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THIRD DIVISION

[G.R. No. 179874. June 22, 2015]

ADELFA DIO TOLENTINO, VIRGINIA DIO, RENATO DIO, and HEIRS OF ROBERTO DIO, represented by ROGER DIO, *petitioners, vs.* **SPOUSES MARIA JERERA and EBON LATAGAN, substituted by his heirs, namely: MA. JANELITA LATAGAN-BULAWAN, YVONNE LATAGAN, LESLIE LATAGAN, RODOLFO H. LATAGAN, EMMANUEL NOEL H. LATAGAN, GEMMA LATAGAN-DE LEON, MARIE GLEN LATAGAN-CERUJALES, and CELESTE LATAGAN-BO; and SALVE *vda. de* JERERA,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; THERE WAS SUBSTANTIAL COMPLIANCE TO THE RULES WHEN ONLY ONE OF THE PETITIONERS SIGNED THE VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING.— In *Ateneo de Naga University v. Manalo*, it was held that the verification requirement is deemed substantially complied with when only one of the heirs-plaintiffs, who has sufficient knowledge and belief to swear to the truth of the allegations in the petition, signed the verification attached to it. Such verification was deemed sufficient assurance that matters alleged in the petition have been made in good faith or are true and correct, not merely speculative. Likewise, liberality and leniency were accorded in some cases where those who did not sign were relatives of the lone signatory of the certification against forum shopping when they all share a common interest in a disputed property and invoke a common cause of action or defense. x x x Guided by the foregoing jurisprudence, the Court finds substantial compliance with the Rules when Adelfa signed the said verification and certification in behalf of her co-petitioners. As heirs and successors-in-interest of Amado over the subject property, Adelfa and her co-petitioners share a common interest and cause of action in their complaint for

the quieting of title and recovery of possession thereof, as well as in the instant petition for review on *certiorari*.

2. ID.; RULE 45 PETITION; LIMITED TO QUESTIONS OF LAW; EXCEPTION, APPLIED.— Section 1, Rule 45 of the Rules of Court clearly states that the petition filed shall raise only questions of law. In the exercise of its power of review, the Court is not a trier of facts and, subject to certain exceptions, it does not normally undertake the re-examination of the evidence presented by the parties during trial, One of these exceptions is when the findings of the appellate court are contrary to those of the trial court. After all, findings of fact of the trial court and the CA may be set aside when such findings are not supported by the evidence or where the lower courts' conclusions are based on a misapprehension of facts. The contrary findings of the trial court and the CA leave the Court with no other alternative but to re-examine the factual issues raised in the present petition.

3. ID.; EVIDENCE; EXPERT WITNESS; PRESENCE OF BIAS DOES NOT NECESSARILY RENDER THE EXPERT'S TESTIMONY INCREDIBLE.— On the alleged bias and partiality on the part of the NBI expert witness due to the admitted fact that petitioners extended him a loan for his appendectomy, the Court holds that the presence of such bias does not necessarily render his testimony incredible. Petitioners' eagerness to prove their cause which is mainly anchored on the said expert witness' testimony, should also be viewed alongside the justifiable reasons of the urgency of his medical condition and the lack of available funds to address it. Petitioners' justification is supported by a duly notarized medical certificate dated September 25, 2001, stating that the NBI expert witness, Efren Flores, from #2-C San Miguel St., Novaliches, Quezon City, underwent appendectomy and was confined at Sorsogon Medical Mission Group Hospital. x x x [H]aving reviewed the said witness testimony in light of the principle that evidence to be believed must not only come from a credible source, the Court agrees with petitioners that the said witness testified in a clear and unequivocal manner, consistent with the Questioned Documents Report No. 196-300 he had submitted to the trial court long before his appendectomy.

4. ID.; ID.; FORGERY, ESTABLISHED; THE SIGNATURES OF THE PARTIES IN THE QUESTIONED DOCUMENTS

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WERE INDEED FORGED.— Settled is the rule that forgery cannot be presumed and must be proved by clear, positive and convincing evidence by the party alleging the same. Through Questioned Documents Report No. 196-300 and the credible expert witness testimony thereon, petitioners have proven that only the signature of Amado in the Deed of Absolute Sale dated January 14, 1970 (Exhibit "K") was forged, but not that of Modesta due to insufficiency of specimen submitted to be used as basis for comparative analysis. Be that as it may, having in mind that the finding of forgery does not depend entirely on the testimonies of handwriting experts because the judge must conduct an independent examination of a questioned signature in order to arrive at a reasonable conclusion as to its authenticity, the Court compared the signatures of Amado and Modesta in Exhibit "K" *vis-à-vis* Exhibits "L-2" to "L-7", the sanitary permits containing the real signatures of Amado, and Exhibits "M-2" and "M-3", the Affidavit of Extra Judicial Settlement dated May 11, 1962 and Modesta's real signature thereon. Upon a careful examination of such pieces of documentary evidence, the Court finds that petitioners have successfully proved that both signatures of Amado and Modesta in the Deed of Absolute Sale dated January 14, 1970 marked as Exhibit "K" were indeed forged.

5. **CIVIL LAW; SALES; EFFECTS OF A FORGED DEED OF SALE; IT TRANSFERS NO RIGHT OVER THE SUBJECT PROPERTY AND ALL TRANSACTIONS SUBSEQUENT THERETO ARE VOID.—** In *Rufloe v. Burgos,* the Court held that a forged deed of sale is null and void and conveys no title, for it is a well-settled principle that no one can give what one does not have; *nemo dat quod non habet*. One can sell only what one owns or is authorized to sell, and the buyer can acquire no more right than what the seller can transfer legally. Due to the forged Deed of Absolute Sale dated January 14, 1970, Servillano acquired no right over the subject property which he could convey to his daughter, Maria. All the transactions subsequent to the falsified sale between the Servillano and his daughter are likewise void, namely, the Deeds of Absolute Sale of the subject property that Servillano executed on May 25, 1971 and November 24, 1977 in favor his daughter, as well as the Self-Adjudication of Real Property.

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6. ID.; ID.; ID.; A FORGED DOCUMENT MAY BECOME THE ROOT OF A VALID TITLE IF SUBSEQUENTLY TRANSFERRED TO AN INNOCENT PURCHASER FOR VALUE; APPLICATION.— However, it has also been consistently ruled that that a forged or fraudulent document may become the root of a valid title, if the property has already been transferred from the name of the owner to that of the forger, and then to that of an innocent purchaser for value. This doctrine emphasizes that a person who deals with registered property in good faith will acquire good title from a forger and be absolutely protected by a Torrens title. This is because a prospective buyer of a property registered under the Torrens system need not go beyond the title, especially when she has no notice of any badge of fraud or defect that would place her on guard. x x x After a careful review of the evidence on record, the Court agrees with the CA that Maria is an innocent purchaser for value of the subject property. x x x It is a well-settled rule that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property. Where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its face indicates in quest for any hidden defects or inchoate right that may subsequently defeat his right thereto. However, this rule shall not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious person to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent person to inquire into the status of the title of the property in litigation. In this case, the Court finds that respondents have successfully discharged such burden of proving the status of a purchaser in good faith and for value. Contrary to petitioners' contention and the trial court's ruling, the fact that Maria was aware of the execution of the Deed of Absolute Sale dated May 25, 1971, and the Deed of Absolute Sale and the Self-adjudication of Real Property both dated November 24, 1977, does not constitute knowledge of a defect or lack of title of the vendor, or of sufficient facts to induce a reasonably prudent person to inquire into the status such title.

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7. ID.; ID.; LACK OF CONSIDERATION, NOT ESTABLISHED. — As held in *Ramos v. Heirs of Honorio Ramos, Sr.*, the burden of proving the alleged simulation of a contract falls on those who impugn its regularity and validity. A failure to discharge this duty will result in the upholding of the contract. The primary consideration in determining whether a contract is simulated is the intention of the parties as manifested by the express terms of the agreement itself, as well as the contemporaneous and subsequent actions of the parties. The most striking index of simulation is not the filial relationship between the purported seller and buyer, but the complete absence of any attempt in any manner on the part of the latter to assert rights of dominion over the disputed property. In this case, the lack of consideration for the November 24, 1977 Deed of Absolute Sale was justified when Maria testified that the second sale was merely a confirmation of the first sale on May 25, 1971. Besides, petitioner Adelfa herself testified that after the execution of the Deed of Absolute Sale on January 14, 1970, the Jereras asserted dominion over the subject property by taking possession and claiming ownership of it. Hence, such sale cannot be considered simulated. As to the lack of consideration for the second deed of sale, it is presumed that a written contract is for a valuable consideration. Thus, the execution of a deed purporting to convey ownership of a realty is in itself *prima facie* evidence of the existence of a valuable consideration and the party alleging lack of consideration has the burden of proving such allegation. Petitioners failed to present clear and convincing evidence to overturn such disputable presumption. At any rate, Maria aptly explained that she no longer paid for a consideration for the November 24, 1977 Deed of Absolute Sale as it was a mere confirmation of the May 25, 1971 Deed of Absolute sale of the subject property for which she had paid ₱585.00.

8. ID.; OWNERSHIP; WHERE TAX DECLARATION AND REAL PROPERTY TAX PAYMENTS STRENGTHEN THE CLAIM OF TITLE OVER THE PROPERTY.— It is also noteworthy that petitioners failed to dispute that Maria had been in actual, peaceful and uninterrupted possession of the subject property since her birth on April 23, 1929, long before it was sold to her by Servillano by virtue of the Deeds of Absolute Sale executed on May 25, 1971 and on November 24, 1977. On September 6, 1973, she declared it in her name for taxation purposes under Tax Dec. No. 4826. On October 27, 1978, TCT

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No. T-15364 in the name of Servillano was cancelled and TCT No. T-15365 was issued and registered in her name. She also religiously paid the taxes thereon from 1985 until 2001 as evidenced by real property tax receipts. It is a settled rule that albeit tax declarations and realty tax payment of property are not conclusive evidence of ownership, they are nonetheless good *indicia* of the possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. Thus, her voluntary declaration of the subject property for taxation purposes and payment of such tax strengthens her *bona fide* claim of title over the property.

9. ID.; LACHES; FILING THE COMPLAINT AFTER 20 YEARS FROM THE ISSUANCE OF TRANSFER CERTIFICATE OF TITLE CONSTITUTES LACHES.— [T]he complaint was filed only May 21, 1998 or about 20 years from the issuance of TCT No. T-15364, x x x such delay is unjustified and unreasonably long, and petitioners clearly failed to exercise due diligence in asserting their right over the property. Therefore, petitioners' complaint is likewise barred by laches, which has been defined as the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence, could or should have been done earlier, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it.

APPEARANCES OF COUNSEL

Desiree G. De Vera for petitioners.
Acelo Bailey for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to reverse and set aside the Court of Appeals (CA) Decision[1]

[1] Penned by Associate Justice (Now Supreme Court Associate Justice) Jose Catral Mendoza, with Associate Justices (Now Presiding Justice) Andres B. Reyes, Jr. and Ramon M. Bato Jr, concurring; *rollo*, pp. 19-42.

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dated July 6, 2007 and its Resolution[2] dated August 22, 2007 in CA G.R. CV No. 83337. The dispositive portion of the Decision reads:

> WHEREFORE, the July 12, 2004 Decision of the Regional Trial Court, Branch 53, Sorsogon City, in Civil Case No. 98-6459, is hereby REVERSED and SET ASIDE and another judgment entered dismissing the Complaint.
>
> SO ORDERED.[3]

Meanwhile, the Resolution dated August 22, 2007 denied the motion for reconsideration of the CA Decision for lack of merit.

The facts are as follows:

The subject property is a parcel of land identified as Lot No. 3789 with an area of about 5,028 square meters, located in Roro, Sorsogon [now City], Sorsogon. It was covered by Original Certificate of Title (OCT) No. 12494 issued per Decree No. 43051[4] and registered on May 5, 1931 in the names of six (6) co-owners who inherited it from Guillermo Jerera and whose undivided interests therein were as follows:

1. Cipriano[5] Jerera, married to Lorenza Janaban, 1/5 share
2. Dionisia[6] Jerera, the wife of Ceferino Jalmasco, 1/5 share
3. Teopisto Jerera, married to Juana Araya, 1/5 share
4. Servillano[7] Jerera, married to Flora Jerao, 1/5 share
5. Maria Jerera, the wife of Mauricio Jarilla, 1/10 share
6. Rosa Jerera, the wife of Tomas Lanuza, 1/10

On June 27, 1933, Servillano, Dionisia, Teofilo, and Cipriano, all surnamed Jerera, ceded and conveyed by way of sale with

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[2] *Id.* at 44.

[3] *Id.*, at 42.

[4] Exhibit "3".

[5] Also spelled as "Cepriano".

[6] Also spelled as "Dionesia".

[7] Also spelled as "Serviliano".

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right to repurchase to Amado Dio, his heir and assigns, a 10,000 square-meter coconut land in Sorsogon, Sorsogon, for ₱122.00 as shown in the document entitled "*Escritura de Venta Con Pacto de Retro*."[8] The said document stated that the property was part of Tax Declaration (Dec.) No. 15078 in the name of Guillermo Jerera; that the period within which to repurchase the property was two (2) years from the date of its execution; that the Jereras were the ones to pay the realty taxes; and that once they have paid the amount of ₱122.00, the deed would be canceled and deemed without force and effect.

Meanwhile, on December 4, 1935, Amado sold to Flora Girao[9], wife of Servillano and mother of respondent Maria Jerera Latagan, a 1,890 square-meter coconut land in Roro, Sorsogon, Sorsogon, for ₱85.00.[10] The deed of sale of the land stated that Amado was its absolute owner and possessor, and that it was part and parcel registered under Tax Dec. No. 15078 in the name of Guillermo Jerera.

On December 7, 1967, Amado executed an affidavit of consolidation of ownership,[11] stating that Servillano, Dionesia, Teofilo and Cepriano have neither exercised their right to repurchase the subject property within the 2-year period nor paid the amount of ₱122.00, as stipulated in the June 22, 1933 deed of sale with right to repurchase. Thus, Amado consolidated his absolute ownership over the property, gave his children and legal heirs the right to inherit it, and himself the right to administer and to dispose of it. He also stated that the property was free from all liens, charges and encumbrances.

On December 8, 1967, Amado declared the subject property in his name for taxation purposes under Tax Dec. No. 9273 which cancelled Tax Dec. No. 2840 in Ceferino Jerera's name.[12]

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[8] Exhibit "6".

[9] Also spelled as "Jerao".

[10] Exhibit "8".

[11] Exhibit "9".

[12] Exhibits "I" and "J".

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On January 14, 1970, the Spouses Amado Dio and Modesta Domer allegedly executed a Deed of Absolute Sale of the subject property in favor of Servillano for ₱585.00. On even date, the property was declared for taxation purposes in Servillano's name under Tax Dec. No. 10326 which cancelled Tax Dec. No. 9273 in Amado's name.[13]

On May 25, 1971, Servillano executed with marital consent a Deed of Absolute Sale[14] of the subject property for ₱585.00 in favor of his daughter, Maria Jerera, married to Ebon[15] Latagan.

On September 6, 1973, Maria declared the property in her name for taxation purposes under Tax Dec. No. 4826,[16] which cancelled Tax Dec. No. 10326 in Servillano's name.

On November 24, 1977, Servillano executed again a Deed of Absolute Sale[17] of the subject property for ₱585.00 in favor of his daughter, Maria.

On the same day, Servillano also executed a Self-Adjudication of Real Property[18] over the same property, claiming that he was the only surviving co-owner; that his co-owners, Cepriano, Dionisia, Teopista, Maria[19] and Rosa, all surnamed Jerera[20], had all died intestate without any debts and obligations; and that pursuant to Section 1, Rule 74 of the Rules of Court, he adjudicated unto himself, his heirs and assigns, the entire property. Servillano then caused the publication of legal notices stating that the property covered by OCT No. 1249 was self-adjudicated to him as the heir of the intestate estate of Cepriano Jerera, et al.[21]

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[13] Exhibit "N" and "N-1".

[14] Records, p. 22, Exhibit "1".

[15] Also spelled as "Ibon".

[16] Exhibit "30".

[17] Exhibit "O".

[18] Exhibit "P".

[19] Wife of Mauricio Jarilla.

[20] Also spelled as "Jerrera".

[21] Exhibit "19".

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On October 27, 1978, Servillano caused OCT No. 1249 to be cancelled and TCT No. T-15364[22] to be issued and registered in his name. It was also on even time[23] and date that TCT No. T-15364 was cancelled and TCT No. T-15365[24] was issued and registered in the name of Maria, married to Ebon.

Later on, the subject property was subdivided into seven (7) lots, to wit: Lot No. 3789-A under TCT No. T-40107; Lot No. 3789-A-1 under TCT No. T-49864; Lot No. 3789-A-2 under TCT No. T-49865; Lot No. 3789-A-3 under TCT No. T-49866; Lot No. 3789-A-4 under TCT No. 49867; Lot No. 3789-B under TCT No. T-40106; and Lot No. 3789-C under TCT No. T-40105, all in the name of Maria, married to Ebon.

On May 21, 1998, petitioner Adelfa Dio Tolentino, and her co-petitioners Virginia, Renato, and Heirs of Roberto, represented by Roger, all surnamed Dio, filed a Complaint[25] for quieting of title, recovery of property and damages before the Regional Trial Court, Branch 53, Sorsogon City, alleging that they are the successors-in-interest of Amado over the subject property. They claimed that Amado acquired the property from Servillano, Dionesia, Teofilo (Teopisto)[26], Cipriano (Ceferino)[27] and Heirs of Rosa, all surnamed Jerera, and later caused it to be declared in his name for taxation purposes under Tax Dec. No. 9273. Petitioners assert that the Deed of Sale executed on January 14, 1970 by the Spouses Amado and Modesta, conveying the property to Servillano, is simulated and/or fictitious for being a forgery, hence, all transactions emanating from it are null and void.

Petitioners thus prayed before the trial court for the following reliefs: (1) to declare the Deed of Absolute Sale dated January

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[22] Exhibit "R".

[23] 3:34 P.M.

[24] Exhibit "S".

[25] Records, pp. 1-6.

[26] *Id.* at 2.

[27] *Id.*

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14, 1970 null and void; (2) to declare them as the *pro-indiviso* owners of the subject property; (3) to order the issuance of a transfer certificate of title in their names as owners; (4) to declare the Deed of Absolute Sale dated November 24, 1977 and the Self-adjudication of Real Property of even date, and all other subsequent transactions emanating from them as null and void; (5) to order the cancellation of transfer certificates of title in Servillano's name [TCT No. T-15364] and those in Maria's name [TCT No. T-15365, TCT No. T-40107, TCT No. T-49864, TCT No. T-49865, TCT No. T-49866, TCT No. 49867, TCT No. T-40106, and TCT No. T-40105]; (6) to order the cancellation of tax declarations covering the property in Servillano's name [Tax Dec. No. 10326], those in Maria's name [Tax Dec. Nos. 4826, 31-302, 31-589, 31-321], and all those issued thereafter; and (7) to order the respondents to pay attorney's fees, litigation expenses, moral and exemplary damages.[28]

On July 2, 1998, respondents Maria and Latagan filed their Answer,[29] alleging that they are the registered and absolute owners of the subject property. Their co-defendant, Salve Vda. De Jerera, failed to file an answer despite receipt of summons.

Respondents claimed to have acquired the subject property from Servillano by way of a Deed of Sale executed on May 25, 1971 and another Deed of Sale executed on November 24, 1977 which could be construed as confirmation of the first sale. They pointed out that Servillano acquired the property from Amado and Modesta by virtue of a Deed of sale executed on January 14, 1970.

Respondents further alleged that prior to the sale he made in favor of Servillano, Amado sold 1,058 square meters of the subject property to Flora Jerera, the wife of Servillano and mother of Maria, on December 4, 1935. Then, on November 24, 1977, a deed of self-adjudication of property covered by OCT No. 1249 was executed by Servillano which was published in the Sorsogon Newsweek for three (3) consecutive weeks. Having

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[28] *Id*. at. 5.

[29] *Id.* at 14-20.

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acquired the property for value and good faith and having been in continuous and uninterrupted possession as owners for over 30 years since 1950, respondents have caused the property to be subdivided and constructed residential buildings thereon. They averred that Amado, whose residence was just about 250 meters away from the property, during his lifetime, or any of his heirs, never actually possessed the same or any portion thereof. They pointed out that if indeed Amado was the owner of the property, he and petitioners should have asserted adverse claim on it against respondents, instead of remaining silent and sleeping on their rights.

The pre-trial having been terminated, trial ensued.

On July 12, 2004, the trial court rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, on the foregoing, judgment is hereby rendered as follows:
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> 1. Declaring the deed of sale dated January 14, 1970 allegedly executed by Amado Dio in favor of Servillano Jerera to be VOID;
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> 2. Declaring the plaintiffs [petitioners] the lawful owners of the property in question to the exclusion of the defendants [respondents], their heirs and assigns;
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> 3. Directing defendants-spouses [respondents] Maria Jerera Latagan and Ebon Latagan and Salve Vda. De Jerera to vacate the property and deliver possession thereof to the plaintiffs [petitioners];
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> 4. Directing the said defendants [respondents] to indemnify plaintiffs [petitioners] the following:
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> a. ₱30,000.00 as moral damages;
> b. ₱20,000.00 as attorney's fees;
> c. ₱10,000.00 as exemplary damages; and
> d. To pay the costs of suit.
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> SO ORDRED.[30]

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[30] *Id.* at 248-249.

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In ruling that the Deed of Sale executed on January 14, 1970 by Spouses Amado and Modesta in favor of Servillano is simulated or fictitious for being a forgery, the trial court held:

> The testimony of the National Bureau of Investigation document examiner Efren B. Flores declares that the signature of Amado Dio in the questioned document of sale (Exhibit '4') is significantly different from that as appearing in sanitary permit and community tax certificate which signature/s affixed thereon were made the basis of comparison with the afore-cited questioned document as shown by the (Exh. 'BB') Questioned Document Report. Accordingly, because of the deed of sale allegedly executed by Amado Dio in favor of Servillano Jerera bore a forged signature of the former it follows that the document is not what it purports to be. Therefore it is deemed fictitious and/or simulated. x x x
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> x x x x x x x x x
>
> Simulated or fictitious contract is void for utter lack of consent. Apparently, Amado Dio, by reason of the forged signature, could not have given his consent to the contract of sale.[31]

The trial court also ruled that Maria is a buyer in good faith and an innocent purchaser for value of the subject property, thus:

> Defendant Maria Latagan acquired the subject property by virtue of a subsequent contract of sale in her favor sometime in 1971 executed by her father, Servillano Jerera, who allegedly obtained the same by virtue of a contract of sale which was fictitious. Surprisingly, in 1977, Servillano again executed a second deed of sale over the same parcel of land in favor of the same buyer, his daughter, the defendant Maria Latagan. On the same date, he executed an instrument designated as Self-Adjudication of Property. These subsequent acts of Servillano Jerera and defendant, Maria Latagan, are indications of knowledge on their part that the document of conveyance from the primitive owner Amado Dio is void ab initio and they attempted to ratify the 'flaws' attached thereunto. Yet, under the law, void contracts can never be ratified:
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> x x x x x x x x x

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[31] *Id.* at 246-247.

Having knowledge of the defect in the title, therefore, the second transferee defendant Maria Latagan cannot be afforded the mantle of protection accorded to buyers-in-good-faith and for value.[32]

Dissatisfied with the trial court Decision, respondents filed an appeal with the CA.

On July 6, 2007, the CA rendered the appealed Decision reversing and setting aside the trial court Decision. In finding that petitioners failed to prove that the Deed of Absolute Sale executed by Amado in favor of Servillano was forged, the CA ruled:

Plaintiffs (petitioners) assert that the signature of Amado Dio on the Deed of Sale (Exhibit K and Exhibit 4 is a forgery. Having made such allegation, it is axiomatic that the plaintiffs must bear the burden of proving the same for as a rule, "forgery cannot be presumed and must be proved by clear, positive and convincing evidence x x." In this case, the plaintiffs presented the report of the NBI document examiner, Efren Flores, (Exhibits L to L-7) [Exhibit L – Sanitary Permit No. 122; L-1 – signature of Amado Dio; L-2 – Sanitary Permit No. 220; L-3 – signature of Amado Dio; L-4 – Sanitary Permit no. 216; L-5 – signature of Amado Dio L-6 – Affidavit dated September 8, 1973; and L-7 – signature of Amado Dio] to show that Amado Dio's signatures on these exhibits are not the same as his signature on Exhibit K (copy of the deed of sale which was not admitted).

Were the plaintiffs (petitioners) successful in discharging their burden? The answer is in the negative. "The best evidence of a forged signature is an *instrument itself* reflecting the alleged forged signature. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged. *Without the original document* containing the alleged forged signature, one cannot make a definitive comparison which would establish forgery. *A comparison based on a mere xerox copy or reproduction of the document under controversy cannot produce reliable results*."

The Court is not unaware that under Sec. 22 of Rule 132 of the Rules of Court, "the handwriting of a person may be proved by any

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[32] *Id.* at 247-248.

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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 hand writing may also be given by 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."

Considering, however, that the documentary bases for such comparison, Exhibits L to L-7 were mere photocopies which were, in fact, not admitted, the Court cannot make one. Any finding in that regard would be unreliable. Neither were there testimonies from plaintiff's witnesses to the effect that they saw somebody, Servillano Jerera or Maria Jerera, forge the said document.[33]

The CA also held that respondents acquired the subject property in good faith, thus:

An examination of the records shows that there were no clear-cut flaws in the title of their predecessor in interest, Servillano Jerera. In this regard, it may be well to stress that bad faith is never presumed especially in this case since the property subject matter of this case is a land titled under the Torrens System. x x x

x x x x x x x x x

With regard to the fact that Servillano Jerera executed a second Deed of Sale over the subject property in favor of Maria Jerera in 1977 despite having executed an earlier one in 1971, suffice it to say that, as already explained by Maria Jerera, it was merely a confirmation of the first sale and not, as interpreted by the court a quo, an indication of knowledge on her part that the document of conveyance from the primitive owner is void *ab initio*. Nor was it an attempt to ratify an otherwise null Deed of Absolute Sale.

It could not be said that defendants [respondents] were guilty of negligence because, at the time of the sale, the land was already in the name of Servillano Jerera (Exhibit 11). Also, the tax declaration was also in his name so there was no annotation, defect or flaw in the title that could have aroused their suspicion as to its authenticity.

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[33] *Rollo*, pp. 39-40. (Citations omitted)

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It being the case, defendants [respondents] indeed have the right to rely on what appears on the face of the certificate of title.

Finally, in arriving at this determination, the Court took into account the fact that, as Adelfa Dio Tolentino herself admitted, the defendants [respondents] are in actual possession of the property but despite the same, the plaintiffs [petitioners] did not take steps since 1970 to claim it or verify the status of their possession. Such inaction and indifference on the part of plaintiffs [petitioners] constitute laches.[34]

On August 22, 2007, the CA issued a Resolution denying petitioners' motion for reconsideration of its Decision.

Aggrieved by the CA Decision, petitioners now seek for its reversal on two errors ascribed to the CA:

I. The Honorable Court of Appeals erred in reversing and setting aside the decision of the Regional Trial Court and holding that the plaintiffs [petitioners] failed to discharge their burden of proof considering that the NBI handwriting expert based its conclusion on mere photocopies of the questioned document.

II. The Honorable Court of Appeals erred in holding that defendants [respondents] did not act in bad faith.[35]

The petition lacks merit.

On the procedural issue of whether or not the instant petition for review on *certiorari* should be dismissed as the verification and certification against forum shopping was signed by only one of the four petitioners, Adelfa, without any showing that she was authorized to represent her co-petitioners Virginia Dio, Renato Dio and Heirs of Roberto Dio, represented by Roger Dio, the Court resolves the same in the negative.

In *Oldarico S. Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative*,[36] the Court restated the jurisprudential

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[34] *Id*. at. 41-42.

[35] *Id.* at 11.

[36] G.R. No. 164205, September 3, 2009, 598 SCRA 27.

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pronouncements respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The Court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) **Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.**

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. **Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule**.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[37]

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[37] Emphasis added.

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In *Ateneo de Naga University v. Manalo,*[38] it was held that the verification requirement is deemed substantially complied with when only one of the heirs-plaintiffs, who has sufficient knowledge and belief to swear to the truth of the allegations in the petition, signed the verification attached to it. Such verification was deemed sufficient assurance that matters alleged in the petition have been made in good faith or are true and correct, not merely speculative. Likewise, liberality and leniency were accorded in some cases where those who did not sign were relatives of the lone signatory[39] of the certification against forum shopping when they all share a common interest in a disputed property and invoke a common cause of action or defense. As held in *Iglesia Ni Cristo v. Hon. Thelma A. Ponferrada*[40]

> The substantial compliance rule has been applied by this Court in a number of cases: *Cavile v. Heirs of Cavile*, where the Court sustained the validity of the certification signed by only one of petitioners because he is a relative of the other petitioners and co-owner of the properties in dispute; *Heirs of Agapito T. Olarte v. Office of the President of the Philippines*, where the Court allowed a certification signed by only two petitioners because the case involved a family home in which all the petitioners shared a common interest; *Gudoy v. Guadalquiver*, where the Court considered as valid the certification signed by only four of the nine petitioners because all petitioners filed as co-owners *pro indiviso* a complaint against respondents for quieting of title and damages, as such, they all have joint interest in the undivided whole; and *Dar v. Alonzo-Legasto*,where the Court sustained the certification signed by only one of the spouses as they were sued jointly involving a property in which they had a common interest.

Guided by the foregoing jurisprudence, the Court finds substantial compliance with the Rules when Adelfa signed the

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[38] G.R. No. 160455, May 9, 2005, 458 SCRA 325, 333-334, citing *Torres v. Specialized Packaging Development Corporation*, G.R. No. 433 SCRA 455, 463-464 (2000).

[39] *Vda. De Formoso v. Philippine National Bank*, G.R. No. 154704, June 1, 2011.

[40] G.R. No. 168943, October 27, 2006. (Citations omitted)

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said verification and certification in behalf of her co-petitioners. As heirs and successors-in-interest of Amado over the subject property, Adelfa and her co-petitioners share a common interest and cause of action in their complaint for the quieting of title and recovery of possession thereof, as well as in the instant petition for review on *certiorari*.

Meanwhile, as to respondent Salve Vda. De Jerera who refused to sign the original copy of the summons but received a copy of the complaint[41], the Court notes that a motion[42] to declare her in default was filed on December 2, 1998 but the trial court failed to resolve such motion. Suffice it to state that the effect of such partial default is dealt with under Section 3 (c), Rule 9 of the Rules of Court:

> (c) When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

The Court now delves into substantive issues of the case.

Section 1, Rule 45 of the Rules of Court clearly states that the petition filed shall raise only questions of law. In the exercise of its power of review, the Court is not a trier of facts and, subject to certain exceptions,[43] it does not normally undertake

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[41] Records, p. 10.

[42] *Id*. at. 57.

[43] (a) When the findings are grounded entirely on speculation, surmises, or conjectures;
(b) When the inference made is manifestly mistaken, absurd, or impossible;
(c) When there is grave abuse of discretion;
(d) When the judgment is based on a misapprehension of facts;
(e) When the findings of facts are conflicting;
(f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
(g) When the CA's findings are contrary to those by the trial court;

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the re-examination of the evidence presented by the parties during trial.[44] One of these exceptions is when the findings of the appellate court are contrary to those of the trial court. After all, findings of fact of the trial court and the CA may be set aside when such findings are not supported by the evidence or where the lower courts' conclusions are based on a misapprehension of facts.[45]

The contrary findings of the trial court and the CA leave the Court with no other alternative but to re-examine the factual issues raised in the present petition.

On the first issue, petitioners argue that contrary to the CA ruling that the NBI handwriting expert witness relied on mere photocopies of the questioned document (the Deed of Absolute Sale executed on January 14, 1970 by the Spouses Amado Dio and Modesta Domer in favor of Servillano) and the specimen signatures of the said spouses, the transcript of stenographic notes of the said witness' testimony show that the basis of his findings and conclusions were original documents submitted to him upon the order of the trial court. They insist that the documents submitted as the questioned document, together with the standard specimens, were all original documents because the NBI does not conduct examination of documents based on mere photocopies. They contend that there is no showing that the said witness strayed out of the NBI standards in the examination process of the questioned document. They assert

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(h) When the findings are conclusions without citation of specific evidence on which they are based;

(i) When the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;

(j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or

(k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Sps. Andrada v. Pilhino Sales Corporation,* 659 Phil 70 (2011).

[44] *Claravall, et al., v. Lim, et al.,* 669 Phil. 570 (2011)

[45] *Golden Apple and Realty Development Corp., et al. v. Sierra Grande Realty Corp., et al.*, 640 Phil. 62 (2010), citing *Guillang, et al. v. Bedania, et al.*, 606 Phil. 57 (2009).

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that the testimony of the said witness—that the signature appearing on the questioned document and the standard specimen signatures were not written by one and the same person—was clear, direct and unambiguous.

Respondents counter that a careful reading of the stenographic notes reveals that no original documents were submitted to the NBI upon order of the trial court. They note that in its Order dated October 10, 2002, the trial court denied admission of the questioned document as it was a mere photocopy.

The Court rules that the CA erred in ruling that petitioners failed to prove that the signatures of Amado and Modesta in the Deed of Absolute Sale dated January 14, 1970 were forged.

Contrary to respondents' claim that no original documents were submitted to the NBI, records show that the trial court ordered the original copies of Exhibit "K," the questioned Deed of Absolute Sale dated January 14, 1970, and Exhibits "L-2,"[46] L-4,"[47] "L-6,"[48] "M,"[49] "M-2,"[50] the documents containing the standard specimen signature of Amado and Modesta, to be submitted to it for examination purposes by the NBI Questioned Documents Division in Manila. The dispositive portion of the trial court Order dated January 13, 2000 reads:

WHEREFORE, in the interest of substantial justice, fair play and equity the Motion is hereby granted. Accordingly, **the original copy** (sic) **of Exhibits "K", "L-2," L-4," "L-6," "M," "M-2," and their derivatives are ordered submitted to this court and the latter will in turn send the same to the National Bureau of Investigation Questioned Documents Division in Manila, for**

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[46] Sanitary Permit No. 220 with the authentic signature of Amado Dio.

[47] Sanitary Permit No. 216 with the authentic signature of Amado.

[48] Affidavit dated September 8, 1973 with the authentic signature of Amado.

[49] Residence Certificate with the authentic signature of Modesta Domer.

[50] Affidavit of Extrajudicial Settlement with the authentic signature of Modesta.

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examination purposes. All expenses incidental hereof shall be borne by the Plaintiffs (petitioners).

SO ORDERED.[51]

The NBI transmitted a copy of Questioned Documents Report No. 196-300[52] in connection with the trial court's request for handwriting examination of the questioned signatures of Amado and Modesta.[53] The NBI concluded in the said report that the questioned document and the standard signatures of Amado were not written by one and the same person, but no definite opinion can be rendered on the signature of Modesta Domer due to insufficiency of specimen submitted for comparative analysis. It also stated that the document containing the questioned signatures was examined and photographed at the Office of the Provincial Assessor of Sorsogon, Sorsogon, on April 11, 2000, while the other specimen submitted were then being retained in the NBI office for safekeeping.

The Court therefore holds that that the original copies of the Deed of Absolute Sale dated January 14, 1970 (Exhibit "K") and the documents containing the standard specimen signatures of Amado and Modesta (Exhibits "L-2," L-4," "L-6," "M," "M-2" and their derivatives), were indeed submitted to the trial court and then turned over to the NBI for examination. The Court is of the view that had petitioners really failed to submit the original copies of the said Exhibits as required in the January 13, 2000 Order, then the trial court would have simply refused to send them over to the NBI. That the NBI complied with the said Order by submitting the Questioned Documents Report No. 196-300, confirms the Court's view that the original copies of the said Exhibits were submitted to the trial court and then turned over to the NBI. Hence, the trial court erred when it later denied admission of petitioners' formal offer of Exhibit "K" for being a mere photocopy.[54] Granted that their formal

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[51] Records, p. 118. (Emphasis added)

[52] *Id.* at 121-122.

[53] *Id.* at 120. Letter dated April 27, 2000.

[54] *Id.* at 187.

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offer of evidence[55] included only photocopies of Exhibit "K", and Exhibits "L-2" to "L-7,"[56] petitioners cannot be blamed therefor as they were earlier ordered to submit the originals thereof to the trial court. It is also noteworthy that in their comment to the formal offer of the said documentary exhibits, respondents admitted the existence of such exhibits, but never objected to their admission for being mere photocopies.[57]

Consequently, the CA erred in ruling that the NBI expert witness merely relied on photocopies of the questioned documents and sample signatures in concluding that Amado's signature was forged, and that Exhibits "L-2" to "L-7"[58] were mere photocopies. While the trial court correctly denied admission of Exhibit "L" in the Order dated September 12, 2002 as the document submitted was not the Sanitary Permit No. 122 as previously marked, but a certificate of ownership of a large cattle, the Court finds no indication that the formal offer of Exhibits "L-2" to "L-7" were denied, hence, they are deemed admitted, as the original copies thereof were ordered submitted to the trial court and then sent to the NBI for examination.

On the alleged bias and partiality on the part of the NBI expert witness due to the admitted fact that petitioners extended him a loan for his appendectomy, the Court holds that the presence of such bias does not necessarily render his testimony incredible. Petitioners' eagerness to prove their cause which is mainly anchored on the said expert witness' testimony, should also be viewed alongside the justifiable reasons of the urgency of his medical condition and the lack of available funds to address it. Petitioners' justification is supported by a duly notarized medical

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[55] *Id.* at 180-182.

[56] Exhibit "L-2" – Sanitary Permit No. 220; Exhibit "L-3" – Signature of Amado thereon; Exhibit "L-4" – Sanitary Permit No. 216; Exhibit "L-5" – Signature of Amado thereon; and Exhibit "L-6" – Affidavit dated September 8, 1973; Exhibit "L-7" – Signature of Amado thereon.

[57] Records, p. 184.

[58] *Id.*

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certificate dated September 25, 2001, stating that the NBI expert witness, Efren Flores, from #2-C San Miguel St., Novaliches, Quezon City, underwent appendectomy and was confined at Sorsogon Medical Mission Group Hospital.[59] As aptly explained by petitioners:

> Such surgical procedure is unexpected and could happen without any warning at all. It is therefor unreasonable to expect one who had to travel more than 600 kilomters from Metro Manila to anticipate such occurrence and to be financially prepared for it.
>
> Who else would run to Mr. Efren Flores' aid except for the only people he has come in contract with here in Sorsogon – the plaintiff-appellee [herein petitioners].[60]

At any rate, having reviewed the said witness testimony in light of the principle that evidence to be believed must not only come from a credible source, the Court agrees with petitioners that the said witness testified in a clear and unequivocal manner, consistent with the Questioned Documents Report No. 196-300 he had submitted to the trial court long before his appendectomy.[61]

Settled is the rule that forgery cannot be presumed and must be proved by clear, positive and convincing evidence by the party alleging the same.[62] Through Questioned Documents Report No. 196-300[63] and the credible expert witness testimony thereon, petitioners have proven that only the signature of Amado in the Deed of Absolute Sale dated January 14, 1970 (Exhibit "K") was forged, but not that of Modesta due to insufficiency of specimen submitted to be used as basis for comparative analysis. Be that as it may, having in mind that the finding of forgery does not depend entirely on the testimonies of handwriting experts

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[59] *Id*. at 161.

[60] *Rollo*, p. 59.

[61] *Id.*

[62] *Heirs of Luga v. Sps. Arciaga*, G.R. No. 175343, July 27, 2011, 670 Phil 294.

[63] Records, pp. 121-122.

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because the judge must conduct an independent examination of a questioned signature in order to arrive at a reasonable conclusion as to its authenticity,[64] the Court compared the signatures of Amado and Modesta in Exhibit "K" *vis-à-vis* Exhibits "L-2" to "L-7"[65], the sanitary permits containing the real signatures of Amado, and Exhibits "M-2" and "M-3," the Affidavit of Extra Judicial Settlement dated May 11, 1962 and Modesta's real signature thereon. Upon a careful examination of such pieces of documentary evidence, the Court finds that petitioners have successfully proved that both signatures of Amado and Modesta in the Deed of Absolute Sale dated January 14, 1970 marked as Exhibit "K" were indeed forged.

In *Rufloe v. Burgos,*[66] the Court held that a forged deed of sale is null and void and conveys no title, for it is a well-settled principle that no one can give what one does not have; *nemo dat quod non habet.* One can sell only what one owns or is authorized to sell, and the buyer can acquire no more right than what the seller can transfer legally.[67] Due to the forged Deed of Absolute Sale dated January 14, 1970, Servillano acquired no right over the subject property which he could convey to his daughter, Maria. All the transactions subsequent to the falsified sale between the Servillano and his daughter are likewise void, namely, the Deeds of Absolute Sale of the subject property that Servillano executed on May 25, 1971 and November 24, 1977 in favor his daughter, as well as the Self-Adjudication of Real Property.

However, it has also been consistently ruled that a forged or fraudulent document may become the root of a valid title, if the

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[64] *Alcos v. Intermediate Appellate Court*, G.R. No. 79317, June 28, 1988, 162 SCRA 833.

[65] Exhibit "L-2" – Sanitary Permit No. 220; Exhibit "L-3" – Signature of Amado thereon; Exhibit "L-4" – Sanitary Permit No. 216; Exhibit "L-5" – Signature of Amado thereon; and Exhibit "L-6" – Affidavit dated September 8, 1973; Exhibit "L-7" – Signature of Amado thereon.

[66] G..R. No. 143573, January 30, 2009.

[67] *Consolidated Rural Bank, Inc. v. Court of Appeals*, G.R. No. 132161, January 17, 2005, 448 SCRA 347, 363.

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property has already been transferred from the name of the owner to that of the forger,[68] and then to that of an innocent purchaser for value.[69] This doctrine emphasizes that a person who deals with registered property in good faith will acquire good title from a forger and be absolutely protected by a Torrens title. This is because a prospective buyer of a property registered under the Torrens system need not go beyond the title, especially when she has no notice of any badge of fraud or defect that would place her on guard.[70] In view of such doctrine, the Court now resolves the second issue of whether or not Maria is an innocent purchaser for value.

Petitioners claim that Maria was aware that Deeds of Absolute Sale was executed in her favor by her father Servillano on May 25, 1971 and on November 24, 1977, and that her father executed a document of self-adjudication where he lied under oath that he is the sole heir of his brothers and sisters, and owner of the subject property. They argue that since Servillano sold the property to his daughter on May 25, 1971, he was no longer the owner thereof in 1977. Moreover, her testimony that she did not pay her father the purchase price of the property subject of the Deed of Sale executed on November 24, 1977, proves that such contract is void *ab initio* for being simulated and for lack of valuable consideration. Petitioners thus impute bad faith on the part of Maria for having submitted a void deed of sale and a perjured document of self-adjudication to the Register of Deeds of Sorsogon in order to acquire title to the subject property. On the other hand, quoting *verbatim* from the CA decision, respondents insist that its ruling on the lack of bad faith on her part is forthright.

After a careful review of the evidence on record, the Court agrees with the CA that Maria is an innocent purchaser for value of the subject property.

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[68] *Lim v. Chuatoco*, G.R. No. 161861, March 11, 2005, 453 SCRA 308.

[69] *Camper Realty Corp. v. Pajo-Reyes, et al.*, 646 Phil 689 (2010); *Rufloe v. Burgos*, *supra* note 66, citing *Cayana v. Court of Appeals*, G.R. No. 125607, March 18, 2004, 426 SCRA 10, 22.

[70] *Camper Realty Corp. v. Pajo-Reyes, et al.*, *supra.*

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In *Sigaya v. Mayuga*,[71] the Court held that the burden of proving the status of a purchaser in good faith lies upon one who asserts that status and this *onus probandi* cannot be discharged my mere invocation of the legal presumption of good faith. A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before she has notice of the adverse claims and interest of another person in the same property. The honesty of intention which constitutes good faith implies a freedom from knowledge of circumstances which ought to put a person on inquiry.[72]

It is a well-settled rule that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property.[73] Where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its face indicates in quest for any hidden defects or inchoate right that may subsequently defeat his right thereto.[74] However, this rule shall not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious person to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent person to inquire into the status of the title of the property in litigation.[75]

In this case, the Court finds that respondents have successfully discharged such burden of proving the status of a purchaser in

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[71] 504 Phil. 600 (2005).

[72] *Sps. Occeña vs. Esponilla*, G.R. No. 156973, June 4, 2004, 431 SCRA 116, 124.

[73] *Sigaya v. Mayuga*, *supra* note 71.

[74] *Lim v. Chuatoco*, *supra* note 68.

[75] *Id.*

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good faith and for value. Contrary to petitioners' contention and the trial court's ruling, the fact that Maria was aware of the execution of the Deed of Absolute Sale dated May 25, 1971, and the Deed of Absolute Sale and the Self-adjudication of Real Property both dated November 24, 1977, does not constitute knowledge of a defect or lack of title of the vendor, or of sufficient facts to induce a reasonably prudent person to inquire into the status such title. Anent the execution of two deeds of absolute sale over the same property, the Court finds no cogent reason to disturb the CA ruling on such issue:

> With regard to the fact that Servillano Jerera executed a second Deed of Sale over the subject property in favor of Maria Jerera in 1977 despite having executed an earlier one in 1971, suffice it to say that, as already explained by Maria Jerera, it was merely a confirmation of the first sale and not, as interpreted by the court a quo, an indication of knowledge on her part that the document of conveyance from the primitive owner is void ab initio. Nor was it an attempt to ratify an otherwise null Deed of Absolute Sale.[76]

On the supposedly perjured Self-Adjudication of Real Property executed by Servillano on November 24, 1977, the same day he executed the second Deed of Absolute Sale which confirmed the first sale the same property in favor of his daughter on May 25, 1971, the Court holds that the doubt cast by those documents in the title of Maria Jerera Latagan is properly addressed in an action for quieting of title between her and the heirs and assigns of Cepriano,[77] Dionesia,[78] Teopista, Maria,[79] and Rosa, all surnamed Jerera, who were adversely affected by such self-adjudication. Not being parties or privies to those documents, petitioners cannot invoke such doubt to support their claim over the property, which is based on a mere tax declaration in the name of their successor-in-interest, i.e., Tax Dec. No. 9273 in

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[76] *Rollo*, p. 41.

[77] Also spelled as "Cipriano."

[78] Also spelled as "Dionisia."

[79] Wife of *Mauricio "Jarilla."*

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the name of Amado. Petitioners would do well to remember that in civil cases, the specific rule as to the burden of proof is that the plaintiff has the burden of proving the material allegations of the complaint which are denied by the answer; and the defendant has the burden of proving the material allegations in his answer, which sets up new matter as a defense.[80] This rule does not involve a shifting of the burden of proof, but merely means that each party must establish his own case.[81] Moreover, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent.[82]

The Court also rejects petitioners' contentions that Maria's testimony that she did not pay her father the purchase price of the property subject of the Deed of Sale executed on November 24, 1977, proves that such contract is void *ab initio* for being simulated and for lack of valuable consideration.

As held in *Ramos v. Heirs of Honorio Ramos, Sr.*,[83] the burden of proving the alleged simulation of a contract falls on those who impugn its regularity and validity. A failure to discharge this duty will result in the upholding of the contract. The primary consideration in determining whether a contract is simulated is the intention of the parties as manifested by the express terms of the agreement itself, as well as the contemporaneous and subsequent actions of the parties. The most striking index of simulation is not the filial relationship between the purported seller and buyer, but the complete absence of any attempt in any manner on the part of the latter to assert rights of dominion over the disputed property. In this case, the lack of consideration for the November 24, 1977 Deed of Absolute Sale was justified when Maria testified that the second sale was merely a confirmation of the first sale on May 25, 1971. Besides, petitioner

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[80] *VSD Realty & Development Corporation v. Uniwide Sales, Inc.*, G.R. No. 170677, October 24, 2012.

[81] *Id.*

[82] *Spouses Ramos v. Obispo*, G.R. No. 193804, February 27, 2013.

[83] 431 Phil. 337 (2002).

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Adelfa herself testified[84] that after the execution of the Deed of Absolute Sale on January 14, 1970, the Jereras asserted dominion over the subject property by taking possession and claiming ownership of it. Hence, such sale cannot be considered simulated.

As to the lack of consideration for the second deed of sale, it is presumed that a written contract is for a valuable consideration.[85] Thus, the execution of a deed purporting to convey ownership of a realty is in itself *prima facie* evidence of the existence of a valuable consideration and the party alleging lack of consideration has the burden of proving such allegation.[86] Petitioners failed to present clear and convincing evidence to overturn such disputable presumption. At any rate, Maria aptly explained that she no longer paid for a consideration for the November 24, 1977 Deed of Absolute Sale as it was a mere confirmation of the May 25, 1971 Deed of Absolute sale of the subject property for which she had paid ₱585.00.

It is also noteworthy that petitioners failed to dispute that Maria had been in actual, peaceful and uninterrupted possession of the subject property since her birth on April 23, 1929, long before it was sold to her by Servillano by virtue of the Deeds of Absolute Sale executed on May 25, 1971 and on November 24, 1977. On September 6, 1973, she declared it in her name for taxation purposes under Tax Dec. No. 4826.[87] On October 27, 1978, TCT No. T-15364 in the name of Servillano was cancelled and TCT No. T-15365[88] was issued and registered in her name. She also religiously paid the taxes thereon from 1985 until 2001 as evidenced by real property tax receipts.[89] It is a

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[84] TSN, December 10, 1998, p. 18.

[85] Rules of Court, Rule 131, Sec. 5 (r).

[86] *Ong v. Ong,* G.R. No. 67888, October 8, 1985, citing *Caballero, et al. v. Caballero, et al.,* C.A. 45 O.G. 2536.

[87] Exhibit "30".

[88] Exhibit "S".

[89] Exhibits "21" to "27".

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settled rule that albeit tax declarations and realty tax payment of property are not conclusive evidence of ownership, they are nonetheless good *indicia* of the possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession.[90] Thus, her voluntary declaration of the subject property for taxation purposes and payment of such tax strengthens her *bona fide* claim of title over the property.

In contrast, petitioners' predecessor-in-interest, Amado, was only able to declare the subject property for taxation purposes in his name under Tax Dec. No. 9273 after having consolidated his ownership thereof on December 7, 1967, but failed to cause the cancellation of OCT No. 1249 and the registration and issuance of its title in his own name, let alone cause the annotation of his adverse claim. It bears emphasis that the issuance of such torrens certificate of title is constructive notice to the whole world that the person in whose name it is issued has become the owner of the lot described therein.[91]

Neither Amado, who was living nearby the property, nor any of his successors-in-interests—not to mention petitioner Adelfa who admitted having been a long-time neighbor of Maria—have taken any appropriate action for the recovery of its ownership and possession from respondents, despite having been registered in Servillano's name on October 27, 1978 through the forged January 14, 1970 Deed of Absolute Sale. It was only on May 21, 1998 that petitioners filed a complaint for quieting of title, recovery of property and damages only, or after the lapse of more than twenty (20) years after TCT No. T-15365 in the name of Maria was issued and registered on October 27, 1978, in lieu of the cancelled TCT No. T-15364 in the name of Servillano. These matters can be gleaned from cross-examination of Adelfa, to wit:

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[90] *Ganila v. Court of Appeals*, G.R. No. 150755, 28 June 2005, 461 SCRA 435, 448, citing *Alcaraz v. Tangga-an*, G.R. No. 128568, 9 April 2003, 401 SCRA 84, 90-91.

[91] *Borbe v. Calalo,* G.R. No. 152572, October 5, 2007.

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[Atty. Acelo Bailey, counsel for respondents]

Q. And, before your father died [in 1979], was there any personal knowledge you acquired whether your father initiated any case against these Jereras, particularly Maria Jerera Latagan as well as Serviliano Jerera in connection with this property for ownership?

[Witness Adelfa Dio Tolentino]
A. No sir.

Q. So, in other words, it is only now [1998], that only case that was filed by you against defendants [respondents] in connection with this property in question?
A. Because I am claiming for the property of Amado Dio which is (sic) leased and I found it from them.

Q. When you said that lot is leased, that is only [f]igurative speech because the land is there?
A. Yes sir.

Q. And, in fact that lot is very near the residence or the house of your father, about 200 meters away. Am I right?
A. Yes sir.

Q. And, as you said you have been twenty (20) years staying in Roro, San Juan, Sorsogon, Sorsogon before the death of your father, you have seen, actually you have seen the lot?
A. Yes sir.

Q. And, you have seen this Maria Jerera, Ebon Latagan, Serviliano Jerera and Enia Dagñ alan before in that place?
A. Yes sir because they are my neighbors.

Q. But, no claim was ever launched by your father during his lifetime as well as you as his heirs (sic)?
A. No sir. In 1974, when we last talk[ed], my father told me to take care of the small property we have.

COURT:
Q. And, you understood that, that is the property which your father occupied then?

WITNESS:
A. What I understood are all the properties.[92]

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[92] TSN, July 21, 1999, pp. 19-20.

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Adelfa also conceded that petitioners and their predecessor-in-interest neglected and failed to pay realty taxes on the subject property:

> ATTY. BAILEY:
>
> Q. Now, you claim that your father the late Amado Dio is the owner of this lot in question because of the pacto de retro sale of the Jereras in favor of your father and the consolidation of ownership signed by your father. My question is this: Do you have evidence to prove that indeed as owner, you paid taxes of the property, if indeed, you were the owners of this lot in question?
>
> WITNESS:
> A. Maybe my father paid the taxes. But I did not see any receipt.
>
> Q. But you know how to get this documents allegedly from the Register of Deeds and Government offices concerned, did you not exert effort to look over this in the Assessor's office as well as in the Municipality of Sorsogon to see and verify whether taxes were paid by your father as far as this property is concerned?
>
> A. I did not anymore verify from the Municipal Assessor's Office whether taxes were paid because I saw the document of sale in 1970 and I presumed that the realty taxes were already paid by them, by the Jereras.
>
> Q. So, you are now telling this Court categorically that you are not sure that your father paid the realty taxes because you said lease only as you cannot show to this Court any receipt evidencing payment in the name of your father?
>
> A. Maybe he paid or maybe he did not pay because this lot was neglected.
>
> Q. So, you are sure that this lot is neglected by your father?
>
> A. Yes sir.[93]

Significantly, there is no evidence on record that Maria was aware that the signatures of Amado and Modesta in the Deed of Absolute Sale dated January 14, 1970 were forged in order for Servillano to cause the cancellation OCT No. 1249 covering

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[93] TSN, July 21, 1999, pp. 20-21.

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the subject property, and the issuance of TCT No. T-15364 in his name on October 27, 1978. All told, despite the fact that the Deed of Absolute Sale dated January 14, 1970 was forged, it became the root of a valid title when it was transferred from the name of Servillano to Maria who was proven to be an innocent purchaser for value.

Finally, the Court notes that petitioners' cause of action for quieting of title, recovery and damages over the subject property acquired by respondents through a forged deed can be considered as that of enforcing an implied trust[94] under Article 1456 of the Civil Code:

> Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

In *Heirs of Jose Olviga v. Court of Appeals,*[95] the Court explained when an action enforcing an implied trust prescribes:

> With regard to the issue of prescription, this Court has ruled a number of times before that an action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property (*Vda. de Portugal vs. IAC*, 159 SCRA 178). But this rule applies only *when the plaintiff is not in possession of the property,* since if a person claiming to be the owner thereof is in actual possession of the property, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe.

In the case at bar, petitioners were not in possession of the subject property when they filed their complaint for quieting of title, recovery and damages. If their complaint were to be considered as that of enforcing an implied trust, it should have been filed within 10 years from the issuance of TCT No. T-15364

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[94] *Heirs of Domingo Valientes v. Hon. Ramas, et al.*, G.R. No. 157852, December 15, 2010.

[95] G.R. No. 104813, October 21, 1993, 227 SCRA 330.

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in the name of the innocent purchaser for value, Maria, on October 27, 1978. However, the complaint was filed only May 21, 1998 or about 20 years from the issuance of TCT No. T-15364, which is way beyond the prescriptive period. Worse, such delay is unjustified and unreasonably long, and petitioners clearly failed to exercise due diligence in asserting their right over the property. Therefore, petitioners' complaint is likewise barred by laches, which has been defined as the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence, could or should have been done earlier, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it.[96]

WHEREFORE, premises considered, the petition is **DENIED**. The Court of Appeals Decision dated July 6, 2007 and its Resolution dated August 22, 2007 in CA-G.R. CV No. 83337 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Villarama, Jr., Reyes, and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 182926. June 22, 2015]

ANA LOU B. NAVAJA, *petitioner, vs.* **HON. MANUEL A. DE CASTRO, or the Acting Presiding Judge of MCTC Jagna-Garcia-Hernandez, DKT PHILS., INC., represented by ATTY. EDGAR BORJE,** *respondents*.

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[96] *Philippine Carpet Manufacturing Corporation v. Tagyamon*, G.R. No. 191475, December 11, 2013, 712 SCRA 489, 498.