Supreme Court E-Library

A No, sir." (Italics supplied)[55]

Neither did nor could the trial court, much less the Court of Appeals, precisely establish the stage in the course of the shipment when the goods were lost, destroyed or damaged. What can only be inferred from the factual findings of the trial court is that by the time the cargo was discharged to DVAPSI, loss or damage had already occurred and that the same could not have possibly occurred while the same was in the custody of DVAPSI, as demonstrated by the observations of the trial court quoted at the start of this opinion.

ACCORDINGLY, on the foregoing premises, the instant petition is DENIED and the dismissal of the complaint in the court a quo as decreed by respondent Court of Appeals in its challenged judgment is hereby AFFIRMED.

SO ORDERED.

Narvasa, C. J. (Chairman), Padilla, and *Nocon, JJ.*, concur.

FIRST DIVISION

[G.R. No. 97291. August 5, 1992]

RUFINO MISA, ANASTACIO MISA and ABUNDIA S. MISA, *petitioners, vs.* **HON. COURT OF APPEALS, ALBERTO MISA, PANFILA (TEOFILA) MISA and LUIS MISA,** *respondents.*

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[55] TSN, June 26, 1981, 16-19, 22.

Supreme Court E-Library

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM COURT OF APPEALS TO SUPREME COURT; AS A GENERAL RULE, ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS. — It is readily discernible that petitioners are asking Us to re-examine all the evidence already presented before the respondent court and trial court and evaluated by them. These evidence served as basis in arriving at their findings of fact. We shall not analyze such evidence all over again. Instead, We put finis to the factual findings in this case. It is firmly settled that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Certainly, We recognize exceptions to this rule. The case of *Medina, et al. v. Asistio, etc., et al.*, G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223-224 enumerates several instances when findings of fact may be passed upon and reviewed by this Court, none of which obtain herein: "(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures (*Joaquin v. Navarro*, 93 Phil. 257 [1953]); (2) When the inference made is manifestly mistaken, absurd or impossible (*Luna v. Linatok*, 74 Phil. 15 [1942]); (3) Where there is a grave abuse of discretion (*Buyco v. People*, 95 Phil. 453 [1955]); (4) When the judgment is based on a misapprehension of facts (*Cruz, v. Sosing*, L-4875, Nov. 27, 1953); (5) When the findings of fact are conflicting (*Casica v. Villaseca*, L-9590 Ap. 30, 1957; unrep.); . . (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee (*Evangelista v. Alto Surety and Insurance Co.*, 103 Phil. 401 [1958]; (7) The findings of the Court of Appeals are contrary to those of the trial court (*Garcia v. Court of Appeals*, 33 SCRA 622 [1970]; *Sacay v. Sandiganbayan*, 142 SCRA 593 [1986]) . . (8) When the findings of fact are conclusions without citation of specific evidence on which they are based (*Ibid.*,); (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record (*Salazar v. Gutierrez*, 33 SCRA 242 [1970])."

Supreme Court E-Library

2. CIVIL LAW; OWNERSHIP; ACTION TO RECOVER OWNERSHIP; RULE. — "In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim (Article 434, Civil Code; *Salacup vs. Rambac*, 17 Phil. 21; *Abellera vs. Dulamag*, 37 Phil. 865; *Misamis Lumber vs. Director of Lands*, 57 Phil. 881; *Lim An vs. Director of lands*, 65 Phil. 343) and the plaintiff is charged with the burden of proving the affirmative allegations of his complaint by preponderance of evidence (Section 1, Rule 131; Section 1, Rule 133, Revised Rules of Court)."

APPEARANCES OF COUNSEL

Basilio E. Duaban for petitioner.

V. U. Montecillo for private respondents.

D E C I S I O N

MEDIALDEA, *J.*:

This is a petition for review on *certiorari* seeking to nullify the decision of the respondent Court of Appeals in CA-G.R. CV No. 18176 dated October 3, 1990, which affirmed the decision of the Regional Trial Court of Cebu dated January 28, 1988, dismissing petitioner's complaint.

The antecedent facts, as found by the Court of Appeals are, as follows:

Lorenzo Misa died leaving parcels of unregistered land located in places referred to as lowland and upland which his eight children, namely, Crisostomo, Carlos, Anastacia, Pascual, Antonio, Teofila, Alberto and Leoncio, all surnamed Misa, partitioned among themselves, each receiving two parcels, one located at the lowland and another, the upland (pp. 5, 6, 7, t.s.n., Oct. 26, 1983). Among those partitioned by Lorenzo's children was the parcel of land located in Malbago, Daan Bantayan, Cebu, at the lowland, covered by Tax Declaration No. 09478 (Exhibit C, p. 68, rec.; Exhibit 5-D, p. 104, rec.). The partition was

Supreme Court E-Library

made in accordance with the sketch (Exhibit A), adjudicating portions thereof, as follows: to Crisostomo Misa (Exhibit A-1); Leoncio Misa (Exhibit A-2); to Teofila Misa (Exhibit A-3); to Carlos Misa (Exhibit A-4); to Antonio Misa (Exhibit A-5); to Alberto Misa (Exhibit A-6); to Pascual Misa (Exhibit A-7); and to Anastacia Misa (Exhibit A-8).

After Crisostomo Misa died in 1972, his share (Exhibit A-1) was partitioned by his surviving children, namely, petitioner Rufino Misa, petitioner Anastacio Misa, Ananias Misa, Natalia Misa, Juan Misa, Marcos Misa, Eduardo Misa, Dolores Misa, Santa Misa and Aniceto Misa (p. 21, Oct. 18, 1984, Steno. Arnaez; pp. 4, 5, t.s.n., Dec. 12, 1984, Steno Arnaez).

The shares of petitioner Rufino Misa and his brother Ananias and sister Natalia were declared for purposes of taxation in their names under Tax Declaration Nos. 15803, 15800 and 15802, respectively (Exhibits 1, 2 and 3, pp. 96, 97, 98, rec.). The share of petitioner Anastacio Misa was sold to Rosendo Pino who declared it for purposes of taxation in his name under Tax Declaration No. 15804 (Exhibit 4, p. 99, rec.). The share of an unidentified son of Crisostomo Misa was declared for purposes of taxation in the name of the son's widow, petitioner Abundia S. Misa, under Tax Declaration no. 15805 (Exhibit 5-B, p. 102, rec.). The share of another unidentified son or daughter was declared for purposes of taxation in the name of Francisco Tragico under Tax Declaration No. 15906 (Exhibit 5-C, p. 103, rec.). Another portion continued to be declared for purposes of taxation in the name of Crisostomo Misa under Tax Declaration No. 15081 (Exhibit 5, p. 100, rec.; pp. 4-16, t.s.n., Dec. 12, 1984, Steno. Arnaez; pp. 17-22, t.s.n., Aug. 8, 1985, Steno. Arnaez).

On January 31, 1983, petitioners filed a complaint for quieting of title, ejectment and damages against private respondents Alberto Misa, Panfila (Teofila) Misa and Luis Misa before the Regional Trial Court of Cebu, 7th Judicial Region, Branch XXIII. It was alleged therein that petitioners were the heirs of Crisostomo Misa who in his lifetime, upon request, allowed private respondents to occupy and use a portion of his parcel of land situated in Malbago, Daan Bantayan, Cebu, covered by Tax Declaration

Supreme Court E-Library

No. 09476, which private respondents claimed as theirs during the cadastral survey in 1980.

Private respondents, answering the complaint, averred that what they are occupying was acquired by them by inheritance and no part of it belongs to Crisostomo Misa and set up a counterclaim for attorney's fees and litigation expenses against petitioners.

On January 28, 1988, the trial court dismissed petitioner's complaint (p. 173, Records).

Petitioners filed an appeal before the respondent Court of Appeals which, however, affirmed the questioned ruling of the trial court in its decision dated October 3, 1990 (p. 16, *Rollo*). Hence, the present petition.

Petitioners assign as an error committed by the respondent court its having overlooked matters of substance in the resolution of this case and instead, considered matters of insignificance.

They allege that on the basis of their Exhibit "A," in relation to private respondents' Exhibit "6," there is no doubt that the area claimed by private respondents and indicated therein as Exhibits "6-E" to "6-H" is within the land of petitioners marked as Exhibit "A-1." The area in question is actually claimed by private respondents. In fact, private respondents had caused their respective claims to be declared in their names as evidenced by Tax Declaration Nos. 08144 (Exh. 6-E-1), 20-09175 (Exh. 6-F-1), 16789 (Exh. 6-G-1) and 20-09190 (Exh. 6-H-5).

It is readily discernible that petitioners are asking Us to re-examine all the evidence already presented before the respondent court and trial court and evaluated by them. These evidence served as basis in arriving at their findings of fact. We shall not analyze such evidence all over again. Instead, We put *finis* to the factual findings in this case. It is firmly settled that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Certainly, We recognize exceptions to this rule. The case of *Medina, et al. v. Asistio, etc., et al.*, G.R. No. 75450, November 8, 1990, 191

Supreme Court E-Library

SCRA 218, 223-224 enumerates several instances when findings of fact may be passed upon and reviewed by this Court, none of which obtain herein:

"(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures (*Joaquin v. Navarro*, 93 Phil. 257 [1953]); (2) When the inference made is manifestly mistaken, absurd or impossible (*Luna v. Linatok*, 74 Phil. 15 [1942]); (3) Where there is a grave abuse of discretion (*Buyco v. People*, 95 Phil. 453 [1955]); (4) When the judgment is based on a misapprehension of facts (*Cruz, v. Sosing*, L-4875, Nov. 27, 1953); (5) When the findings of fact are conflicting (*Casica v. Villaseca*, L-9590 Ap. 30, 1957; unrep.); . . (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee (*Evangelista v. Alto Surety and Insurance Co.*, 103 Phil. 401 [1958]; (7) The findings of the Court of Appeals are contrary to those of the trial court (*Garcia v. Court of Appeals*, 33 SCRA 622 [1970]; *Sacay v. Sandiganbayan*, 142 SCRA 593 [1986]) . . (8) When the findings of fact are conclusions without citation of specific evidence on which they are based (*Ibid*.,); (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents (*Ibid*.,); and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record (*Salazar v. Gutierrez*, 33 SCRA 242 [1970])."

We, therefore, adopt as Our own the ratiocination of the respondent court (pp. 14-16, *Rollo*):

"Appellant (herein petitioner) Rufino Misa and his witness Rosendo Pino testified: In 1947, appellee Alberto Misa requested his older brother Crisostomo to allow him to put up a 'tuba' store on his (Crisostomo's) parcel of land. Appellee Teofila Misa Maramara, Crisostomo's sister, with his permission, erected a nipa hut on his parcel of land where her husband Lucas Maramara, a fisherman, kept his banca and fishing equipment. Leoncio Misa, Crisostomo's brother and appellee Luis Misa's father, asked Crisostomo to allow him to set up on his parcel of land a storage bin for his fishing equipment. Appellee Alberto Misa's 'tuba' store is no longer at the place where it stood since fifteen years ago. (pp. 13-17, t.s.n., Oct. 26, 1983, Steno Abella; pp. 20-26, t.s.n., Oct. 18, 1984, Steno. Arnaez). In

Supreme Court E-Library

1980, during the cadastral survey, appellant Alberto Misa claimed ownership of Crisostomo Misa's parcel of land (pp. 16-17, 19, t.s.n., Oct. 18, 1984, Steno. Arnaez).

"To begin with, appellees Toefila Misa Maramara and Luis Misa do not claim ownership of a portion of the parcel of land in question. Asked on direct examination why he has filed a case against her (Teofila), appellant Rufino Misa answered, 'Because she succeeded Eñeng-Pino in occupying, in constructing a hangar, in occupying that portion of land near the seashore where he used to keep his fishing boat.' Asked if Teofila is claiming ownership of a portion of the land of his father, Rufino answered, 'No, sir.' Asked if 'even now, she is not claiming ownership,' Rufino answered, 'No, sir.' Asked why he included Teofila as party defendant when she was not claiming ownership over a portion of the land of his father, Rufino did not answer the question at all. Asked finally if Teofila has claimed ownership of a portion of his father's land, this time Rufino categorically said, 'She did not claim ownership' (pp. 22, 23, 26, t.s.n., Oct. 18, 1984, Steno. Arnaez). Asked if appellee Luis Misa ever claimed ownership over a portion of the parcel of land of his father, Rufino answered, 'No, sir' (p. 26, t.s.n., Oct. 18, 1984, Steno. Arnaez).

"No less than appellant Rufino Misa himself has admitted that appellees Teofila Misa Maramara and Luis Misa are not claiming ownership of a portion of the parcel of land in question, which is a confirmation of what they have alleged in their answer that what they are occupying are theirs by inheritance (from their parents) and not part of what belongs to Crisostomo Misa, the appellants' predecessor-in-interest. Besides, appellants' witness, Rosendo Pino, testified that the nipa hut that appellee Teofila Misa Maramara has erected and the storage bin that appellee Luis Misa's father, Leoncio Misa, has put up on the portion of the parcel of land in question are no longer there (pp. 15, 17, t.s.n., Oct. 26, 1983, Steno. Abella). The trial court, therefore, did not commit a reversible error in dismissing the appellants' complaint against both appellees Teofila Misa Maramara and Luis Misa.

"True, it appears from appellees' evidence that Teofila Misa Maramara has laid claim to Lot No. 8402 during the cadastral survey (Exhibit 6-F-1-D, p. 124, rec.). Appellants, however, have not proven that said lot is a portion of the parcel of land in question which they claim belongs to their father Crisostomo.

Supreme Court E-Library

"Coming now to the case of appellee Alberto Misa, appellant Rufino Misa testified that it is only Alberto who is claiming ownership of a portion of the parcel of land in question (p. 27, t.s.n., Oct. 18, 1984, Steno. Arnaez). Indeed, Alberto has laid claim of ownership to Lot No. 8403 during the cadastral survey (Exhibit 6-H-4, p. 133, rec.). Is Lot No. 8403 the very same portion of the parcel of land that according to appellants belongs to their father? Appellants have not shown that it is. True, appellants and their brothers and sisters have partitioned among themselves the share of their father, Crisostomo Misa, from what he has inherited from his (Crisostomo's) father, Lorenzo Misa (Exhibit A-1) and have declared their respective shares for purposes of taxation in their names (p. 21, Oct. 18, 1984, Steno. Arnaez; pp. 4, 5, t.s.n., Dec. 12, 1984, Steno. Arnaez). But nothing is there to indicate that Lot No. 8403 claimed by appellee Alberto Misa is part of the parcel of land that appellants have inherited from their father, Crisostomo Misa.

"In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim (Article 434, Civil Code; Salacup vs. Rambac, 17 Phil. 21; Abellera vs. Dulamag, 37 Phil. 865; Misamis Lumber vs. Director of Lands, 57 Phil. 881; Lim An vs. Director of lands, 65 Phil. 343) and the plaintiff is charged with the burden of proving the affirmative allegations of his complaint by preponderance of evidence (Section 1, Rule 131; Section 1, Rule 133, Revised Rules of Court).' That herein appellants failed to do.

"Besides, according to appellants' witness, Rosendo Pino, the 'tuba' store that appellee Alberto Misa had put up on his brother Crisostomo's parcel of land is no longer there since about fifteen years ago (p. 14, t.s.n., Oct. 26, 1983, Steno. Abella).

"Again, it may be said that the trial court committed no reversible error in dismissing appellants' complaint as against appellee Alberto Misa."

ACCORDINGLY, the petition is hereby DENIED. The decision of the Court of Appeals dated October 3, 1990 is AFFIRMED.

SO ORDERED.

Cruz (Chairman), Griño-Aquino, and *Bellosillo, JJ.*, concur.