Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ESPERANZA BERBOSO,
Petitioner,

- versus -

VICTORIA CABRAL,
Respondent.

G.R. No. 204617

Present:

VELASCO, JR., *J.*,
Chairperson,
BERSAMIN,
JARDELEZA,
*MARTIRES, and
TIJAM, *JJ.*

Promulgated:

July 10, 2017

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DECISION

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari* filed by petitioner Esperanza Berboso assailing the Decision[1] dated May 7, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 100831, which reversed and set aside the Decision[2] dated August 30, 2006 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 12283, dismissing the case filed by respondent Victoria Cabral for cancellation of emancipation patents (EP).

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* Designated Fifth Member of the Third Division per Special Order No. 2461 dated July 10, 2017 *vice* retired Associate Justice Bienvenido L. Reyes.

[1] Penned by Associate Justice Rodil V. Zalameda, concurred in by Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro; *rollo*, pp. 65-81.

[2] Id. at 124-128.

The pertinent facts of the case are as follows:

The subject matter of this case is a parcel of land located in Barangay Saluysoy, Municipality of Meycauyan, Bulacan containing an area of 23,426 square meters (subject land). The subject land was awarded to Alejandro Berboso (Alejandro) by the Department of Agrarian Reform (DAR) on September 11, 1981 pursuant to Presidential Decree (P.D.) No. 27[3] by virtue of a Certificate of Land Transfer (CLT) No. 0-056450. The same was duly registered with the Register of Deeds of Meycauyan, Bulacan.

On July 27, 1987, CLT No. 0-056450 was replaced by EP No. 445829 covering 22,426 sq m and EP No. 445830 covering the remaining 1,000 sq m.

On November 17, 1992, after Alejandro had fully complied with all the requirements for the final grant of title, the Register of Deeds of Meycauyan, Bulacan issued Transfer Certificate of Title (TCT) No. EP-046 and TCT No. EP-047 in the name of Alejandro. TCT Nos. EP-046 and EP-047 thereby cancelled EP Nos. 445829 and 445830.

On September 8, 1993, respondent filed with the DAR Provincial Agrarian Reform Adjudication Board (PARAB) her first petition to cancel EP Nos. 445829 and 445830.

Meanwhile, Alejandro died in 1994. After his death, his heirs settled his estate and executed an Extra-Judicial Settlement of Estate. Thus, on April 15, 1996, TCT Nos. EP-046 and EP-047 were cancelled and TCT Nos. 263885(M) and 263886(M) were issued in the name of the heirs of Alejandro, namely, Esperanza Vda. De Berboso, Juan Berboso, Benita Berboso Gonzales, Adelina Berboso Villegas and Rolando Berboso.

The PARAB rendered a decision in favor of Alejandro and accordingly affirmed the validity of the EP Nos. 445829 and 445830. Respondent's appeal to the DARAB was denied. Respondent elevated the case to the CA via a Petition for Review docketed as CA-G.R. SP No. 44666. The CA in its Decision[4] dated April 21, 1998, affirmed the decisions of the PARAB and the DARAB.

Respondent assailed the CA decision to this Court, but on December 9, 1998 Resolution,[5] this Court dismissed the respondent's petition. Pending the resolution of the motion for reconsideration (MR) filed by the

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[3] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR.

[4] *Rollo*, pp. 101-110.

[5] Court Third Division Resolution in G.R. No. 135317 entitled *Victoria Cabral v. Adjudication Board Department of Agrarian Reform and Spouses Alejandro and Esperanza Berboso*; id. at 111.

respondent, the latter filed on February 26, 1999, her second petition for the cancellation of the said EP Nos. 445829 and 445830 before the PARAB docketed as DARAB Case No. R-03-02-8506'99. Respondent claimed that petitioner sold a portion of the subject land to a certain Rosa Fernando (Fernando) within the prohibitory period under the existing rules and regulations of the DAR and prayed again for the cancellation of EP Nos. 445829 and 445830 awarded to Alejandro. Petitioner specifically denied the allegation of respondent that she sold a portion of the subject land to Fernando.

On March 17, 1999, this Court, in its Resolution[6] denied with finality the MR filed by respondent.

Then, on December 20, 2000, the PARAB issued its Decision,[7] in connection with the second petition of respondent, granting respondent's petition and ordered as follows:

> WHEREFORE, judgment is hereby rendered in favor of the [respondent] and against [petitioner] and order is hereby issued:
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> 1. ORDERING [petitioner] and other persons acting in her behalf to vacate the landholdings in question, subject of this present litigation;
> 2. ORDERING the cancellation of Emancipation Patent Nos. 445829 and 445830;
> 3. DIRECTING the DAR officers and personnel concerned to re-allocate the subject landholdings in favor of qualified farmer-beneficiaries in accordance with its existing DAR laws, rules and regulations on the matter.
>
> No pronouncement as to costs.
>
> SO ORDERED.[8]

Petitioner appealed the PARAB's decision to the DARAB, which the latter granted in its Decision[9] dated August 30, 2006 in DARAB Case No. 12283, thus:

> **WHEREFORE**, premises considered, the Decision of the Honorable Adjudicator a quo dated December 20, 2000 is hereby **SET ASIDE. A NEW JUDGMENT** is hereby rendered **DISMISSING** the petition filed by petitioner-appellee for lack of merit.
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> **SO ORDERED.**[10]

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[6] Id. at 112.
[7] Id. at 118-122.
[8] Id. at 122.
[9] Id. at 124-128.
[10] Id. at 128.

Respondent herein appealed the DARAB's decision to the CA docketed as CA-G.R. SP No. 100831. The CA in its Decision[11] dated May 7, 2012, reversed the DARAB and reinstated the PARAB's decision, to wit:

> **WHEREFORE**, foregoing premises considered, the Petition for Review is **GRANTED** and the assailed 30 August 2006 Decision and the Resolution dated 21 June 2007 of the DARAB is [sic] **REVERSED** and **SET ASIDE**. Accordingly, the 20 December 2000 Decision of the Provincial Adjudicator is **REINSTATED**.
>
> **SO ORDERED**.[12]

Aggrieved, petitioner brought the present Petition for Review on *Certiorari* raising the following issues, *viz.*:

> I. DOES THE PROVINCIAL ADJUDICATOR HAVE JURISDICTION TO ACT ON A SECOND PETITION FOR CANCELLATION OF AN EMANCIPATION PATENT WHICH HAS ALREADY BEEN CANCELLED, FILED AFTER THE DEATH OF THE ORIGINAL GRANTEE/BENEFICIARY OF THE SAID EMANCIPATION PATENT[,] AND LONG REPLACED BY A CERTIFICATE OF TITLE ISSUED IN THE NAME OF THE PETITIONER AND HER CHILDREN WHO WERE NOT EVEN IMPLEADED IN THE SAID PETITION AND WHEREIN THE PARTIES HAVE NO TENANCY RELATIONSHIP WHATSOEVER;
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> II. CAN THE RESPONDENT QUESTION THE VALIDITY OF THE TORRENS TITLE ISSUED TO THE PETITIONER AND TO HER CHILDREN BEFORE THE PROVINCIAL ADJUDICATOR WITHOUT VIOLATING THE EXPRESS PROVISION OF SECTION 48 OF PRESIDENTIAL DECREE NO. 1529 WHICH EXPRESSLY PROVIDES THAT A CERTIFICATE OF TITLE SHALL NOT BE SUBJECT TO COLLATERAL ATTACK, IT CANNOT BE ALTERED, MODIFIED, OR CANCELLED EXCEPT IN A DIRECT PROCEEDING IN ACCORDANCE WITH LAW AND DOES THE PROVINCIAL ADJUDICATOR HAVE ANY JURISDICTION TO ISSUE AN ORDER WHICH WOULD AFFECT THE RIGHTS, OWNERSHIP, INTEREST AND POSSESSION OF THE REGISTERED OWNER OF A CERTIFICATE OF TITLE WHO WERE NOT EVEN IMPLEADED IN THE PETITION;
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> III. WHEN WILL THE TEN YEARS PROHIBITORY PERIOD PROVIDED FOR IN SECTION 24 OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (R.A. NO. 6657) COMMENCE, IS IT FROM THE DATE THE LAND WAS AWARDED TO THE BENEFICIARY, OR WILL IT COMMENCE TO RUN ONLY FROM THE DATE THE CLOA OR EMANCIPATION PATENT WAS ISSUED TO THE

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[11] Id. at 65-81.
[12] Id. at 81.

BENEFICIARY?

IV. UNDER THE RULE OF EVIDENCE, WHICH WEIGHT [sic] MORE, A FINAL DECISION RENDERED BY A COMPETENT COURT OR THE FINDINGS AND OPINION OF THE PROVINCIAL ADJUDICATOR BASE [sic] ON UNVERIFIED AND UNIDENTIFIED PRIVATE DOCUMENTS WHOSE ORIGINAL COPY WERE NOT EVEN PRESENTED[;]

V. DOES FORUM SHOPPING AND THE PRINCIPLE OF RES JUDICATA APPLIES [sic] IN THIS SECOND PETITION FOR CANCELLATION OF EMANCIPATION PATENT FILED BY THE RESPONDENT[.][13]

Ultimately, the issues to be resolved in this case are: 1) whether the principle of *res judicata* and forum shopping apply in this case, such that the second petition for cancellation of EP Nos. 445829 and 445830 was barred by Our decision in G.R. No. 135317 dismissing respondent's first petition; 2) whether the petitioner sold the subject land to a certain Fernando in violation of the prohibition to transfer under the provisions of P.D. No. 27; and 3) whether the petition for cancellation of EP Nos. 445829 and 445830 constitute as a collateral attack to the certificate of title issued in favor of Alejandro.

The Court's Ruling

At the outset, a Rule 45 petition is limited to questions of law, and the factual findings of the lower courts are, as a rule, conclusive on this Court. Despite this Rule 45 requirement, however, Our pronouncements have likewise recognized exceptions,[14] such as the situation obtaining here – where the tribunals below conflict in their factual findings and when the judgment is based on a misapprehension of facts.[15]

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[13] Id. at 27-28.

[14] In *Prudential Bank (now Bank of the Philippine Islands) v. Rapanot, et. al.*, G.R. No. 191636, January 16, 2017, We held that as a general rule, only questions of law may be raised in petitions filed under Rule 45. However, there are recognized exceptions to this general rule, namely:

> (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) **when the judgment is based on a misapprehension of facts**; (5) **when the findings of facts are conflicting**; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[15] *Heirs of Buensuceso, et. al. v. Perez, et. al.*, G.R. No. 173926, March 6, 2013.

I

The principle of *res judicata* and forum shopping does not apply in the present case.

Petitioner alleges that the respondent in filing the second petition for cancellation of EP Nos. 445829 and 445830 raised issues which have been already resolved by this Court in the first petition. The second petition involves the same subject land, same parties, same cause of action and same reliefs prayed for. The respondent filed the second petition while the MR in G.R. No. 135317 was still pending for resolution before this Court. As such, respondent was guilty of forum shopping. Further, petitioner claims that the elements of *litis pendentia* were clearly present in this case. In the first petition, the validity of EP Nos. 445829 and 445830 was affirmed by this Court in G.R. 135317; as such, the same constitutes *res judicata* to the second petition.

We are not persuaded.

In *Daswani v. Banco de Oro Universal Bank, et al.*,[16] the Court elucidated that:

> In determining whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* concur, namely: a) there is identity of parties, or at least such parties who represent the same interests in both actions; b) there is identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and, c) that the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[17]

Meanwhile, in *Club Filipino Inc., et al. v. Bautista, et al.*,[18] the Court enumerated, to wit:

> The elements of *res judicata* are: 1) the judgment sought to bar the new action must be final; 2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; 3) the disposition of the case must be a judgment on the merits; and 4) there must be as between the first and second action, identity of parties, subject matter and causes of action.[19]

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[16] G.R. No. 190983, July 29, 2015.
[17] Id.
[18] G.R. No. 168406, January 14, 2015.
[19] Id.

In the case at bar, the first petition for cancellation of EP Nos. 445829 and 445830 was based on the validity of its issuance in favor of Alejandro, while the second petition was based on the alleged violation of the prohibition on the sale of the subject land. As such, there is no, as between the first petition and the second petition, identity of causes of action. Therefore, the final decision in G.R. No. 135317 does not constitute as *res judicata* on the second petition.

II

Respondent was not able to prove that petitioner violated the prohibition on the sale of the subject land.

It is a basic rule of evidence that each party must prove his affirmative allegation.[20] The party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it. Verily, the party who asserts, not he who denies, must prove.[21]

Respondent alleged that petitioner sold a portion of the subject land to Fernando as evidenced by the *Kasunduan*[22] dated December 17, 1994. As such, respondent bears the burden of proving that there is indeed a sale between petitioner and Fernando, rather than petitioner to prove that there is no sale.

Examination of the records will show that the *Kasunduan* dated December 17, 1994 is a mere photocopy; as such, the same cannot be admitted to prove the contents thereof. The best evidence rule requires that the highest available degree of proof must be produced. For documentary evidence, the contents of a document are best proved by the production of the document itself to the exclusion of secondary or substitutionary evidence.[23]

Rule 130, Section 3 of the Rules of Court states that:

> Sec. 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;

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[20] *Reyes v. Glaucoma Research Foundation, Inc., et. al.*, G.R. No. 189255, June 17, 2015.
[21] *Far East Bank Trust Company v. Chante*, G.R. No. 170598, October 9, 2013.
[22] *Rollo*, p. 148.
[23] *Dantis v. Maghinang, Jr.*, G.R. No. 191696, April 10, 2013.

> (b) When the original is in the custody or under the 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.

Rule 130, Section 5 of the Rules of Court provides the rules when secondary evidence may be presented, thus:

> Sec. 5. *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

Accordingly, the offeror of the secondary evidence is burdened to satisfactorily prove the predicates thereof, namely: (1) the execution or existence of the original; (2) the loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent/offeror. Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence.[24]

Nowhere in the records will show that the respondent proved that the original of the *Kasunduan* dated December 17, 1994 exists. Respondent even failed to explain why she merely presented a photocopy of the *Kasunduan*. Respondent likewise failed to prove the contents of the *Kasunduan* in some authentic document, nor presented Fernando, a party to the said *Kasunduan* or any witness for that matter. As such, respondent failed to prove the due execution and existence of the *Kasunduan*. Therefore, a photocopy of the *Kasunduan* cannot be admitted to prove that there is indeed a sale between petitioner and Fernando.

Further, the *Kasunduan* is merely a private document since the same was not notarized before a notary public.

Rule 132, Section 20 of the Rules of Court states that a private document, before the same can be admitted as evidence, must first be authenticated, to wit:

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[24] Id.

> Sec. 20. *Proof of private document.* — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as that which it is claimed to be.

In *Otero v. Tan*,[25] the Court held that:

> The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.[26]

Here, the *Kasunduan* is not authenticated by the respondent. No one attested to the genuineness and due execution of the document. Fernando was not presented nor did he submit an affidavit to confirm and authenticate the document or its contents. Neither was the requirement of authentication excused under the above-cited instances.

Since the *Kasunduan* dated December 17, 1994 was not authenticated and was a mere photocopy, the same is considered hearsay evidence and cannot be admitted as evidence against the petitioner. The CA, therefore erred when it considered the *Kasunduan* as evidence against the petitioner.

III

The petition for cancellation of EP Nos. 445829 and 445830 constitutes as a collateral attack to the validity of the certificate of title issued in favor of petitioner and her children. Therefore, the same should be dismissed.

Section 48 of P.D. No. 1529 or the Property Registration Decree proscribes a collateral attack to a certificate of title and allows only a direct attack thereof.[27] A Torrens title cannot be altered, modified or cancelled except in a direct proceeding in accordance with law. When the Court

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[25] G.R. No. 200134, August 15, 2012.
[26] Id.
[27] *Firaza, Sr. v. Spouses Ugay*, G.R. No. 165838, April 3, 2013.

says direct attack, it means that the object of an action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceeding is nevertheless made as an incident thereof.[28]

In *Bumagat, et al. v. Arribay*,[29] the Court reiterated the rule that:

> Certificates of title issued pursuant to emancipation patents acquire the same protection accorded to other titles, and become indefeasible and incontrovertible upon the expiration of one year from the date of the issuance of the order for the issuance of the patent. Lands so titled may no longer be the subject matter of a cadastral proceeding; nor can they be decreed to other individuals. The rule in this jurisdiction, regarding public land patents and the character of the certificate of title that may be issued by virtue thereof, is that where land is granted by the government to a private individual, the corresponding patent therefor is recorded, and the certificate of title is issued to the grantee; thereafter, the land is automatically brought within the operation of the Land Registration Act.[30]

As such, upon expiration of one year from its issuance, the certificate of title shall become irrevocable and indefeasible like a certificate issued in a registration proceeding.[31] Therefore, TCT Nos. 263885(M) and 263886(M) issued in favor of petitioner and her children as heirs of Alejandro are indefeasible and binding upon the whole world unless it is nullified by a court of competent jurisdiction in a direct proceeding for cancellation of title.[32] Thus, We find that the petition to cancel EP Nos. 445829 and 445830 is a collateral attack to the validity of TCT Nos. 263885(M) and 263886(M); as such, the same should not be allowed.

Therefore, in view of the fact that respondent was not able to sufficiently prove that petitioner sold the subject land to Fernando and that the petition to cancel EP Nos. 445829 and 445830 is a collateral attack to the validity of TCT Nos. 263885(M) and 263886(M), We hold that the CA erred in reversing the decision of the DARAB.

WHEREFORE, the foregoing considered, the petition is **GRANTED**. The Decision dated May 7, 2012 of the Court of Appeals in CA-G.R. SP No. 100831 is **REVERSED and SET ASIDE.** The Decision dated August 30, 2006 of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 12283 dismissing the case filed by respondent Victoria Cabral is **REINSTATED.**

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[28] *Hortizuela, represented by Jovier Tagufa v. Tagufa, et. al.*, G.R. No. 205867, February 23, 2015.
[29] G.R. No. 194818, June 9, 2014.
[30] Id.
[31] Id.
[32] *Cagatao v. Almonte, et. al.*, G.R. No. 174004, October 9, 2013.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

(On official leave)
FRANCIS H. JARDELEZA
Associate Justice

SAMUEL R. MARTIRES
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 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

MISAEL [illegible] BATTUNG III
Deputy [illegible] Clerk of Court
Third Division
AUG 18 2017