Supreme Court E-Library



**THIRD DIVISION**

[G.R. No. 177235. July 7, 2014]

**SERCONSISION R. MENDOZA,** *petitioner vs.* **AURORA MENDOZA FERMIN,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS, RESPECTED; EXCEPTIONS; CONTRARY FINDINGS OF THE TRIAL COURT.—** The rule is that the jurisdiction of the Court over appealed cases from the CA is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. Thus, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. However, this rule admits exceptions, such as when the findings of fact of the CA are contrary to the findings and conclusions of the trial court such as in the case at bar.

**2. ID.; EVIDENCE; DOCUMENTARY EVIDENCE; ALLEGATION OF FORGERY MUST BE SUFFICIENTLY ESTABLISHED.—** With regard to the issue on forgery, the general rule is, the same cannot be presumed and must be proved by clear, positive and convincing evidence; the burden of proof of which lies on the party alleging forgery. The best evidence of a forged signature in the instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged.

**3. ID.; ID.; ID.; HANDWRITING EXPERTS, NOT MANDATORY. —** While we recognize that the technical nature of the procedure in examining forged documents calls for handwriting experts, resort to these experts is not mandatory or indispensable, because a finding of forgery does not depend entirely on their testimonies. Judges must also exercise independent judgment in determining the authenticity or genuineness of the signatures in question, and not rely merely

Supreme Court E-Library



on the testimonies of handwriting experts. The doctrine in *Heirs of Severa P. Gregorio v. Court of Appeals*, is instructive. x x x When the dissimilarity between the genuine and false specimens of writing is visible to the naked eye and would not ordinarily escape notice or detection from an unpracticed observer, resort to technical rules is no longer necessary and the instrument may be stricken off for being spurious. In other words, when so established and is conspicuously evident from its appearance, the opinion of handwriting experts on the forged document is no longer necessary. More so when, as in this case, the forgery was testified to and thus established by evidence other than the writing itself.

**4. ID.; ID.; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE; MAY ESTABLISH ALLEGATION OF FORGERY.—** Although there is no direct evidence to prove forgery, preponderance of evidence indubitably favors the respondent. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.

**5. ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; REGULARITY OF NOTARIZED DOCUMENT MAY BE REBUTTED BY OVERWHELMING EVIDENCE TO THE CONTRARY.—** We cannot likewise uphold the validity of the questioned Deed of Absolute Sale on the basis that it was notarized by one Atty. Julian Tubig, and, therefore, carries with it the presumption of regularity. Time and again, we have ruled that "while it is true that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and has in its favor the presumption of regularity, this presumption, however, is not absolute." It may be rebutted by clear and convincing evidence to the contrary. x x x The necessity of a public document for contracts which transmit or extinguish real rights over immovable property, as mandated by Article 1358 of the Civil Code, is only for convenience; it is not essential for validity or enforceability. The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. A defective

notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence. Here, preponderance of evidence heavily tilts in favor of respondent. Being a forgery, the Deed of Absolute Sale conveyed nothing in favor of Eduardo C. Sanchez, as claimed by petitioner.

**6. CIVIL LAW; PERSONS AND FAMILY RELATIONS; CONJUGAL PARTNERSHIP OF GAINS; REMEDY OF THE WIFE IN CASE HER HUSBAND SHOULD DISPOSE OF THEIR CONJUGAL PROPERTY WITHOUT HER CONSENT.—** Considering that the questioned sale was concluded on September 22, 1986, before the Family Code took effect, the transaction could still be aptly governed by the then governing provisions of the Civil Code. Under Article 173 of the Civil Code, the remedy available to the wife in case her husband should dispose of their conjugal property without her consent is as follows: Art. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of the property fraudulently alienated by the husband. In *Heirs of Christina Ayuste v. Court of Appeals*, we have held that the sale of real property of the conjugal partnership by the husband without the consent of his wife is voidable.

**7. ID.; DAMAGES; ATTORNEY'S FEES; WHEN AWARDED. —** [W]e are inclined to uphold the grant of attorney's fees by the CA in favor of respondent in the amount of ₱30,000.00, since respondent was compelled to litigate and incur expenses to protect her hereditary rights. In *BPI Family Bank v. Franco*, we have reiterated that "[a]ttorney's fees may be awarded when a party is compelled to litigate or incur expenses to protect his interest, or when the court deems it just and equitable."

Supreme Court E-Library



**APPEARANCES OF COUNSEL**

*Phio L. Viovicente* for petitioner.
*Balita & Associates Law Office* for respondent.

**D E C I S I O N**

**PERALTA, *J.*:**

Before us is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court which seeks to review, reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated January 25, 2007 and March 28, 2007, respectively, in the case entitled *Aurora Mendoza Fermin v. Eduardo C. Sanchez, Serconsision R. Mendoza and Ofelia E. Abueg-Sta. Maria*, docketed as CA-G.R. CV No. 65760.

The facts are as follows:

Leonardo G. Mendoza (*Leonardo*), allegedly married to petitioner Serconsision R. Mendoza, died on November 25, 1986.[3] In the testate proceedings of her father's estate, respondent Aurora Mendoza Fermin, being the legitimate and eldest daughter of Leonardo, was appointed as one of the administratix.[4]

In March 1989, petitioner submitted to the probate court an inventory of Leonardo's properties and included therein a parcel of land, specifically described as Lot 39, Block 12 of the consolidation and subdivision plan Pcs-04-00250 located in Parañaque City.[5] Sometime in 1990, when respondent was the one preparing an inventory of the properties of her late father

---

[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Remedios A. Salazar-Fernando and Jose C. Mendoza (now a member of this Court), concurring; Annex "A" to Petition, *rollo*, pp. 30-40.

[2] Annex "B" to Petition, *id*. at 42-43.

[3] *Rollo*, p. 31.

[4] *Id.*

[5] *Id.*

Supreme Court E-Library



as directed by the probate court, she discovered that her father and petitioner purportedly sold the said property to one Eduardo C. Sanchez as evidenced by a Deed of Absolute Sale dated September 22, 1986 (the *Deed of Absolute Sale*), for and in consideration of the amount of ₱150,000.00.[6] However, the Deed of Absolute Sale was registered with the Register of Deeds for the City of Parañaque only on April 30, 1991, or five (5) years after the alleged transfer.[7] Meanwhile, petitioner did not inform the tenants of the property that a certain Eduardo C. Sanchez already owned the same; and in fact, continued to collect the rentals of the property even after the alleged sale.[8]

On March 19, 1992, convinced that the signatures appearing in the Deed of Absolute Sale did not fit that of the genuine signature of her father, respondent filed a case for Annulment of Deed of Absolute Sale, Transfer Certificate of Title and Damages, praying that: (1) the Deed of Absolute Sale and the Transfer Certificate of Title (TCT) No. 52593 registered in the name of Eduardo C. Sanchez be declared null and void;[9] (2) Ofelia E. Abueg-Sta. Maria, in her capacity as the Register of Deeds of Parañaque City, be ordered to revive and reinstate TCT No. 48946 in the name of Leonardo G. Mendoza and Serconsision R. Mendoza;[10] and (3) petitioner and Eduardo Sanchez be ordered to pay her the sum of ₱50,000.00 as moral damages, ₱20,000.00 as corrective damages, and ₱50,000.00 as attorney's fees, as well as the cost of suit.[11]

In her complaint, respondent alleges that the signature of her father on the Deed of Absolute Sale was forged. To support this allegation, she claims that she is familiar with the signature of her father, because she was his private secretary during the

---

[6] *Id.*

[7] *Id.*

[8] *Id*. at 32.

[9] *Id*. at 30.

[10] *Id*. at 31.

[11] *Id.*

Supreme Court E-Library



period of 1972 to 1981, when her father was still the Mayor of San Pascual, Batangas.[12] Respondent also presented an expert handwriting witness in the person of Noel Cruz, a National Bureau of Investigation (*NBI*) Document Examiner, who testified that in his opinion, the questioned signatures of Leonardo *vis-à-vis* the sample signatures of the latter submitted by respondent were not written by one and the same person.[13] This conclusion was bolstered by respondent's other witness, Teresita Rosales, who testified that she was a tenant of the subject property until July 11, 1990.[14] She presented a receipt dated November 24, 1986 of the payment of her monthly rental with the signature of Leonardo, but claimed that it was petitioner who signed the same by forging the signature of Leonardo.[15] Further, Teresita Rosales testified that when she requested Leonardo to sign a marriage contract, as mayor of their town, she personally witnessed that it was petitioner who signed the same by forging the signature of Leonardo.[16] Petitioner even boasted to her that she has been the one signing documents for Leonardo on account of the latter's failing eyesight.[17]

As part of her documentary evidence, respondent offered in evidence Certifications from the Office of the Clerk of Court of Pasay City and City of Manila, to the effect that Atty. Julian Tubig, the alleged notary public who notarized the Deed of Absolute Sale, was not commissioned as notary public of Pasay City at the time that he notarized the Deed of Absolute Sale.[18]

On the other hand, petitioner denied that the signatures of Leonardo on the Deed of Absolute Sale were forgeries. To augment her position, petitioner presented an expert witness in

---

[12] *Id.* at 32.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

Supreme Court E-Library



the person of Zacarias Semacio, Document Examiner III of the Philippine National Police (*PNP*) at Camp Crame, Quezon City, who testified that there was no forgery upon comparison of the questioned signatures of Leonardo on the Deed of Absolute Sale with the specimens submitted by petitioner.[19]

On April 14, 1999, the Regional Trial Court (*RTC*) rendered its Decision[20] finding that there was no forgery and declaring the sale of the property as valid; thereby dismissing the Complaint in the following wise:

> WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered in favour of the defendants and against the plaintiff. The instant complaint is hereby DISMISSED.
>
> All counterclaims are similarly dismissed for lack of merit.
>
> SO ORDERED.[21]

Upon motion for reconsideration at the instance of the respondent, the RTC rendered a Resolution[22] dated December 6, 1999, denying the said Motion, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court still finds it prudent to maintain the DISMISSAL of this case and to DENY the claims of plaintiff as well as defendants' counterclaims, as stated in the dispositive portion of [the] Decision dated April 14, 1999. ACCORDINGLY, plaintiff's "Motion for Reconsideration" is hereby DENIED.
>
> SO ORDERED.[23]

On the issue of forgery, the trial court reasoned that there was no forgery in the instant case, because no categorical

---

[19] *Id.* at 33.

[20] Penned by Judge Ignacio M. Capulong (now deceased); Annex "C" to Petition, *id.* at 44-47.

[21] *Id.* at 47.

[22] Annex "D" to Petition, *id.* at 48-52.

[23] *Id.* at 52.

Supreme Court E-Library



statement or positive declaration was spoken by any witness that he has seen somebody other than Leonardo Mendoza to have signed or threatened, forced or tricked the latter to sign the questioned documents.[24] The trial court further found that the sweeping statement of respondent's witness that she has heard petitioner's boasting to have signed other documents for Leonardo due to the latter's failing eyesight does not hold water and has no bearing in the instant case, and cannot, therefore, overcome the positive declaration of petitioner that Leonardo indeed signed the Deed of Absolute Sale on the place and date written therein.[25]

As to the validity of the transfer, the RTC took note from the records of the case that two (2) deeds of sale came into being with supposed active participation and intervention of duly commissioned notary public.[26] These two (2) instruments were executed by the same parties on the same day and both pertain to one property.[27] One is allegedly notarized by a certain Julian Tubig for the City of Pasay (superimposed by word "Manila") and the other was notarized by a certain Juanito Vitangcol for the City of Manila.[28] The existence of these two (2) documents is undisputed when petitioner in fact admitted it, but explained that these were done for taxation purposes only.[29] It was the document notarized by Julian Tubig that was the basis of the Register of Deeds for Parañaque City to cancel TCT No. 489946 to issue TCT No. 52593 in favor of Eduardo C. Sanchez, and which is now disputed on the basis that Julian Tubig was not commissioned in Pasay City at the time that the Deed of Absolute Sale was allegedly notarized.[30] In any case,

---

[24] *Id*. at 49.

[25] *Id.*

[26] *Id.*

[27] *Id.* at 50.

[28] *Id.*

[29] *Id.*

[30] *Id.*

Supreme Court E-Library



the RTC ruled that even assuming that the document was not properly notarized, the document has the force of law between the contracting parties and they are expected to abide by their contractual commitments in good faith.[31]

Respondent appealed the decision of the trial court to the CA.

On January 25, 2007, the CA rendered a Decision[32] reversing the Decision of the RTC, dated April 14, 1999, the dispositive portion of the appellate court's decision reads:

> ***WHEREFORE***, the Decision dated April 14, 1999 is ***SET ASIDE*** and ***NULLIFIED***. Judgment is hereby rendered:
>
> ***1.*** ***DECLARING*** as ***NULL*** and ***VOID*** the Deed of Absolute Sale purportedly executed by Leonardo Mendoza and Serconsision Mendoza in favor of defendant-appellee Eduardo C. Sanchez over a parcel of land, specifically Lot 39, Block 12 of the consolidation and subdivision plan Pcs-04-00250 of Parañaque City.
>
> ***2.*** ***ORDERING*** the Register of Deeds of Parañaque City to cause the ***CANCELLATION*** of TCT No. 52593 issued in the name of Eduardo C. Sanchez by virtue of the Deed of Absolute Sale and to ***REVIVE*** TCT No. 48946 in the name of Leonardo Mendoza and Serconsision Mendoza.
>
> ***3.*** ***DECLARING*** the said parcel of land as belonging of the estate of the late Leonardo Mendoza but only with respect to his conjugal share therein; and
>
> ***4.*** ***ORDERING*** defendants-appellees Serconsision Mendoza and Eduardo Sanchez to pay plaintiff-appellant Aurora Mendoza Fermin ₱30,000.00 as attorney's fees.
>
> ***SO ORDERED***.[33]

In ruling for respondent, the CA held that a judge must conduct an independent examination of the signature itself in order to

---

[31] *Id.*

[32] *Rollo*, pp. 30-40.

[33] *Id.* at 38-39. (Emphasis in the original)

Supreme Court E-Library



arrive at a reasonable conclusion as to its authenticity.[34] In the present case, the CA found that the trial court, in upholding the genuineness of Leonardo's signature on the Deed of Absolute Sale did not even conduct its own comparison on the questioned signatures of Leonardo with that of the specimen standard signatures submitted by respondent, as well as those submitted by petitioner.[35] After examining the assailed signatures of Leonardo, and comparing them with his accepted standard signatures, the CA concluded that the questioned signatures were forgeries.[36] The CA also took note of the questionable circumstances under which the Deed of Absolute Sale was prepared and the actuations of petitioner after its execution in arriving at the foregoing conclusions.[37]

Petitioner filed her Motion for Reconsideration, but the same was denied by the CA in its Resolution[38] dated March 28, 2007.

Hence, this petition.

Petitioner invokes the following grounds to support its petition:

THE COURT OF APPEALS GRAVELY ERRED IN SETTING ASIDE THE FINDINGS OF FACT OF THE TRIAL COURT AS TO THE AUTHENTICITY AND DUE EXECUTION OF THE QUESTIONED DEED OF SALE; AND

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN REVERSING THE TRIAL COURT'S FINDINGS THAT THE DEED OF SALE WAS VALID.[39]

The petition is bereft of merit.

The rule is that the jurisdiction of the Court over appealed cases from the CA is limited to the review and revision of errors

---

[34] *Id*. at 34.

[35] *Id*. at 35.

[36] *Id*. at 36.

[37] *Id*. at 37.

[38] *Id*. at 42-43.

[39] *Id*. at 15-16.

Supreme Court E-Library



of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive.[40] Thus, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[41] However, this rule admits exceptions, such as when the findings of fact of the CA are contrary to the findings and conclusions of the trial court[42] such as in the case at bar.

With regard to the issue on forgery, the general rule is, the same cannot be presumed and must be proved by clear, positive and convincing evidence; the burden of proof of which lies on the party alleging forgery.[43] The best evidence of a forged signature in the instrument is the instrument itself reflecting the alleged forged signature.[44] The fact of forgery can only be established by comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged.[45]

In supporting her argument that the signature on the assailed Deed of Absolute Sale was forged, respondent presented an expert handwriting witness, Noel Cruz, who testified that the questioned signatures of Leonardo *vis-à-vis* the sample signatures of the latter submitted by respondent were not written by one and the same person.[46] This conclusion was bolstered by respondent's other witness, Teresita Rosales, who testified that when she requested Leonardo to sign a marriage contract, as mayor of their town, she personally witnessed that it was petitioner who signed the same by forging the signature of Leonardo.[47] According

---

[40] *Meneses v. Venturozo*, G.R. No. 172196, October 19, 2011, 659 SCRA 577, 585.

[41] *Id.*

[42] *Id.*

[43] *Heirs of the Late Felix M. Bucton v. Spouses Gonzalo and Trinidad Go*, G.R. No. 188395, November 20, 2013.

[44] *Id.*

[45] *Id.*

[46] *Rollo*, p. 32.

[47] *Id*.

Supreme Court E-Library



to Rosales, petitioner even boasted to her that she has been the one signing documents for Leonardo on account of the latter's failing eyesight.[48]

The foregoing, however, was disregarded by the RTC on the ground that such general observations could not overcome the positive declaration of petitioner that Leonardo indeed signed the questioned documents on the place and date written. With this, the RTC maintained that there was no forgery and upheld the validity of the Deed of Absolute Sale.

Upon an assiduous examination of the records of this case, we find basis to sustain the reversal of the CA, upon its independent examination of the assailed signatures, and hereby adopt its observations thereon, to wit:

> We, however, after examining the supposed signatures of Leonardo and comparing them with his accepted standard, conclude that the questioned signatures were forgeries. A scrutiny of the comparison charts of the NBI handwriting expert witness and the PNP handwriting expert witness, consisting of the enlarged photographs of the questioned signatures of Leonardo and the specimen signatures submitted by the parties, would reveal ***that there are marked differences between Leonardo's signature on the Deed of Absolute Sale vis-à-vis the specimen signatures submitted by the parties***. As seen in the enlarged photographs of both parties, the most telling differences between the questioned signatures and all the specimen signatures offered in evidence, including the specimen signatures offered in evidence by Serconsision, is in the initial and predominant letter which appears to be a letter "O". ***Significantly, the manner of execution of all the standard specimen signatures of Leonardo, reveal that the person who signed the same used free rapid continuous execution or strokes in forming the letter "O" which is indicative of the signatory's fluidity in movement. In the questioned signatures, the initial and predominant letter was apparently written in a hesitating slow drawn stroke indicating that the person, who executed the same as hesitant when the signatures were made. In short, we find that all specimen signatures submitted in evidence by the parties were written gracefully whereas the questioned signatures were written awkwardly***. As such, the

[48] *Id*.

samples and the questioned signatures in the instant case were written by two different persons.[49]

While we recognize that the technical nature of the procedure in examining forged documents calls for handwriting experts,[50] resort to these experts is not mandatory or indispensable, because a finding of forgery does not depend entirely on their testimonies.[51] Judges must also exercise independent judgment in determining the authenticity or genuineness of the signatures in question, and not rely merely on the testimonies of handwriting experts.[52] The doctrine in *Heirs of Severa P. Gregorio v. Court of Appeals*,[53] is instructive, to wit:

> Due to the technicality of the procedure involved in the examination of forged documents, the expertise of questioned document examiners is usually helpful. However, resort to questioned document examiners is not mandatory and while probably useful, they are not indispensable in examining or comparing handwriting. ***A finding of forgery does not depend entirely on the testimony of handwriting experts. Although such testimony may be useful, the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny***. The judge cannot rely on the mere testimony of the handwriting expert. In the case of *Gamido vs. Court of Appeals* (citing the case of *Alcon vs. Intermediate Appellate Court*, 162 SCRA 833), the Court held that the authenticity of signatures
>
> > ". . . is not a highly technical issue in the same sense that questions concerning, *e.g.*, quantum physics or topology or molecular biology, would constitute matters of a highly technical nature. The opinion of a handwriting expert on the genuineness of a questioned signature is certainly much less compelling upon a judge than an opinion rendered by a specialist on a highly technical issue."

---

[49] *Id*. at 36-37. (Emphasis ours)

[50] *Mendez v. Court of Appeals*, G.R. No. 174937, June 13, 2012, 672 SCRA 200, 209.

[51] *Id.*

[52] *Id*. at 209-210.

[53] 360 Phil. 753 (1998).

Supreme Court E-Library



A judge must therefore conduct an independent examination of the signature itself in order to arrive at a reasonable conclusion as to its authenticity and this cannot be done without the original copy being produced in court.[54]

When the dissimilarity between the genuine and false specimens of writing is visible to the naked eye and would not ordinarily escape notice or detection from an unpracticed observer, resort to technical rules is no longer necessary and the instrument may be stricken off for being spurious.[55] In other words, when so established and is conspicuously evident from its appearance, the opinion of handwriting experts on the forged document is no longer necessary.[56]

More so when, as in this case, the forgery was testified to and thus established by evidence other than the writing itself, as correctly observed by the CA, thus:

> Strongly indicative also of the forged signatures of Leonardo and the fictitious character of the Deed of Absolute Sale is not only the physical manifestation of imitation in the signature of Leonardo, but also ***the questionable circumstances under which the Deed of Absolute Sale was prepared and the actuations of the defendants-appellees after its execution***. Firstly, Serconsision admitted that she still occupied the property long after the alleged sale in favor of Eduardo took place. This admission of Serconsision substantiates the testimony of witness Teresita Rosales, that Serconsision still occupied the subject property, continued to collect the rentals from the tenants and that she never informed the tenants that the property was already sold to Eduardo. Secondly, the inventory prepared by Serconsision for the probate court on March 8, 1989 clearly listed the subject property as part of the properties of the late Leonardo. Lastly, there is an apparent lack of interest on the part of Eduardo to protect his rights over the property, assuming that he had any. As aptly pointed out by Aurora in her brief, Eduardo never appeared in court, much less testify thereto to protect his alleged interest.[57]

---

[54] *Id.* at 763-764. (Emphasis supplied)

[55] *Heirs of the Late Felix M. Bucton v. Spouses Gonzalo and Trinidad Go, supra* note 43.

[56] *Id.*

[57] *Rollo*, p. 39. (Emphasis ours; citations omitted)

Supreme Court E-Library



Contrary to the RTC's view, the positive declaration of petitioner that Leonardo affixed the assailed signatures in her presence cannot be taken as gospel truth, as it is self-serving and biased at best. Petitioner's interest on the sale of the property contained in the assailed Deed of Absolute Sale is glaring, and it is only logical that she would foster the due execution and genuineness of the questioned documents if only to enforce the same between the parties, as well as against third persons.

More, the conclusion of the RTC that no direct and credible testimony of witnesses as to matters within their personal observation was present in the instant case is belied by respondent's testimony that she is familiar with the signature of her father because she was his private secretary during the period of 1972 to 1981, when her father was still the mayor of San Pascual, Batangas. Considering the proximity of respondent to Leonardo and her personal knowledge of the latter's signatures, her conclusion that the signatures appearing in the Deed of Absolute Sale did not fit that of the genuine signature of her father is sound and reliable.

Indeed, the foregoing testimonial and circumstantial evidence cast doubt on the integrity, genuineness, and veracity of the questioned Deed of Absolute Sale and impels this Court to tilt the scale in favor of respondent. Although there is no direct evidence to prove forgery, preponderance of evidence indubitably favors the respondent. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence."[58] It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[59]

We cannot likewise uphold the validity of the questioned Deed of Absolute Sale on the basis that it was notarized by one Atty.

---

[58] *Heirs of the Late Felix M. Bucton v. Spouses Gonzalo and Trinidad Go, supra* note 43.

[59] *Id.*

Supreme Court E-Library



Julian Tubig, and, therefore, carries with it the presumption of regularity. Time and again, we have ruled that "while it is true that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and has in its favor the presumption of regularity, this presumption, however, is not absolute."[60] It may be rebutted by clear and convincing evidence to the contrary.[61]

For one, it is undisputed that there are two (2) versions of the notarized Deed of Absolute Sale, as admitted by petitioner, that were allegedly executed for taxation purposes.[62] Such is certainly not in accordance with the normal scheme of things. Executing different adaptations of a conveying document involving the same parties and property invites questions, not only as to the due execution and genuineness thereof but also with respect to the true intent of the parties in the provisions contained therein. In addition, the records show that one of the deeds is allegedly notarized by Atty. Julian Tubig for the City of Pasay **(superimposed by word "Manila").** In fact, upon cross-examination by respondent's counsel, petitioner testified to this, to wit:

> Atty. Balita:
> The witness testified that Tubig is a Notary Public of Pasay City and the property was transferred by virtue of the document executed before Tubig?
>
> Atty. Viovicente:
> That's misleading, Your Honor. The document would speak for itself. ***This was signed in Manila***. He was speaking to the other document.
>
> Atty. Balita:
> It's not. She said that the property was transferred by virtue of the document executed before Tubig and then you insist that this document was in Manila?

---

[60] *Meneses v. Venturozo, supra* note 40, at 586.

[61] *Id.*

[62] *Rollo,* pp. 49-50.

Supreme Court E-Library



Atty. Viovicente:
Yes, the documents would speak for itself. The acknowledgment states.

Atty. Balita:
***This is manila then interposition Pasay***.

Atty. Viovicente:
This is the same document which they attached in their complaint, Your Honor as Annex "B".[63]

Taking into account the foregoing defects, as well as the testimony of respondent and her expert witnesses (had it been properly appreciated), is sufficient to overcome the presumption of regularity attached to public documents and to meet the stringent requirements to prove forgery.

The necessity of a public document for contracts which transmit or extinguish real rights over immovable property, as mandated by Article 1358 of the Civil Code, is only for convenience; it is not essential for validity or enforceability.[64] The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular.[65] A defective notarization will strip the document of its public character and reduce it to a private instrument.[66] Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.[67] Here, preponderance of evidence heavily tilts in favor of respondent.

Being a forgery, the Deed of Absolute Sale conveyed nothing in favor of Eduardo C. Sanchez, as claimed by petitioner. The

---

[63] *Id*. at 20. (Emphasis ours)

[64] *Meneses v. Venturozo, supra* note 40, at 585-586.

[65] *Id.* at 586.

[66] *Id.*

[67] *Id.*

Supreme Court E-Library



necessary consequence of which was succinctly stated by the CA in the following wise:

> Having ruled that the signatures of Leonardo in the Deed of Absolute Sale were forgeries, ***then it follows that such document should be annulled for lack of consent on the part of Leonardo***. Notably, the subject property was part of the conjugal property of the Spouses Leonardo and Serconsision Mendoza, this can be gleaned from TCT No. 48946 wherein it states that the same is owned by "Leonardo G. Mendoza & Serconsision R. Mendoza, both of legal age." Besides, Aurora has not adduced any proof to substantiate her allegation that Serconsision was just the common-law wife of her father.
>
> As Leonardo and Serconsision were married sometime in 1985, the applicable provision governing the property relations of the spouses is Article 172 of the Civil Code of the Philippines which states that the wife cannot bind the conjugal partnership without the husband's consent. In *Felipe vs. Heirs of Maximo Aldon*, a case decided under the provisions of the Civil Code, the Supreme Court had the occasion to rule that the sale of a land belonging to the conjugal partnership made by the wife without the consent of the husband is voidable. The Supreme Court further ruled that the view that the disposal by the wife of their conjugal property without the husband's consent is voidable is supported by Article 173 of the Civil Code which states that contracts entered by the husband without the consent of the wife when such consent is required are annullable at her instance during the marriage and within ten years from the transaction questioned. In the present case, the fictitious Deed of Absolute Sale was executed on September 22, 1986, one month after or specifically on November 25, 1986, Leonardo died. Aurora as one of the heirs and the duly appointed administratrix of Leonardo's estate, had the right therefore to seek for the annulment of the Deed of Sale as it deprived her and the other legal heirs of Leonardo of their hereditary rights. Consequently, TCT No. 52593 in the name of Eduardo must be cancelled. Defendant-appellees' unauthorized and fictitious transaction cannot be invoked as a source of right.[68]

Considering that the questioned sale was concluded on September 22, 1986, before the Family Code took effect, the

---

[68] *Rollo*, pp. 37-38. (Citations omitted)

Supreme Court E-Library



transaction could still be aptly governed by the then governing provisions of the Civil Code. Under Article 173 of the Civil Code, the remedy available to the wife in case her husband should dispose of their conjugal property without her consent is as follows:

> Art. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of the property fraudulently alienated by the husband.

In *Heirs of Christina Ayuste v. Court of Appeals*,[69] we have held that the sale of real property of the conjugal partnership by the husband without the consent of his wife is voidable, to wit:

> There is no ambiguity in the wording of the law. A sale of real property of the conjugal partnership made by the husband without the consent of his wife is voidable. The action for annulment must be brought during the marriage and within ten years from the questioned transaction by the wife. Where the law speaks in clear and categorical language, there is no room for interpretation — there is room only for application.[70]

More recently, we echoed the aforequoted ruling in *Ros v. Philippine National Bank-Laoag Branch*,[71] thus:

> The husband cannot alienate or encumber any conjugal real property without the consent, express or implied, of the wife. Should the husband do so, then the contract is voidable. Article 173 of the Civil Code allows Aguete to question Ros' encumbrance of the subject property. However, the same article does not guarantee that the courts will declare the annulment of the contract. Annulment will be declared only upon a finding that the wife did not give her consent. x x x.[72]

---

[69] 372 Phil. 370 (1999).

[70] *Heirs of Christina Ayuste v. Court of Appeals, supra,* at 379.

[71] G.R. No. 170166, April 6, 2011, 647 SCRA 334.

[72] *Ros v. Philippine National Bank-Laoag Branch, supra,* at 342.

Supreme Court E-Library



In view thereof, we are inclined to uphold the grant of attorney's fees by the CA in favor of respondent in the amount of ₱30,000.00, since respondent was compelled to litigate and incur expenses to protect her hereditary rights. In *BPI Family Bank v. Franco*,[73] we have reiterated that "[a]ttorney's fees may be awarded when a party is compelled to litigate or incur expenses to protect his interest, or when the court deems it just and equitable."[74]

**WHEREFORE,** the petition is **DENIED**. The Decision dated January 25, 2007 and Resolution dated March 28, 2007 of the Court of Appeals are hereby **AFFIRMED *IN TOTO***.

**SO ORDERED.**

*Velasco, Jr. (Chairperson), Brion,*[*] *Villarama, Jr.,*[**] and *Leonen, JJ.,* concur.

---

**FIRST DIVISION**

[G.R. No. 178145. July 7, 2014]

**REYNALDO S. MARIANO**, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; THE FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY**

---

[73] 563 Phil. 495 (2007).

[74] *BPI Family Bank v. Franco, supra,* at 516.

[*] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated February 22, 2010.

[**] Designated Acting Member, per Special Order No. 1691 dated May 22, 2014.