

THIRTEENTH DIVISION

[CA-G.R. CV NO. 99101, March 16, 2015]

**ULYSSES NALLOS AND ELISA NALLOS-PENA, REP. BY ATTY.
RUBEN N. VILLALUZ, PLAINTIFFS-APPELLANTS, VS. DELFIN
SUMPAY, LOURDES SUMPAY AND LYDIO NUEVA, DEFENDANTS-
APPELLEES.**

DECISION

CORALES, J.:

This an appeal^[1] from the February 15, 2012 Decision^[2] of the Regional Trial Court (RTC), Branch 31, Pili, Camarines Sur in Civil Case No. P-2242 dismissing the complaint for ownership, possession, and damages (recovery of ownership and possession case) filed by plaintiffs-appellants Ulysses Nallos and Elisa Nallos-Pena (individually referred by their first name but collectively as the Nallos) against defendants-appellees Lydio Nueva (Lydio), and Delfin and Lourdes Sumpay (individually referred by their first names and collectively as Spouses Sumpay).

The Antecedents

The instant controversy involves a 10,000-square meter (sq.m.) land in Pawili, Pili, Camarines Sur, originally registered in the name of Isabel Beriña (Isabel) under Original Certificate of Title (OCT) No. RP-8854 (2622).^[3] Sometime in March 1982, Isabel and her son Lydio, executed a deed of sale with right to repurchase (sale with right to repurchase) over the subject property in favor of Spouses Sumpay who took physical possession of the premises. However, it appears that on February 2, 1987, Isabel also executed a Deed of Absolute Sale^[4] (1987 deed of sale) over the subject property in favor of the Nallos who were allegedly assured by Lydio, a witness to the 1987 deed of sale, that the property would be redeemed from Spouses Sumpay.

Upon Isabel's demise, her heirs, including Lydio, offered to redeem the subject land from Spouses Sumpay but the latter insisted that they were already the owners of the property. Resultantly, the heirs of Isabel filed before the RTC, Branch 32, Pili, Camarines Sur a complaint for consignment of P7,000.00 to redeem the land from Spouses Sumpay, docketed as Civil Case No. P-1693 (the consignment case). In its January 30, 1992 Decision,^[5] the RTC ruled that the consignment of P7,000.00 on March 3, 1989, with notice to Spouses Sumpay, released the heirs of Isabel from their obligation under the sale with right to repurchase. It further ordered Spouses Sumpay to deliver possession of the land to the heirs of Isabel and pay them attorney's fees and litigation expenses.

Notwithstanding the finality of the January 30, 1992 Decision in the consignment case, Lydio and Delfin filed a Joint Motion^[6] manifesting their amicable settlement and praying that Lydio be allowed to withdraw the consigned amount to serve as

partial payment for the P120,000.00 consideration for the sale of the subject land in favor of Spouses Sumpay. The RTC granted the motion through its March 6, 1992 Order.^[7]

Thereafter, the heirs of Isabel executed a February 14, 1997 Extra-judicial Settlement of Estate with Absolute Sale^[8] (1997 sale) wherein they adjudicated to themselves the estate of Isabel and sold to Delfin the subject land for and in consideration of the sum of P120,000.00.

Meanwhile, in a February 15, 1997 letter,^[9] the Nallos demanded Spouses Sumpay to vacate and surrender to them the possession of the litigated property. Their demand fell on deaf ears prompting them to file before the RTC, Branch 33, Pili, Camarines Sur a complaint for specific performance and damages against Lydio, docketed as Civil Case No. P-2088 (specific performance case). However, the RTC dismissed the specific performance case through its November 12, 2004 Order^[10] which pertinently reads:

Resolving now this incident, this Court believes that a case for specific performance is no longer proper. A case for specific performance is filed in order to seek assistance from the Court to direct a particular person to do, to give or to deliver something. The records of this case and of the testimonies of the witnesses show, however, that defendant Lydio Nueva and his co-heirs had already sold the property in question to Delfin Sumpay, a stranger to this case, way back on February 14, 1997. **Considering that the property is already in the hands of a third person who is presumed in good faith there exists a legal impossibility for the defendant to transfer the title (sic) and possession of the property to the plaintiffs. Specific performance, therefore, would no longer lie. What the plaintiffs should have done was to implead the subsequent vendee who is in actual possession of the land in question and prove bad faith on the part of the latter.** It must be noted that this case was filed on March 14, 1997, a month after the sale of the land to Delfin Sumpay x x x.

Corollarily, be it noted that by admission of the parties, the land and the certificate of title thereto were never delivered to the plaintiffs. In fact, possession thereof remained with Delfin Sumpay, a third party to this case. **In other words, legally speaking, the alleged sale between the plaintiffs and the defendant was never consummated since it is the delivery of the thing sold that consummates the sale or transfers ownership thereof to the vendee x x x. While delivery may also be effected constructively such as by the execution of a public instrument of sale, in this case, however, the alleged deed of absolute sale x x x, appears to have been irregularly notarized as to detract from its solemn character. Thus,** the land subject of the alleged sale is in Pili, Camarines Sur, but the deed of sale was notarized in Iriga City; the notary public, a non-lawyer and a clerk in the Provincial Prosecutor's Office in Iriga City, was commissioned as such for Iriga City, but as herein pointed out, he notarized a document of sale covering an immovable situated in Pili, Camarines Sur which is outside of his notarial jurisdiction. **At most, therefore, the deed of sale may be considered**

a private document, not a public document. Not being a solemn instrument, its execution did not effect a constructive delivery. Granting that the deed of sale was a public instrument such that its execution may be deemed a constructive delivery, it must be pointed out, however, that **constructive delivery could not equal or be any better than actual or real delivery if in fact, as in this case, actual or physical delivery could not be effected because the property was and is in the hands of a third person who allegedly refused to give it up.**

This Court believes that a more basic question seemingly overlooked by the parties is that **Lydio B. Nueva, the defendant herein, could not have sold the land on February 2, 1987, to the plaintiffs because he was not its owner at the time. Not being its owner, Lydio B. Nueva had no title of ownership thereto that he could transfer to the plaintiffs herein.** In fact, the registered owner was Isabel Beriña, defendant's mother. x x x This probably explains the reason Lydio B. Nueva allegedly signed the deed of sale, x x x, merely as witness, x x x, not as a vendor, although the first paragraph of the document shows that he is a co-vendor with his mother Isabel Beriña.

It is, therefore, clear that an action for specific performance with damages may not lie against defendant Lydio Nueva.

WHEREFORE, in view of the foregoing, this case is hereby DISMISSED.

SO OREDRED (*sic*). (Emphasis supplied; underscoring appear in the original text of the Order)

The November 12, 2004 Order in the specific performance case became final and executory on October 23, 2008 and the branch clerk of court already issued a Certificate of Finality.^[11]

Undaunted, the Nallos instituted the recovery of ownership and possession case which was assigned by way of raffle to RTC, Branch 31, Pili, Camarines Sur. In their Amended Complaint,^[12] the Nallos claimed that the heirs of Isabel had no more right to sell the subject property to Spouses Sumpay considering that their mother already conveyed the same to the Nallos during her lifetime and such sale was known to Lydio; thus, the 1997 sale in favor of Spouses Sumpay was void and done in bad faith. They further alleged that the decision in the consignment case extinguished whatever right Spouses Sumpay may have over the property. They added that Lydio was privy to the 1987 deed of sale in their favor as evidenced by his execution of an Affidavit of Seller/Transferror^[13] confirming the aforesaid transaction.

The Nallos waived their right to present testimonial evidence^[14] and merely offered the following documents:^[15] the 1987 deed of sale, the photocopy of OCT No. RP-8854 (2622), the January 30, 1992 Decision and March 6, 1992 Order in the consignment case, their February 15, 1997 demand letter to vacate to Spouses Sumpay, Lydio's alleged Affidavit of Seller/Transferror, and the Special Power of Attorney they executed in favor of the their counsel.

Both Spouses Sumpay and Lydio objected to the formal offer of evidence. They challenged the genuineness and due execution of the 1987 deed of sale and the Affidavit of Seller/Transferror, among others, for being mere photocopies and the absence of proper identification in court.^[16]

Spouses Sumpay defended their right to possess the litigated property and invoked ownership of the same pursuant to a lawful court order.^[17] On the other hand, Lydio contended that the Nallos have no cause of action against him because the 1987 deed of sale is a forgery. He denied the genuineness of his and his mother's signature in the 1987 deed of sale and claimed that the Jose Vicente Cruz who notarized the instrument was not commissioned as a notary public for the year 1987.^[18] Both of them interposed counterclaims for moral and exemplary damages and attorney's fees.

The Ruling of the RTC

In its February 15, 2012 Decision,^[19] the RTC noted the failure of the Nallos to identify the 1987 deed of sale and prove its genuineness and due execution. It found that the said deed of sale was a forgery as supposedly shown by the November 12, 2004 Order in the specific performance case, thus, it cannot be enforced against Spouses Sumpay and Lydio. Also taking note of the findings in the November 12, 2004 Order that the alleged sale between the Nallos and Lydio was never consummated, the RTC stressed that "to resolve [the] case in favor of the plaintiff [the Nallos] would in effect be a reversal of the [November 12, 2004] Order of RTC, Br. 33 which is prohibited under the [R]ules of [C]ourt since both Court is (*sic*) of equal jurisdiction". It then disposed the case as follows:

WHEREFORE, in view of all the foregoing, Judgment is hereby rendered DISMISSING the herein complaint for lack of merit and for the plaintiffs to pay defendants Delfin Sumpay and Lourdes Sumpay the amount of P25,000.00 as exemplary damages and P20,000.00 as Attorney's fees.

SO ORDERED.

The Nallos sought reconsideration but to no avail.^[20]

Hence, the instant appeal with this lone assigned error:^[21]

THE TRIAL COURT ERRED IN RULING THAT THE DEED OF SALE IS [A] FORGERY RATHER THAN A DOCUMENT MADE USED OF (*sic*) BY LYDIO NUEVA AND WITH THE CONNIVANCE OF SPOUSES SUMPAYS (*sic*) HAS EFFECTIVELY DEFRAUDED THE PLAINTIFFS-APPELLANTS.

The Nallos fault the RTC for declaring the 1987 deed of sale as a forgery despite the absence of evidence to prove the same. They insist that the November 12, 2004 Order in the specific performance case did not declare the 1987 deed of sale as a forgery, but only pronounced that the instrument was a private document due to the irregularities in its notarization. They add that even if the 1987 deed of sale was forged, the court should have taken into consideration the Affidavit of Seller/Transferror wherein Lydio admitted the sale of the subject property in their favor.^[22]