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FIRST DIVISION

[G.R. No. 208776. November 3, 2020]

THE HEIRS OF LOPE MALAQUE, namely: LOTY LATONIO MALAQUE, ET AL., *Petitioners*, *v.* **HEIRS OF SALOMON MALAQUE, namely: SABINA MALAQUE PANO, MARCELINA MALAQUE SAQUIN, CATALINA MALAQUE PEPITO, AGRIPINO MALAQUE, AND HILARIO MALAQUE,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE RULE THAT A PETITION FOR REVIEW UNDER RULE 45 IS LIMITED TO QUESTIONS OF LAW ADMITS OF EXCEPTIONS.— Well settled is the rule that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. This Court will not review facts, as it is not the function of the Court to analyze or weigh all over again evidence already considered in the proceedings below.

This rule, however, admits of exceptions, such as when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record and when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Finding a confluence of certain exceptions in this case, the general rule that only legal issues may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court does not apply, and the Court retains the authority to pass upon the evidence presented and draw conclusions therefrom.

2. ID.; EVIDENCE; BURDEN OF PROOF; FORGERY; FORGERY MUST BE PROVED BY A PREPONDERANCE OF EVIDENCE.— A reading of respondents' Complaint shows that their main cause of action centers on the alleged **forgery** of the [subject] Deed of Quitclaim and Adjudication. . . .

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As a rule, forgery cannot be presumed and must be proved by clear, positive, and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. In this case, respondents have the burden to prove forgery.

3. ID.; ID.; DOCUMENTARY EVIDENCE; A DULY NOTARIZED DOCUMENT ENJOYS THE *PRIMA FACIE* PRESUMPTION OF AUTHENTICITY AND DUE EXECUTION.— It is a well-settled principle that a duly notarized document enjoys the *prima facie* presumption of authenticity and due execution, as well as the full faith and credence attached to a public instrument. To overturn this legal presumption, evidence must be clear, convincing, and more than merely preponderant to establish that there was forgery that gave rise to a spurious contract.

4. ID.; CIVIL PROCEDURE; HOW TO CONTEST A DOCUMENT; SPECIFIC DENIAL UNDER OATH; FAILURE TO SPECIFICALLY DENY UNDER OATH THE DUE EXECUTION AND GENUINENESS OF THE DOCUMENT AMOUNTS TO AN IMPLIED ADMISSION THEREOF.— Respondents did not file a *Reply* specifically denying under oath the genuineness and due execution of the Deed of Absolute Sale of Rights, as required under Section 8, Rule 8 of the Rules of Court. Thus, with their failure to comply with the "specific denial under oath," respondents had impliedly admitted the due execution and genuineness of said deed evidencing sale of the subject property to Lope. Moreover, respondent failed to adequately prove at the trial that there was fraud and misrepresentation in the execution of said Deed of Sale. Catalina made no denial as to the execution of the Deed of Sale.

5. CIVIL LAW; SPECIAL CONTRACTS; SALES; AN UNNOTARIZED DEED OF ABSOLUTE SALE IS VALID AND BINDING AMONG THE PARTIES.— While the Deed of Absolute Sale of Rights is not notarized, its validity is not affected. A sale of real property, though not consigned in a public instrument or formal writing, is, nevertheless, valid and binding among the parties, for the time-honored rule is that

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even a verbal contract of sale of real estate produces legal effects between the parties. Stated differently, although a conveyance of land is not made in a public document, it does not affect the validity of such conveyance. Article 1358 of the Civil Code does not require the accomplishment of the acts or contracts in a public instrument in order to validate the act or contract but only to insure its efficacy.

6. ID.; PROPERTY; OWNERSHIP; REMEDIAL LAW; EVIDENCE; TAX DECLARATIONS AND REALTY TAX PAYMENT ARE GOOD INDICIA OF THE POSSESSION IN THE CONCEPT OF OWNER. — It is a settled rule that 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, petitioners' voluntary declaration of the subject property for taxation purposes and payment of such tax strengthens their bona fide claim of ownership over the subject property.

7. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE PREVAILS OVER TESTIMONIAL EVIDENCE. — As between the testimonies of respondents, which failed to prove clearly, positively, and convincingly the presence of forgery, and the documentary evidence of petitioners, . . . the latter evidence prevails. Testimonial evidence is easy of fabrication and there is very little room for choice between testimonial evidence and documentary evidence. Thus, in the weighing of evidence, documentary evidence prevails over testimonial evidence.

APPEARANCES OF COUNSEL

Public Attorney's Office and Charles B. Rasonable for respondents.

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D E C I S I O N

CARANDANG, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated January 22, 2013 and the Resolution[3] dated July 24, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 01048-MIN, which dismissed petitioners' appeal for lack of merit and denied petitioners' motion for reconsideration, respectively.

Facts of the Case

This case stemmed from a Complaint[4] for partition, annulment of quitclaim and adjudication, accounting of proceeds, with prayer for writ of preliminary injunction and restraining order and damages filed by respondents Heirs of Salomon Malaque against petitioners Heirs of Lope Malaque before the Regional Trial Court (RTC) of Oroquieta City, Branch 12.

Salomon Malaque (Salomon), married to Marciana Malaque (Marciana), owned a parcel of land known as Lot No. 3974, Pls-646, located at Taboo, Jimenez, Misamis Oriental covering an area of 10,042 square meters. They have six children, namely: respondents Sabina, Marcelina, Catalina, Agripino, Hilario and the late Lope, all surnamed Malaque. When Salomon and Marciana died in 1945 and 1950, only Lope occupied and cultivated the property. When Lope later died, herein petitioners — his surviving spouse, Loty Malaque (Loty) and his children — continued the cultivation of the property without giving any share to respondents. Respondents claimed that they tolerated

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[1] *Rollo*, pp. 13-32.

[2] Penned by Associate Justice Marie Christine Azcarraga-Jacob, with the concurrence of Associate Justices Romulo V. Borja and Ma. Luisa C. Quijano-Padilla; id. at 39-56.

[3] Id. at 63-65.

[4] Id. at 66-71.

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the possession of Lope and at that time, they did not insist on asking for their shares.[5]

Subsequently, respondents were surprised to discover that Tax Declaration No. 3619[6] covering Lot 3974-P had been issued in the name of Lope. When they confronted Loty about it and suggested that the property be now partitioned, she refused and claimed ownership over the property allegedly by virtue of a Deed of Quitclaim and Adjudication[7] dated December 31, 1976 in favor of Lope and Loty, and signed by Sabina, Catalina, and Hilario, who represented themselves to be the only surviving heirs of Salomon. In said Deed, Sabina, Catalina, and Hilario allegedly waived and adjudicated the remaining portion of Lot 3974, now designated as Lot No. 3974-B, to Lope and Loty.[8] In an Affidavit of Denial dated January 12, 2005, however, Sabina, Catalina, and Hilario denied the due execution of said Quitclaim.[9]

Claiming that their signatures in said Deed of Quitclaim and Adjudication were forged; that the same is spurious and void for they did not participate nor execute the said Deed; and that they are not the only heirs of the late Salomon, respondents filed the instant complaint on October 5, 2004. Earnest efforts between the parties and settlement in the barangay proved futile.[10]

Considering that a portion of 2,010 square meters, which is the share of Anatalio Malaque, Salomon's brother, had already been sold to a certain Eusebia Calope, respondents sought to partition only the remaining area of 8,032 square meters designated as Lot 3974-B. Respondents, likewise, sought to declare the Deed of Quitclaim and Adjudication void ab initio,

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[5] Id. at 85.

[6] Id. at 77.

[7] Id. at 78.

[8] Id.

[9] Id. at 41.

[10] Id.

to account for the proceeds of the land and/or their share, and that in the meantime, petitioners refrain from further cultivating the land.[11]

Petitioners countered in their Answer[12] that the Quitclaim, being a public document, should be presumed valid. They further pointed out that prior to the Quitclaim, Catalina, Agripino, Marcelina, and Hilario executed an nonnotarized Deed of Absolute Sale of Rights[13] before Barrio Captain Eleuterio Cabisada selling the subject property in favor of Lope for a consideration of ₱700.00.[14]

In her testimony, Sabina stated that: Lope took possession of the land after their parents' death as he was in possession of the title and the tax declaration; she has three brothers and four sisters; she and her siblings were prompted to file this action when they were informed sometime in 2004 that the land has been mortgaged to and is being cultivated by a certain Jaime Cabisada; it is not true that they sold the land to Lope; she had built a house within the property; and the reason that they have not complained all these years was because they trusted Lope as their brother.[15]

Loty, on her part, testified that she owns the land because she had paid Sabina, Hilario, Catalina, Agripino, Salud, and Marcelina one by one but Loty did not sign as a witness to the sale. Hilario only thumb marked the Deed of Sale because he cannot write while Sabina did not sign the same as she was not there. Agripino later asked for additional payment for his share of the land. Loty paid the realty taxes for the property.[16]

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[11] Id. at 71.

[12] Id. at 81-82.

[13] Id. at 137.

[14] Id. at 81-82.

[15] Id. at 85-87.

[16] Id. at 85-86.

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On rebuttal, respondents presented Catalina and Hilario who denied executing the Quitclaim, although Catalina stated that the signature therein appears similar to her signature when she was single. Hilario admitted having affixed his thumb mark because he was made to believe that it was needed to prevent confiscation of the property. Agripino also admitted signing the Deed of Sale with the understanding that it was a mortgage, not a sale; and that he did not redeem the property as he only returned in 1993.[17]

Ruling of the RTC

On October 5, 2006, the RTC rendered a Decision[18] granting respondents' complaint, the dispositive portion reads:

> WHEREFORE, by preponderance of evidence, judgment is hereby rendered by this Court: a) declaring that the Deed of Quitclaim and Adjudication of Cadastral Lot No. 3974-P with an area of 8,032 square meters in favor of Lope Malaque as void ab initio and non-existent for being simulated and the documents being obtained by fraud and misrepresentation; b) ordering that a Project of Partition shall cause to be prepared by the plaintiffs over the 8,032 square meters with the expenses to be borne from the income of the property of the 18 years that it has been in possession by the defendants; and c) ordering defendant Loty Malaque, to give the respective shares of the income of the land to the plaintiffs; pay the sum of ₱10,000.00 to counsel for plaintiffs as attorney's fees; and the sum of ₱5,000.00 for costs. Counterclaim is hereby dismissed.
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> SO ORDERED.[19]

The RTC ruled that the Deed of Absolute Sale of Rights dated March 2, 1970, signed by four of the six children of the late Salomon and Marciana, is not a public document as required by law; hence, it cannot be registered. The property subject matter of the Deed cannot validly pass on to petitioners. The RTC observed that the actuations of petitioners are highly

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[17] Id. at 86.

[18] Penned by Judge Bernadette S. Paredes-Encinareal; id. at 85-89.

[19] Id. at 89.

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suspicious. *First*, they had been in possession of the Deed of Sale but the signatories therein denied having executed the same. *Second*, the execution of the Deed of Quitclaim and Adjudication in 1976 by only three heirs was also denied by the latter. *Third*, Agripino testified that although there is another document executed by him in 1972 stating therein that he received an advance payment of ₱120.00 for the sale of his share, he had no intention to sell but only mortgaged his share. These documents are fictitious having been obtained by fraud and misrepresentation.[20]

The RTC further observed that the property is the only land left by their parents to the parties and this fact has been well-established. Respondents, already aged, are entitled to legal protection of right to their property as against fraud, misrepresentation, chicanery, and abuse of trust and confidence.[21]

Petitioners moved for reconsideration but it was denied in the Order[22] dated November 16, 2006.

Petitioners appealed the ruling to the CA.[23]

Ruling of the Court of Appeals

In the Decision[24] dated January 22, 2013, the CA dismissed the appeal and affirmed the RTC Decision. The CA observed that OCT No. 20658[25] was not registered in the name of Salomon but it was actually in the name of the "Heirs of Salomon Malaque." It was granted through a free patent[26] on June 22, 1966 to the Heirs of Salomon, represented by Sabina. The application must have been commenced by Salomon but the

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[20] Id. at 87-88.

[21] Id.

[22] Id. at 93.

[23] Id. at 94.

[24] Supra note 2.

[25] *Rollo*, pp. 74-75.

[26] Free Patent No. 307792.

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free patent was granted only after his death; hence, it was issued in the name of his heirs. The CA ruled that acquisitive prescription has not set in. The property was under co-ownership and a co-owner could not acquire the whole property as against the other co-owners, and such right is imprescriptible so long as the co-ownership is expressly or impliedly recognized. The portion of the property pertaining to respondents would be deemed held by Lope under an implied trust for their benefit for which they could demand partition at any time. Further, acquisitive prescription may only set in where there exists a clear repudiation of the co-ownership, and the co-owners are apprised of the claim of adverse and exclusive ownership. In this case, Lope and his heirs have not made a clear, express, and positive repudiation of the co-ownership; hence, prescription has not set in even with the lapse of a considerable length of time (58 years).[27]

Also, the CA affirmed the nullity of the Deed of Absolute Sale of Rights dated March 2, 1970 stating that not all the co-owners have signed therein and those who have signed did not understand the import of what they executed. As for the Deed of Quitclaim and Adjudication, the CA found no consideration stated for the relinquishment of the shares of the co-heirs named therein. The Deed, which is actually a donation, did not comply with the requirements under Article 749 of the Civil Code and there was no categorical acceptance of Lope of the donation from his sibling. Hence, the deed is null and void.[28]

Petitioners moved for reconsideration,[29] but it was denied in the Resolution[30] dated July 24, 2013.

Hence, this Petition for Review on *Certiorari* filed by petitioners.

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[27] *Rollo*, pp. 48-52.

[28] Id. at 52-56.

[29] Id. at 57-61.

[30] Supra note 3.

Issue

Whether respondents had established by clear, positive, and convincing evidence that the documents — Deed of Quitclaim and Adjudication and Deed of Absolute Sale of Rights — are null and void.

Petitioners' Arguments

Petitioners argue that they have clearly established their ownership over the property by virtue of the execution of both the Deed of Quitclaim and Adjudication and Deed of Absolute Sale of Rights. Foremost of this is their undisturbed possession for more than 50 years prior to the complaint. The Deed of Absolute Sale, although not made in a public instrument, is valid and binding among the parties. The Deed of Quitclaim was executed to bolster the Deed of Absolute Sale previously executed by respondents. Petitioners claim that it is highly questionable that respondents did not bother to question the waiver of the 2,010 square meters in favor of Eusebia Calape, despite the fact that the same was embodied in the same documents and said area is well within the area of Lot 3974 owned by the heirs of Salomon.[31] Further, petitioners exercised rights of ownership over the property without objection from respondents. They declared the property for taxation purposes and paid the yearly real property taxes. The lapse of more than 50 years of uninterrupted possession and cultivation by the petitioners of the subject property could only be attributed to the fact that they are cultivating the land under the concept of ownership and said right was respected by respondents until the time that they questioned the same in 2004. Petitioners contend that they are the bona fide owners of the subject property by virtue of the Quitclaim and Adjudication coupled with the due execution of the Deed of Absolute Sale of Rights.[32]

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[31] *Rollo*, pp. 21-26.

[32] Id. at 26-30.

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Respondents' Comment

Respondents aver that petitioners seek review of findings of fact made by the RTC and the CA. It is not the function of this Court to re-examine the oral and documentary evidence submitted by the parties all over again. They maintain that the deeds are invalid, since the respondents did not know the import of their signatures therein.[33]

Ruling of the Court

The petition is meritorious.

Well settled is the rule that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. This Court will not review facts, as it is not the function of the Court to analyze or weigh all over again evidence already considered in the proceedings below.[34]

This rule, however, admits of exceptions, such as when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record and when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Finding a confluence of certain exceptions in this case, the general rule that only legal issues may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court does not apply, and the Court retains the authority to pass upon the evidence presented and draw conclusions therefrom.[35]

After a judicious study of the case, the Court holds that the CA erred in declaring the Deed of Absolute Sale of Rights and the Deed of Quitclaim and Adjudication null and void. As regards the Deed of Absolute Sale of Rights, the CA stated that not all

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[33] Id. at 177-179.

[34] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 416 (2014).

[35] *Heirs of Donton v. Stier*, 817 Phil. 165, 175-176 (2017).

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the co-owners have signed therein and those who have signed did not understand the import of what they executed.[36] Anent the Deed of Quitclaim and Adjudication, the CA found no consideration for the relinquishment of the shares of the co-heirs named therein, and that said Deed failed to comply with the requirements of the donation under Article 749 of the Civil Code.[37] Contrary to the CA, this Court rules that the nullity of these Deeds has not been established by respondents with the required quantum of evidence to declare these Deeds as null and void.

A reading of respondents' Complaint[38] shows that their main cause of action centers on the alleged **forgery** of the Deed of Quitclaim and Adjudication dated December 31, 1976 wherein Sabina, Catalina, and Hilario, allegedly representing themselves to be the only surviving heirs of Salomon, waived and adjudicated the remaining portion of Lot 3974, now designated as Lot No. 3974-B, to Lope and Loty. Specifically, paragraph eight of the complaint reads:

> 8. That the said Deed of Quitclaim and Adjudication dated December 31, 1976, is precisely spurious and void ad initio and has no force and effect, firstly, Sabina Malaque, Catalina Malaque and Hilario Malaque, did not participate or did not sign nor executed *(sic)* the said Deed of Quitclaim and therefore, the signature of Sabina Malaque, Catalina Malaque and the alleged thumbmarked *(sic)* of Hilario Malaque in the said Deed of Quitclaim and Adjudication are being forged; second, Sabina Malaque, Catalina Malaque and Hilario Malaque has *(sic)* no right whatsoever to waive and adjudicate the remaining portion of lot 3974 and/or lot 3974-B in favor of Lope Malaque and to Loty Latonio Malaque, because there *(sic)* not the only heirs of the late Salomon Malaque, the fact that Salomon Malaque is survived by six (6) heirs namely, MARCELINA MALAQUE SAQUIN, CATALINA MALAQUE PEPITO, AGRIPINO MALAQUE, HILARIO MALAQUE AND SABINA MALAQUE

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[36] Id. at 53.

[37] Id. at 53-54.

[38] Id. at 66-71.

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PANO, and clearly, in the said Deed of Quitclaim and Adjudication, MARCELINA MALAQUE and AGRIPINO MALAQUE, did not participate nor have executed the said questioned Deed of Quitclaim and Adjudication.[39]

As a rule, forgery cannot be presumed and must be proved by clear, positive, and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it.[40] In this case, respondents have the burden to prove forgery.

As opposed to their allegation that their signatures are forged because they did not participate and sign in the Deed of Quitclaim and Adjudication, respondents, in the course of the trial, **admitted** that they affixed their signatures/thumbmark in said Deed only that they did not understand the import of what they executed. Catalina testified on rebuttal that the signature in the Deed appears like her signature when she was single. Hilario admitted having affixed his thumbmark therein because he was made to believe that it was needed to prevent confiscation of the property. On the other hand, Sabina did not make a categorical denial of the execution of said Deed. Marcelina was not presented in court.

It should be noted, however, that the Deed of Quitclaim and Adjudication dated December 31, 1976 is a duly notarized document. It is a well-settled principle that a duly notarized document enjoys the *prima facie* presumption of authenticity and due execution, as well as the full faith and credence attached to a public instrument. To overturn this legal presumption, evidence must be clear, convincing, and more than merely preponderant to establish that there was forgery that gave rise to a spurious contract.[41] This respondents failed to do.

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[39] Id. at 69.

[40] *Gepulle-Garbo v. Sps. Garabato*, 750 Phil. 846, 855-856 (2015).

[41] *Gatan v. Vinarao*, 820 Phil. 257, 267 (2017).

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On the other hand, petitioners were able to establish that they had been in undisturbed possession of the property for a long period of time, cultivating the same, and religiously paying the real property taxes. Petitioners claim that they have established their ownership over the subject property by virtue of the execution of the Deed of Quitclaim and Adjudication, and the Deed of Absolute Sale of Rights[42] dated March 2, 1970 which they attached to their Answer.[43] This Deed of Absolute Sale of Rights was executed before Barrio Captain Eleuterio Cabisada signed by Catalina, Agripino, and Marcelina and thumbmarked by Hilario, selling the subject property in favor of Lope for a consideration of ₱700.00.

Respondents did not file a *Reply* specifically denying under oath the genuineness and due execution of the Deed of Absolute Sale of Rights, as required under Section 8,[44] Rule 8 of the Rules of Court. Thus, with their failure to comply with the "specific denial under oath," respondents had impliedly admitted the due execution and genuineness of said deed evidencing sale of the subject property to Lope. Moreover, respondent failed to adequately prove at the trial that there was fraud and misrepresentation in the execution of said Deed of Sale. Catalina made no denial as to the execution of the Deed of Sale. Agripino testified that there is another document executed by him in 1972 stating therein that he received an advance payment of ₱120.00 for the sale of his share. However, Agripino claimed that he had no intention to sell but only mortgaged his share. He never

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[42] *Rollo*, p. 137.

[43] Id. at 81-82.

[44] Section. 8. *How to contest such documents*. — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding Section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

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attempted though to redeem the alleged mortgage because he is single and is not interested in working on it.[45]

While the Deed of Absolute Sale of Rights is not notarized, its validity is not affected. A sale of real property, though not consigned in a public instrument or formal writing, is, nevertheless, valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale of real estate produces legal effects between the parties.[46] Stated differently, although a conveyance of land is not made in a public document, it does not affect the validity of such conveyance.[47] Article 1358[48] of the Civil Code does not require the accomplishment of the acts or contracts in a public instrument in order to validate the act or contract but only to insure its efficacy.[49]

Hence, the Deed of Absolute Sale of Rights is valid and binding between Catalina, Agripino, Marcelina and Hilario, and Lope. More so, it was written in Cebuana, their own language, so it is but logical to conclude that respondents knew the import of what they executed. Further, it was executed in the presence of their Barangay Captain Eleuterio Cabisada. Indeed, above-named respondents failed to discharge their burden to prove with clear and convincing evidence that fraud or misrepresentation attended the execution of said Deed.

Petitioners, likewise, submitted tax declarations in the name of Lope Malaque starting in the year 1978[50] and real property

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[45] *Rollo*, p. 86.

[46] *Estate of Gonzales v. Heirs of Perez*, 620 Phil. 47, 61 (2009).

[47] Id. at 61-62.

[48] Article 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405;

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[49] Supra note 46 at 62.

[50] *Rollo*, p. 76.

tax receipts[51] for the years 1978 to 1982, 1984, 1988, 1991 to 1993, 1996, 1999 and 2004. It can be seen at the dorsal portion of Tax Declaration No. 91190 in the name of Lope that it is a transfer by virtue of the Deed of Quitclaim and Adjudication executed by the Heirs of Salomon in favor of Lope. It is a settled rule that 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.[52] Thus, petitioners voluntary declaration of the subject property for taxation purposes and payment of such tax strengthens their bona fide claim of ownership over the subject property.

Further, it baffles this Court that while respondents sought to declare void ab initio the Deed of Quitclaim and Adjudication claiming that they neither participated nor signed in said Deed, respondents, however, wanted to retain the validity of the first part of the document wherein they waived/quitclaimed the 2,010-square meter portion of the property in favor of Eusebia Calape. Hence, their prayer in the complaint was to partition only the remaining 8,032-square meter portion of Lot 3974. Respondents cannot ask that a portion of said Deed be valid and the rest as null and void. This cannot be done.

As between the testimonies of respondents, which failed to prove clearly, positively, and convincingly the presence of forgery, and the documentary evidence of petitioners, *i.e.*, the notarized Deed of Quitclaim and Adjudication, the Deed of Absolute Sale of Rights, tax declaration, and tax receipts, the latter evidence prevails. Testimonial evidence is easy of fabrication and there is very little room for choice between testimonial evidence and documentary evidence. Thus, in the weighing of evidence, documentary evidence prevails over testimonial evidence.[53] The two documents taken together and

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[51] Id. at 140-154.

[52] *Tolentino v. Sps. Latagan*, 761 Phil. 108, 137-138 (2015).

[53] *GSIS v. Court of Appeals*, 294 Phil. 699, 710 (1993).

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which are complementary to each other establish the rights of Lope as owner of the property subject matter of this litigation.

Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law. For having failed to discharge their burden to prove forgery and/or fraud and misrepresentation by clear, positive, and convincing evidence, respondents failed to prove their cause of action. Inevitably, their complaint should be dismissed.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated January 22, 2013 and the Resolution dated July 24, 2013 of the Court of Appeals in CA-G.R. CV No. 01048-MIN are hereby **REVERSED** and **SET ASIDE**. Respondents' complaint for partition, annulment of quitclaim and adjudication, accounting of proceeds, with prayer for writ of preliminary injunction/restraining order and damages is hereby **DISMISSED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Zalameda, and *Gaerlan, JJ.,* concur.