



### The Facts

This petition stemmed from a complaint for ejectment over a house and lot located at No. 37 Ilang-Ilang Street corner Camias Street, Barangay Capri, Novaliches, Quezon City, filed by Spouses Noel and Violeta Frany (respondent) (Spouses Frany) against petitioners Spouses Dennis and Melody Orsolino (Spouses Orsolino), and all persons claiming rights under them.<sup>6</sup>

Spouses Frany claimed that Carolina Orsolino (Carolina), the mother of petitioner Dennis, authorized her other son Sander Orsolino (Sander), to sell the subject property as evidenced by a Special Power of Attorney<sup>7</sup> (SPA) dated November 20, 2004. On the same date, Sander sold the subject property to Spouses Frany for the sum of ₱200,000.00, evidenced by a Deed of Sale.<sup>8</sup> The respondent said that it was agreed upon that Spouses Orsolino, who are the current occupants of the subject property, shall vacate and peacefully surrender the possession of the same to Spouses Frany on or before the end of November 2004. However, despite repeated demands to vacate the subject property, the petitioners failed to do so. The said matter was also brought before the barangay for conciliation but no settlement was reached.<sup>9</sup>

For their part, the Spouses Orsolino claimed that the subject property is a government property which is being used as a relocation site. They said that they had been occupying the subject property since May 2000 and they derived their right to stay therein from their mother Carolina, who has bought her right to the subject property from Julieta Guaniso in August of 1998. The Spouses Orsolino also alleged that: a) they were not aware of the sale made in favor of Spouses Frany; b) petitioner Dennis has no brother by the name of Sander; c) the signature of Carolina appearing in the SPA and Deed of Sale is a forgery; d) the SPA and the Deed of Sale are spurious documents; e) they did not receive any demand letter from Spouses Frany; and f) there was no real confrontation before the barangay.<sup>10</sup>

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<sup>6</sup> Id. at 87-91.

<sup>7</sup> Id. at 92.

<sup>8</sup> Id. at 93-94.

<sup>9</sup> Id. at 87-88.

<sup>10</sup> Id. at 97-98.

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On September 19, 2007, the MeTC rendered its judgment<sup>11</sup> in favor of Spouses Frany and declared the sale of the subject property as valid upon finding that there was no forgery and, thereby dismissing the complaint in the following wise:

In view of the foregoing, judgment is hereby rendered ordering [Spouses Orsolino], and all those claiming rights under them, to vacate and peacefully surrender possession over the subject premises to [Spouses Frany]; and pay [Spouses Frany] the following:

1. the sum of P5,000.[00], representing reasonable compensation for the use and compensation of the premises, reckoned from July 29, 2005, until the subject premises is finally vacated; and
2. cost of suit.

**SO ORDERED.**<sup>12</sup>

The MeTC took note of the fact that petitioner Dennis admitted to having a brother by the name of Lysander Wilson Ray Orsolino (Lysander), and that petitioner Dennis did not categorically deny that the one who signed under the name of Sander in the Deed of Sale was not his brother Lysander. The MeTC ruled that the presumption that the Deed of Sale was duly executed exists, same with the SPA, since there was no evidence to overturn the presumption as to the authenticity and due execution of the said documents.<sup>13</sup>

Aggrieved, the Spouses Orsolino filed an appeal before the RTC.<sup>14</sup>

### **Ruling of the RTC**

In a Decision<sup>15</sup> dated March 5, 2009, the RTC granted the appeal and set aside the MeTC's ruling, to wit:

**WHEREFORE**, premises considered, the instant appeal filed by [Spouses Orsolino] is hereby **GRANTED**. Accordingly, the assailed Decision dated September 19, 2007 issued by the [MeTC] of Quezon City, Branch 39, is hereby **REVERSED and SET ASIDE**, and a new one is rendered ordering the instant Complaint for Unlawful Detainer filed by [Spouses Frany] to be **[DISMISSED]** for no transfer of rights was conveyed between the parties herein.

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<sup>11</sup> Id. at 82-85.

<sup>12</sup> Id. at 84-85.

<sup>13</sup> Id. at 83.

<sup>14</sup> Id. at 154-155.

<sup>15</sup> Id. at 70-80.

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SO ORDERED.<sup>16</sup>

Contrary to the findings of the MeTC, the RTC concluded that both the SPA and Deed of Sale showed patent irregularities and alterations which render it null and void *ab initio*. According to the RTC, these glaring and strange circumstances overcome the presumption of the authenticity and due execution of the said documents since there has been no explanation on the said alterations. The RTC also said that nothing was adduced in this case to reconcile the variance in the place of execution of the subject documents and the place where it was acknowledged before the notary public.<sup>17</sup>

### Ruling of the CA

On appeal,<sup>18</sup> the CA granted the petition in its Decision<sup>19</sup> dated March 30, 2010 and reinstated the MeTC's judgment. In overturning the RTC ruling, the CA said that:

The courts *a quo* failed to appreciate the documentary evidence marked as Exhibits "F" and "G" which is an acknowledgment receipt executed by [Sander] and [Lysander], acknowledging his receipt of the amounts of P6,000.00 and P194,000.00, respectively, representing full payment of the rights over the property, subject matter of this case. This acknowledgment receipt was attested to not just by [the respondent], as shown in Exhibit "F", but also by Leynardo T. Tiston, as shown in Exhibit "G". This showed that [Sander] and [Lysander] are one and the same person, who received the amount of P200,000.00 from [the respondent], for he signed as a vendor in Exhibit "F" and as an attorney-in-fact in Exhibit "G". This gives credence to [the respondent's] assertion that [Sander] and/or [Lysander] was the attorney-in-fact of [Carolina], who sold the property, and negates the claim of [Spouses Orsolino] that no [Sander] exists but admits that one [Lysander] is his brother. Moreover, a perusal of the [SPA] executed on November 20, 2004 and authorization dated November 1, 2004, shows that the two documents were witnessed by one Leynardo T. Tiston who was also the witness in the document marked as Exhibit "G". Thus, it cannot be said that the signature of [Carolina] on the said [SPA] is forged.<sup>20</sup> (Citations omitted)

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<sup>16</sup> Id. at 80.

<sup>17</sup> Id. at 78-79.

<sup>18</sup> Id. at 62-68.

<sup>19</sup> Id. at 45-55.

<sup>20</sup> Id. at 51-52.

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According to the CA, Spouses Orsolino failed to present any evidence to prove the forgery except to point to the alterations in the place of execution in the SPA and Deed of Sale. They did not present evidence of the fact of forgery which can be established by comparing the alleged false signature with the authentic or genuine signature of Carolina. The CA upheld the validity of the SPA and Deed of Sale which were duly notarized since the same carry evidentiary weight with respect to their due execution and this presumption was not rebutted by clear and convincing evidence to the contrary by Spouses Orsolino.<sup>21</sup>

Upset by the foregoing disquisition, the Spouses Orsolino moved for reconsideration,<sup>22</sup> but it was denied by the CA, in its Resolution<sup>23</sup> dated September 1, 2010. Hence, the present petition for review on *certiorari*.

### **The Issue**

WHETHER OR NOT THE AUTHENTICITY AND DUE EXECUTION OF THE SPA AND DEED OF ABSOLUTE SALE HAVE BEEN SUFFICIENTLY ESTABLISHED.

### **Ruling of the Court**

The petition is bereft of merit.

At the outset, it is definite that the issues raised in this petition are mainly factual which calls for the reassessment of the evidence presented by the parties and is beyond the ambit of the Court's review. However, this petition is properly given due course because of the contradictory findings of facts and rulings of the MeTC and the CA on one hand, and the RTC on the other. But even if the Court were to re-evaluate the evidence presented, considering the divergent positions of the courts below, the petition would still fail.

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<sup>21</sup> Id. at 53.

<sup>22</sup> Id. at 429-440.

<sup>23</sup> Id. at 59-60.

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The bone of contention in the instant case lies on the divergent evaluation of the SPA and the Deed of Sale submitted as evidence by the respondent. Spouses Orsolino mainly dispute said documents by alleging that the signatures of Carolina on the said documents were falsified. To bolster their argument, they presented the *Panunumpa sa Katungkulan*,<sup>24</sup> Statement of Assets, Liabilities and Networth (SALN),<sup>25</sup> and Performance Appraisal Report<sup>26</sup> of Carolina from her previous employer to prove that Carolina's alleged genuine signature which when compared to the signature in the SPA and the Deed of Sale, showed some difference. Spouses Orsolino also question the authenticity and due execution of the said documents inasmuch as it is marred by unexplained erasures and alterations.

To begin with, it bears to emphasize that both trial courts and the CA are unison in finding that no forgery was proven. The RTC even declared that there is no sufficient basis to ascertain the authenticity of Carolina's signature since the allegation of Spouses Orsolino that a comparison of the forged and genuine signatures of Carolina showed patent dissimilarities is not substantiated by the evidence made available in this case. Evidently, the CA and the trial courts found that Spouses Orsolino have failed to overcome the burden of proving their allegation of forgery.

Basic is the rule that forgery cannot be presumed and must be proved by clear, positive and convincing evidence, thus, 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.<sup>27</sup>

The Court sustains the findings of the lower courts that the bases presented by Spouses Orsolino were inadequate to sustain their allegation of forgery. Mere variance of the signatures cannot be considered as conclusive proof that the same were forged. The Spouses Orsolino failed to prove their allegation and simply relied on the apparent difference of the signatures. Moreso, they were not able to establish that the signatures on the said documents were not Carolina's signatures since there had never been an accurate examination of the questioned signatures.

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<sup>24</sup> Id. at 100.

<sup>25</sup> Id. at 148-149.

<sup>26</sup> Id. at 103.

<sup>27</sup> *Gepulle-Garbo y. Garabato*, G.R. No. 200013, January 14, 2015, 746 SCRA 189, 198.

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In imputing discrepancy in the signatures appearing in the SPA and the Deed of Sale, Spouses Orsolino should have conducted an examination of the signatures before the court. Evidently, the foregoing testimonial and documentary evidence adduced by Spouses Orsolino does not suffice the requirement needed to show the genuineness of handwriting as set forth by Section 22<sup>28</sup> of Rule 132 of the Rules of Court. A comparison of both the differences and similarities in the questioned signatures should have been made to satisfy the demands of evidence.<sup>29</sup>

In this case, the Court cannot accept the claim of forgery where no comparison of Carolina's signatures were made and no witness except for Spouses Orsolino themselves were presented to testify on the same, much less an expert witness called. All that was presented were Spouses Orsolino's testimonies and the following documentary evidence: *Panunumpa sa Katungkulan*, SALN, and Performance Appraisal Report of Carolina from her previous employer. Aside from these, no other evidence was submitted by Spouses Orsolino to prove their allegation of forgery.

As to the main issue of this case on whether the authenticity and due execution of the SPA and Deed of Sale have been sufficiently established, the Court agrees with the conclusion of the CA and the MeTC that the validity of the said documents must be upheld on the ground that it enjoys the presumption of regularity of a public document since the same carry evidentiary weight with respect to their due execution. Furthermore, the fact of forgery is not established by the patent irregularities and alterations in the said documents, such as the changing of names of the places and the date written thereon.

A review of the records of this case would show that, notwithstanding, the unexplained erasures and alterations in the said documents after it was signed by Carolina, no sufficient allegation indicates that the alleged alterations had changed the meaning of the documents, or that the details differed from those intended by Carolina at

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<sup>28</sup> **Section 22. How genuineness of handwriting proved.** — The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

<sup>29</sup> *Ladignon v. Court of Appeals*, 390 Phil. 1161, 1172 (2000), citing *American Express International, Inc. v. CA*, 367 Phil. 333, 341-342 (1999).

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the time that she signed it. Thus, it can only be concluded that Carolina had voluntarily executed the subject documents, with the intention of giving effect thereto. Spouses Orsolino's bare allegation that the said alterations invalidated the sale does not equate with the necessary allegation that the alterations were false or had changed the intended meaning of the documents.

As to the unexplained erasures and alterations in the said documents, the findings of the CA on this matter are informative:

The RTC was referring to the alterations on the date and place of execution of the [SPA] and the Deed of Sale from November 20, 2004 to December 2004 and intercalating therein Catarman, N. Samar. This Court scrutinized Exhibits "F" and "G", wherein the partial payment of P6,000.00 was made on November 16, 2004 while the balance of P194,000.00 representing full payment for the house and lot was made on December 29, 2004. Although the RTC stated that no explanation was made as to the alterations on the date and place of execution of the Deed of Sale, it did not however consider Exhibits "F" and "G", regarding the payments received by [Spouses Orsolino], particularly the date of receipt of the payments. This is the reason why the Deed of Sale was signed on November 20, 2004 and notarized only in December 2004, after full payment was received by the attorney-in-fact. The said evidence was never rebutted by [Spouses Orsolino].<sup>30</sup>

The Court also took note of the fact that Sander, the person who prepared the said documents, was never confronted during the trial nor was any affidavit from him presented by Spouses Orsolino.

Lastly, the Court does not agree with the RTC's finding that the sale was void because the subject property was conjugal at the time Carolina sold it to the respondent. Article 160 of the Civil Code provides that all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife. However, the presumption under said article applies only when there is proof that the property was acquired during the marriage. Proof of acquisition during the marriage is an essential condition for the operation of the presumption in favor of the conjugal partnership.<sup>31</sup>

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<sup>30</sup> *Rollo*, pp. 52-53.

<sup>31</sup> *Manongsong v. Estimo*, 452 Phil. 862, 878 (2003).

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Here, the RTC's conclusion that the subject property was conjugal was not based on evidence since Spouses Orsolino failed to present any evidence to establish that Carolina acquired the subject property during her marriage. Consequently, there is no basis for applying the presumption under Article 160 of the Civil Code to the present case.

The Court has also observed that Spouses Orsolino presented nothing to support their claim of their right to possess the subject property. There is no dispute with the fact that Spouses Orsolino were not even the registered owners of the subject property. Spouses Orsolino were not able to prove by preponderance of evidence that they are now the new owners and the rightful possessors of the subject property since they have not presented any solid proof to bolster their claim. The sad truth is that they were merely allowed to stay on the subject property by mere tolerance of Carolina. Thus, their unsubstantiated arguments are not, by themselves, enough to offset the respondent's right as the new owner of the subject property.

Lastly, the other issues raised by Spouses Orsolino, specifically their failure to receive the demand letter and the lack of prior conciliation proceeding before the barangay, are contradicted by the evidence on record. As found by the MeTC, the respondent tried to have a copy of the demand letter personally delivered to Spouses Orsolino on August 5, 2005 but the latter refused to receive the same, thus, the respondent left a copy of the demand letter in the premises.<sup>32</sup> Similarly, the Certificate to File Action issued by the *Punong* Barangay suffices to prove that the case was referred to the barangay for possible conciliation.

In sum, the Court finds no cogent reason to annul the findings and conclusions of the CA. Since the SPA and Deed of Sale are valid, the respondent is deemed as recognized owner of the subject property and consequently has the better right to its possession:

**WHEREFORE**, the petition is **DENIED**. The Decision dated March 30, 2010 and Resolution dated September 1, 2010 of the Court of Appeals in CA-G.R. SP No. 108220 are **AFFIRMED**.

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<sup>32</sup> Rollo, pp. 95-96.

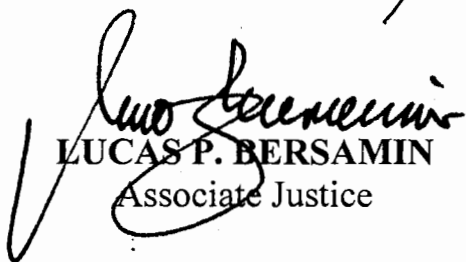
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**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
 Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson


  
**LUCAS P. BERSAMIN**  
 Associate Justice

  
**FRANCIS H. JARDELEZA**  
 Associate Justice

  
**NOEL V. TIAM**  
 Associate Justice


**ATTESTATION**

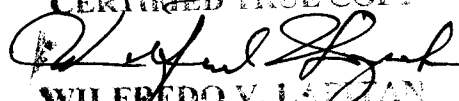
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson

### CERTIFICATION

Pursuant to Section 13, Article VIII of the 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

CERTIFIED TRUE COPY  
  
**WILFREDO V. LAZTAN**  
Division Clerk of Court  
THIRD DIVISION  
MAY 03 2017

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