218 SCRA 602

SECOND DIVISION

[G.R. No. 83377, February 9, 1993]

BASILIO DE VERA, LUIS DE VERA, FELIPE DE VERA, HEIRS OF EUSTAQUIA DE VERA-PAPA represented by GLICERIA PAPA-FRANCISCO, Et Al., Petitioners, v. SPOUSES MARIANO AGUILAR and LEONA V. AGUILAR, Respondents.

D E C I S I O N

CAMPOS, JR., J.:

This is a petition for review on certiorari of the decision ** of the Court of Appeals dated November 27, 1987 in CA-GR CV No. 07448 entitled, "Basilio de Vera, Luis de Vera, Felipe de Vera, Heirs of Eustaquia de Vera-Papa, represented by Gliceria Papa-Francisco, and Heirs of Maria de Vera-Torres, represented by Luis V. Torres, plaintiffs-appellees versus Spouses Mariano Aguilar and Leona V. Aguilar, defendants-appellants", which reversed the decision *** of the Regional Trial Court of Bulacan, Third Judicial Region, Branch 14, for failure of petitioners to prove the loss or destruction of the original deed of sale and of all its duplicate original copies.

The undisputed facts are as follows:

Petitioners Basilio, Luis, Felipe, Eustaquia and Maria, all surnamed de Vera and respondent Leona, married to respondent Mariano Aguilar, are the children and heirs of the late Marcosa Bernabe who died on May 10, 1960. In her lifetime, Marcosa Bernabe owned the disputed parcel of land situated at Camalig, Meycauayan, Bulacan, with an are of 4,195 square meters, designated as Cadastral Lot NO. 3621, Cad. 337, Case No. 4, Meycauayan Cadastre.

The disputed property was mortgaged by respondents Basilio and Felipe de Vera to a certain Atty. Leonardo Bordador. When the mortgage had matured, the respondents redeemed the property from Atty. Leonardo Bordador and in turn Marcosa Bernabe sold the same to them as evidenced by a deed of absolute sale dated February 11, 1956.

On February 13, 1956, the respondents registered the deed with the Registry of Deeds of Bulacan resulting in the cancellation of the tax declaration in the name of Marcosa Bernabe and the issuance of another in the name of the Aguilars. Since then and up to the present, the Aguilars have been paying taxes on the land.

On July 20, 1977, respondent Mariano Aguilar was issued a free patent to the land on the basis of which Original Certificate of Title No. P-1356 (M) was issued in his name.

On September 1, 1980, the respondents wrote to the respondents claiming that as children of Marcosa Bernabe, they were co-owners of the property and demanded partition thereof on threats that the respondents would be charged with perjury and/or falsification. The petitioners also claimed that the respondents had resold the property to Marcosa Bernabe on April 28, 1959.

On September 27, 1980, the respondents wrote in reply to the respondents that they were the sole owners of the disputed parcel of land and denied that the land was resold to Marcosa Bernabe.

True to respondents' threat, they filed a falsification case against the respondents. However, on March 31, 1981, Assistant Provincial Fiscal Arsenio N. Mercado of Bulacan recommended dismissal of the charge of falsification of public document against the respondents for lack of a prima facie case.

On March 26, 1981, petitioners filed a suit for reconveyance of the lot covered by Original Certificate of Title No. P-1356 (M).

On July 31, 1985, the trial court rendered its decision **** the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered ordering defendants:

1. To reconvey the property in question to the plaintiffs;

2. To pay plaintiffs P10,000.00 as litigation expenses;

3. To pay plaintiffs P5,000.00 as exemplary damages;

4. To pay P10,000.00 as attorney's fees.

SO ORDERED." [1]

In ruling in favor of the respondents, the trial court admitted, over the objection of the respondents, Exhibit A purporting to be a xeroxed copy of an alleged deed of sale executed on April 28, 1959 by the respondents selling, transferring and conveying unto Marcosa Bernabe the disputed parcel of land for and in consideration of P1,500.00.

Not contented with the decision, respondents appealed to the Court of Appeals contending that they never sold back to Marcosa Bernabe the disputed parcel of land. Furthermore, respondents contended that since the petitioners have failed to produce the original of the alleged deed of sale dated April 28, 1959, the same was not the best evidence of the alleged sale hence it should have been excluded and should not have been accorded any evidentiary value. On the other hand, the petitioners claimed that the existence of the document of sale dated April 28, 1959 had been duly established by the testimony of the notary public before whom it was acknowledged and by Luis de Vera who was present during its execution and that the loss of the original document had been proven by the

[1] Rollo, pp. 32-33.

testimony of the representatives of the offices of the National Archives and the Provincial Assessor of Bulacan.

On November 29, 1987, the Court of Appeals rendered its decision reversing the trial court's decision. It found that the loss or destruction of the original deed of sale has not been duly proven by the petitioners. Hence, secondary evidence, i.e., presentation of the xeroxed copy of the alleged deed of sale is inadmissible.

Hence this petition.

The crux of this case is whether or not the petitioners have satisfactorily proven the loss of the original deed of sale so as to allow the presentation of the xeroxed copy of the same.

We rule in the negative.

Section 4 of Rule 130 (now Section 5, Rule 130) of the Rules of Court on Secondary Evidence states:

"Sec. 4. Secondary evidence when original is lost or destroyed. - When the original writing has been lost or destroyed, or cannot be produced in court, upon proof of its execution and loss or destruction, or unavailability, its contents may be proved by a copy, or by a recital of its contents in some authentic document, or by the recollection of witnesses."

Secondary evidence is admissible when the original documents were actually lost or destroyed. But prior to the introduction of such secondary evidence, the proponent must establish the former existence of the instrument. The correct order of proof is as follows: Existence; execution loss; contents although this order may be changed if necessary in the discretion of the court. The sufficiency of proof offered as a predicate for the admission of an alleged lost deed lies within the judicial discretion of the trial court under all the circumstances of the particular case. [2]

A reading of the decision of the trial court shows that it merely ruled on the existence and due execution of the alleged deed of sale dated April 28, 1959. It failed to look into the facts and circumstances surrounding the loss or destruction of the original copies of the alleged deed of sale.

In the case at bar, the existence of an alleged sale of a parcel of land was proved by the presentation of a xeroxed copy of the alleged deed of absolute sale.

In establishing the execution of a document the same may be established by the person or persons who executed it, by the person before whom its execution was acknowledged, or by any person who was present and saw it executed or who, after its execution, saw it and recognized the signatures; or by a person to whom the parties to the instrument had previously confessed the execution thereof. [3]

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[2] Lazatin vs. Campos, 92 SCRA 250, 262 (1979).
[3] Michael & Co. vs. Enriquez, 33 Phil. 87, 89-90 (1915).

We agree with the trial court's findings that petitioners have sufficiently established the due execution of the alleged deed of sale through the testimony of the notary public to wit:

"Preponderance of evidence clearly disclosed the facts that Atty. Ismael Estela prepared Exhibit A. Atty. Emiliano Ibasco, Jr. positively identified the signatures appearing therein to be that (sic) of the spouses and witnesses Luis de Vera and Ismael Estela, in his capacity as Notary Public who ratified the document." [4]

After the due execution of the document has been established, it must next be proved that said document has been lost or destroyed. The destruction of the instrument may be proved by any person knowing the fact. The loss may be shown by any person who knew the fact of its loss, or by any one who had made, in the judgment of the court, a sufficient examination in the place or places where the document or papers of similar character are usually kept by the person in whose custody the document lost was, and has been unable to find it; or who has made any other investigation which is sufficient to satisfy the court that the instrument is indeed lost. [5]

However, all duplicates or counterparts must be accounted for before using copies. For, since all the duplicates or multiplicates are parts of the writing itself to be proved, no excuse for non-production of the writing itself can be regarded as established until it appears that all of its parts are unavailable (i.e. lost, retained by the opponent or by a third person or the like). [6]

In the case at bar, Atty. Emiliano Ibasco, Jr., notary public who notarized the document testified that the alleged deed of sale has about four or five original copies. [7] Hence, all originals must be accounted for before secondary evidence can be given of any one. This petitioners failed to do. Records show that petitioners merely accounted for three out of four or five original copies.

In reversing the trial court, the respondent Court of Appeals considered the following points:

"Asked on the witness stand where the original of the document (Exhibit A) was plaintiff-appellee Luis de Vera answered that it was with the Provincial Assessor in Malolos, Bulacan, whereupon the appellees reserved its (sic) right to present it in evidence (p. 11, tsn., August 11, 1981, Steno. Tecson). The same question propounded to the same witness at the next hearing, he replied that in the early part of 1976 his sister Maria borrowed from him the original document and a certified true copy thereof and brought them to the Office of the Register of Deeds in Malolos "for the purpose of having it registered;" and that when she returned she told him that the original copy of the document was submitted to that office "and it (the property) was transferred in the name of Marcosa Bernabe instead of Mariano Aguilar" (p. 8, tsn., December 10, 1981, Steno. Crisostomo; p. 9, tsn., Mar. 16, 1982, Steno. Vallarta).

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[4] Rollo, p. 32.
[5] Supra, note 3.
[6] WIGMORE ON EVIDENCE, Sec. 1233, pp. 443-444.
[7] Rollo, p. 13.

Indeed, upon the appellees' own evidence the original of the deed of sale in question, a purported xerox copy and certified true copy of which are marked Exhibits A and B, has not been lost or destroyed. It was submitted to the Office of the Register of Deeds of Malolos for registration. The appellees, therefore, should have asked that office to produce it in court and it if could not be produced for one reason or another should have called the Register of Deeds or his representative to explain why. That they failed to do. The loss or destruction of the original of the document in question has not, therefore, been established. Hence, secondary evidence of it is inadmissible . . . .

Neither did the testimony of notary public Ibasco, Jr. to the effect that he did not have a copy of the deed of sale in question because his files were burned when his office at Ronquillo Street, Manila was gutted by fire in 1971 and 1972 (p. 4, tsn., November 10, 1981, Steno. Crisostomo) establish the loss or destruction of the original document in question. What was lost or destroyed in the custody of Atty. Ibasco, Jr. was but one of the duplicate original copies on file with him. Nor did the testimony of Hipolito Timoteo, representative of the Assessor's Office of Bulacan, to the effect that he failed to see the deed of absolute sale annotated on the simple copy of tax declaration No. 15412 (p. 7, tsn., Aug. 12, 1982, Steno. Vallarta) and of David Montenegro, Jr. of the National Archives to the effect that his office had no copy of the document in question because the notary public might not have submitted a copy thereof; or that it was lost or destroyed during the transmittal; and that most of the record before 1960 were destroyed by termites (pp. 8-12, tsn., Oct. 5, 1982, Steno. Tecson), prove loss or destruction of the original and of all the duplicate original copies of the document in question." [8]

We find no cogent reason to rule otherwise.

WHEREFORE, the decision of the Court of Appeals dated November 27, 1987 is hereby AFFIRMED.

SO ORDERED.

Narvasa, (C.J.), Feliciano, Regalado and Nocon, JJ., concur.

Footnotes

** Penned by Associate Justice Pedro A. Ramirez and concurred in by Associate Justices Luis A. Javellana and Minerva P. Gonzales-Reyes.

*** Penned by Judge Felipe N. Villajuan, Jr.

**** Branch XIV, Regional Trial Court, Malolos, Bulacan.

[8] Rollo, pp. 55-56