

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**SPOUSES ALBERTO GARRIDO AND  
COLOMA DAGURO,**  
*Petitioners,*

*-versus-*

**G.R. No. 101262  
September 14, 1994**

**THE COURT OF APPEALS, SPOUSES  
RUFINO AND CONRADA  
SUPLEMENTO,**  
*Respondents.*

X-----X

**DECISION**

**BELLOSILLO, J.:**

Tomas Hingco, a widower, originally owned Lot 209 of the Dingle Cadastre, Iloilo, He married Consolacion Rondael, a widow, who had a daughter Magdalena Rondael. In 1947 he donated one half (1/2) of Lot 209 to his stepdaughter Magdalena subject to the condition that

she could not sell, transfer or cede the same. When he died, Consolacion inherited the remaining half of Lot 209 which, in turn, was inherited by Magdalena upon the death of Consolacion. Consequently, the entire Lot 209 was registered in the name of Magdalena Rondael, married to Lorenzo Daguro, under Transfer Certificate of Title No. T-13089.

In 1973 Magdalena sold a portion of Lot 209 (Lot 209-B) to Mariano Platinos and Florida Macahilo. The remaining portion (Lot 209-A) with an area of 343 square meters is the subject of this litigation.

In 1976 Lorenzo Daguro died. Magdalena then filed before the Court of First Instance of Iloilo a petition to cancel the lien prohibiting her from disposing of Lot 209-A because she needed money for her subsistence and medical expenses as she was then in her 80's. Besides, she was sickly.<sup>[1]</sup> Her deposition on oral examination in connection with her petition was taken on 24 January 1979.<sup>[2]</sup>

On 17 August 1978, during the pendency of her petition, Magdalena executed a Conditional Deed of Sale of Lot 209-A in favor of respondent spouses Rufino and Conrada Suplemento "subject to the lien subsisting and annotated on the face of the Certificate of Title."<sup>[3]</sup> Magdalena agreed to bear the cost of the cancellation of the lien and respondents to be bound thereby as long as it subsisted, with the understanding that in the event the lien was not cancelled, the amount already paid would be refunded. It was further stipulated that "out of the Nineteen Thousand (P19,000.00) consideration only Three Thousand (P3,000.00) pesos shall be paid pro rata monthly for ten (10) years and to convene (commence?) one (1) year from the date of this Deed."<sup>[4]</sup>

On 24 January 1979 the petition for cancellation of encumbrance was denied for the reason that the ground cited for the cancellation was not one of these allowed by Sec. 112 of Act 496 and that Magdalena failed to produce the deed of donation which contained the alleged restriction. Nonetheless, on 19 July 1979 Magdalena executed with the conformity of her husband a Deed of Absolute Sale covering Lot 209-A in favor of respondents, spouses Rufino and Conrada Suplemento.<sup>[5]</sup> The deed was notarized on the same date. On 13 April

1982, Magdalena died. On 2 December 1982 TCT No. T-108689 was issued in the name of the Suplementos.<sup>[6]</sup>

Magdalena had two (2) daughters but only one is still living, Coloma Daguro, married to Alberto Garrido, the spouses being the petitioners herein. They were based in Davao City and would visit Magdalena only on occasions. In February 1984, Alberto Garrido visited the Suplementos in the house where Magdalena used to live.<sup>[7]</sup> He wanted to find out if the taxes on the house were being paid. In reply, respondents showed him the Deed of Absolute Sale signed by his parents-in-law and it was only then that he came to know that Lot 209-A no longer belonged to his in-laws.

On 28 October 1985 petitioners Coloma Daguro and Alberto Garrido filed a complaint before the Regional Trial Court of Iloilo City for annulment of the Deed of Absolute Sale of Lot 209-A, reconveyance and damages claiming that the deed was fictitious since Magdalena's signature thereon "appears to have been traced" and Lorenzo Daguro's signature was likewise a forgery since he died prior to the execution thereof, or on 9 October 1976.<sup>[8]</sup>

The trial court, relying on the deposition of Magdalena on 24 January 1979, found that she wanted to sell and did in fact sell Lot 209-A to the Suplementos. In addition, the court found that the genuineness of Lorenzo Daguro's signature was not germane to the validity of the Deed of Absolute Sale as said signature was not necessary to convey title to the paraphernal property of Magdalena. To petitioners' credit, it held that no evidence was adduced by respondents to show payment of any installment of the balance of the purchase price to Magdalena before her death or to her heir, Coloma. Thus, judgment was rendered on 19 October 1988 declaring the sale of 19 July 1979 valid but ordering the Suplementos to pay petitioners P16,000.00 with legal rate of interest until fully paid.<sup>[9]</sup>

On appeal, respondent Court of Appeals affirmed the ruling of the Iloilo trial court in its decision of 27 February 1991<sup>[10]</sup> and denied reconsideration on 29 July 1991.<sup>[11]</sup>

Petitioners contend that the appellate court erred in holding that they have no personality to assail the Absolute Deed of Sale and the genuineness of the signature of Magdalena Rondael.

Petitioners assert that the issue raised in the trial court was whether Magdalena Rondael could sell the property despite the prohibition in the deed of donation. In ruling that they were incapacitated to question the non-observance of the condition, respondent court went beyond the issue, hence, exceeded its jurisdiction.

We find for respondents. Petitioners have no personality to question the violation of the restriction because they are not heirs of the donor. When the done fails to comply with any of the conditions imposed by the donor, it is the donor who has the right to impugn the validity of the transaction affecting the donated property, conformably with Art. 764 of the Civil Code, which provides that the right to revoke may be transmitted to the heirs of the donor and may be exercised against the heirs of the done, and the action prescribes four years after the violation of the condition.

Petitioners, lack to capacity of question the non-compliance with the condition is intimately connected with the issue regarding the validity of the sale on account of the prohibition in the deed of donation. Thus, we have established the rule that an unassigned error closely related to an error properly assigned, or upon which the determination of the question properly assigned is dependent, may be considered by the appellate court. <sup>[12]</sup>

Petitioners also submit that the finding of the appellate court that the signature of Magdalena Rondael in the Deed of Absolute Sale is genuine has been overtaken by events. In a letter dated 1 August 1991, the Regional Director of the NBI, Iloilo City, furnished the Iloilo City Prosecutor with a copy of NBI Questioned Document Report No. 413-791 dated 23 July 1991, purporting to show that the questioned signature as well as the standard/sample signatures of the deceased Magdalena Rondael were not written by one and the same person,<sup>[13]</sup> hence, a forgery.

Admittedly, the NBI report was never adduced before the lower courts; in fact, it is presented for the first time and only before this

Court. Obviously, this is not a newly discovered evidence within the purview of Sec. 1, par. (b), Rule 37, of the Rules of Court. Petitioners should have thought of having the signature of Magdalena Rondael on the deed of sale examined when the case was still with the trial court. Nothing would have stopped them from doing so. Hence, it is now late, too late in fact, to present it before this Court.

Petitioners' reliance on the NBI report as basis for new trial on the ground of "newly discovered evidence" is a mistake. In the first place, the rule is explicit that a motion for new trial should be filed before the trial court and within the period for appeal. In the second place, in order that a particular piece of evidence may be properly regarded as "newly discovered" for the purpose of granting new trial, the following requisites must concur: (a) the evidence had been discovered after trial; (b) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and, (c) the evidence is material and not merely corroborative, cumulative or impeaching and is of such weight that if admitted would probably alter the result.<sup>[14]</sup> At the pith of these requirements is that what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; rather, that the offering party had exercised reasonable diligence in producing or locating such evidence before or during trial but had nonetheless failed to secure it. The NBI report does not qualify as newly discovered evidence because the second requirement was not complied with. Petitioners did not exercise reasonable diligence in procuring such evidence before or during trial. By their own admission, the Fiscal sought NBI assistance only after the trial of the case. They could have done so themselves when their case was tried. Besides, when the City Prosecutor requested the NBI for a handwriting examination in connection with petitioners' criminal complaint for falsification against respondents, the initial response of the NBI was: "no definite opinion can be rendered on the matter due to lack of sufficient basis necessary for a scientific comparative examination."<sup>[15]</sup> From there it can be deduced that petitioners did not submit adequate documents before the NBI at the first instance, thus showing their want of reasonable diligence in procuring the evidence they needed for a new trial.

We accord finality to the finding of respondent court, supported as it is by substantial evidence, that the alleged discrepancy between the signature of Magdalena Rondael appearing on the Deed of Absolute Sale and her signature on the Conditional Deed of Sale, petition to cancel the annotation prohibiting the sale of the donated property, petitioners' reply to opposition,<sup>[16]</sup> transcript of her deposition dated 24 January 1979, and the deed of sale of Lot 209-B, does not exist. Having alleged forgery, petitioners had the burden of proof. Here, they utterly failed. They even attached to their complaint five receipts purportedly signed by Magdalena but, except for one which was signed "Magdalena Rondael," said receipts were signed "Magdalena Daguro."<sup>[17]</sup> Besides, there is no showing that the signatures presented as bases for comparison are themselves genuine. On the other hand, the Deed of Absolute Sale is a notarized document which carries the evidentiary weight conferred upon such public document with respect to its due execution.

**WHEREFORE**, the petition is **DENIED**. The decision of the Court of Appeals of 27 February 1991 as well as its resolution denying reconsideration thereof is **AFFIRMED**.

**SO ORDERED.**

**Davide, Jr., Quiason and Kapunan, JJ., concur.**  
**Cruz, J., is on leave.**

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[1] Exh. "4;" Records, pp. 181-183.

[2] Exh. "7;" Records, pp. 189-195.

[3] Exh. "1;" Records, p. 176.

[4] Ibid.

[5] Exh. "5;" Records, pp. 178-179.

[6] Exh. "6;" Records, p. 180.

[7] Magdalena stated in her deposition that respondents, who were her second cousins, allowed her to stay in the house for as long as she lived. The disputed Deed of Sale conveyed Lot 209-A as well as the house erected thereon.

[8] Records, pp. 1-6;; Annex "A," Complaint.

[9] Decision by Judge Sixto R. Guanzon; Records, pp. 233-241.

[10] CA-G. R. CV No. 23183, Justice Minerva Gonzaga-Reyes, ponente and concurred in by Justices Arturo B. Buena and Cancio C. Garcia; Rollo, p. 39.

[11] Id., p. 43.

- [12] Medida vs. Court of Appeals, G. R. No. 98334, 8 May 1992, 208 SCRA 887; Roman Catholic Archbishop of Manila vs. Court of Appeals, G.R. No. 77425, 19 June 1991, 198 SCRA 300; Philippine Commercial and Industrial Bank vs. Court of Appeals, No. L-34959, 18 March 1988, 159 SCRA 24.
- [13] Rollo, p. 47.
- [14] Tumang vs. Court of Appeals, G. R. No. 82072, 17 April 1989, 172 SCRA 328; Velasco vs. Ortiz, G. R. No. 51973, 16 April 1990, 184 SCRA 303.
- [15] Rollo, p. 42.
- [16] Records, p. 187.
- [17] Id., pp. 100-101.

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