Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JUANA VDA. DE ROJALES, Substituted by her heirs, represented by CELERINA ROJALES-SEVILLA, Petitioner, - *versus* - **MARCELINO DIME, Substituted by his heirs, represented by BONIFACIA MANIBAY,** Respondent.	**G.R. No. 194548** **Present:** VELASCO, JR., *J.*, *Chairperson*, PERALTA, PEREZ, REYES, and JARDELEZA, *JJ.* **Promulgated:** February 10, 2016

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D E C I S I O N

PERALTA, *J.*:

Challenged and sought to be set aside in this petition for review on *certiorari* dated December 9, 2010 of petitioner Juana Vda. de Rojales, substituted by her heirs Celerina Rojales, Reynaldo Rojales, Pogs Rojales, Olive Rojales and Josefina Rojales is the Decision[1] dated August 16, 2010 of the Court of Appeals (*CA*), as reiterated in its Resolution[2] dated November 15, 2010 in CA-G.R. CV No. 92228, reversing and setting aside the Decision[3] dated May 7, 2008 of the Regional Trial Court (*RTC*) of Nasugbu, Batangas, Branch 14, which dismissed the petition for the consolidation of ownership and title over Lot 4-A covered by Transfer Certificate of Title (*TCT*) No. T-55726 in the name of the respondent Marcelino Dime.

The antecedents are as follows:

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1 Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ramon R. Garcia and Manuel M. Barrios, concurring; *rollo* pp. 20-33.

2 *Id.* at 19.

3 Penned by Executive/Presiding Judge Wilfredo De Joya Mayor, *id.* at 36-46.

Petitioner Juana Vda. de Rojales owned a parcel of land (Lot 4-A) located at Barrio Remanente, Municipality of Nasugbu, Batangas consisting of 2,064 square meters covered by TCT No. T-55726.[4]

In a petition dated May 30, 2000 filed before the RTC of Nasugbu, Batangas, Branch 14, respondent Marcelino Dime alleged that on May 16, 1999, petitioner conveyed under a *pacto de retro* contract Lot 4-A in favor of respondent for and in consideration of the sum of ₱2,502,932.10.[5] Petitioner reserved the right to repurchase the property for the same price within a period of nine (9) months from March 24, 1999 to December 24, 1999.[6] Despite repeated verbal and formal demands to exercise her right, petitioner refused to exercise her right to repurchase the subject property.[7]

In her answer, petitioner denied the execution of the *pacto de retro* sale in favor of respondent and alleged that she had not sold the subject property.[8] She claimed that the document presented by respondent was falsified since the fingerprint appearing therein was not hers and the signature of the Notary Public Modesto S. Alix was not his.[9] She also averred that she filed falsification and use of falsified documents charges against respondent.[10]

In her sworn statement attached to her Answer, petitioner alleged that she mortgaged the subject property with the Batangas Savings and Loan Bank for ₱100,000.00 when her daughter Violeta Rojales Rufo needed the money for application of overseas work; Antonio Barcelon redeemed the property and paid ₱260,000.00 for the debt plus the unpaid interest with the bank; when Barcelon entered the mayoralty race, he demanded payment of the debt, then mortgaged the title of the subject property with respondent; and the signatures appearing in the documents were falsified.[11]

During the pre-trial, the parties agreed that petitioner is the registered owner of the subject property, and that she once mortgaged the property with the Batangas Savings & Loan Bank in order to secure a loan of ₱200,000.00 from the bank.[12] They also submitted the following issues for resolution: whether the *pacto de retro* sale was executed by petitioner; whether the consideration of the sale has been paid to petitioner; and whether the contract of sale con *pacto de retro* is genuine.[13]

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4 *Id.* at 21.
5 *Id.*
6 Records, p. 4.
7 *Rollo* p. 21.
8 Records, p. 12.
9 *Id.*
10 *Id.* at 13.
11 *Id.* at 17.
12 *Id.* at 51.
13 *Id.* at 51-52.

Upon the joint motion of the parties, the RTC issued an Order dated November 16, 2000 directing the questioned thumbmark be referred to the fingerprint expert of the National Bureau of Investigation (*NBI*) to determine whether the thumbmark appearing in the *pacto de retro* contract and the specimen thumbmark of the petitioner are the same.[14]

On April 16, 2001, the NBI submitted a copy of Dactyloscopic Report FP Case No. 2000-349 by Fingerprint Examiner Eriberto B. Gomez, Jr. to the court. It was concluded therein that the questioned thumbmark appearing on the original-duplicate copy of the notarized *pacto de retro* sale and the standard right thumbmark, taken by Police Officer Marcelo Quintin Sosing, were impressed by and belong to the same person, the petitioner.[15]

Respondent passed away on June 22, 2002 before the trial on the merits of the case ensued. Being his compulsory heirs, respondent's estranged wife Bonifacia Dime and their children Cesario Antonio Dime and Marcelino Dime, Jr., substituted him in the suit.[16]

On July 11, 2006, the heirs of respondent filed a Manifestation and Motion to Dismiss the Complaint on the ground that it was Rufina Villamin, respondent's common law wife, who was the source of the fund in purchasing Lot 4-A.[17] They alleged that the consolidation of ownership and title to respondent would be prejudicial to Villamin and would unjustly enrich them.[18] Consequently, the RTC, through Judge Christino E. Judit, in an Order dated July 12, 2006, dismissed the case with prejudice on the ground that the case was not filed by an indispensable party, Villamin.[19]

However, on August 2, 2006, Atty. Pedro N. Belmi, the counsel of respondent, filed a Motion for Reconsideration praying to set aside the dismissal with prejudice on the ground that Villamin and the daughters of petitioner, Manilyn Rojales Sevilla and Olivia Rojales, tricked and manipulated the respondent's widow and her children to affix their signatures on the motion to dismiss.[20] Atty. Belmi insisted that the RTC erred in giving credence to the motion without his verification that the motion was indeed freely and voluntarily executed by the parties.[21]

Feeling that the respondent's counsel already lost his trust and confidence to his impartiality and lack of bias to resolve the case, Judge Judit inhibited himself from the case on January 25, 2007 without waiting

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14 *Id.* at 60.
15 *Id.* at 70.
16 *Rollo*, p. 23.
17 Records, p. 290.
18 *Id.*
19 *Id.* at 292.
20 *Id.* at 294.
21 *Id.* at 295.

for the petitioner to file a motion for inhibition against him.[22] This Court designated Judge Wilfredo De Joya Mayor to replace Judge Judit.[23]

In an Order dated October 25, 2007, Judge Mayor set aside the order of dismissal of the case and set the hearing for further reception of evidence.[24]

Thereafter, the RTC ruled in favor of the petitioner. The court *a quo* ratiocinated that it is a clear mistake to rule on the merits of the case knowing that such was not filed by the indispensable party, hence, the judgment will be void.[25] The RTC considered the unverified motion for reconsideration filed by Atty. Belmi as an unsigned pleading.[26] It further held that the manifestation and motion to dismiss deserved the presumption of validity since there was no sufficient proof that the compulsory heirs who substituted respondent were made to sign such motion without knowing its content.[27] The *fallo* of the decision reads:

> WHEREFORE, premises considered, the above-captioned case is hereby DISMISSED for utterly lack of merit.
>
> SO ORDERED.[28]

Aggrieved, respondent assailed the decision before the CA. In a Decision dated August 16, 2010, the CA reversed and set aside the decision of the RTC. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the instant appeal is GRANTED and the herein assailed Decision of the trial court dated May 7, 2008 is hereby REVERSED and SET ASIDE. Accordingly, judgment is hereby rendered ordering the consolidation of ownership over the property (Lot 4-A) covered by TCT No. T-55726 in the name of the vendee a retro Marcelino Dime.
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> SO ORDERED.[29]

The CA rejected the ruling of the court *a quo* that Villamin was an indispensable party. It ruled that the person who provided the funds for the purchase of the property is not considered as an indispensable party in a case of consolidation of title filed by respondent, the vendee, in whose favor the

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22 *Id.* at 304.
23 *Id.* at 306.
24 *Id.* at 308.
25 *Id.* at 45.
26 *Id.* at 44-45.
27 *Supra* note 25.
28 *Id.* at 46.
29 *Supra* note 1, at 33.

petitioner sold the subject property under the contract of sale con *pacto de retro*.[30]

Upon the denial of her Motion for Reconsideration by the CA, petitioner filed the instant petition raising the following issues:

> A. THE HONORABLE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO THIS APPEAL DESPITE THE MANIFESTATION OF THE HEIRS OF MARCELINO DIME TO DISMISS THE CASE.
> B. THE HONORABLE COURT OF APPEALS ERRED WHEN IT DISREGARDED THE NECESSITY OF VERIFICATION OF THE RESPONDENTS IN THE MOTION FOR RECONSIDERATION FILED BEFORE THE REGIONAL TRIAL COURT.
> C. THE HONORABLE COURT OF APPEALS ERRED IN ALLOWING THE CONSOLIDATION OF THE TITLE DESPITE THE MANIFESTATION AND ADMISSION OF THE RESPONDENTS THAT CONTINUING SO WOULD CONSTITUTE UNJUST ENRICHMENT.
> D. THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT THE PETITIONERS FAILED TO OVERCOME THE PRESUMPTION OF REGULARITY OF THE SUBJECT PACTO DE RETRO SALE.

This Court finds the instant petition devoid of merit.

Bisecting the first and third issues, this Court notes that the petitioner basically argues that the CA erred in ordering the consolidation of ownership and title in the name of respondent Dime since his heirs have filed a motion to dismiss which admitted therein that a ruling of the trial court in respondent's favor is tantamount to unjust enrichment considering that Villamin provided the funds for the purchase of the subject property.

Relying on the principle that the client has the exclusive control of the cause of action on the claim or demand sued upon, petitioner insists that the filing of the manifestation reflected the intention of the heirs of respondent to enter into a settlement with the petitioner.[31]

Settled is the rule that a client has an undoubted right to settle her litigation without the intervention of the attorney, for the former is generally conceded to have exclusive control over the subject matter of the litigation and may at anytime, if acting in good faith, settle and adjust the cause of

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30 *Rollo* pp. 29-30.
31 *Id.*

action out of court before judgment, even without the attorney's intervention.[32]

While we agree with the petitioner that the heirs, as the client, has the exclusive control over the subject matter of litigation and may settle the case without the attorney's intervention, we deny the rationale of the filing of the motion to dismiss by the heirs. It was alleged that they would be unjustly enriched should the court order the consolidation of the title of Lot 4-A in the name of respondent since the source of the consideration was Villamin, respondent's common-law wife.

As relevant to the case at bar, Articles 1311 and 1607 of the Civil Code provide:

> Article 1311. **Contracts take effect only between the parties, their assigns and heirs**, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.
>
> If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. **A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.** (emphasis supplied).
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> x x x x
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> Article 1607. In case of real property, the consolidation of ownership in the vendee by virtue of the failure of the vendor to comply with the provisions of article 1616 shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard.

We have consistently held that the parties to a contract are the real parties-in-interest in an action upon it.[33] The basic principle of relativity of contracts is that contracts can only bind the parties who entered into it, and cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.[34] Hence, one who is not a party to a contract, and for whose benefit it was not expressly made, cannot maintain an action on it.[35] One cannot do so, even if the contract performed by the contracting parties would incidentally inure to one's benefit.[36]

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32 *Malvar vs. Kraft Food Phils., Inc. et al*, G.R. No. 183952, September 9, 2013, 705 SCRA 242, 262..

33 *Spouses Oco vs. Limbaring*, 516 Phil. 691, 704 (2006).

34 *Philippine National Bank vs. Dee*, G.R. No. 182128, February 19, 2014, 717 SCRA 14.

35 *Supra* note 33.

36 *Id.*

As evidenced by the contract of *Pacto de Retro* sale,[37] petitioner, the vendor, bound herself to sell the subject property to respondent, the vendee, and reserved the right to repurchase the same property for the same amount within a period of nine (9) months from March 24, 1999 to December 24, 1999.[38] Therefore, in an action for the consolidation of title and ownership in the name of vendee in accordance with Article 1616[39] of the Civil Code, the indispensable parties are the parties to the *Pacto de Retro* Sale – the vendor, the vendee, and their assigns and heirs.

Villamin, as the alleged source of the consideration, is not privy to the contract of sale between the petitioner and the respondent. Therefore, she could not maintain an action for consolidation of ownership and title of the subject property in her name since she was not a party to the said contract.

Where there is no privity of contract, there is likewise no obligation or liability to speak about.[40] This Court, in defining the word "privy" in the case of *Republic vs. Grijaldo,*[41] said that the word privy denotes the idea of succession, thus, he who by succession is placed in the position of one of those who contracted the judicial relation and executed the private document and appears to be substituting him in the personal rights and obligation is a privy.[42]

For not being an heir or an assignee of the respondent, Villamin did not substitute respondent in the personal rights and obligation in the *pacto de retro* sale by succession. Since she is not privy to the contract, she cannot be considered as indispensable party in the action for consolidation of title and ownership in favor of respondent. A cursory reading of the contract reveals that the parties did not clearly and deliberately confer a favor upon Villamin, a third person.

Petitioner alleges that the consolidation of the title should not be allowed since the heirs admitted that they would be unjustly enriched, Villamin being the source of the fund used for the purchase of the subject property.[43]

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37 Records, p. 4.

38 *Id.*

39 Article 1616. The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition:
(1) The expenses of the contract, and any other legitimate payments made by reason of the sale;
(2) The necessary and useful expenses made on the thing sold.

40 *Spouses Borromeo v. Hon. Court of Appeals*, 573 Phil. 400, 411-412 (2008).

41 122 Phil. 1060, 1069 (1965)

42 *Republic v. Grijaldo, supra.*

43 *Id.* at 15.

Unjust enrichment exists when a person unjustly retains a benefit at the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.[44] The prevention of unjust enrichment is a recognized public policy of the State, as embodied in Article 22 of the Civil Code which provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."[45]

This Court notes that the RTC relied on the bare assertions of the heirs in dismissing the case with prejudice. The records are bereft of evidence to support the allegation that Villamin has indeed provided the consideration. Not being a privy to the *pacto de retro* sale, Villamin cannot be considered to have been prejudiced with the consolidation of title in respondent's name. Assuming *arguendo* that she was indeed the source of the consideration, she has a separate cause of action against respondent. The legal obligation of respondent to her is separate and distinct from the contract of sale con *pacto de retro*, thus, the award of consolidation of title in her name would be untenable.

Anent the issue on verification, Section 4, Rule 7 of the Rules of Court provides as follows:

> Sec. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
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> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

We do not agree with petitioner's assertion that the motion for reconsideration should not have been allowed since the respondent failed to pose a reasonable explanation on the absence of verification.

Time and again, we have said that non-compliance with verification or a defect therein does not necessarily render the pleading fatally defective.[46] Verification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional.[47] It is mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation.[48] Thus, when circumstances so warrant, "the court may simply order the correction of

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44 *Gonzalo vs. Tarnate, Jr.*, G.R. No. 160600, January 15, 2014.
45 *Id.*
46 *Fernandez vs. Villegas*, G.R. No. 200191, August 20, 2014, 733 SCRA 548, 556.
47 *Heirs of Austino and Genoveva Mesina vs. Heirs of Fian, Jr.*, G.R. No. 201816, April 8, 2013.
48 *Id.*

unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may thereby be served."[49]

The RTC waived the strict compliance for verification when it acted on the motion for reconsideration in the interest of justice and equity and allowed the further reception of evidence. Therefore, it is erroneous to dismiss the case based on the non-compliance of verification. As discussed earlier, Villamin is not privy to the *pacto de retro* sale between the petitioner and the respondent. Hence, the case should not have been dismissed because Villamin is not an indispensable party in an action for consolidation of ownership and title emanating from the contract of *pacto de retro* sale.

Petitioner's allegation that respondent should have executed affidavits in denying what was written in the manifestation and motion to dismiss based on Rule 8, Section 8[50] of the Rules of Court is unfounded. Such rule is applicable in contesting an action or defense based on a written instrument or document copied or attached to the pleading. In the case at bar, it is the motion to dismiss that is being contested and not a written instrument or document which an action or defense is based on.

Petitioner avers that the CA erred in relying on the NBI Fingerprint Examination. She alleges that the opinion of one claiming to be an expert is not binding upon the court.

There is nothing on record that would compel this Court to believe that said witness, Fingerprint Examiner Gomez, has improper motive to falsely testify against the petitioner nor was his testimony not very certain. His testimony is worthy of full faith and credit in the absence of evidence of an improper motive. His straightforward and consistent testimonies bear the earmarks of credibility.

Gomez testified during direct and cross examination, the process of examination of the fingerprints and his conclusion:[51]

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[49] *Id.*

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

[51] TSN, October 28, 2003, *rollo*, pp. 4-8, 10-11 and TSN, July 27, 2004, *rollo*, p. 5.

ATTY: BELMI:

Q: Will you kindly tell the court what was the result of your examination?
A: After having thorough examination, comparison and analysis, the thumbmark appearing on the [Pacto] de Retro and the right thumbmark appearing on the original copy of PC/INP Fingerprint form taken by SPO3 Marcelo Quintin Sosing were impressed by one and the same person.

x x x x

Q: How do you go about this comparison to determine whether that thumbmark were impressed by the same person?
A: We must locate the three elements of comparing, the number 1 is type of fingerprint pattern.

x x x x

A: There are three elements, after knowing the fingerprint pattern and they are of the same fingerprint the next step is to know the flow of the rages of the fingerprint pattern or the shape.

x x x x

Q: Then what is next?
A: After number 2, the last is the most important one because you must locate the number of ridges of characteristics and their relationship with each other because it is the basis of identification of the fingerprint.

Q: Meaning the description of the ridges?
A: Yes, sir, the identification features appearing on the fingerprint.

Q: What did you see?
A: I found that there were 13 identical points to warrant the positive identification.

Q: [Those] 13 points [are] more than enough to determine whether those thumbmark[s] [are] done by one and the same person?
A: Yes, sir.

x x x x

Q: Where did you base your conclusion that the thumbprint on the Pacto de Retro Sale over and above the name Juana Vda. de Rojales is genuine thumbprint of the same person?
A: Well, we only respon[d]ed to the request of the court to compare with the thumbprint appearing on the Pacto de Retro Sale to that of the fingerprint appearing on the thumbprint form.

Q: You mean to say you were provided with the standard fingerprint of the subject?
A: Yes, sir.

x x x x

COURT:

Q: Now, with this photograph blown-up, you have here 13 points, will you please explain to the court how these 13 points agree from that standard to that questioned document?
A: I found 2x4 bifurcation, it means that single rage splitting into two branches.

Q: You pointed out?
A: I found the bifurcation on the standard that corresponds exactly to the bifurcation which I marked number 1 in both photograph[s].

Q: From the center?
A: As to the number and location with respect to the core, I found that both questioned and standard coincide.

x x x x

Q: Now, but the layer does not change in point 1, how many layer from the core?
A: From the core, there are 4 intervening layers from number 1 to number 2 and it appears also the questioned 4 intervening layers between number 1 and number 2, so, the intervening rages between ends of this characteristics are all both in agreement.

x x x x

ATTY. SALANGUIT:

Q: Can you say that based on the questioned thumbmark, you would be able to arrive an accurate evaluation between the questioned thumbmark and standard thumbmark?
A: Yes, [ma'am].

Q: Even if the questioned thumbmark is a little bit blurred as to the standard thumbmark?
A: [Even though] the questioned thumbmark is a little bit blurred but still the ridge characteristics is still discernible.

Q: You are telling us that among many people here in the world, nobody have the same thumbmark as another person and that include the thumbmark of a twins?
A: Yes, [ma'am].

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A meticulous perusal of the records reveals that during the trial, petitioner's lawyer manifested that the petitioner, through her former counsel, has bound herself with the result of the NBI Fingerprint Examination.[52] It was further admitted in the court that there is no more

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52 TSN, January 17, 2005, *rollo*, p. 3.

issue about the authenticity and genuineness of the thumbmark.[53] Petitioner's counsel manifested:[54]

> ATTY. SALANGUIT:
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> Your honor, the nature of the testimony of the defendant is to prove the fact that she never really sold the property a retro to anybody. That is the property covered by Transfer Certificate of Title. That is at presently subject of the complaint.
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> COURT:
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> How about the documents which was turned out to be tampered?
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> ATTY. SALANGUIT:
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> Your honor, I understand that based on the records of the case[,] [petitioner's] counsel has already found himself to be bound by the result of the NBI investigation. Actually, your honor, there is no more issue about the authenticity and genuineness of the thumbmark of the defendant, so what we only prove today is that the defendant never really intentionally sold the property to anybody.
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> ATTY. BELMI:
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> With that manifestation, we will allow the defendant, in the interest of justice.
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> x x x

The CA ruled that the presumption of regularity accorded to a public document must stand in the presence of the evidence showing that the thumbmark in the contract belongs to the petitioner, and due to her failure to present clear and convincing evidence to overcome such legal presumption.

Settled is the rule that generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity.[55] In other words, absent any clear and convincing proof to the contrary, a notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents.[56] Irregularities in the notarization of the document may be established by oral evidence of persons present in said proceeding.[57]

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53 *Id.*

54 *Id.* at 2-3.

55 *Lazaro et al. vs. Agustin, et al.*, 632 Phil. 310 (2010).

56 *Spouses Palada vs. Solidbank Corporation*, 668 Phil. 172 (2011).

57 *Manzano Jr. vs. Garcia*, 697 Phil. 376 (2011).

We rule that petitioner failed to present clear and convincing evidence to overcome such presumption of regularity of a public document. Petitioner submitted the specimen signature of the notary public but the same was never presented during the trial nor was authenticated. Records disclose that after she admitted to being bound with conclusion of the NBI regarding the issue on the thumbmark, petitioner did not present any evidence to rebut the due execution of the notarized contract of sale con *pacto de retro*. Instead, she presented her testimony and the testimony of her daughter Josefina Rojales to prove that she never intended to sell her property.

The inconsistencies in petitioner's claims cast doubt to the credibility of her testimonies. We note that petitioner admitted, as reflected in the pre-trial order,[58] that she once mortgaged her property to the bank. However, she denied the same during the trial and further claimed that it was the respondent who mortgaged the title with the bank.[59]

To prove her lack of intention to sell the property, petitioner maintained that the respondent borrowed the title from her. She herself took the witness stand and testified during the direct and cross examination that,[60]

COURT:

Q: Are you aware of any or were you shown a purported document wherein it was alleged that you sold that property to the plaintiff Marcelino Dime?
A: No, sir, I am already old and I don't know.

x x x x

Q: You mean to say that you did not bother to go to Marcelino Dime after a complaint was filed against you considering that he was a neighbor of yours?
A: He just borrowed the title, sir, and I don't know.

Q: You mean to say that [you have] a title over that property and that property was borrowed by Marcelino Dime, [is that] what you mean?
A: Yes, sir.

x x x x

ATTY. BELMI:

Q: Mrs. Witness, when Dime took from you the title, you asked him why he was taking the title?
A: Yes, sir, he told me that he will just borrow the title.

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58 *Supra* note 12.
59 Records, p. 244.
60 TSN, January 17, 2005, *rollo*, pp. 5, 10-11.

x x x x

Q: This property covered by the title was mortgaged with the Batangas Savings and Loan Bank?
A: He (respondent) was the one who mortgaged the title but he did not give the money to us, sir.

Q: So, when he took the title from you, Dime told you that he will mortgage the property with the bank?
A: Yes, sir, he will use the money.

Q: So, you mean to say that you were not the one who mortgaged the property with the bank?
A: He (respondent) was the one who mortgaged the property, sir.

x x x x

COURT:

Q: Are you aware that Marcelino Dime could not be able to mortgage the property to the bank if you [do not] have any document, a Special Power of Attorney authorizing Dime to mortgage the property with the bank?
A: I did not give any authority, sir.

x x x x

Her daughter Josefina claimed otherwise. She averred that her mother has previously mortgaged the property with the bank and that it was Barcelon who redeemed the property from the bank.[61] She admitted that Barcelon borrowed the title from her mother because there was already a buyer.[62] She also alleged that Barangay Captain Esguerra and his secretary Laila Samonte, upon the instruction of Barcelon, took the title from them.[63] Thus, her testimony contradicts her mother's claim that respondent borrowed the title from her.

We have consistently decreed that the nomenclature used by the contracting parties to describe a contract does not determine its nature.[64] The decisive factor is their intention – as shown by their conduct, words, actions and deeds – prior to, during, and after executing the agreement.[65] Thus, even if a contract is denominated as a *pacto de retro*, the owner of the property may still disprove it by means of parole evidence,[66] provided that the nature

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61 Records, p. 254.
62 *Id.*
63 *Id.* at 255.
64 *Ramos vs. Sarao, et al.*, 491 Phil. 288 (2005).
65 *Id.*
66 Rules of Court, Rule 130, Section 9. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there

of the agreement is placed in issue by the pleadings filed with the trial court.[67]

Petitioner failed to specifically allege in all her pleadings that she did not intend to sell her property to respondent, instead, she maintained that there was no *pacto de retro* sale because her thumbmark and the notary public's signature were falsified. She should have raised the issue that respondent merely borrowed the title from her and promised to pay her in her pleadings and not belatedly claimed the same after the NBI ruled that the thumbmark in the contract was hers.

In light of petitioner's inconsistent and bare allegations and the conflicting testimony of her other witness, we rule that petitioner failed to overcome the presumption of regularity of the notarized contract of *Pacto de Retro* sale. Moreover, this Court is unconvinced that petitioner has successfully proven that her agreement with respondent was not a *pacto de retro* sale but a contract of loan secured by a mortgage of the subject property.

WHEREFORE, the petition for review on *certiorari* dated December 9, 2010 of petitioner Juana Vda. de Rojales, substituted by her heirs Celerina Rojales, Reynaldo Rojales, Pogs Rojales, Olive Rojales and Josefina Rojales is hereby **DENIED**. The Decision and Resolution, dated August 16, 2010 and November 15, 2010, respectively, of the Court of Appeals in CA-G.R. CV No. 92228 are hereby **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
(c) The validity of the written agreement; or
(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills.

67 *Supra* note 64.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
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 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. LAPITAN
Division Clerk of Court
Third Division
FEB 26 2016