

**CONSUELO SEVILLE JUTIC, JUAN JUTIC, CELESTINO SEVILLE,
TIBURCIO SEVILLE, RAVELO SEVILLE, SONITA SEVILLE, LUCY
SEVILLE, EPIFANIA SEVILLE, NARACY SEVILLE, EMMANUEL
SEVILLE, ORLAND...**

G.R. No. L-44628. August 27, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review on appeal by certiorari the decision of the Court of Appeals which affirmed the decision of the then Court of First Instance of Davao del Norte, Branch 9. The dispositive portion of the decision reads:

"WHEREFORE, the decision appealed from is hereby affirmed and this case is remanded to the court a quo for implementation of, and compliance with Rule 69, Revised Rules of Court, and to partition the property in accordance with the rights as herein determined, defined and declared, with costs against defendants-appellants." (p. 48, Petitioner's brief)

Vicente Sullan and the other respondents filed a complaint with the then Court of First Instance at Tagum, Davao del Norte against the petitioners for partition and accounting of the properties of Arsenio Seville, alleging they are heirs of the decedent.

The petitioners, averred the following in their answer:

xxx xxx xxx

"7. That the defendants are the owners of Lots 170 and 172 and improvements thereon, containing an area of 11.9499 and 9.6862 hectares, respectively, both covered by Original Certificates of Title No. P-15964.

"8. That defendants are the surviving heirs of Melquiades Seville, Melquiades Seville in turn is the brother of the deceased Arsenio Seville. Arsenio Seville died ahead. Melquiades Seville died later. During the lifetime of Arsenio Seville he executed an instrument x x x.

xxx xxx xxx

"9. That Melquiades Seville and his family have been in actual possession, occupation and cultivation of Lots Nos. 170 and 172, Cad-283, since 1954 continuously and peacefully in concept of owner, up to the time of his death, and had introduced valuable improvements thereon. After his demise his heirs, the defendants herein, succeeded to the occupation and possession of the said parcel of land and improvements with the knowledge of the plaintiffs and with the acquiescence of Arsenio Seville during his lifetime

"10. That even during the lifetime of the deceased Arsenio Seville it had been his desire, intention and his wish that Lots 170 and 172 shall be owned by Melquiades Seville, the father of the herein defendants.

"11. That the ownership over the said Lots 170 and 172, Cad-283 and improvements had been vested,

transmitted, conveyed and/or descended unto the defendants by virtue of Exhibit '1' of this answer and though continuous possession and cultivation of the land since 1954 continuously up to the present, in concept of owner as alleged under paragraph '9' hereof.

"12. That by reason of this unfounded action by the plaintiffs, defendants have been compelled to engage services of counsel for which they bound themselves to pay P3,000.00 as attorney's fees.

"13. That Melquiades Seville during his lifetime had taken legal steps to perfect titles to these parcels of land in his name." (pp. 11, 14-15, Record on Appeal).

On September 19, 1972, the trial court rendered judgment in favor of the private respondents. The petitioners appealed to the Court of Appeals. The Court of Appeals affirmed the trial court's decision.

Involved in this appeal is the issue of whether or not there was a valid donation from Arsenio Seville to Melquiades Seville.

The facts of the case are briefly stated as follows ?

During his lifetime, Arsenio Seville owned -- (1) a parcel of agricultural land described as Lot No. 170 situated at Anquibit, Asuncion (Saug), Davao del Norte containing an area of 11.9499 hectares, more or less; (2) a parcel of agricultural land described as Lot No. 172 likewise situated at Anquibit, Asuncion (Saug), Davao del Norte with an area of 9.6862 hectares; (3) a residential house erected on Lot 172; (4) rice and corn mills and their respective paraphernalia valued at P5,000.00; and (5) five (5) carabaos in the possession of the then defendants (pp. 6-9, Petitioners' brief).

On March 4, 1963, Arsenio Seville executed an affidavit in favor of Melquiades Seville, which reads:

"AFFIDAVIT

"I, ARSENIO SEVILLE, of legal age, WIDOWER, Filipino, and a resident of Anquibit, Cambanogoy, Saug, Davao, Philippines, after having been duly sworn to in accordance with law do hereby depose and say, as follows:

"That I am the declared and legal owner of a certain parcel of land otherwise known as Lot Nos. 172 and 170 Cad. 283, containing an area of 21.6361 has., and situated at Cambanogoy, Saug, Davao and covered by H.A. No. V-77791 (E?69793) and approved by the Director of Lands as per Order issued on March 5, 1954;

"That I am a widower as indicated above and that I have no one to inherit all my properties except my brother Melquiades Seville who appears to be the only and rightful person upon whom I have the most sympathy since I have no wife and children;

"That it is my desire that in case I will die I will assign all my rights, interest, share and participation over the above-mentioned property and that he shall succeed to me in case of my death, however, as long as I am alive I will be the one to possess, enjoy and benefit from the produce of my said land and that whatever benefits it will give me in the future I shall be the one to enjoy it;

"That I make this affidavit to make manifest my intention and desire as to the way the above-mentioned property shall be disposed of and for whatever purpose it may serve.

xxx xxx xxx

(SGD.) ARSENIO SEVILLE

Affiant"

(p. 7. Appellees' brief; Exh. 4, p. 52, Folder of Exhibits).

On May 24, 1968, Arsenio Seville mortgaged said properties to the Philippine National Bank in consideration of a loan. This was done with the knowledge and acquiescence of Melquiades Seville.

On May 15, 1970, Arsenio Seville died intestate, single, without issue, and without any debt. He was survived by his brothers, Buenaventura Seville and Zoilo Seville who are included as respondents; brother Melquiades Seville; and sisters Encarnacion Seville and Petra Seville. Thereafter, Melquiades died and is survived by his children Consuelo, Celestino, Tiburcio, Ravelo, Sonita, Lucy, Epifania, Naracy and Emmanuel, all surnamed Seville. Sisters Encarnacion and Petra died later. Encarnacion is survived by her children Trinidad, Teresita, Ulysses and Alejandrino, all surnamed Sullan, and her husband Vicente Sullan while Petra Seville is survived by her children Orlando Manican and Pacifico Manican.

The children of Melquiades Seville are now claiming exclusive ownership of the properties and improvements thereon on the basis of the instrument executed by Arsenio Seville in favor of Melquiades Seville and on their alleged actual possession, occupation, and cultivation of Lots Nos. 170 and 172 since 1954 continuously and peacefully in the concept of owner up to the time of Arsenio Seville's death.

The petitioners assign the following alleged errors of the respondent court:

I

THE COURT OF APPEALS ERRED IN NOT CONSIDERING THE AFFIDAVIT IN QUESTION A DEED OR INSTRUMENT OF DONATION INTER VIVOS.

II

THE COURT OF APPEALS ERRED IN NOT RULING CATEGORICALLY THAT ARSENIO SEVILLE COULD VALIDLY DISPOSE OR DONATE THE PROPERTIES IN QUESTION.

III

THE COURT OF APPEALS ERRED IN NOT VACATING THE JUDGMENT OF THE LOWER COURT AND ENTERED (SIC) A NEW ONE HOLDING THAT THE AFFIDAVIT IN QUESTION IS A DEED OF DONATION AND THAT THE DONATION IS A DONATION INTER VIVOS THUS VALIDLY CONVEYING THE LAND UNTO THE DONEE MELQUIADES SEVILLE. (p. 10, Petitioners' brief).

All the above assigned errors discuss the issues as relating to a donation. The trial court was correct in stating that "a close reading reveals that Exhibit 4 is not a donation inter vivos or mortis causa but a mere declaration of an intention and a desire. Certainly, it is not a concrete and formal act of giving or donating. The form and contents of said Exhibit 4 amply support this conclusion." (p. 37, Record on Appeal).

A discussion of the different kinds of donations and the requisites for their effectivity is irrelevant in the case at bar. There clearly was no intention to transfer ownership from Arsenio Seville to Melquiades Seville at the time of the instrument's execution. It was a mere intention or a desire on the part of Arsenio Seville that in the event of his death at some future time, his properties should go to Melquiades Seville.

In *Aldaba v. Court of Appeals* (27 SCRA 263, 269-270) we ruled on a similar expression of an intention, as follows:

"The question to be resolved in the instant case is: Was there a disposition of the property in question made by the deceased Belen Aldaba in favor of herein petitioners? The note, Exhibit 6, considered alone, was, as held

by the Court of Appeals, confirming the opinion of the lower court, only an indication of the intention of Belen Aldaba to donate to the petitioners the property occupied by the latter. We agree with this conclusion of the trial court and the Court of Appeals. The note, in fact, expressed that the property was really intended for the petitioners, 'talagang iyan ay para sa inyo.' If the property was only intended for petitioners then, at the time of its writing, the property had not yet been disposed of in their favor. There is no evidence in the record that such intention was effectively carried out after the writing of the note. Inasmuch as the mere expression of an intention is not a promise, because a promise is an undertaking to carry the intention into effect, (17 American Jurisprudence, 2d p. 334) We cannot, considering Exhibit 6 alone, conclude that the deceased promised, much less did convey, the property in question to the petitioners. x x x."

It is quite apparent that Arsenio Seville was thinking of succession ("x x x in case I will die, I will assign all my rights, share and participation over the above-mentioned properties and that he shall succeed to me in case of my death x x x."). Donations which are to take effect upon the death of the donor partake of the nature of testamentary provisions and shall be governed by the rules established in the title on succession (Art. 728, Civil Code).

The petitioners likewise contend that the document was a valid donation as only donations are accepted by the donees. However, the petitioners could not have accepted something, which by the terms of the supposed "donation" was not given to them at the time. The affidavit could not transmit ownership except in clear and express terms.

Furthermore, the homestead application was later prosecuted in the name of Arsenio Seville and the land, much later, was mortgaged by him to the Philippine National Bank (Annex 1, p. 100, Rollo) in consideration of a loan. Arsenio dealt with the land and entered into transactions as its owner. All these happened with the knowledge and acquiescence of the supposed donee, Melquiades Seville. Contrary to the petitioners' allegations in their brief, there was no immediate transfer of title upon the execution of Exhibit 4.

Contrary to what the petitioners aver, private respondents as legal heirs of Arsenio Seville have actual and substantial interests in the subject of litigation thus qualifying them as real parties-in-interest.

Common ownership is shown by the records. Therefore, any claim of ownership of the petitioners is not based on Exhibit 4 but on the fact that they are heirs of Arsenio Seville together with the private respondents.

It is likewise significant to note the respondents' assertion that the signed affidavit is a forgery because Arsenio Seville was illiterate during his lifetime. He could not write his name. He executed documents by affixing his thumbmark as shown in the Real Estate Mortgage (Exhibit A-4), which he executed on May 24, 1968 in favor of the Philippine National Bank. The real estate mortgage came much later or more than five years after the supposed donation (Exhibit 4) to Melquiades Seville where Arsenio Seville allegedly affixed his signature. This fact was not disputed by the petitioners.

Moreover, the petitioners' actions do not support their claim of ownership. During the lifetime of Arsenio Seville, no paid the PNB amortization out of his personal funds and out of the income on his property. The payments were not continued by the petitioners when Arsenio Seville died so much so that the property was extrajudicially foreclosed and had to be repurchased by Zoilo Seville, one of the respondents, through installment arrangements. (Deed of Promise to Sell appended as Annex 4 to respondents' brief). The actions of the respondents are in consonance with their claim of co-ownership.

Finally, it is a well-established rule that the factual findings of the trial court are generally not disturbed except where there is a clear cause or a strong reason appearing in the record to warrant a departure from such findings (Alcaraz v. Racimo, 125 SCRA 328; People v. Tala, 141 SCRA 240; and People v. Alcid, 135 SCRA 280). There

is no such clear cause or strong reason in this case.

WHEREFORE, the petition is hereby DISMISSED. The judgment of the Court of Appeals is AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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