Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HEIRS OF MARGARITA PRODON,	**G.R. No. 170604**
Petitioners,	Present:
-versus-	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
HEIRS OF MAXIMO S. ALVAREZ AND VALENTINA CLAVE, REPRESENTED BY REV. MAXIMO ALVAREZ, JR.,	Promulgated:
Respondents.	SEP 02 2013

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D E C I S I O N

BERSAMIN, *J.*:

The Best Evidence Rule applies only when the terms of a written document are the subject of the inquiry. In an action for quieting of title based on the *inexistence* of a deed of sale with right to repurchase that purportedly cast a cloud on the title of a property, therefore, the Best Evidence Rule does not apply, and the defendant is not precluded from presenting evidence other than the original document.

The Case

This appeal seeks the review and reversal of the decision promulgated on August 18, 2005,[1] whereby the Court of Appeals (CA) reversed the judgment rendered on November 5, 1997 by the Regional Trial Court (RTC), Branch 35, in Manila in Civil Case No. 96-78481 entitled *Heirs of Maximo S. Alvarez and Valentina Clave, represented by Rev. Maximo*

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[1] *Rollo*, pp. 20-33; penned by Associate Justice Jose C. Reyes, Jr., with Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Arturo D. Brion (now a Member of this Court) concurring.

*S. Alvarez and Valentina Clave, represented by Rev. Maximo Alvarez, Jr. v. Margarita Prodon and the Register of Deeds of the City of Manila*dismissing the respondents' action for quieting of title.[2]

Antecedents

In their complaint for quieting of title and damages against Margarita Prodon,[3]the respondents averred as the plaintiffs that their parents,the late spouses Maximo S. Alvarez, Sr. and Valentina Clave,were the registered owners of that parcel of land covered by Transfer Certificate of Title (TCT) No. 84797 of the Register of Deeds of Manila; that their parents had been in possession of theproperty during their lifetime; that upon their parents' deaths, they had continued the possession of the property as heirs,payingthe real property taxes due thereon;that they could not locate the owner's duplicate copy of TCT No. 84797, but the original copy of TCT No. 84797 on file with the Register of Deeds of Manila was intact; that the original copy contained an entry stating that the property had been sold to defendant Prodon subject to the right of repurchase; and that the entry had been maliciously done by Prodon because the deed of sale with right to repurchasecovering the property did not exist. Consequently, they prayed that the entry be cancelled, and that Prodon be adjudged liable for damages.

The entry sought to be cancelled reads:

> ENTRY NO. 3816/T-84797 – SALE W/ RIGHT TO REPURCHASE IN FAVOR OF: MARGARITA PRODON, SINGLE, FOR THE SUM OF ₱120,000.00, THE HEREIN REGISTERED OWNER RESERVING FOR HIMSELF THE RIGHTS TO REPURCHASE SAID PROPERTY FOR THE SAME AMOUNT WITHIN THE PERIOD OF SIX MONTH (*sic*) FROM EXECUTION THEREOF. OTHER CONDITION SET FORTH IN (DOC. NO. 321, PAGE 66, BOOK NO. VIII OF LISEO A. RAZON, NOT.PUB. OF MANILA)
>
> DATE OF INSTRUMENT – SEPT. 9, 1975
>
> DATE OF INSCRIPTION – SEPT. 10, 1975, AT 3:42 P.M.[4]

In her answer,[5] Prodon claimed that the late Maximo Alvarez, Sr.had executed on September 9, 1975 the deed of sale with right to repurchase; that the deed had been registered with the Register of Deeds and duly annotated on the title;that the late Maximo Alvarez, Sr.had been granted six

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2 Id.at 67-72.
3 Id.at 51-56.
4 Id. at 66.
5 Id.at 57-60.

months from September 9, 1975 within which to repurchase the property; and that she had then become the absolute owner of the property due to its non-repurchase within the given 6-month period.

During trial, the custodian of the records of the property attested that the copy of the deed of sale with right to repurchase could not be found in the files of the Register of Deeds of Manila.

On November 5, 1997, the RTC rendered judgment,[6] finding untenable the plaintiffs' contention that the deed of sale with right to repurchase did not exist. It opined thatalthough the deed itself could not be presentedas evidencein court, its contents could nevertheless be proved by secondary evidencein accordance with Section 5, Rule 130 of the *Rules ofCourt*, upon proof of its execution or existence and of the cause of its unavailability being without bad faith. Itfound that the defendant had established the execution and existence of the deed, to wit:

> In the case under consideration, the execution and existence of the disputed deed of sale with right to repurchase accomplished by the late Maximo Alvarez in favor of defendant Margarita Prodon has been adequately established by reliable and trustworthy evidences (sic). Defendant Prodon swore that on September 9, 1975 she purchased the land covered by TCT No. 84747 (Exhibit 1) from its registered owners Maximo S. Alvarez, Sr. and Valentina Clave (TSN, Aug. 1, 1997, pp.5-7); that the deed of sale with right to repurchase was drawn and prepared by Notary Public Eliseo Razon (Ibid., p. 9); and that on September 10, 1975, she registered the document in the Register of Deeds of Manila (Ibid., pp.18-19).
>
> The testimony of Margarita Prodon has been confirmed by the Notarial Register of Notary Public Eliseo Razon dated September 10, 1975 (Exhibit 2), and by the Primary Entry Book of the Register of Deeds of Manila (Exhibit 4).
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> Page 66 of Exhibit 2 discloses, among others, the following entries, to wit: "No. 321; Nature of Instrument: Deed of Sale with Right to Repurchase; Name of Persons: Maximo S. Alvarez and Valentina Alvarez(ack.); Date and Month: 9 Sept."(Exhibit 2-a).
>
> Exhibit 4, on the other hand, also reveals the following data, to wit: 'Number of Entry: 3816; Month, Day and Year: Sept. 10, 1975; Hour and Minute: 3:42 p.m.; Nature of Contract: Sale with Right to Repurchase; Executed by: Maximo S. Alvarez; In favor: Margarita Prodon; Date of Document: 9-9-75; Contract value: 120,000.' (Exhibit 4-a). Under these premises the Court entertains no doubt about the execution and existence of the controverted deed of sale with right to repurchase.[7]

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6 Id.at 67-72.
7 Id.at68-69.

The RTC rejected the plaintiffs' submission that the late Maximo Alvarez, Sr. could not have executed the deed of sale with right to repurchase because of illness and poor eyesight from cataract. It held that there was no proof that the illness had rendered him bedridden and immobile; and that his poor eyesightcould be corrected by wearing lenses.

The RTC concluded that the original copy of the deed of sale with right to repurchase had been lost, and that earnest efforts had been exerted to produce it before the court. It believedJose Camilon's testimony that he had handed the original to one Atty. Anacleto Lacanilao, but that he could not anymore retrieve such original from Atty. Lacanilao because the latter had meanwhile sufferedfrom a heart ailment and had been recuperating.

Ruling of the CA

On appeal, the respondents assigned the following errors, namely:

> A.
> THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE DUE EXECUTION AND EXISTENCE OF THE QUESTIONED DEED OF SALE WITH RIGHT TO REPURCHASE HAS BEEN DULY PROVED BY THE DEFENDANT.
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> B.
> THE TRIAL COURT GRAVELY ERRED IN ADMITTING THE PIECES OF EVIDENCE PRESENTED BY THE DEFENDANTS AS PROOFS OF THE DUE EXECUTION AND EXISTENCE OF THE QUESTIONED DEED OF SALE WITH RIGHT TO REPURCHASE.
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> C.
> THE TRIAL COURT SERIOUSLY ERRED IN FINDING THAT THE QUESTIONED DEED OF SALE WITH RIGHT TO REPURCHASE HAS BEEN LOST OR OTHERWISE COULD NOT BE PRODUCED IN COURT WITHOUT THE FAULT OF THE DEFENDANT.
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> D.
> THE TRIAL COURT GRAVELY ERRED IN REJECTING THE PLAINTIFFS' CLAIM THAT THEIR FATHER COULD NOT HAVE EXECUTED THE QUESTIONED DOCUMENT AT THE TIME OF ITS ALLEGED EXECUTION.[8]

On August 18, 2005, the CA promulgated its assailed decision, reversing the RTC, and rulingas follows:

> The case of the *Department of Education Culture and Sports (DECS) v. Del Rosario* in GR No. 146586 (January 26, 2005) is instructive in resolving this issue. The said case held:

[8] CA *Rollo*, pp. 23-24.

> "Secondary evidence of the contents of a document refers to evidence other than the original document itself. A party may introduce secondary evidence of the contents of a written instrument not only when the original is lost or destroyed, but also when it cannot be produced in court, provided there is no bad faith on the part of the offeror. However, a party must first satisfactorily explain the loss of the best or primary evidence before he can resort to secondary evidence. A party must first present to the court proof of loss or other satisfactory explanation for non-production of the original instrument. The correct order of proof is as follows: *existence, execution, loss, contents*, although the court in its discretion may change this order if necessary."

It is clear, therefore, that before secondary evidence as to the contents of a document may be admitted in evidence, the existence of [the] document must first be proved, likewise, its execution and its subsequent loss.

In the present case, the trial court found all three (3) prerequisites ha[ve] been established by Margarita Prodon. This Court, however, after going through the records of the case, believes otherwise. The Court finds that the following circumstances put doubt on the very existence of the alleged deed of sale. Evidence on record showed that Maximo Alvarez was hospitalized between August 23, 1975 to September 3, 1975 (Exhibit "K"). It was also established by said Exhibit "L" that Maximo Alvarez suffered from paralysis of half of his body and blindness due to cataract. It should further be noted that barely 6 days later, on September 15, 1975, Maximo Alvarez was again hospitalized for the last time because he died on October of 1975 without having left the hospital. This lends credence to plaintiffs-appellants' assertion that their father, Maximo Alvarez, was not physically able to personally execute the deed of sale and puts to serious doubt [on] Jose Camilion's testimony that Maximo Alvarez, with his wife, went to his residence on September 5, 1975 to sell the property and that again they met on September 9, 1975 to sign the alleged deed of sale (Exhibits "A" and "1"). The Court also notes that from the sale in 1975 to 1996 when the case was finally filed, defendant-appellee never tried to recover possession of the property nor had she shown that she ever paid Real Property Tax thereon. Additionally, the Transfer Certificate of Title had not been transferred in the name of the alleged present owner. These actions put to doubt the validity of the claim of ownership because their actions are contrary to that expected of legitimate owners of property.

Moreover, granting, *in arguendo*, that the deed of sale did exist, the fact of its loss had not been duly established. In *De Vera, et al. v Sps. Aguilar* (218 SCRA 602 [1993]), the Supreme Court held that after proof of the execution of the Deed it must also be established that the said document had been lost or destroyed, thus:

> "After the due execution of the document has been established, it must next be proved that said document has been lost or destroyed. The destruction of the instrument may be proved by any person knowing the fact. The loss may be shown by any person who knew the fact of its loss, or by anyone who had made, in the judgment of the court, a sufficient examination in the place or places where the document or papers of similar

> character are usually kept by the person in whose custody the document lost was, and has been unable to find it; or who has made any other investigation which is sufficient to satisfy the court that the instrument is indeed lost.
>
> However, all duplicates or counterparts must be accounted for before using copies. For, since all the duplicates or multiplicates are parts of the writing itself to be proved, no excuse for non-production of the writing itself can be regarded as established until it appears that all of its parts are unavailable (i.e. lost, retained by the opponent or by a third person or the like).
>
> In the case at bar, Atty. Emiliano Ibasco, Jr., notary public who notarized the document testified that the alleged deed of sale has about four or five original copies. Hence, all originals must be accounted for before secondary evidence can be given of any one. This[,] petitioners failed to do. Records show that petitioners merely accounted for three out of four or five original copies." (218 SCRA at 607-608)

In the case at bar, Jose Camilion's testimony showed that a copy was given to Atty. Anacleto Lacanilao but he could not recover said copy. A perusal of the testimony does not convince this Court that Jose Camilion had exerted sufficient effort to recover said copy. x x x

x x x x

The foregoing testimony does not convince this Court that Jose Camilion had exerted sufficient effort to obtain the copy which he said was with Atty. Lacanilao. It should be noted that he never claimed that Atty. Lacanilao was already too sick to even try looking for the copy he had. But even assuming this is to be so, Jose Camilion did not testify that Atty. Lacanilao had no one in his office to help him find said copy. In fine, this Court believes that the trial court erred in admitting the secondary evidence because Margarita Prodon failed to prove the loss or destruction of the deed.

In fine, the Court finds that the secondary evidence should not have been admitted because Margarita Prodon failed to prove the existence of the original deed of sale and to establish its loss.

x x x x

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Manila, Branch 35 in Civil Case No. 96-78481 is hereby **REVERSED** and a new one entered ordering the cancellation of Entry No. 3816/T-84797 inscribed at the back of TCT No. 84797 in order to remove the cloud over plaintiff-appellants' title.

SO ORDERED.[9]

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[9] *Rollo*, pp. 25-32.

The heirs of Margarita Prodon (who meanwhile died on March 3, 2002) filed an *Omnibus Motion for Substitution of Defendant and for Reconsideration of the Decision,*[10]wherein they alleged that the CA erred:(*a*) in finding that the pre-requisites for the admission of secondary evidence had not been complied with; (*b*) in concluding that the late Maximo Alvarez, Sr. had been physically incapable of personally executing the deed of sale with right to repurchase; and (*c*) in blaming them for not recovering the property, for not paying the realty taxes thereon, and for not transferring the title in their names.

On November 22, 2005, the CA issued itsresolution,[11] allowing the substitution of the heirs of Margarita Prodon, and denying their motion for reconsideration for its lack of merit.

Hence, the heirs of Margarita Prodon (petitioners) have appealed to the Court through petition for review on *certiorari*.

Issues

In this appeal, the petitioners submit the following as issues, namely: (*a*) whether the pre-requisites for the admission of secondary evidence had been complied with; (*b*) whether the late Maximo Alvarez, Sr.had been physically incapable of personally executing the deed of sale with right to repurchase;and (*c*) whether Prodon's claim of ownership was already barred by laches.[12]

Ruling

The appeal has no merit.

1.
Best Evidence Rulewas not applicable herein

We focus first on an unseemly error on the part of the CA that, albeit a harmless one, requiresus to re-examine and rectify in order to carry out our essentialresponsibility of educating the Bench and the Bar on the admissibility of evidence.An analysis leads us to conclude that the CA and the RTC bothmisapplied the Best Evidence Ruleto this case, and their misapplication divertedthe attention from the decisive issuein this action for quieting of title. We shallendeavor to correct the error in order to turn the case tothe right track.

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10 CA *rollo*, pp. 101-108.
11 Id. at 117.
12 *Rollo*, p. 11.

Section 3,Rule 130 of the *Rules of Court*embodies the Best Evidence Rule, to wit:

> Section 3.*Original document must be produced; exceptions.* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
>
> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
>
> (b) When the original is in the custody or under control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
>
> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
>
> (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

The Best Evidence Rule stipulates that in proving the terms of a written document the original of the document must be produced in court. The rule excludes any evidence other than the original writing to prove the contents thereof, unless the offeror proves: (*a*) the existence or due execution of the original; (*b*) the loss and destruction of the original, or the reason for its non-production in court; and (*c*) the absence of bad faithon the part of the offeror to which the unavailability of the original can be attributed.[13]

The primary purpose of the Best Evidence Rule is to ensure that the exact contents of a writing are brought before the court,[14]considering that (*a*) the precision in presenting to the court the exact words of the writing is of more than average importance, particularly as respects operative or dispositive instruments, such as deeds, wills and contracts, because a slight variation in words may mean a great difference in rights; (*b*) there is a substantial hazard of inaccuracy in the human process of making a copy by handwriting or typewriting; and (*c*) as respects oral testimony purporting to give from memory the terms of a writing, there is a special risk of error, greater than in the case of attempts at describing other situations generally.[15] The rule further acts as an insurance against fraud.[16]Verily, if a

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[13] *Citibank, N.A. Mastercard v. Teodoro*, G.R. No. 150905, September 23, 2003, 411 SCRA 577, 584-585, citing *De Vera v. Aguilar*, G.R. No. 83377, February 9, 1993, 218 SCRA 602, 606.

[14] Lempert and Saltzburg, *A Modern Approach to Evidence*, (American Casebook Series), Second Edition, 1982, p. 1007.

[15] McCormick on Evidence (Hornbook Series), Third Edition 1984, § 233, p. 707.

party is in the possession of the best evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes that its production would expose and defeat.[17]Lastly, the rule protects against misleading inferences resulting from the intentional or unintentional introduction of selected portions of a larger set of writings.[18]

But theevilsofmistransmission of critical facts, fraud, and misleading inferencesarise only when the issue relates to the terms of the writing. Hence, the Best Evidence Rule applies only when the *terms of a writing* are in issue. When the evidence sought to be introduced concerns external facts, such as the existence, execution or deliveryof the writing,without reference to its terms, the Best Evidence Rule cannot be invoked.[19]In such acase, secondary evidence may be admitted even withoutaccounting for the original.

This case involves an action for quieting of title,a common-law remedy for the removal of any cloud or doubt or uncertainty on the title to real propertyby reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title.In such an action, the competent court is tasked to determine the respective rights of the complainant and other claimants to place things in their proper place and to make the one who has no rights to said immovable respect and not disturb the other. The action is for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property. For an action to quiet title to prosper, two indispensable requisites must concur, namely: (*a*) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (*b*) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie*appearance of validity or legal efficacy.[20]

The action for quieting of title may be based on the fact that a deed is invalid, ineffective, voidable, or unenforceable. The terms of the writing may or may not be material to an action for quieting of title, depending on the ground alleged by the plaintiff. For instance, when an action for quieting of title is based on the unenforceability of a contract for not complying with the Statute of Frauds, Article 1403 of the *Civil Code* specifically provides

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16 Lempert and Saltzburg,supra.
17 Francisco, *Evidence: Rules of Court in the Philippines* (Rules 128-134), Third Edition 1996, p. 56.
18 Lempertand Saltzburg, supra.
19 McCormick on Evidence, supra;R. Francisco, supra.
20 *Phil-Ville Development and Housing Corporation v. Bonifacio,* G.R. No. 167391, June 8, 2011, 651 SCRA 327, 341.

that evidence of the agreement cannot be received without the writing, or a secondary evidence of its contents. There is then no doubt that the Best Evidence Rule will come into play.

It is not denied that this action does not involve the terms or contents of the deed of sale with right to repurchase. The principal issue raised by the respondents as the plaintiffs, which Prodonchallenged head on, was whether or not the deed of sale with right to repurchase, duly executed by the late Maximo Alvarez, Sr.,had really existed. They alleged in the complaint that:

> x x x x
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> 9. Such entry which could have been maliciously and deliberately done by the defendant Margarita Prodon created cloud and [is] prejudicial to the title of the property subject matter of this case, since while it is apparently valid or effective, but **in truth and in fact it is invalid, ineffective or unenforceable inasmuch that the instrument purporting to be a Deed of Sale with right of repurchase** mentioned in the said entry **does not exist**.[21]
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> x x x x

On her part, Prodon specifically denied the allegation, averring in her answer that "sometime [o]n September 9, 1975, deceased Maximo S. Alvarez lawfully entered into a Contract of Sale with Right to Repurchase, object of which is the titled lot located at Endaya Street, Tondo, Manila, in favor of defendant."[22]In thepre-trial order,the RTC defined the issue to be triedas "[w]hether or not the alleged document mentioned in the said entry is existing, valid or unenforceable,"[23] and did not include the terms of the deed of salewith right to repurchase among the issues.

Apparently, the parties were fully cognizant of the issues as defined,fornone of themthereafterventured to present evidence to establish the terms of the deed of sale with right to repurchase. In the course of the trial, however,a question was propounded to Prodon as to who had signed or executed the deed,and the question was objected to based on the Best Evidence Rule. The RTC thensustained the objection.[24]At that point began the diversion of the focus in the case. The RTC should have outrightly overruled the objection because the fact sought to be established by the requested testimony was the execution of the deed, not its terms.[25]Despite the fact that the terms of the writing were not in issue, the RTC inexplicably applied the Best Evidence Rule to the case and proceeded to determine whether the requisites for the admission of secondary evidence had been

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21 Records, p. 5.
22 Id. at 26.
23 Id. at 148.
24 TSN, August 1, 1997, p. 10.
25 Id.

complied with, without being clear as to what secondary evidence was sought to be excluded. In the end, the RTCfound in its judgment that Prodonhad complied with the requisites for the introduction of secondary evidence, and gave full credence to the testimony of Jose Camilon explaining the non-production of the original. On appeal, the CA seconded the RTC's mistake by likewise applying the Best Evidence Rule, except that the CA concluded differently, inthat it held thatProdonhad notestablishedthe existence, execution, and loss of the original documentas the pre-requisites for the presentation of secondary evidence. Its application of the Best Evidence Rulenaturally led the CA to rule that secondary evidence should not have been admitted, but like the RTC the CA did not state what excluded secondary evidence it was referring to.

Considering that the Best Evidence Rule was not applicable because the terms of the deed of sale with right to repurchasewere not the issue, the CA did not have toaddress and determine whether the existence, execution, and loss, as pre-requisites for the presentation of secondary evidence, had been established by Prodon's evidence. It should have simply addressed and determined whether or not the "existence" and "execution" of the deed*as the facts in issue* had been proved by preponderance of evidence.

Indeed, for Prodon who had the burden to prove theexistence and due execution of the deedof sale with right to repurchase, the presentation of evidence other than the original document, likethe testimonies of Prodon and Jose Camilon, the Notarial Register of Notary Eliseo Razon, and the Primary Entry Book of the Register of Deeds,would have sufficed even without first proving the loss or unavailability of the original of the deed.

2.
Prodon did not preponderantly establish the existence and due execution of the deed of sale with right to repurchase

The foregoing notwithstanding, good trial tactics still required Prodon to establish and explain the loss of the original of the deed of salewith right to repurchase to establish the genuineness and due execution of the deed.[26]This was because the deed, although a collateral document, was the foundation of her defense in this action for quieting of title.[27]Her inability to

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[26] Lempert and Saltzburg,supra,at 1007, to wit:

The best evidence rule does not require that a writing be produced when its existence rather than its contents is at issue. If, for example, the question arises whether a particular report was written and filed, a witness could testify that the report was made without accounting for the original. Of course, if it were important to one party to show that the report existed, good trial tactics usually would require the party to produce the report or account for its absence.

[27] See *Lee v. People*, G.R. No. 159288, October 19, 2004, 440 SCRA 662 ("xxx It has been held that where the missing document is the foundation of the action, more strictness in proof is required than where the document is only collaterally involved. xxxIf the document is one in which other persons are also interested, and which has been placed in the hands of a custodian for safekeeping, the custodian must be required to make a search and the fruitlessness of such search must be shown, beforesecondary evidence

produce the original logically gave rise to the need for her to prove its existence and due execution by other means that could only be secondary under the rules on evidence. Towards that end, however, it was not required to subjectthe proof of the loss of the original to the same strict standard to which it would be subjected had the loss or unavailability been a precondition for presenting secondary evidence to prove the terms of a writing.

A review of the records reveals that Prodon did not adduce proofsufficient to show thelossor explain the unavailability of the original as to justify the presentation of secondary evidence. Camilon,one of her witnesses, testified that he had given the original to her lawyer, Atty. Anacleto Lacanilao, but that he (Camilon) could not anymore retrieve the original because Atty. Lacanilao had been recuperating fromhis heart ailment. Such evidence without showing the inability to locate the originalfrom among Atty. Lacanilao's belongings by himself or by any of his assistants or representativeswas inadequate. Moreover, a duplicate original could have been secured fromNotary PublicRazon, but no effort was shown to have been exerted in that direction.

In contrast, the records contained ample *indicia*of the improbability of the existence of the deed. Camilon claimed that the late Maximo Alvarez, Sr. had twice gone to his residence in Meycauayan, Bulacan, the first on September 5, 1975, to negotiate the sale of the property in question, and the second on September 9, 1975,to execute the deed of sale with right to repurchase,*viz*:

> Q Do you also know the deceased plaintiff in this case, MaximoAlvarez, Sr. and his wife Valentina Clave, Mr. Witness?
>
> A Yes, sir.
>
> Q Under what circumstance were you able to know the deceased plaintiff Maximo Alvarez, Sr. and his wife?
>
> A When they went to our house, sir.
>
> Q When was this specifically?
>
> A Sometime the first week of September or about September 5, 1975, sir.
>
> Q What was the purpose of the spouses Maximo and Valentina in meeting you on that date?
>
> A. They were selling a piece of land, sir.
>
> x x x x

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can be admitted. The certificate of the custody of the document is incompetent to prove the loss or destruction thereof. Such fact must be proved by some person who has knowledge of such loss.")

Q At the time when the spouses Maximo Alvarez, Sr. and Valentina Clave approached you to sell their piece of land located at Endaya, Tondo, Manila, what document, if any, did they show you?

A The title of the land, sir.

x x x x

Q You said that on the first week of September or September 5, 1975 spouses Maximo and Valentina approached you at the time, what did you tell the spouses, if any?

A I asked them to come back telling them that I was going to look for a buyer, sir.

x x x x

Q You said that you told the spouse[s] Alvarez to just come back later and that you will look for a buyer, what happened next, if any?

A I went to see my aunt Margarita Prodon, sir.

Q What did you tell your aunt Margarita Prodon?

A I convinced her to buy the lot.

ATTY. REAL

Q What was the reply of Margarita Prodon, if any?

A She agreed, provided that she should meet the spouses, sir.

Q After Margarita Prodon told you that[,] what happened next, if any?

A I waited for the spouses Alvarez to bring them to my aunt, sir.

Q Were you able to finally bring the spouses before Margarita Prodon?

A Valentina Clave returned to our house and asked me if they can now sell the piece of land, sir.

Q What did you tell Valentina Clave?

A We went to the house of my aunt so she can meet her personally, sir.

Q And did the meeting occur?

WITNESS

A Yes, sir.

ATTY. REAL

Q What happened at the meeting?

A I told Valentina Clave in front of the aunt of my wife that they, the spouses, wanted to sell the land, sir.

Q What was the reply of your aunt Margarita Prodon at the time?

A That Valentina Clave should come back with her husband because she was going to buy the lot, sir.[28]

The foregoing testimony could not be credible for the purpose of proving the due execution of the deed of sale with right to repurchase for three reasons.

The first is that the respondents preponderantly established that the late Maximo Alvarez, Sr. had been in and out of the hospital around the time that the deed of sale with right to repurchase had been supposedly executed on September 9, 1975. The records manifested that he had been admitted to the Veterans Memorial Hospital in Quezon City on several occasions, and had then been diagnosed with the serious ailments or conditions, as follows:

Period of confinement	Diagnosis
March 31 – May 19, 1975	• Prostatitis, chronic • Arteriosclerotic heart disease • Atrial fibrillation • Congestive heart failure • CFC III[29]
June 2- June 6, 1975	• Chest pains (Atrial Flutter) • Painful urination (Chronic prostatitis)[30]
August 23-September 3, 1975	• Arteriosclerotic heart disease • Congestive heart failure, mild • Atrial fibrillation • Cardiac functional capacity III-B[31]
September 15-October 2, 1975	• Arteriosclerotic heart disease • Atrial fibrillation • Congestive heart failure • Pneumonia • Urinary tract infection • Cerebrovascular accident, old • Upper GI bleeding probably secondary to stress ulcers[32]

28 TSN, August 14, 1997, pp. 54-59.
29 Records, p. 182.
30 Id.at184.
31 Id.at186.
32 Id.at188.

The medical history showingthe number of very serious ailmentsthe late Maximo Alvarez, Sr. had been suffering from rendered it highly improbable for him to travel from Manila all the way to Meycauayan, Bulacan, where Prodon and Camilon were then residing in order only to negotiate and consummate the sale of the property. This high improbability was fully confirmed by his son, Maximo, Jr., who attested that his father had been seriously ill, and had been in and out of the hospital in 1975.[33] The medical recordsrevealed, too, that on September 12, 1975, or three days prior to his final admission to the hospital, the late Maximo Alvarez, Sr. had suffered from "[h]igh grade fever, accompanied by chills, vomiting and cough productive of whitish sticky sputum;"had been observed to be "conscious" but "weak" and "bedridden" with his heart having "faint" sounds, irregular rhythm, but no murmurs; and his left upper extremity and left lower extremity had suffered 90% motor loss.[34]Truly, Prodon's allegation that the deed of sale with right to repurchase had been executed on September 9, 1975 could not command belief.

The second is that the annotation on TCT No. 84797of the deed of sale with right to repurchase and the entry in the primary entry book of the Register of Deeds did not themselves establish the existence of the deed. They provedat best that a document purporting to be a deed of sale with right to repurchasehad been registered with the Register of Deeds. Verily, the registration alone of the deed was not conclusive proof of its authenticity or its due execution by the registered owner of the property, which was preciselythe issue in this case. The explanation for this is that registration,being a specie of notice, is simply a ministerial act by which an instrument is inscribed in the records of the Register of Deeds and annotated on the dorsal side of the certificate of title covering the land subject of the instrument.[35] It is relevant to mention that the law on land registration does not require that only valid instruments be registered, because the purpose of registration is only to give notice.[36]

By the same token, the entry in the notarial register of Notary Public Razon could only be proof that a deed of sale with right to repurchase had been notarized by him, but did not establish the due execution of the deed.

The third is thatthe respondents' remaining in the peaceful possession of the property was further convincing evidence demonstrating that the late Maximo Alvarez, Sr. did not execute the deed of sale with right to repurchase. Otherwise, Prodon would have herself asserted and exercised her right to take over the property, legally and physically speaking, upon the expiration in 1976 of the repurchase period stipulated under the deed, including transferring the TCT in her nameand paying the real property

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33 TSN, June 6, 1997, p. 11.
34 Records, p. 188.
35 *Autocorp Group v. Court of Appeals*, G.R. No. 157553, September 8, 2004, 437 SCRA 678, 688.
36 Id.

taxes due on the property. Her inaction was an index of the falsity of her claim against the respondents.

In view of the foregoing circumstances, we concur with the CA that the respondents preponderantly proved that the deed of sale with right to repurchase executed by the late Maximo Alvarez, Sr. did not exist in fact.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on August 18, 2005 by the Court of Appeals in C.A.-G.R. CV No. 58624 entitled *Heirs of Maximo S. Alvarez and Valentina Clave, represented by Rev. Maximo Alvarez, Jr. v. Margarita Prodon and the Register of Deeds of the City of Manila*; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice