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May I add here that the foregoing reasons explain why I have always insisted that when appeals in criminal cases before US have to be dismissed by reason of the death of the appellant, it is not proper to qualify such dismissal as limited to that of the criminal liability of the appellant. It is my humble view that the dismissal should be unqualified and that the offended parties concerned should be left to pursue their remedies, if they so desire, in the appropriate separate civil action contemplated both in the Civil Code and in Rule 111, as explained above. I admit this view might entail the institution of what is virtually a repetitive proceeding, but I cannot see any way of avoiding what the unequivocal language of the pertinent legal provisions mandate, unless I make myself a party to judicial legislation, which I believe it is not constitutionally permissible for me to do, no matter how practical the procedure might be.

FIRST DIVISION

[G.R. No. L-31494. January 23, 1978]

PASTOR LOPEZ, *petitioner*, *vs.* **COURT OF APPEALS, and JESUS R. MARTIN,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; THAT PUBLIC DOCUMENTS ARE GENUINE IS REBUTTABLE.** — It is true that public documents are presumed genuine and regular under the provisions of the Rules of Court but this presumption is a rebuttable presumption which may be overcome by clear, strong and convincing evidence not conclusive evidence.

2. **ID.; ID.; ID.; ID.; SUBSCRIBING WITNESSES; AS EVIDENCE TO THE GENUINENESS OF SIGNATURE.** — There is no inflexible rule under Sec. 23, Rule 132 of the Revised Rules of Court that gives priority to subscribing witnesses in the order and quality of evidence to prove a handwriting. The rule merely

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enumerates the means or methods by which the handwriting of a person may be proved, which may either be (1) by any witness who believes it to be the handwriting of such person, and has seen the person write, or has been writing purporting to be his upon which the witness has acted or has been charged, and has thus acquired knowledge of the handwriting of such person; (2) 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. The law makes no preference, much less distinction among and between the different means in proving the handwriting of a person.

3. **ID.; ID.; ID.; ID.; COURT MAY MAKE COMPARISON BETWEEN THE QUESTIONED AND STANDARD SIGNATURES.** — Under Section 23, Rule 32, Revised Rules of Courts, the court may also make a comparison between the questioned and standard signatures between the questioned and standard signatures before it, and since the Judge or the Magistrates must make use of their physical senses to conduct an ocular inspection of the signatures where the signatures appear as they are, and not merely described by witnesses testifying about them, the result of such inspection by the Judge or the Magistrates becomes the ultimate judgment of the court. The signatures speak for themselves. *Res ipsa loquitur*.

4. **ID.; ID.; ID.; ID.; TESTIMONY OF NBI HANDWRITING EXPERT ON AUTHENTICITY OF SIGNATURE GIVEN MORE WEIGHT THAN THAT OF NOTARY PUBLIC OF THE SUBSCRIBING WITNESSES.** — It can hardly expected of the notary public to dispute the authenticity of the very deed he had notarized since he was paid his notarial fees therefor. much less of the subscribing witnesses to deny their participation, especially where it is shown that they are local politicians who are likely to affix their names to every paper and deed asked of them to act as witnesses. As against the testimony of the notary public and the subscribing witnesses, the testimony on a technical matter of an NBI handwriting expert, as a government witness fulfilling an official function requested by the court, must be viewed as a public duty impressed with and entitled to credence and faith: especially where it is shown that the NBI expert had been an examiner for more than 5 years, that his report bears the approval of the Assistant Director, and there is no proof

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that the NBI witness was paid by the interested party or that he was motivated with bias or prejudice or interest in making the report.

5. **CIVIL LAW; SPECIAL CONTRACTS; SALES; CIRCUMSTANCES SHOWING BADGES OF FRAUD REVEALING FALSITY OF ALLEGED SALE.** — Where petitioner's claims, defenses and acts are highly improbable, exaggerated and inconsistent with the regular norm of human conduct and the natural course of events, such as a claim that his possession and ownership of the property is more than thirty (30) years when the said property was supposedly acquired and purchased only nine (9) years back; that the improvement (house) was built by him in 1937 when the land was sold to him eleven (11) years thereafter and he declared the house for taxation purposes only after eleven (11) years; that he registered the deed of sale nine (9) years after its execution, and after the complainant for its cancellation had already been filed, and finally, the gross inadequacy and unconscionableness of the consideration, petitioner's posture becomes a misrepresentation that cannot be relieved or sustained.

APPEARANCES OF COUNSEL

Porfirio V. Sison, Nancy Q. Sison & Anthony Q. Sison for petitioner.

H. G. Laureta for private respondent.

D E C I S I O N

GUERRERO, *J.*:

Appeal by *certiorari* from the decision of the Court of Appeals[1] in GA-G.R. No. 34109-R entitled "*Jesus R. Martin, plaintiff-Appellee, versus Pastor Lopez, defendant-appellant*," affirming the judgment of the Court of First Instance of Pangasinan, the dispositive portion of which states, as follows:

"WHEREFORE, decision is hereby rendered declaring false and apocryphal, null and void, the Deed of Absolute Sale, dated May

[1] First Division, Concepcion Jr., *J. ponente*, with Villamor, P.J., Mojica, *J.*, concurring.

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18, 1948, being Document No. 189, Page 2, Book II, Series of 1948 of the notary public *ex-oficio*, Simeon Rico; ordering the defendant to pay to the plaintiff the sum of ₱280.00 as value of the shingles and another sum of ₱40.00 a year until the land described in paragraph 3 of the complaint is delivered to the plaintiff; ordering the defendant to pay to the plaintiff the sum of ₱840.00 as rental of the house built on the parcel of land described in paragraph 4 of the said complaint; and another sum of ₱10.00 a month from today until the said house shall have been delivered to the plaintiff; adjudging the defendant to be the owner of the parcel of land described in paragraph 7 of the complaint; adjudging the plaintiff to be the owner of the parcel of land described in paragraph 3 of the complaint and the house existing therein and described in paragraph 4 of the same complaint; ordering the defendant to vacate the land and the house mentioned above and deliver them to the plaintiff; and ordering the defendant to pay the costs of the suit.

SO ORDERED.

Done at Lingayen, Pangasinan, this 8th day of June, 1963.

(SGD.) ELOY B. BELLO
Judge"

On July 11, 1957, respondent Jesus R. Martin filed the complaint against petitioner Pastor Lopez in the Court of First Instance of Pangasinan seeking principally the recovery of two (2) parcels of land described in paragraphs 3 and 7 of the complaint, and the declaration of nullity of the deed of sale dated May 18, 1948 allegedly executed by one Gervacio Resoso conveying to the petitioner the said land described in paragraph 3 of the complaint, with damages, attorneys fees and costs.

On August 12, 1957, petitioner Pastor Lopez, the defendant below, filed his answer, alleging that he is the owner of the parcels of land in question as well as the improvements thereon by virtue of a deed of absolute sale duly executed by said Gervacio Resoso over the parcel of land described in paragraph 3 of the complaint, and also by virtue of a deed of absolute sale executed by Zacarias Resoso over the parcel of land described in paragraph 7 of the complaint.

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The evidence adduced by Jesus R. Martin shows that he is the grandson and sole heir of the deceased Gervacio Resoso and Marta Manaois, being the only son of their daughter, Juana Resoso, married to Aurelio Martin; that the said two (2) parcels of land and the house constructed on the residential land described in paragraph 3 of said complaint had been in the continuous possession of Gervacio Resoso until his death; that after the death of Gervacio Resoso in 1956, Pastor Lopez illegally took possession of the said parcels of land and drove the respondent Jesus R. Martin from the house constructed on the residential land described in paragraph 3 of the complaint; that the deed of absolute sale, dated May 18, 1948 allegedly executed by Gervacio Resoso conveying to the petitioner the land described in paragraph 3 of the complaint is "fictitious, simulated and fraudulent," the signature of Gervacio Resoso appearing thereon not being his genuine signature.

On the other hand, Pastor Lopez claimed that he is the stepson of the late Gervacio Resoso, being the child by another man of Gervacio's second wife, one Filomena Lopez; that he bought the parcel of land described in paragraph 3 of the complaint on May 18, 1948 and that he paid the consideration of ₱100.00 in the presence of Judge Simeon Rico, Justice of the Peace of Labrador, Pangasinan, who prepared and notarized the disputed deed of sale and in the presence of the two witnesses to the contract of sale; that thereafter he declared for taxation purposes the said parcel of land in his name and since then, he had been paying the taxes thereon; that it was he who built the house existing on the land described in paragraph 3 of the complaint; and that he bought the parcel of land described in paragraph 7 of the complaint from one Zacarias Resoso, brother of the deceased owner.

At the trial below, Pastor Lopez presented as witnesses Judge Simeon Rico, the Notary Public, and the two alleged subscribing witnesses to the said deed, Antonio Marayag and Feliciano Soliven, who all affirmed the genuineness of the said document. On the other hand, Jesus R. Martin presented Antonio Rotor, an NBI examiner of documents, who testified that the signature

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on the deed of sale did not appear to be the same signature of the vendor appearing on other documents bearing his undisputed signature. The testimony of the NBI documents examiner is hereunder reproduced:

"My basis of my conclusion is the spelling of the name Gervacio Resoso, sir. In the standard, Gervacio Resoso is spelled as "B" and in the letter "R" with RIS in all the sample signatures, sir. In the questioned signature, Gervacio, it is "V" and in Resoso, it is spelled as letter "E" and not letter "I". one of the signs of capital letters "D" and "R". The sign of letter "G" in the standard is different from the genuine of the capital letter in the questioned. But in the sign of capital letter "R" in Resoso, there is a mistake of terminal stroke of capital letter "R" it curves or there is a curve of capital letter "R" and it is found in all the standard type which shows the characteristics or permanent characters of the writer, sir. In the last signature there is a curve but it does not touch the extent of the letter, it is outside but it is the characteristic curving of the internal stroke. In the questioned signature, there is no curve. It is just a simple curve to the right. The standard basis of my findings are the sizes of the letters, sir. The letters or standard is Exhs. "E-1" to "E-6", the tendency of these letters is narrower and in the questioned document Exh. A, the letters are broad instead of narrower and in the terminal stroke of the letter "V", there is a pause which indicates the stroke or rather there is a pause there.

Also in the terminal stroke of Exh. "E", there is a pause indicated by a broad stroke. It is also an indication that the writer paused and unlike the standard signatures, there is a steady movement of the writer. The pause which is found or are found in the questioned documents are never found in the standards. In Exh. "A", sir, the writer makes a cross and there is an overwriting here of the letters and then before he makes the connection to the next letter, there is a hesitation as indicated by the stroke here. (The witness indicating the line between the letters, "E" and "S" in Exh. "A") Another characteristics is terminal letter "O" in the word, Resoso to the preceding letter "S". These are the tendency of these letters in the sample signature, Exhs. "1" to "E-6" are smaller than the preceding letter "S" and which is different in the questioned signature Resoso in Exh. "A". And with this findings, my conclusion is that the writer of the questioned signature in Exh. "A" is not the same writer who

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submitted his standard which are marked Exhs. "E-1" to "E-6", sir." (*sic*) [2]

In its Decision, the lower court held and declared "false and apocryphal, null and void, the Deed of Absolute Sale, dated May 18, 1948, being Document No. 189, Page 2, Book II, Series of 1948 of the notary *ex-oficio*, Simeon Rico."

With respect to the parcel of land described under paragraph 7 of the complaint, the lower court found that the said land had been sold by Zacarias Resoso to Pastor Lopez, with the conformity and the knowledge of Gervacio Resoso.

On appeal to the Court of Appeals, Pastor Lopez limited his appeal to the decision of the lower court declaring Jesus R. Martin as the true owner of the parcel of land described in paragraph 3 of the complaint on the ground that the deed of sale conveying the same to Pastor Lopez is a falsity.

On the basis of the evidence, the appellate court found the signature of Gervacio Resoso appearing on the disputed document a forgery and affirmed the decision of the lower court. On July 26, 1969, Pastor Lopez filed a motion for reconsideration, and again on July 28, 1969 filed an urgent motion setting the said motion for reconsideration for oral argument. On December 13, 1969, the appellate court denied both motions in a minute resolution.

Hence, this present recourse on the following assignment of errors:

I. The court erred in not applying the rule that public documents are presumed genuine and regular and that it requires not merely preponderance of evidence but clear, strong, and conclusive evidence to overthrow this legal presumption.

II. The court erred in disregarding the inflexible rule that gives priority to subscribing witnesses in the order and quality of evidence to prove a handwriting.

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[2] Record on Appeal, pp. 56-59.

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III. The court deviated from accepted rules in not taking into account the testimony of the judge-notary and two subscribing witnesses who gave uncontradicted testimony as to the genuineness of the signature in the Deed of Sale which they personally witnessed.

IV. The court erred in not taking into account the rule that the opinion testimony of an expert is the most unreliable, the weakest, and the lowest order of evidence known to law.

V. The court erred in not taking into account that petitioner reasonably explained the differences in the signatures as reported by the witness and observed by the court.

VI. The Court of Appeals erred in sustaining the finding of the lower court on the alleged "unusual" procedure of payment when the same is grounded entirely on conjecture and not based on evidence of record.

VII. The court erred in sustaining award of damages which is without basis in fact and law.

The first five errors assigned by petitioner all assail the finding of the appellate court that the deed of sale, Exh. A, is a forgery. Considering each and every one of them and all of them together, We find the contentions of petitioner to be without merit. It is true that public documents are presumed genuine and regular under the provisions of the Rules of Court but this presumption is a rebuttable presumption which may be overcome by clear, strong and convincing evidence, not conclusive evidence as petitioner asserts in the first assignment of error.

In the case at bar, the Court of Appeals relied not merely on the expert testimony given by Antonio B. Rotor, the NBI handwriting expert, who examined the questioned signature appearing on the deed of sale, Exh. A, then compared them with standard signatures of Gervacio Resoso and concluded that the questioned signature was not written by the same person who made the standard signatures. Apart from this expert evidence, the Court of Appeals made its own observation and comparison, and arrived at its own finding and conclusion, which states:

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"We have made a comparative analysis of the questioned signature appearing on the deed of sale with the admittedly genuine signatures of Gervacio Resoso (Exh. B-1, to B-4 and C) and the conclusion is inevitable that the signature in question is indeed a falsified one. Apart from the finding of Antonio B. Rotor, an NBI handwriting expert, that the writer of the questioned signature is not the same writer of that appearing on the specimens of genuine signatures of Gervacio Resoso, by mere glance of the questioned signature and the specimens the marked difference and distinction is patently discernable. In the questioned signature the strokes of the writer are not natural. In fact there are added strokes in the capital letter "C". In the said genuine signatures, the late Gervacio Resoso had the natural characteristics of using letter "b" instead of letter "v" in Gervacio and letter "i" instead of "e" in Resoso. Even in inclination of the strokes and the usual habit of connecting the letters by the writer there indeed appears to have a marked distinction between the writer of the questioned signatures and the writer of the genuine signatures." (*Rollo*, pp. 22-23, Decision, CA).

The above conclusion of the respondent appellate court is the same as that found and concluded by the trial court's ruling, thus:

"One does not need to be an expert to see the very divergence and distinction between the signatures appearing in Exh. A-1 and those appearing in Exhs. B-1, B-2, B-3, B-4 and C. Because of this, this Court is inclined to believe and to hold that the signatures of Gervacio Resoso appearing in Exhs. A, 1 and 2 are not the genuine signatures of said Gervacio Resoso. As well pointed out by the expert, it will be seen in the signature of Gervacio Resoso in Exh. A and Exhs. 1 and 2 there is a tendency to imitate; in other words, the stroke there is not natural. As a matter of fact, there are added strokes in the letter capital "G". Add to that, the finding that the late Gervacio Resoso always used letter (b) in Gervacio and did not use the letter (e) in signing but the letter (i) which is a characteristic common in the province of Pangasinan among the Pangasinan people. In the light of all these, this Court is constrained to hold as it hereby holds that the Deed of Absolute Sale, Exhs. A and Exhs. 1 as well as its copy, Exh. 2, is an apocryphal document, forged and falsified by whoever was interested in said land." (p. 60, Record on Appeal)

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For our own verification and satisfaction, this Court likewise made a close examination, comparison and analysis of the questioned and standard signatures, aided by the testimony of the NBI witness, and We have come to the same finding, the same conclusion arrived at by the lower courts. The differences pointed out by the NBI witness altogether paint a picture of general dissimilarity between the standard signature and the questioned signature.

There is no inflexible rule as claimed by petitioner under Sec. 23, Rule 132 of the Revised Rules of Court that gives priority to subscribing witnesses in the order and quality of evidence to prove a handwriting. The rule referred to above merely enumerates the means or methods by which the handwriting of a person may be proved, which may either be by: 1 — any witness who believes it to be the handwriting of such person, and has seen the person write; 2 — 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; 3 — 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. The law makes no preference, much less distinction among and between the different means stated above in proving the handwriting of a person.

Under the above cited section, Sec. 23, Rule 132, Revised Rules of Court, it must be noted that the court may also make a comparison between the questioned and standard signatures before it, and since the Judge or the Magistrates must make use of their physical senses to conduct an ocular inspection of the signatures where the signatures appear as they are, and not merely described by witnesses testifying about them, the result of such inspection by the Judge or the Magistrates becomes the ultimate judgment of the Court. Plainly, the signatures speak for themselves. *Res ipsa loquitur.*

Petitioner contends that the testimonies of the judge-notary and two subscribing witnesses who gave uncontradicted

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testimony as to the genuineness of the signature on the deed of sale should have been given credence and credit, since the opinion testimony of an expert is the most unreliable, the weakest and the lowest order of evidence known to law.

We disagree. It can hardly be expected of the notary public to dispute the authenticity of the very deed he had notarized since he was paid his notarial fees therefor, much less of the two subscribing witnesses to deny their participation because being local politicians as vice-mayor and *barrio* lieutenant, they are likely to affix their names to every paper and deed asked of them to act as witnesses by a school principal and/or the town judge as in this case. On the other hand, Mr. Rotor, the NBI expert had been an examiner of questioned documents of the NBI for more than 5 years. In the report rendered by him, Exh. F, it shows that the handwriting examination was requested by the Presiding Judge himself, Judge Eloy Bello, who was trying the case itself. The said report bears also the approval by the Asst. Director, Felipe P. Logan. And there is no proof that the NBI witness was paid by the interested party or that he was motivated with bias or prejudice or interest in making the report. As a government witness fulfilling an official function requested by the Court, his testimony on a technical matter must be viewed as a public duty impressed with and entitled to credence and faith.

On the petitioner's explanation that the signature "GERVACIO RESOSO" was written because the name as typewritten was "GERVACIO RESOSO," suffice it to say that the same contradicts petitioner's evidence marked Exhs. 3-B, 4-A, 4-B, 4-C, where the names as typewritten were also "GERBACIO RESOSO" but the signatures signed over them reads: "GERBACIO RISOSO." Petitioner also marked as his own evidence Exh. 6, Exh. 7, 7-A and 7-B where the typewritten names read GERVACIO RESOSO and the signatures above spell: GERBACIO RISOSO. All these repudiate petitioner's explanation. Petitioner cannot now repudiate his own evidence for he is bound by the same.

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Anent the sixth assignment of error attacking the finding of the lower court on the "unusual" procedure of payment which the petitioner claims to be grounded on conjecture and not based on evidence of record, the appellate court itself approved the observation of the trial court, affirming it to be well-founded "in the sense that the transaction being between a step-father and steep-son, the natural course of things would be that there would be no need for the vendee to show the payment of the ₱100.00 to the vendor. And if the defendant has dared to give such an exaggerated, not to say, false evidence before this Court, it was only with the purpose of trying to hide a nefarious and illegal act, that is, the falsification of the deed of absolute sale, Exh. A and Exhs. 1 and 2."[3]

We find other exaggerated claims and acts of petitioner which run counter to the natural course of things, inconsistent with the contention of the petitioner that he bought the property in question from Gervacio Resoso on May 18, 1948: Thus —

1. Petitioner contends that he has been in possession of the land "in good faith and in concept of owner, openly, publicly, adversely, peacefully, actually and continuously for more than thirty years now." (Brief of the petitioner, p. 4) Since the alleged sale took place on May 18, 1948, it is not only exaggerated but "apocryphal and false" as the deed itself to assert that he had been in possession for more than 30 years already. This cannot be merely a clerical error for said allegation of possession is averred in par. 25 of the Answer dated August 12, 1957 under the caption Special Defense to the First Cause of Action (Record on Appeal, pp. 26-27) and is once more repeated in par. 27 of the Answer under the caption Counterclaim. (Record on Appeal, p. 30) For the third time, petitioner alleges 30 years possession in its Reply Brief, p. 5. If the claim of possession were true, then he would have acquired the land in 1927, not on May 18, 1948. The shallow pretense and the empty extravagance of petitioner's claim is at once palpable and must fall from its inherent improbability of time and period.

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[3] Records. p. 23.

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2. Petitioner claims that he built his house on the land in controversy in 1937, as testified to by his witness, Timoteo Molano, the carpenter who took 4 weeks to build the house with 8 workers whose wages were paid by the petitioner, the latter paying the materials used in the construction. (t.s.n., pp. 72-75, hearing of March 11, 1963). Again, this is exaggerated, if not false for petitioner supposedly bought the land in 1948 yet he built his house on the land in 1937. Assuming that he built his house on the land in 1937, yet he declared the house for taxation purposes only in November 10, 1948, as shown in Exh. 8-b, Tax Declaration No. 15125, some eleven (11) years thereafter, which again is irregular and out of the ordinary course of events.

3. The act of the petitioner in registering the deed of sale, Exh. A, allegedly executed on May 18, 1948, in the Office of the Register of Deeds of Pangasinan only on July 22, 1957, which was after the filing of the complaint on July 11, 1957 (Record on Appeal, p. 1) is very suspicious. This registration, as shown on the reverse side of Exh. 2, was caused by petitioner 8 months after the death of the vendor, Gervacio Resoso, and 9 years the execution of the instrument itself. These posterior acts of the petitioner indicate a questionable and doubtful design to cover up a suspicious, if not nefarious transaction during the lifetime of the supposed vendor to hide the transfer of the property to the petitioner.

4. It appears in the deed of sale, Exh. A, that the land which is described therein as

> "A parcel of residential land containing an area of 1,456 square meters more or less. Bounded on the North by Agno River; on the East by property of Martin Resoso; on the South by Carretera and on the West by property of Cristobal Martin and assessed at ₱150.00 as described by Tax Declaration No. 13119 for the current year. It i visible by means of fences on all sides."

was sold for only One Hundred Pesos (₱100.00) Philippine Currency. Considering that the area of the land (1,456 sq. meters, more or less); the nature of the lot it being urban and residential;

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its classification (2nd); and its assessed valuation by the provincial assessor at ₱150.00 for taxation purposes, which is usually 15%-20% of the actual market value, it becomes evident that the consideration was grossly inadequate.

And if We take into account the value of improvements existing on the land such as a granary and the trees growing thereon, like coconuts, bamboos, caimito, avocado, santol, and nipa palms that are made into shingles and sold commercially, the price paid was plainly unconscionable. These are badges of fraud which reveal the falsity of the alleged sale.

In sum and substance, where petitioner's claims, defenses and acts are highly improbable, exaggerated and inconsistent with the regular norm of human conduct and the normal course of events, such as a claim that his possession and ownership of the property is more than thirty (30) years when the said property was supposedly acquired and purchased only nine (9) years back; that the improvement (house) was built by him in 1937 when the land was sold to him eleven (11) years thereafter and he declared the house for taxation purposes only after eleven (11) years; that he registered the deed of sale nine (9) years after its execution, and after the complaint for its cancellation had already been filed, and finally, the gross inadequacy and unconscionableness of the consideration, petitioner's posture becomes a misrepresentation that cannot be believed or sustained.

IN VIEW OF ALL THE FOREGOING, the judgment appealed from is hereby affirmed, with no pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Muñoz Palma, and *Fernandez, JJ.*, concur.