



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

**HEIRS OF SPOUSES ANGEL
LIWAGON AND FRANCISCA
DUMALAGAN, namely:
NARCISA LIWAGON-LAGANG,
represented by her Heir VICTOR
LIWAGON LAGANG, LEONCIO
LIWAGON, represented by his
Heir GERONIMA VDA.
LIWAGON, and JOSEFINA
LIWAGON-ESCAUSO
represented by their Attorney-in-
Fact and for herself, JOSEFINA
LIWAGON-ESCAUSO,**
Petitioners,

G.R. No. 193117

Present:

VELASCO, JR., J., *Chairperson*,
PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, JJ.

Promulgated:

November 26, 2014

- versus -

**HEIRS OF SPOUSES
DEMETRIO LIWAGON AND
REGINA LIWAGON, namely:
RODRIGO LIWAGON,
MINENCIA LIWAGON-
OMITTER, JOSEFINA
LIWAGON-NUEVO, TERESITO
LIWAGON and DANILO
LIWAGON,**

Respondents.

X-----X

DECISION

VILLARAMA, JR., J.:

Before this Court is a petition for review on certiorari of the Decision¹ of the Court of Appeals (CA) in Cagayan de Oro City dated October 23, 2009 and its Resolution² dated June 24, 2010 in CA-G.R. CV No. 00965-

¹ *Rollo*, pp. 99-108. Penned by Associate Justice Edgardo A. Camello with Associate Justices Edgardo T. Lloren and Leoncia R. Dimagiba concurring.

² *Id.* at 117-118.

MIN affirming *in toto* the September 5, 2006 Decision³ of the Regional Trial Court (RTC), Branch 5, Mati, Davao Oriental in Civil Case No. 1902.

Petitioners and respondents in the case at bar are all children and grandchildren of the late spouses Angel and Francisca Liwagon. On June 4, 1957, Angel was provisionally awarded the following parcel of land through the Board of Liquidators of the Y. Furukawa Plantation:

A parcel of land being portion of the Y. Furukawa plantation, containing an area of 8:30:04 hectares, designated as Lot No. 61, PSD 39427, bounded on the North – Abandoned Road, on the East – Quinonoan River, on the South – Lot No. 57 and on the West – Lot No. 62 covered by the latest Tax Declaration No. ARP-007-00127 under the name of the deceased Angel Liwagon, xerox copy of said Tax Declaration is hereto attached and marked as Annex “E” to form part of this complaint.⁴

Together with his children, he cultivated and introduced improvements on the land. Later, his children got married and lived their own lives – except for his son Demetrio.

The appellate court adopted the findings of fact of the trial court and narrates the succeeding material events, *viz.*:

One of Angel’s sons named Demetrio, together with his wife Regina, stayed with the former and administered the property in litigation. The defendants – who are all Demetrio’s children – helped with the cultivation and took care of the family’s copra-making business.

Eventually, Angel applied to the Y. Furukawa Tarragona Plantation for final acquisition of the land by sale. A deed of conveyance was thus executed in Angel’s favor. As he grew older, Angel stayed with his children, one after the other. He became sickly in 1976, while staying with one of his daughters in Misamis Occidental, until the time of his death in 1978.

Upon their father’s demise, the [petitioners] demanded of their brother Demetrio for the partition of the subject landholding. Demetrio pleaded to defer the partition for economic reasons, to which the [petitioners] acquiesced by permitting the spouses Demetrio and Regina, and their children, to continuously occupy the land in litigation. When Demetrio died, followed shortly by Regina, [petitioner] Josefina signified her demand for partition to one of Demetrio’s sons named Rodrigo. Rodrigo ignored the demand, however, contending that they now owned the property as inheritance from their parents, who had earlier lawfully acquired the land by purchase from their grandfather, as evidenced by a Deed of Sale dated 24 July 1972. As heirs of Angel and Francisca, the [petitioners] presently brought the instant case for annulment of the sale, partition, accounting and damages against the defendants-heirs of Spouses Demetrio and Regina.⁵

Petitioners presented the testimony of Josefina Liwagon-Escauso

³ Id. at 72-91. Penned by Judge Diosdado A. Yamas.

⁴ Id. at 47.

⁵ Id. at 100-101. Citations omitted.

(Josefina) before the court *a quo*. Josefina testified that she is the attorney-in-fact of petitioners and respondents are her nephews from her brother Demetrio. She testified that her father had acquired an eight-hectare parcel of land from the Furukawa Plantation located at Quinonoan, Tarragona, Davao Oriental on June 4, 1957. According to the witness, she and her siblings cultivated and planted coconuts on the subject land in 1955. Demetrio was later allowed by his siblings to attend to the land. He then took charge of the harvesting and making of copra, and remained in possession of the subject land during their lifetime. After he and his wife died, their children retained possession of the property.⁶

Josefina claimed that since the death of their father Angel in 1994, she and her sisters never received any share from the income derived from the proceeds of the improvements on the land. Her brother Demetrio allegedly refused to give their share because he claimed that the income derived from the land was not even sufficient for his own needs. In her accounting before the court *a quo*, she pegged the copra production of the subject land for the period 1994 to 1999 at 40 tons. She claimed her share of the proceeds of the copra production, and explained that the reason she did not demand for her share in the past was because her brother Demetrio and his wife were then hard up.⁷

Josefina further claimed that the signature appearing on the assailed Deed of Sale is not the signature of her father, and that his father's true signature is the one found on the Application for the sales patent. The witness also testified on cross-examination that she only learned, for the first time, that the subject property was purportedly bought by the spouses Demetrio and Regina in 1994 when she was demanding for the partition of the property. Her father also allegedly did not inform her about the purported sale. She only saw the assailed Deed of Sale when it was presented to her at the barangay office. Although they have already had a conference and agreed to divide the subject land before a certain Judge Castro sometime in 1994, the agreement was never complied with.⁸

Respondents presented the testimony of Rodrigo Liwagon (Rodrigo). He stated that petitioners are his aunts Gregoria Liwagon-Grundio, Josefina Liwagon-Escauso and uncles Narciso Liwagon and Leoncio Liwagon. He stated that his father Demetrio passed away on March 14, 1994, and his mother on September 27, 1994. He is the eldest among five children who all grew up in Tarragona, Davao Oriental. He testified that he, his parents and siblings occupied and cultivated 17 hectares of the Furukawa Plantation. His father Demetrio owned 8½ hectares (designated as Lot 62) of the said 17 hectares. He allegedly accompanied his father when the latter submitted the name of his grandfather to the NAFCO Board of Liquidators on or about 1953 or 1954, in order for his grandfather to be awarded a title

⁶ Id. at 75-78.

⁷ Id.

⁸ Id. at 76-78.

over the other 8½ hectares (designated as Lot 61).⁹

Rodrigo testified that his mother acquired the subject property from his grandfather by way of sale. The subject land was already occupied by his family since 1954 – prior to the execution of the assailed Deed of Sale. Such fact of residence is corroborated by a certification from the Barangay Secretary. He claimed that his family had introduced improvements to the subject land since 1954 by planting coconut, abaca, banana and other fruit-bearing trees and they have been receiving and utilizing the income realized from these improvements. It was also his mother, Regina, who paid the realty taxes on the subject property for the years 1971, 1974, 1980, 1985, 1994 and 2000 as evidenced by the corresponding Tax Declarations and Certificate of Payment of Taxes presented.¹⁰

On cross-examination, Rodrigo stated that while he was not present when the purported Deed of Sale over Lot 61 was executed, he is in possession of the said document. Lastly, he claimed that he and his parents were the only ones who cultivated the whole 17-hectare property. His uncles and aunties – all petitioners in this case – never took part in the cultivation and introduction of improvements to the land.¹¹

Julia Divinagracia (Julia), another witness for respondents, testified that she and the late spouses Demetrio and Regina were neighbors. She stated that she owns a nine-hectare parcel of land at the Furukawa Plantation, while the late spouses owned eight hectares. After the death of the spouses, their children occupied the subject land. On cross-examination, Julia stated that her lot is located about one kilometer from the land of the late spouses. She, however, stated that she had no personal knowledge as to who cultivated and introduced the improvements to the subject land. She clarified this part of her testimony on redirect examination and stated that she saw respondents and their father Demetrio attend to the young coconuts in the area sometime in 1959.¹²

The last witness for respondents, Tobias Sapalo (Tobias), is Regina's brother and was also a neighbor of Demetrio at the Furukawa Plantation. He testified that in 1954, the late spouses Demetrio and Regina joined several other applicants who entered and cultivated certain portions of the Furukawa Plantation. The late spouses occupied Lot No. 61.¹³

In its decision dated September 5, 2006, the court *a quo* dismissed the complaint for lack of merit. The trial court found that petitioners failed to disprove the genuineness of the signature of Angel in the purported Deed of Sale which was duly executed before a notary public. Thus, the trial court held that the authenticity of the document must be upheld under the doctrine

⁹ Id. at 78-80.

¹⁰ Id. at 80-81.

¹¹ Id. at 81.

¹² Id. at 82-83.

¹³ Id. at 83-84.

of presumption of regularity. It ruled, *viz.*:

WHEREFORE, proceeding from the foregoing facts supported by evidence and jurisprudence on the matter, this Court hereby renders judgment as follows:

1. Dismissing the complaint for lack of merit;
2. Ordering the plaintiffs to pay jointly and solidarily the defendants the amount of [P]20,000.00 as attorney's fees and [P]20,000.00 as litigation expenses;
3. Ordering the plaintiffs to pay the costs of suit.

SO ORDERED.¹⁴

Petitioners filed a Notice of Appeal before the CA in Cagayan de Oro City, raising the issues on whether or not the purported deed of sale is void and whether the present action is barred by prescription. Petitioners maintained that the purported Deed of Sale was simulated and fictitious because the signature of their father was forged. They emphasized that the deed was never shown to them by the late spouses Demetrio and Regina who, during their lifetime, could not have had the financial capacity to make the purchase. As to the issue of prescription, petitioners argued that their cause of action is imprescriptible because it involves the declaration of nullity of a forged document.

In its assailed Decision dated October 23, 2009, the appellate court denied the appeal for lack of merit, *viz.*:

FOR THE REASONS STATED, the appealed Decision dated 5 September 2006 of the Regional Trial Court, Branch 5, Mati, Davao Oriental, is **AFFIRMED *in toto***; with costs against the plaintiffs-appellants.

SO ORDERED.¹⁵

The CA ruled that the purported Deed of Sale appears regular and valid on its face and petitioners failed to present clear and convincing evidence to controvert the presumption that it was issued with regularity, *viz.*:

Being duly notarized, it carries with it the presumption of regularity, authenticity, and due execution. It has been the consistent rule that without clear, convincing, and more than preponderant evidence to controvert, the presumption of regularity, the evidentiary weight conferred upon such public document with respect to its execution, as well as the statements and the authenticity of the signatures thereon, stand. x x x¹⁶

As to the allegation of forgery, the appellate court ruled that while there may be some variance or difference from the signatures affixed by Angel in the sales application and the assailed Deed of Sale, "these variances

¹⁴ Id. at 91.

¹⁵ Id. at 107.

¹⁶ Id. at 102-103. Citations omitted.

could not be considered *per se* as conclusive proof that the signature in the document in question [has] been forged.”¹⁷ Further, the CA found that petitioners themselves failed to present strong, concrete, and conclusive proof that the subject deed of sale was forged, *viz.*:

It is well settled in this jurisdiction that forgery cannot be presumed; it must always be proved by clear, positive and convincing evidence. Those who make the allegation of forgery have the burden of proving it. Unarguably, no examination of the alleged different signatures was ever conducted in the instant case. Plaintiff-appellant Josefina Liwagon-Escauso’s allegation to the effect that the signature found in the assailed document is not the real and true signature of their father will not suffice to overcome the positive value of the notarized Deed of Sale dated 24 July 1972. x x x¹⁸

x x x x

In the case at bar, the Court cannot accept the [petitioners’] claim of forgery because there was no witness (save for [petitioner] Josefina herself), much less an expert witness, who testified to that effect. Neither were appellants able to prove that Angel Liwagon never appeared before Notary Public Alfredo D. Abayon and acknowledged the deed to be his voluntary and free act, a burden which was theirs to discharge.¹⁹

Petitioners moved for reconsideration but the motion was denied by the appellate court in its assailed Resolution dated June 24, 2010. Hence, this petition raising the following lone assignment of error:

WHETHER THE ALLEGED DEED OF SALE EXECUTED BY ANGEL LIWAGON IN FAVOR OF REGINA LIWAGON IN 1972 IS VALID.²⁰

In the instant petition, petitioners argue that the purported Deed of Sale is invalid and has no force and effect. They contend that both the trial and appellate courts overlooked three material circumstances of the case. **First**, at the time Angel allegedly sold the subject parcel of land to Regina on July 24, 1972, he was merely an awardee of the said property. The said property then remained part of the government’s disposable public land until the Deed of Absolute Sale was issued in Angel’s name sometime only in 1974. Petitioners conclude that when Angel sold the subject land to Regina, he was not yet the owner of the land – therefore making the conveyance devoid of any force and effect under the law.²¹ **Second**, even if the purported Deed of Sale is a public document which enjoys the presumption of regularity, petitioners argue that “the court may validly determine forgery from its own independent examination of the documentary evidence at hand” and the trial judge can do so “without resorting to experts, especially when the question involved is mere handwriting similarity or dissimilarity, which can be determined by a visual comparison of specimen of the

¹⁷ Id. at 103.

¹⁸ Id. at 103-104. Citations omitted.

¹⁹ Id. at 105-106. Citations omitted.

²⁰ Id. at 31.

²¹ Id. at 33-35.

questioned signatures with those of currently existing ones.”²² **Third**, petitioners argue that the fact that their brother Demetrio, during his lifetime, never brought out the existence of the Deed of Sale is a form of concealment which is “an indication of guilt and fully supports the position of the petitioners that the subject Deed of Sale dated 24 July 1972 is fictitious.”²³

We deny the petition.

Both the trial and appellate courts correctly ruled in favor of the due execution of the subject Deed of Sale which was duly acknowledged and recorded by Atty. Alfredo Abayon in his notarial registry. It is a rule in our jurisdiction that the act of notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. By law, a notarial document is entitled to full faith and credit upon its face.²⁴ It enjoys the presumption of regularity and is a *prima facie* evidence of the facts stated therein – which may only be overcome by evidence that is clear, convincing and more than merely preponderant. Without such evidence, the presumption must be upheld.²⁵

Petitioners failed to overcome this presumption.

In the case at bar, a single fact fatal to the cause of petitioners is clear: that aside from the sole testimony of petitioner Josefina that the signature appearing in the assailed Deed of Sale is not that of her father, no clear, positive and convincing evidence was shown to corroborate such claim. The trial court correctly appreciated the testimony of Josefina in its ruling on the issue, *viz.*:

The plaintiffs in this case failed to overcome the presumption of regularity. Josefina testified that the signature affixed on top of the typewritten name of Angel Liwagon is not the real and true signature of her father Angel. The presentation of a copy of a sales application is not enough to substantiate her claim that the signature found on said application is the real and true signature of her father Angel Liwagon. Plaintiff did not present the notary public who notarized the Deed of Sale or any witness to prove that the signature of Angel appearing on the deed is not the true signature of her father. x x x

x x x x

Plaintiff merely said in her testimony that the signature in the Deed of Sale is not the signature of her father. No other evidence was offered that would indubitably show that [the] signatures appearing on the sales application and deed of sale were written by two different persons or that one of the signatures was written or affixed by a person other than Angel Liwagon.²⁶

²² Id. at 35, citing *Spouses Estacio v. Dr. Jaranilla*, 462 Phil. 723, 733 (2003).

²³ Id. at 36.

²⁴ *Gonzales v. Atty. Ramos*, 499 Phil. 345, 347 (2005).

²⁵ *Cavile v. Heirs of Cavile*, 448 Phil. 302, 315 (2003). Citations omitted.

²⁶ *Rollo*, pp. 87-89.

In the case of *Tapuroc v. Loquellano Vda. de Mende*,²⁷ petitioners similarly contended “that by merely examining the signatures in the questioned Deed of Sale and the genuine signatures of their predecessors-in-interest in their Special Power of Attorney, the glaring dissimilarities between the two sets of signatures are immediately evident to support their claim of forgery.”²⁸ We reiterated the rule in *Tapuroc* that forgery cannot be presumed and it must be proved by clear, positive and convincing evidence. Its mere allegation is not evidence and the burden of proof lies on the party alleging it.²⁹ The Court held in that case that the bare denial of therein petitioners that their predecessors-in-interest signed the subject Deed of Sale did not suffice to overcome the presumption of regularity of notarized documents.

We quote the Court’s explanation in the case of *Tapuroc* on the factors involved in the examination and comparison of handwritings, viz.:

In *Jimenez v. Commission on Ecumenical Mission and Relations of the United Presbyterian Church in the USA*, the Court identified and explained the factors involved in the examination and comparison of handwritings:

x x x [T]he authenticity of a questioned signature cannot be determined solely upon its general characteristics, similarities or dissimilarities with the genuine signature. Dissimilarities as regards spontaneity, rhythm, pressure of the pen, loops in the strokes, signs of stops, shades, *etc.*, that may be found between the questioned signatures and the genuine one are not decisive on the question of the former’s authenticity. The result of examinations of questioned handwriting, even with the benefit of aid of experts and scientific instruments, is, at best, inconclusive. There are other factors that must be taken into consideration. The position of the writer, the condition of the surface on which the paper where the questioned signature is written is placed, his state of mind, feelings and nerves, and the kind of pen and/or paper used, play an important role on the general appearance of the signature. Unless, therefore, there is, in a given case, absolute absence, or manifest dearth, of direct or circumstantial competent evidence on the character of the questioned handwriting, much weight should not be given to characteristic similarities, or dissimilarities, between that questioned handwriting and an authentic one.³⁰

Prescinding from the foregoing, the contention of petitioners must fail that a “visual comparison”³¹ of Angel’s signatures in the purported Deed of Sale and in his Application with the Bureau of Lands and Affidavit would reveal “that the signature in the Deed of Sale was not genuine.”³² Not only did petitioners fail to present clear, positive and convincing evidence to

²⁷ 541 Phil. 93 (2007).

²⁸ Id. at 103.

²⁹ Id. Citations omitted.

³⁰ Id. at 104-105. Citations omitted.

³¹ *Rollo*, p. 35.

³² Id.

overcome the presumption of regularity in favor of the assailed document, they merely stated these two sentences in this petition for review to support their claim of forgery *via* a visual comparison of two signatures, *viz.*:

In the Application and Affidavit, the word “*Liwagon*” in his signature is very legible and readable. On the other hand, the word “*Liwagon*” in his signature appearing in the Deed of Sale is not legible or clear.³³

It bears noting and stressing that what petitioners call for in the case at bar is a review of the facts: whether or not the signature of Angel was forged in the assailed Deed of Sale – making the deed fictitious and the sale between Angel and Regina not valid. Such factual question may not be elevated in a petition for review on certiorari as clearly stated under Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended, *viz.*:

SECTION 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

The Court defers and accords finality to the factual findings of trial courts especially when such findings are undisturbed by the appellate court, as in the case at bar. This factual determination deserves great weight and shall not be disturbed on appeal, save for the most compelling reasons, such as when that determination is clearly without evidentiary support or when grave abuse of discretion has been committed.³⁴ It is not the function of this Court to analyze and weigh all over again the evidence or premises supportive of the factual holdings of lower courts,³⁵ or that would defeat the very essence of Rule 45 and would convert the Court into a trier of facts.³⁶

All the more, the Court cannot be called on to decide on an issue of fact which was never raised in the Amended Complaint³⁷ before the trial court which could have had the opportunity to hear and to rule on the evidence presented to support petitioners’ claim. It is one of the instant arguments of petitioners that the Deed of Absolute Sale over the subject property was issued in the name of Angel only in 1974. Hence, when Angel sold the subject land to Regina in 1972, he was not yet the owner of the land – making the conveyance devoid of any force and effect under the law.

To be sure, the stated cause of action of petitioners for the annulment of the subject Deed of Sale in their Amended Complaint was anchored on forgery. Hence, testimonial and documentary evidence were presented and offered to the trial court to prove the existence of such forgery. Petitioners

³³ Id.

³⁴ *Tapuroc v. Loquellano Vda. de Mende*, supra note 27, at 101-102, citing *Republic v. Court of Appeals*, 402 Phil. 498, 508 (2001); *Floro v. Llenado*, 314 Phil. 715 (1995); *Remalante v. Tibe*, 241 Phil. 930 (1988); *Benguet Exploration, Inc. v. CA*, 404 Phil. 270 (2001).

³⁵ Id. at 102, citing *PT & T Corp. v. Court of Appeals*, 458 Phil. 905 (2003).

³⁶ Id. Citations omitted.

³⁷ *Rollo*, pp. 46-53.

cannot now allege a new cause of action – in this petition for review – for invalidating the subject Deed of Sale by arguing that when “Angel Liwagon sold the subject land to Regina Liwagon, he was not yet the owner of the land x x x and had no right to transfer or convey the property.”³⁸ x x x Consequently, the conveyance x x x had no force and effect.”³⁹ It is the trial court which has the jurisdiction to hear and to try evidence that should have been adduced by the parties as to whether Angel neither had ownership nor authority to convey the subject property to Regina.

The Court in the case of *Calanasan v. Dolorito*⁴⁰ could not have been more incisive in explaining the reason for this rule, viz.:

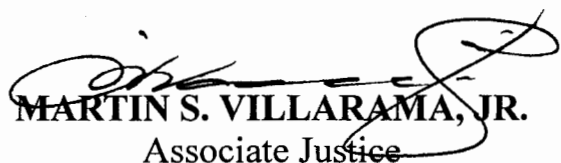
The petitioner never raised this issue before the lower courts. It can’t be emphasized enough that the Court will not revisit the evidence presented below as well as any evidence introduced for the first time on appeal. Aside from being a factual issue that is not proper for the present action, the Court dismisses this *new argument* for being procedurally infirm and violative of due process. As we have held in the past: “points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic consideration of due process impels this rule.”⁴¹

Lastly, as to petitioners making an issue of the circumstance that their brother Demetrio never disclosed to them the existence of the purported Deed of Sale, such “unexplained delay in disclosing the alleged deed of sale”⁴² is not sufficient basis to declare that the sale was fictitious and hence not valid. While petitioners may consider it as concealment and as a sign of guilt that the purported deed is fictitious, this Court needs relevant, convincing and clear evidence – and not mere unsubstantiated conjectures – especially in this case where petitioners failed to discharge their burden to prove on all points that the assailed Deed of Sale was not valid.

WHEREFORE, in view of the foregoing, the petition is **DENIED**. The assailed Decision and Resolution dated October 23, 2009 and June 24, 2010, respectively, of the Court of Appeals in Cagayan de Oro City in CA-G.R. CV No. 00965-MIN are **AFFIRMED**.

With costs against the petitioners.

SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

³⁸ Id. at 33.


³⁹ Id. at 34.

⁴⁰ G.R. No. 171937, November 25, 2013, 710 SCRA 505.

⁴¹ Id. at 510-511. Citations omitted.

⁴² *Rollo*, p. 69.

WE CONCUR:



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson



DIOSDADO M. PERALTA

Associate Justice



BIENVENIDO L. REYES

Associate Justice



FRANCIS H. JARDELEZA

Associate Justice

ATTESTATION

I attest 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.



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution and the Division Chairperson's Attestation, 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

