



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Cagayan de Oro City

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **March 6, 2023** which reads as follows:*

G.R. No. 235261 (Panfila Vda. de Tomo, Franklin Tomo, Maximo Tomo, et al., Petitioners v. Tony Ong, Alexander Ong, and Daniel Arbias, Respondents). Before this Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated November 18, 2016 and the Resolution³ dated September 12, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 03268-MIN, which affirmed the Decision⁴ dated June 2, 2010 of the Regional Trial Court of Surallah, South Cotabato, Branch 26 (RTC), dismissing the complaint for declaration of the deed of absolute sale as null and void, cancellation of titles, reconveyance, and/or recovery of possession with prayer for the issuance of preliminary and mandatory injunction filed by the Heirs of Teodoro Tomo (Teodoro), namely, petitioners Panfila *vda. de* Tomo, Franklin Tomo, Maximo Tomo, *et al.* (petitioners) against respondents Tony Ong (Tony), Alexander Ong (Alexander), and Daniel Arbias (Daniel; collectively, respondents).

The Facts

This case stemmed from a Complaint⁵ for declaration of the deed of absolute sale as null and void, cancellation of titles, reconveyance, and/or recovery of possession with prayer for the issuance of preliminary and mandatory injunction filed before the RTC by petitioners against respondents. Petitioners alleged that Teodoro died on February 18, 1993, leaving to his heirs, herein petitioners, a 77,924-square-meter parcel of land located in Banga, South Cotabato and covered by Transfer Certificate of Title No. T-24858.⁶ Prior to Teodoro's death, he and Panfila (Spouses Tomo) mortgaged the subject property to the

¹ *Rollo*, pp. 4-23.

² *Id.* at 26-38. Penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos.

³ *Id.* at 39-40.

⁴ *Id.* at 110-135. Penned by Presiding Judge Roberto L. Atco.

⁵ *Records*, pp. 1-7.

⁶ *Id.* at 10-17.

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Development Bank of the Philippines (DBP) for the sum of ₱90,000.00. Due to Spouses Tomo's failure to pay their obligation, the subject property was foreclosed on October 22, 1985, with DBP as the winning bidder. Consequently, Teodoro supposedly entered into a verbal agreement with Tony, allowing the latter to work on the land through maintainers or hired workers on the condition that a portion of the income therein will be paid every harvest to DBP for the purpose of preserving Teodoro's right of redemption. Upon payment of the redemption price, a Deed of Redemption⁷ was executed in favor of Teodoro. Despite this, Tony and his son, Alexander, continued to derive income from the land. In their desire to recover possession of the subject property, Ruby Tomo (Ruby) offered to pay Tony the redemption price of ₱282,929.34. However, it was declined by Tony, claiming that he should be paid ₱1,000,000.00.⁸

Petitioners further claimed that when they verified the status of the title before the DBP and the Register of Deeds of South Cotabato, they discovered that the same was already transferred to Alexander and Daniel by virtue of a Deed of Absolute Sale⁹ executed by Spouses Tomo in favor of Alexander and Daniel, and that only half of the subject property remained in Teodoro's name. This prompted the filing of the instant complaint, claiming that the signatures of Spouses Tomo in the said Deed were forged, and that they did not receive any consideration from Alexander and Daniel.¹⁰

For their part, respondents admitted that the subject property was foreclosed with DBP as the highest bidder. However, they denied knowledge of the mortgage and the purported verbal agreement entered by Teodoro and Tony as to the use of the subject property. Further, they averred that Alexander and Daniel had the capacity to acquire the subject property, and that the property lost its status as a homestead after it was sold to Teodoro. They then alleged that petitioners' right over the subject property have been paid, waived, assigned, and abandoned by Teodoro in respondents' favor with their full and express consent. As an alternative defense, they posited that they were willing to reconvey the subject property to petitioners provided the latter will pay their outstanding obligation, including the amount paid to DBP, with interest, damages, and attorney's fees. Finally, they alleged that the subject Deed was not forged, and that if there was irregularity in its preparation, the liability belongs to those who processed the document.¹¹

⁷ Id. at 517.

⁸ *Rollo*, pp. 27–28.

⁹ Id. at 138–139.

¹⁰ Id. at 28.

¹¹ Id. at 28–29.

The RTC Ruling

In a Decision¹² dated June 2, 2010, the RTC ruled in favor of respondents, and accordingly, dismissed the complaint. It likewise dismissed the counterclaims interposed by respondents.¹³

In so ruling, the RTC held that the evidence on record preponderate in favor of respondents, who were able to establish how they acquired the property from DBP on the basis of the deed of conditional sale executed by the latter in their favor and the proof of the payments respondents made to satisfy the mortgage obligation of Spouses Tomo after a waiver of rights to redeem the property was executed by the said spouses in their favor. It then found that even assuming that there indeed exists a verbal agreement between petitioners and respondents which allowed the latter to cultivate the subject land through hired workers and to pay the mortgage obligation of the former with DBP, the same is unenforceable for being violative of the Statute of Frauds.¹⁴

Dissatisfied, petitioners appealed to the CA.

The CA Ruling

In a Decision¹⁵ dated November 18, 2016, the CA affirmed the RTC ruling. It found that respondents were purchasers in good faith when they bought the subject property from the DBP after the latter acquired the same in a foreclosure proceeding — the validity of which was not contested. Further, and similar to the RTC's finding, the CA ruled that even if there exists a verbal agreement between Spouses Tomo and respondents, the same is unenforceable under the Statute of Frauds as it partakes of a lease for a period longer than one (1) year. In any event, it held that this verbal agreement remained to be a mere allegation or speculation since there was nothing in the Deed of Assignment of Rights¹⁶ specifically obliging Alexander to return Teodoro's property should he be able to redeem the same.¹⁷

As to the claim of forgery, the CA held that a cursory perusal of the evidence on records showed that Teodoro actually used two signatures, *i.e.*, "Teodoro Tomo" and "Teddy Tomo," and as such, his signature as "Teddy Tomo" in the Deed of Absolute Sale conveying the

¹² Id. at 110-135.

¹³ Id. at 135.

¹⁴ Id. at 131-135.

¹⁵ Id. at 26-38.

¹⁶ Id. at 165-166.

¹⁷ Id. at 32-37.

subject properties to Alexander and Daniel cannot be said to be a forgery. Moreover, it found that there was no valid comparative examination of the standard signatures and questioned signatures in the National Bureau of Investigation (NBI) as the specimen signature of “Teddy Tomo” was not submitted to it.¹⁸

Undeterred, petitioners moved for reconsideration, which was denied in a Resolution¹⁹ dated September 12, 2017; hence, the instant petition.

The Issues Before the Court

The issues before the Court are whether or not the CA erred in finding that: (a) respondents were able to prove their ownership and right of possession over the subject property; (b) the verbal agreement between petitioners and respondents was unenforceable for being violative of the Statute of Frauds; and (c) the signature “Teddy Tomo” in the questioned Deed of Assignment of Rights was not a forgery.

The Court’s Ruling

The petition is unmeritorious.

At the outset, the Court finds that the issues raised by petitioners pertain to factual and evidentiary matters that are generally not subject to review *via* Rule 45 of the Rules of Court.²⁰ In appellate review, the trial court’s factual findings — including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings — are accorded great respect and even conclusive effect.²¹ The rule finds an even more stringent application where the said findings are sustained by the CA,²² as in this case. While this rule admits exceptions,²³ none were obtained in this case.

In this relation, it bears stressing that in civil cases, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts the affirmative of an issue. Here, the burden lies on petitioners, who are duty bound to prove the allegations in their complaint. As this Court has held, he who alleges a

¹⁸ Id. at 34–35.

¹⁹ Id. at 39–40.

²⁰ See *Lee v. Sandiganbayan*, G.R. Nos. 234664-67, January 12, 2021 [Per CJ. Peralta, First Division].

²¹ *People v. Aguirre*, 820 Phil. 1085 (2017) [Per J. Tijam, First Division].

²² *Fantastico v. Malicse, Jr.*, 750 Phil. 120 (2015) [Per CJ. Peralta, Third Division].

²³ See *Lee v. Sandiganbayan*, *supra*.

fact has the burden of proving it and a mere allegation is not evidence.²⁴

After a judicious perusal of the records of this case, the Court finds that the courts *a quo* correctly ruled that the evidence on record preponderate in respondents' favor, as they were able to establish how they acquired the subject property from the DBP by virtue of a Deed of Conditional Sale²⁵ executed by the bank and their payments of Spouses Tomo's loan obligation, which they allowed. This is evinced by the waiver of rights to redeem mortgage executed by the latter in favor of the former. Clearly, due to petitioners' failure to redeem the subject property, the ownership of the land was transferred by operation of law to the DBP, being the highest bidder in the foreclosure sale. Consequently, the DBP conveyed the subject property to respondents.

Moreover, the alleged verbal agreement between Spouses Tomo and respondents pertaining to the authority to till the land and pay the mortgage, as well as the right of the latter to redeem the property from the former, is unenforceable for being violative of the Statute of Frauds.

Article 1403 (2) of the Civil Code, otherwise known as the Statute of Frauds, requires that covered transactions must be reduced in writing, otherwise the same would be unenforceable by action, thus:²⁶

ART. 1403. The following contracts are unenforceable, unless they are ratified:

x x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

x x x x

(c) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

x x x x

Verily, the supposed verbal agreement between Spouses Tomo and respondents, even assuming that there indeed exists such an

²⁴ *P.T. Cerna Corp. v. CA*, 293 Phil. 21 (1993) [Per J. Campos, Jr., Second Division].

²⁵ Records, pp. 236-237, including dorsal portions.

²⁶ *Heirs of Alido v. Campano*, G.R. No. 226065, July 29, 2019 [Per J. Reyes, Jr., Second Division].

agreement, is tantamount to lease of the subject property for a period of more than one (1) year, which under Article 1403 (2) (e) should be made in writing to be enforceable. Thus, for failure to put said agreement in writing, the same cannot be enforced.

Further, while both parties admitted that the verbal agreement was based on trust as their families were good friends, Article 1443 of the Civil Code provides that “[n]o express trusts concerning an immovable or any interest therein may be proved by parol evidence.” Thus, said verbal agreement is inadmissible as proof of its existence.

Finally, in their complaint, petitioners averred that respondents were able to transfer a portion of the subject property under their names through the use of forgery in the Deed of Absolute Sale.

Petitioners’ contention cannot be given any credence.

Forgery cannot be presumed and must be proved by clear, positive, and convincing evidence.²⁷ The burden of proof lies on the party alleging forgery.²⁸ Pursuant to Section 22, Rule 132 of the Rules of Court, “[t]he handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.”²⁹ In *Domingo v. Domingo*,³⁰ the Court, through Justice Leonardo A. Quisumbing, held:

Under the Rules of Court, the genuineness of a handwriting may be proved by the following:

- (1) A witness who actually saw the person writing the instrument;
- (2) A witness familiar with such handwriting and who can give his opinion thereon, such opinion being an exception to the opinion rule;
- (3) A comparison by the court of the questioned handwriting and admitted genuine specimen thereof; and
- (4) Expert evidence.

The law makes no preference, much less distinction among and between the different means stated above in proving the

²⁷ *Gepulle-Garbo v. Garabato*, 750 Phil. 846 (2015) [Per J. Villarama, Jr., Third Division].

²⁸ *Id.*

²⁹ *Heirs of Salud v. Rural Bank of Salinas, Inc.*, 784 Phil. 21 (2016) [Per J. Del Castillo, Second Division].

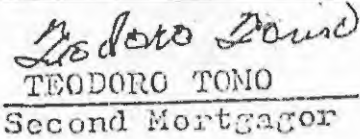
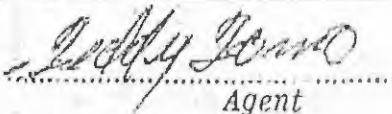
³⁰ 495 Phil. 213 (2005) [Per J. Quisumbing, First Division].

handwriting of a person. It is likewise clear from the foregoing that courts are not bound to give probative value or evidentiary value to the opinions of handwriting experts, as resort to handwriting experts is not mandatory.³¹

Here, the courts *a quo* correctly pointed out that the expert evidence stating that the signature of Teodoro in the subject deeds were forged cannot be given credence as the specimen signatures submitted by petitioners to the NBI were all “Teodoro Tomo.” They failed to submit a specimen signature for the signature “Teddy Tomo.” Thus, it cannot be said that a valid comparative examination of the standard signatures and questioned signatures was made so as to conclude that the signature “Teddy Tomo” appearing in the deeds of sale were forgeries. Clearly, mere variance in the signatures cannot be considered as conclusive proof of forgery.³²

Moreover, as discussed above, the genuineness of the signature does not depend on the expert evidence alone. Expert testimony is generally regarded to be purely advisory in character and the courts “may place whatever weight they choose upon said testimony and reject it, if they find that it is inconsistent with the facts in the case or otherwise, unreasonable.”³³ “Verily, the opinions of handwriting experts, while helpful in the examination of forged documents owing to the technical procedure involved in the analysis, are not binding on the courts. As a logical corollary, a finding of forgery does not depend entirely on the testimonies of handwriting experts as the judge must conduct an independent examination on the questioned signature or entry to arrive at a reasonable conclusion as to its authenticity.”³⁴

As aptly observed by the CA, Teodoro used two signatures during his lifetime, *i.e.*, “Teodoro Tomo” and “Teddy Tomo,” *viz.*:

Signature “Teodoro Tomo”	Signature “Teddy Tomo”
	

While petitioners merely presented with the NBI and the court Teodoro’s signature as “Teodoro Tomo,” respondents, on the other hand, submitted to the court the acknowledgment receipts and agreements³⁵ signed by Teodoro using both the signatures “Teodoro Tomo” and

³¹ Id.

³² *Heirs of Florencio v. Heirs of De Leon*, 469 Phil. 459 (2004) [Per J. Callejo, Sr., Second Division].

³³ *Varias v. Commission on Elections*, Phil. 626 Phil. 292, 324 (2010) [Per J. Brion, *En Banc*].

³⁴ See Dissenting Opinion of J. Velasco, Jr. in *Varias v. Commission on Elections*, *id.* at 341.

³⁵ Records, pp. 518–535.

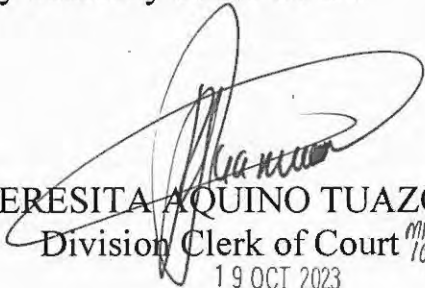
“Teddy Tomo.” Clearly, petitioners failed to satisfactorily discharge their burden of establishing forgery.

In sum, the CA did not err in affirming the RTC’s dismissal of petitioners’ complaint; hence, the petition must be denied.

FOR THESE REASONS, the instant petition is **DENIED**. The Decision dated November 18, 2016 and the Resolution dated September 12, 2017 of the Court of Appeals in CA-G.R. CV No. 03268-MIN are hereby **AFFIRMED**.

SO ORDERED.

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court ^{mm}_{16/19}
 19 OCT 2023

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