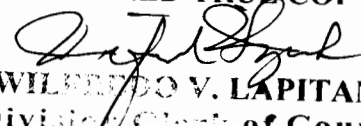


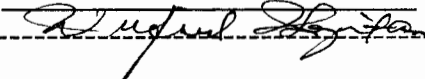
THIRD DIVISION
Agenda of December 5, 2016
Item No. 329

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
DEC 27 2016

G.R. No. 221513 (*Spouses Luisito Pontigon and Leodegaria Sanchez-Pontigon v. Heirs of Meliton Sanchez, namely: Apolonia Sanchez, et al.*).

Promulgated:

December 5, 2016

X----------X

DISSENTING OPINION

PERALTA, J.:

With all due respect to my esteemed colleagues, I register my dissent from the majority decision on the following grounds:

First, both the RTC and the CA found that the execution and approval of the Extrajudicial Settlement with Sale and the subsequent transfer of title of the subject property to petitioners were tainted with irregularities, among which are the following:

1. Despite the loss of the original copy of the Original Certificate of Title (OCT) in the custody of the Registrar of Deeds (RD) for Pampanga, the latter still issued a TCT in the name of petitioners merely on the basis of the owner's duplicate copy of the OCT which does not contain any annotation of cancellation;
2. The TCT in petitioner's name was issued based only on the Extrajudicial Settlement with Sale, which is a private document;
3. The Petition for Approval of the Extrajudicial Settlement with Sale, dated November 9, 1979 was prepared earlier than the Extra Judicial Settlement sought to be approved, which was dated November 10, 1979;
4. Copies of the Petition for Approval of the Extrajudicial Settlement with Sale as well as the Certification which attests to the existence of a CFI Decision which supposedly granted the said Petition were mere photocopies;
5. The alleged Order issued by the CFI which set the hearing for and publication of the Petition for Approval of the Extrajudicial Settlement with Sale was not signed by the Presiding Judge.



The Court has repeatedly held that it is not necessitated to examine, evaluate or weigh the evidence considered in the lower courts all over again.¹ This is especially true where the trial court's factual findings are adopted and affirmed by the CA as in the present case.² Factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal.³ Based on these irregularities, the RTC and the CA are justified in concluding that the subject Extrajudicial Settlement with Sale could not have validly conveyed title to petitioners and that the TCT which was issued in their favor is null and void.

Indeed, the irregularities attendant in the present case do not indicate a mere lapse on the part of the RD in the issuance of the disputed TCT.

Considering that the owner's duplicate copy of the OCT in the custody of the RD does not contain any annotation of its cancellation, it is a grievous error on the part of the RD to consider such duplicate copy as basis in cancelling the OCT and issuing a new TCT in petitioners' favor.

In the first place, there is no OCT to cancel as the original copy which is in the custody of the RD has been destroyed. Thus, the proper procedure that should have been followed was to reconstitute first the lost or destroyed OCT, in accordance with Section 1104 of PD 1529. The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land.⁵ The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.⁶ The lost or destroyed document referred to is the one that is in the custody of the Register of Deeds. When reconstitution is ordered, this document is replaced with a new one that basically reproduces the original.⁷ After the reconstitution, the owner is issued a duplicate copy of the *reconstituted* title.⁸ It is from this reconstituted title that a new TCT may be derived. Thus, it is error on the

¹ *Timoteo and Diosdada Bacalso v. Gregoria B. Aca-ac, et al.*, G.R. No. 172919, January 13, 2016.

² *Id.*

³ *Id.*

⁴ **Section 110.** *Reconstitution of lost or destroyed original of Torrens title.* Original copies of certificates of title lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act is hereby abrogated.

Notice of all hearings of the petition for judicial reconstitution shall be given to the Register of Deeds of the place where the land is situated and to the Commissioner of Land Registration. No order or judgment ordering the reconstitution of a certificate of title shall become final until the lapse of thirty days from receipt by the Register of Deeds and by the Commissioner of Land Registration of a notice of such order or judgment without any appeal having been filed by any of such officials.

⁵ *Republic of the Philippines v. Vergel De Dios, et al.*, 657 Phil. 423, 429 (2011).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

part of the RD to have issued the disputed TCT in favor of petitioners in the absence of a duly reconstituted OCT.

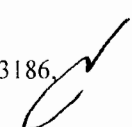
The irregularity in the issuance of the contested TCT is also highlighted by the fact that the supposed Order which set the hearing for and publication of the Petition for Approval of the Extrajudicial Settlement with Sale was not signed by the Presiding Judge. In addition, copies of the Petition for Approval of the Extrajudicial Settlement with Sale, as well as the Certification which attests to the existence of a CFI Decision which supposedly granted the said Petition, were mere photocopies. In this regard, the CA was correct in ruling that mere photocopies of documents, being secondary evidence, are inadmissible as evidence unless it is shown that their originals are unavailable.

The *ponencia* also holds that respondents' action is already barred by prescription by restating the rule that an action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten (10) years, reckoned from the date of registration or the date of the issuance of the certificate of title over the property; that, as an added exception, this Court has permitted the filing of an action for reconveyance even beyond the 10-year period in cases where the plaintiffs therein were in actual possession of the disputed land, thereby converting the action from reconveyance of property into one for quieting of title. Applying the above rule to the present case, the *ponencia* holds that since respondents' complaint did not allege their possession of the contested property as an ultimate fact, it follows that the case could only be one for reconveyance of property, not for quieting of title. Thus, respondents should have commenced their action within ten (10) years from May 21, 1980, the date of the issuance of the Transfer Certificate of Title (TCT) in petitioners' favor. However, since respondents only filed their Complaint on September 17, 2000, or more than twenty (20) years thereafter, their action has already prescribed.

I beg to disagree.

Whether an action for reconveyance prescribes or not is determined by the nature of the action, that is, whether it is founded on a claim of the existence of an implied or constructive trust, or one based on the existence of a void or inexistent contract.⁹ It is true that an action for reconveyance based on an implied trust ordinarily prescribes in ten (10) years, subject to the exception mentioned above. However, in actions for reconveyance of the property predicated on the fact that the conveyance complained of was null and void *ab initio*, a claim of prescription of action would be

⁹ *Aniceto Uy v. Court of Appeals, Mindanao Station, Cagayan de Oro City, et al.*, G.R. No. 173186, September 16, 2015.



unavailing.¹⁰ The action or defense for the declaration of the inexistence of a contract does not prescribe.¹¹ In the instant case, the action filed by respondents is essentially an action for reconveyance based on their allegation that the title over the subject property was transferred in petitioners' name without any valid document of conveyance. Since respondents' complaint was based on the allegation of the inexistence of a valid contract, which would have lawfully transferred ownership of the subject property in petitioners' favor, such complaint is, therefore, imprescriptible.

Lastly, the *ponencia* rules that the Extrajudicial Settlement with Sale was not properly notarized; thus, rendering the written contract a private instrument which, nonetheless, binds respondents. This notwithstanding, it is my considered opinion that the above document, being a private instrument, is not a sufficient basis to convey title over the disputed property in favor of petitioners. In this regard, the case of *Gallardo v. Intermediate Appellate Court*¹² is instructive, to wit:

x x x x

Petitioners claim that the sale although not in a public document, is nevertheless valid and binding citing this Court's rulings in the cases of *Cauto v. Cortes*, 8 Phil. 459, 460; *Guerrero v. Miguel*, 10 Phil. 52, 53; *Bucton v. Gabar* 55 SCRA 499 wherein this Court ruled that even a verbal contract of sale of real estate produces legal effects between the parties.

The contention is unmeritorious.

As the respondent court aptly stated in its decision:

True, as argued by appellants, a private conveyance of registered property is valid as between the parties. However, the only right the vendee of registered property in a private document is to compel through court processes the vendor to execute a deed of conveyance sufficient in law for purposes of registration. Plaintiffs-appellants' reliance on Article 1356 of the Civil Code is unfortunate. The general rule enunciated in said Art. 1356 is that contracts are obligatory, in whatever form they may have been entered, provided all the essential requisites for their validity are present. The next sentence provides the exception, requiring a contract to be in some form when the law so requires for validity or enforceability. Said law is Section 127 of Act 496 which requires, among other things, that the conveyance be executed "before the judge of a court of record or clerk of a court of record or a notary

¹⁰ *Heirs of Dumaliang v. Serban*, 545 Phil. 243, 257 (2007), citing *Heirs of Ingjug-Tiro v. Casals*, 415 Phil. 665, 673 (2001).

¹¹ *Id.*

¹² 239 Phil. 243, 253-254 (1987).



public or a justice of the peace, who shall certify such acknowledgment substantially in form next hereinafter stated."

Such law was violated in this case. The action of the Register of Deeds of Laguna in allowing the registration of the private deed of sale was unauthorized and did not lend a bit of validity to the defective private document of sale.

With reference to the special law, Section 127 of the Land Registration Act, Act 496 (now Sec. 112 of P.D. No. 1529) provides:

Sec. 127. Deeds of Conveyance, ... affecting lands, whether registered under this act or unregistered shall be sufficient in law when made substantially in accordance with the following forms, and shall be as effective to convey, encumber, ... or bind the lands as though made in accordance with the more prolix forms heretofore in use: Provided, That every such instrument shall be signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the instrument as witnesses to the execution thereof, *and shall be acknowledged to be his or their free act and deed by the person or persons executing the same, before the judge of a court of record or clerk of a court of record, or a notary public, or a justice of the peace, who shall certify to such acknowledgement substantially in the form next hereinafter stated.* (Emphasis supplied).

It is therefore evident that Exhibit "E" in the case at bar is definitely not registerable under the Land Registration Act.

Likewise noteworthy is the case of *Pornellosa and Angels v. Land Tenure Administration and Guzman*, 110 Phil. 986, where the Court ruled:

The deed of sale (Exhibit A), allegedly executed by Vicente San Jose in favor of Pornellosa is a mere private document and does not conclusively establish their right to the parcel of land. While it is valid and binding upon the parties with respect to the sale of the house erected thereon, yet it is not sufficient to convey title or any right to the residential lot in litigation. Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property must appear in a public document.

x x x

Thus, Section 57 of Presidential Decree 1529¹³ (PD 1529) provides:



¹³

Property Registration Decree.

Section 57. Procedure in registration of conveyances. An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "canceled". The deed of conveyance shall be filled and indorsed with the number and the place of registration of the certificate of title of the land conveyed.¹⁴

In relation to the above provision, Section 112 of the same Decree provides for the "Forms Used in Land Registration and Conveyancing," to wit:

Section 112. Forms in conveyancing. The Commissioner of Land Registration shall prepare convenient blank forms as may be necessary to help facilitate the proceedings in land registration and shall take charge of the printing of land title forms.

Deeds, conveyances, encumbrances, discharges, powers of attorney and other voluntary instruments, whether affecting registered or unregistered land, executed in accordance with law in the form of public instruments shall be registrable: Provided, that, every such instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon, and shall acknowledged to be the free act and deed of the person or persons executing the same before a notary public or other public officer authorized by law to take acknowledgment. Where the instrument so acknowledged consists of two or more pages including the page whereon acknowledgment is written, each page of the copy which is to be registered in the office of the Register of Deeds, or if registration is not contemplated, each page of the copy to be kept by the notary public, except the page where the signatures already appear at the foot of the instrument, shall be signed on the left margin thereof by the person or persons executing the instrument and their witnesses, and all the pages sealed with the notarial seal, and this fact as well as the number of pages shall be stated in the acknowledgment. Where the instrument acknowledged relates to a sale, transfer, mortgage or encumbrance of two or more parcels of land, the number thereof shall likewise be set forth in said acknowledgment.¹⁵


Based on the above discussions and provision of law, it is clear that the subject Extrajudicial Settlement with Sale may not be used as a valid basis for the issuance of the questioned TCT in the name of petitioners.

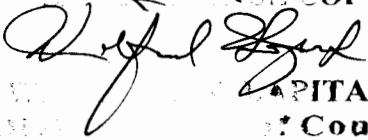


¹⁴ Emphasis supplied.

¹⁵ Emphasis supplied.

Accordingly, I vote to **DENY** the petition and **AFFIRM** the Decision dated March 26, 2015 and Resolution dated September 14, 2015 of the Court of Appeals in CA-G.R. CV No. 100188.


DIOSDADO M. PERALTA
Associate Justice


CLERK
COURT OF APPEALS
MANILA
DEC 27 2016