEIRS OF TEODORO DELA CRUZ REPRESENTED BY EDRONEL DELA CRUZ, PETITIONERS, VS. COURT OF APPEALS, PACIFICO MARQUEZ, FILOMENO AND GREGORIO, BOTH SURNAMED MADRID, RESPONDENTS.

D E C I S I O N

ROMERO, J.:

Petitioners seek the reversal of the decision of the Court of Appeals,[1] in CA G.R. No. 25339 dated September 27, 1994 affirming the decision of the Regional Trial Court of Isabela in Civil Case No. 19-219 dated October 9, 1989 which adjudicated lot Nos. 7036-A-10-A, 7036-A-10-B and 7036-A-10-C to herein private respondents.[2]

The following facts, concisely related in the petition[3] are not in dispute.

On November 20, 1986, petitioners filed an action for reconveyance with damages[4] against private respondents involving a parcel of land situated in Poblacion, San Mateo, Isabela with a total area of 3,277 square meters. In their complaint, petitioners assert that the subject land was bought by their predecessor-in-interest from the private respondents, Madrid brothers, for P4,000.00 in a deed of sale executed on May 18, 1959, and since then they have been in actual, physical, continuous and open possession of the property. However, sometime in October 1986, much to their dismay and surprise, private respondents managed to obtain a Torrens Title over the said land.

On the other hand, the Madrids denied having executed the said deed of sale and assuming that said document exists, the same is fictitious and falsified. Moreover, while they admit petitioners' possession of the land, they assert that this possession is in defiance of their repeated demands that the former relinquish the same. Meanwhile, Pacifico Marquez contends that he is an innocent purchaser for value of the property having bought the same from the Madrid brothers in 1976.[5]

During the trial, petitioners were unable to present the original deed of sale since it was lost. Consequently, they were constrained to offer, as Exhibit "A," a photo copy of the purported original carbon copy of the deed of sale in an effort to prove the transaction.

However, in disposing of the case, the trial court ruled that Exhibit "A" was inadmissible in evidence, thus:

> "Since at the time of the execution of Teodoro dela Cruz' affidavit or on June 14, 1966, a duplicate original carbon copy of the alleged sale was

> still in his possession, the plaintiffs must have to account for it. No proof was adduced that this remaining copy was lost or destroyed. Furthermore, no attempt was done to produce the copies retained by the notary public although there is a possibility that the same still exist (sic). Neither was there any proof that the copy sent to the court as required by the notarial law is unavailable. Under these (sic) state of facts, the Court believes that the 'xerox copy of a certified true copy' of the original issued by the notary public cannot be admitted in evidence to prove the conveyance of the land in question."

Accordingly, the trial court dismissed petitioners' complaint, the dispositive portion of the decision of which reads:

> "WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered:
>
> 1. Dismissing the complaint;
>
> 2. Declaring the defendants the lawful owners of the land in question insofar as the portion thereof falling or found in their respective titles are concerned; and
>
> 3. Ordering the plaintiffs, their agents, representatives or any person or persons deriving their title, ownership or possession from the plaintiffs, to vacate the portions of Lots 7036-A-10-A, 70360A-10-B and 7036-A-10-C, occupied by them and to deliver the possession thereof to the defendants;
>
> No pronouncement as to costs.
>
> SO ORDERED."

Evidently aggrieved by the decision, petitioners appealed to the Court of Appeals contending that the trial court erred in holding that: (1) Exhibit "A" was inadmissible in evidence to prove the transaction; (2) there was no valid sale of the land in question; (3) that they (petitioners) are not entitled to the improvements they had introduced in the land.

On September 27, 1994, the Court of Appeals rendered its judgment which ruled that Exhibit "A" was admissible in evidence for failure of the private respondents to object when it was offered during the trial, thus:

> "It is therefore evident that defendants-appellees never put in issue the inadmissible nature of Exh. "A" as a mere secondary evidence and that the trial judge did not exclude the same when it was formally offered, only to ultimately exclude it in its decision. It is true that the originals of Exh. "A" were never produced or accounted for by plaintiffs. Yet, notwithstanding this omission, the defense did not object to its not being the best evidence when it was formally offered. Had the defendants interposed an objection to Exh. "A" on the ground of its incompetency for not complying with the best evidence rule, it would have been properly excluded by the trial court. Defendants' omission to object on the proper

ground operated as a waiver, as this was a matter resting on their discretion."

Unfortunately, petitioners' victory was shortlived. For the Court of Appeals, while ruling that Exhibit "A" was admissible, concluded that the same had no probative value to support the allegation of the petitioners that the disputed land was sold to them in 1959, *viz.*:

> "The lone fact that Atty. Tabangay asserted that he recognized his signature on the copy shown by Teodoro when the loss of the originals was just made known to him, does not render Exh. "A" trustworthy as to the actual execution of the alleged deed of sale. Exh. "A" does not even contain a reproduction of the alleged signatures of the Madrid brothers for comparison purposes. The surviving witness to the alleged execution, Constantino Balmoja was not presented to corroborate Atty. Tabangay's testimony, hinged as the latter was on secondary evidence."

Hence, the Court of Appeals affirmed the trial court's decision, the dispositive portion of which reads:

> "WHEREFORE, IN VIEW OF THE FOREGOING, the decision of the trial court dated October 9, 1989 is hereby AFFIRMED with the modification that the case be remanded to the court a quo to conduct the proper proceedings to determine the value of the useful improvements introduced by appellants for reimbursement by appellees.
>
> SO ORDERED."

Failing in their bid to reconsider the decision, the petitioners have filed the present petition.

Petitioners maintain that even if Exhibit "A" were a mere photo copy of the original carbon copy, they had presented other substantial evidence during the trial to prove the existence of the sale.[6] *First,* the testimony of the notary public, Atty. Tabangay, who acknowledged the due execution of the deed of sale. *Second,* their long possession of the land in question, bolstered by the construction of various improvements gives rise to the disputable presumption of ownership.

While we concur with the Court of Appeals' finding that Exhibit "A" does not prove that the sale of the land indeed occurred, still we are constrained to reverse its decision in view of the circumstances present in this case.

To begin with, Atty. Sevillano Tabangay, the notary public who notarized the deed of sale, testified that the document has about five (5) copies.[7] Hence, it is imperative that all the originals must be accounted for before secondary evidence can be presented.[8] These petitioners failed to do. Moreover, records show that none of these five copies was even presented during the trial. Petitioners' explanation that these copies were lost or could not be found in the National Archives was not even supported by any certification from the said office.

It is a well-settled principle that before secondary evidence can be presented, all duplicates and/or counterparts must be accounted for, and no excuse for the non-production of the original document itself can be regarded as established until all its

parts are unavailable.[9]

Notwithstanding this procedural lapse, when Exhibit "A" was presented private respondents failed, not only to object, but even to cross-examine the notary public, Atty. Tabangay, regarding its execution.[10] Forthwith, upon private respondents' failure to object to Exhibit "A" when it was presented, the same becomes primary evidence.[11] To be sure, even if Exhibit "A" is admitted in evidence, we agree with the Court of Appeals that its probative value must still meet the various tests by which its reliability is to be determined. Its tendency to convince and persuade must be considered for admissibility of evidence should not be confused with its probative value.[12]

As earlier stated, Exhibit "A" was merely a photocopy lifted from the carbon copy of the alleged deed of sale.[13] A cursory glance will immediately reveal that it was unsigned by any of the parties and undated as to when it was executed. Worse, when Atty. Tabangay typed Exhibit "A," the contents were based on an alleged carbon original which petitioners' predecessor-in-interest presented to him, without bothering to check his own files to verify the correctness of the contents of the document he was copying. In other words, Atty. Tabangay's failure to determine the accuracy of the carbon copy requested by the petitioners' predecessor-in-interest renders Exhibit "A" unreliable.

However, despite our prescinding discussion, all is not lost for the petitioner.

The records show that the disputed property has been in the possession of the petitioners since 1959. They have since been introducing several improvements on the land which certainly could not have escaped the attention of the Madrids. Furthermore, during all this time, the land was enclosed, thus signifying petitioners' exclusive claim of ownership. The construction of various infrastructure on the land - rice mill, storage house, garage, pavements and other buildings - was undoubtedly a clear exercise of ownership which the Madrids could not ignore. Oddly, not one of them protested.

We cannot accept the Madrids' explanation that they did not demand the petitioners to vacate the land due to the unexplained killings within the area.[14] Not a single shred of evidence was presented to show that these killings were perpetrated by the petitioners. All told, their remonstration and fears are nothing but pure speculation. To make matters worse, the record is bereft of any documentary evidence that the Madrids sent a written demand to the petitioners ordering them to vacate the land. Their failure to raise a restraining arm or a shout of dissent to the petitioners' possession of the subject land in a span of almost thirty (30) years is simply contrary to their claim of ownership.

Next, the Madrids argue that neither prescription nor laches can operate against them because their title to the property is registered under the Torrens system and therefore imprescriptable.[15] The principles raised, while admittedly correct, are not without exception. The fact that the Madrids were able to secure TCT No. 167250, and Marquez, TCT Nos. 167220 and 167256, did not operate to vest upon them ownership of the property. The Torrens system does not create or vest title. It has never been recognized as a mode of acquiring ownership,[16] especially considering