

**MARTIN NERY AND LEONCIA L. DE LEON, PETITIONERS, VS.
ROSARIO, ALFREDO, MARIANO, PACIFICO, ONOFRE, TEOFILO,
LOLOY AND TRINIDAD, ALL SURNAMED LORENZO, RESPONDENTS.**

G.R. No. L-23096. April 27, 1972

Ponente: FERNANDO, J.

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FERNANDO, J.:

The point to be resolved in these two petitions for the review of a decision of the respondent Court of Appeals dated April 30, 1964 is the extent of the rights acquired by the vendors, the spouses Martin Nery and Leoncia L. de Leon[1] arising from a sale of a parcel of land, four (4) hectares more or less, situated in Malaking Kahoy, Parañaque, Rizal. The vendor, Bienvenida de la Isla, was the widow of the deceased Leoncio Lorenzo and guardian of their children, Dionisio, Perfecto, Maria Rebecca, Asuncion, Mauro and Lourdes,[2] who thereafter challenged the validity of such a transaction. It was their contention that notwithstanding an order authorizing the sale from the probate court on June 2, 1953, it could be impugned as they were not informed of such a move. Moreover, the guardianship proceeding, instituted on December 7, 1950, was heard without the two elder children, Dionisio and Perfecto Lorenzo being notified although they were then more than 14 years of age. The heirs of Silvestra Ferrer, who originally owned one-fourth of the property in question,[3] intervened in such action. In the lower court decision, they were adjudged co-owners of the aforesaid one-fourth portion of the property, the sale by the widow being considered null and void insofar as they were concerned. The rights of the children of Leoncio Lorenzo and Bienvenida de la Isla to one-half of the three-fourths appertaining to such spouses were likewise accorded recognition.

The matter was then elevated to the respondent Court of Appeals by the spouses Martin Nery and Leoncia L. de Leon. Respondent Court in its decision, now subject of this review, declared valid the deed of sale executed by the mother Bienvenida de la Isla in favor of the spouses Nery and de Leon as to the whole three-fourths, without prejudice however to the children demanding from their mother their participation in the amount paid for the sale of such property. It thus ignored the grave jurisdictional defects that attended the challenged orders, starting with the two elder children not being notified of the petition for guardianship, even if they were already above 14, as pointed out and stressed in their petition for review. There is need then for the exercise of the corrective power of this Court. The original decision of the lower court has much more to recommend it. Thereby, the rights of the children are fully respected. With a restoration in full of what was decided by the lower court, there is a corresponding modification of the judgment of the Court of Appeals. So we decide.

The antecedents of the case were set forth in the appealed decision thus: "After hearing the evidence, the lower court handed down decision on June 24, 1961, finding that in the guardianship proceedings, the court acquired no jurisdiction over the persons of the minors who were not notified of the petition, at least 2 of them being over 14 years of age; that as the inventory submitted by the guardian stated that the minors had no real estate, the court did not acquire jurisdiction over the real property of the minors and could not have validly authorized its sale, and the total 'absence of the requisite notice necessarily rendered the order of sale, * * * null and void, and the defendant,

Martin S. Nery, a lawyer, could not be considered a purchaser in good faith of the one-half portion of the land belonging to the minors; * * * that as Silvestra Ferrer, one of the sisters of Florentino Ferrer, did not sign the deed of sale * * * upon her death in 1952, her 1/4 portion of the land passed to her nearest relatives, the third-party plaintiffs who are children of her sister, Tomasa Ferrer, whose action had not prescribed 'because from the death of Silvestra Ferrer in 1952 up to the filing of the third-party complaint on September 3, 1958, barely six years had elapsed' and that the remaining 3/4 of the land in question was the conjugal property of Leoncio Lorenzo and his wife, Bienvenida de la Isla, 1/2 of which, upon the demise of Leoncio, corresponding to Bienvenida and the other half to their children, the herein plaintiffs, in equal shares." [4]

Why respondent Court reached the decision it did on appeal was explained this way: "It is unquestioned that the property in question formerly belonged to Florentino Ferrer and his three sisters, Agueda, Tomasa and Silvestra and brother, Meliton. When, after the death of Florentino, that is, on December 6, 1943, the document denominated 'Bilihan Ganap Nang Lupang-Bukid', * * * was executed in favor of Leoncio F. Lorenzo, one of the children of Agueda and married to Bienvenida de la Isla, by said Agueda, Tomasa and the children of Meliton, already deceased, said Leoncio merely acquired the participation of said sellers; equivalent to 3/4 undivided part of said land, and became a co-owner to that extent with Silvestra who did not execute said document and, therefore, did not sell her 1/4 undivided portion of the said land, which 1/4 undivided portion passed, upon her demise in 1952, to her nearest relatives who are the third-party plaintiffs Rosario, Alfredo, Mariano, Pacifico, Onofre, Teofilo, Loloy and Trinidad all surnamed Lorenzo, the children of her deceased sister, Tomasa. Bienvenida de la Isla, then the wife of said Leoncio F. Lorenzo, knew of this purchase made by her deceased husband, and she had no right to mortgage the whole land which, for taxation purposes was declared in her husband's name, without the consent of aforementioned successors-in-interest of Silvestra Ferrer, much less sell the same afterwards to the defendant spouses, Martin S. Nery, and Leoncia L. de Leon, even if authorized by the guardianship court, said authority having been granted upon her misrepresentation, contained in her petition of May 26, 1953, that her minor children, the plaintiff's herein, were the owners in common of 1/2 portion of the land in question, the other 1/2 pertaining to her. However, inasmuch as the said minor plaintiffs were really the owners in common of 1/2 of 3/4 undivided part of the said land, and the other 1/2, to their mother and guardian, the orders of the guardianship court authorizing the guardian to sell the real property of the minors, and approving the deed of sale executed in accordance with said authority must be construed as referring to the correct real property of the said minors." [5]

Hence its dispositive portion provided as follows: "[Wherefore] the appealed judgment is hereby modified by declaring that the deed of sale * * ', executed by Bienvenida de la Isla in favor of the defendants valid only insofar as the undivided 3/4 portion of the land in question is concerned, as to which portion, the defendants are declared owners, and that the third-party plaintiffs, Rosario, Alfredo, Mariano, Pacifico, Onofre, Teofilo, Loloy and Trinidad, all surnamed Lorenzo, are declared owners in common of the remaining undivided 1/4 portion of the said land. In all other respects, the appealed judgment is hereby affirmed. No costs." [6]

The spouses Martin Nery and Leoncia L. de Leon and the children of the deceased Leoncio Lorenzo and the vendor, Bienvenida de la Isla, not being satisfied with the above decision instituted the petitions for review as noted at the outset, the failure of respondent Court of Appeals to give due weight to the grave jurisdictional defect that tainted the guardianship proceeding resulted in its judgment suffering the corrosion of substantial legal error. The rights of the children of Leoncio Lorenzo as upheld by the lower court must, to repeat, be maintained. In that sense, the decision of the respondent Court of Appeals is subject to modification. Insofar however as it affirmed the lower court decision sustaining the claim of the heirs of Silvestra Ferrer, [7] it is free from any infirmity.

1. What is indisputable in the light of the controlling legal doctrines is that it was the lower court and not the

respondent Court of Appeals that yielded obeisance to the applicable procedural rule. It is worded thus: "When a petition for the appointment of a general guardian is filed, the court shall fix a time and place for hearing the same, and shall cause reasonable notice thereof to be given to the persons mentioned in the petition residing in the province, including the minor if above 14 years of age or the incompetent himself, and may direct other general or special notice thereof to be given." [8] The late Chief Justice Moran was quite explicit as to its jurisdictional character. These are his words: "Service of the notice upon the minor if above 14 years of age or upon the incompetent, is jurisdictional. Without such notice, the court acquires no jurisdiction to appoint a guardian." [9]

The case cited by him in support of such view is *Yangco vs. Court of First Instance*, [10] a 1915 decision. As was therein made clear: "There is no need for interpretation or construction of the word in the case before us. Its meaning is so clear that interpretation and construction are unnecessary. Our simple duty is to leave untouched the meaning with which the English language has endowed the word; and that is the meaning which the ordinary reader would accord to it on reading a sentence in which it was found. Where language is plain, subtle refinements which tinge words so as to give them the color of a particular judicial theory are not only unnecessary but decidedly harmful. That which has caused so much confusion in the law, which has made it so difficult for the public to understand and know what the law is with respect to a given matter, is in considerable measure the unwarranted interference by judicial tribunals with the English language as found in statutes and contracts, cutting out words here and inserting them there, making them fit personal ideas of what the legislature ought to have done or what parties should have agreed upon, giving them meanings which they do not ordinarily have, cutting, trimming, fitting, changing and coloring until lawyers themselves are unable to advise their clients as to the meaning of a given statute or contract until it has been submitted to some court for its 'interpretation and construction.'" [11]

Respondent Court of Appeals cannot therefore be sustained in its assumption that the probate court could have authorized the sale in question. The jurisdictional infirmity was too patent to be overcome. It was the lower court that acted correctly. There is the more reason for deciding as we do considering that the rights of minors are involved. It is a distinctive feature of our law, one that is quite commendable, that whenever their welfare may be affected, its solicitude is made manifest. The rights of young are not to be ignored. Precisely their stage of immaturity calls for every procedural principle being observed before their interest in property to which they have a claim could be adversely affected. It does not matter that their guardian is their mother. As far back as 1911, in *Salunga vs. Evangelista*, [12] Chief Justice Arellano took note that even a mother could have an "interest opposed to that of her children." [13] That may not have been the precise situation in this case, but certainly from the facts as found by the Court of Appeals, the Lorenzo children would have been better protected if they were notified as is required by law. If there is any occasion then why there should be a strict insistence on rule having the impress of a jurisdictional requirement, this is it.

Moreover, where minors are involved, the State acts as *parens patriae*. To it is cast the duty of protecting the rights of persons or individual who because of age or incapacity are in an unfavorable position, vis-a-vis other parties. Unable as they are to take due care of what concerns them, they have the political community to look after their welfare. This obligation the state must live up to. It cannot be recreant to such a trust. As was set forth in an opinion of the United States Supreme Court: "This prerogative of *parens patriae* is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature, and has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarchs to the great detriment of the people and the destruction of their liberties. On the contrary, it is a most beneficent function, and often necessary to be exercised in the interest of humanity, and for the prevention of injury to those who cannot protect themselves." [14]

2. Much less could the decision arrived at both by the lower court and respondent Court of Appeals as to the heirs of Silvestra Ferrer^[15] being entitled to one-fourth of the property in question be set aside. At no time had the deceased Leoncio Lorenzo ever denied that he was holding such property in the capacity of trustee for them. At the time then that the settlement of his estate was pending in the probate courts, his widow, Bienvenida de la Isla, the vendor, could not assert any other right, except that traceable to her late husband. Respondent Court of Appeals did note that petitioner Martin S. Nery is a lawyer. As member of the bar, he could not have been unaware that his vendor could not sell to him more than she rightfully could dispose of. It is much too late in the day to depart from the well-settled principle as to a trustee being incapable of acquiring interest opposed to that of his principal. So it was announced in *Severino vs. Severino*.^[16] That is in conformity with an overmastering requirement of equity and conscience. He should thus be held to the strictest degree of accountability. The law would lay itself open to well-deserved criticism if a principle other than the above were followed. The Nery spouses ought to be aware that it would be unthinkable to deny its authoritative force whenever called for.

The spouses Martin Nery and Leoncia L. de Leon would demonstrate its inapplicability by the two principal errors assigned, namely, that Silvestra Ferrer did sell her share of the property as far back as 1943 and that even if it were not so, the deceased Leoncio Lorenzo and thereafter his widow, Bienvenida de la Isla did assert rights of ownership therein. It is obvious that on the face of such alleged errors that they are essentially factual. We are thus precluded from inquiring into their veracity as on such a matter what was decided by respondent Court of Appeals is binding on us. Moreover, as to the alleged prescription; the issue was resolved satisfactorily by the lower court in this fashion: "The action of said children of Tomasa Ferrer has not as yet prescribed because from the death of Silvestra Ferrer in 1952 up to the filing of the third-party complaint on September 3, 1958, barely six years had elapsed. Moreover, there is no clear and satisfactory evidence that Leoncio Lorenzo and his successors-in-interest had been in continuous, adverse, and open possession, and under claim of ownership, of the one-fourth portion corresponding to Silvestra Ferrer as to acquire same by acquisitive prescription."^[17] Consequently, it was appropriate for the Court of Appeals to affirm the judgment of the lower court insofar as it recognized the rights of the heir of Silvestra Ferrer to one-fourth of the land sold.

WHEREFORE, premises considered, with the modification as above set forth that Dionisio, Perfecto, Maria Rebecca Asuncion, Mauro and Lourdes, all surnamed Lorenzo children of the deceased Leoncio Lorenzo and Bienvenida de la Isla are adjudged co-owners to the extent of one-half the three-fourths of the property in question, as was decreed by the lower court, the appealed decision of the Court Appeals is affirmed. With costs against Martin Nery and Leoncia L. de Leon.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Castro, Teehankee, Barredo, Makasiar, and Antonio, JJ., concur.
Concepcion, C.J., on official leave.

[1] Martin Nery and Leoncia L. de Leon are the petitioners in L-23096 and respondents in L-23376.

[2] They are the petitioners in L-23376.

[3] They are Rosario, Alfredo, Mariano, Pacifico, Onofre, Teofilo, Loloy and Trinidad, all surnamed Lorenzo, respondents in L-23096.

[4] Decision of the Court of Appeals of April 30, 1964, pp. 7-9.

[5] *Ibid*, pp. 10-11.

[6] *Ibid*, p. 14.

[7] Respondents in L-23096.

[8] Section 3 of Rule 93, Rules of Court as quoted in 3 Moran, Comments on the Rules of Court, 1970 ed., p. 547. This was formerly the same section of Rule 94.

[9] Ibid. Former Chief Justice Moran added that this Rule had its origin from sections 551 and 559 of Act 190 (1901), pp. 547 548.

[10] 29 Phil. 183.

[11] Ibid, p. 188.

[12] 20 Phil. 273.

[13] Ibid, p. 294.

[14] Mormon Church vs. United States, 136 U.S. 1(1890).

[15] Respondents in L-23096.

[16] 44 Phil. 343 (1923). It was subsequently followed by the following cases: Flores vs. Flores, 48 Phil. 288 (1925); Jalandoni vs. Carballo, 48 Phil. 857 (1926); Barretto vs. Tuason, 50 Phil. 888 (1926); Gemora vs. F. M. Yap Tico & Co., Ltd., 52 Phil. 616 (1928); De Ocampo vs. Zaporteza, 53 Phil. 442 (1929); Castro vs. Castro, 57 Phil. 675 (1932); Velayo Bernardo vs. Siojo, 58 Phil. 89 (1933); Yumul vs. Rivera, 64 Phil. 13 (1937); Bagayas vs. Guilao, 64 Phil. 347 (1937); Palma vs. Cristobal, 77 Phil. 712 (1946); Osorio vs. Osorio, 85 Phil. 209 (1949); Thomas vs. Pineda, 89 Phil. 312 (1951); Phil. Trust Co. vs. Roldan, 99 Phil. 393 (1956) and Cuison vs. Fernandez, 105 Phil. 135 (1959). Before the Severino doctrine, the following cases spoke to the same effect: Uy Aloc vs. Cho Jan Ling, 19 Phil. 202 (1911); Camacho vs. Mun. of Baliuag, 28 Phil. 466 (1914) and Buenaventura vs. David, 37 Phil. 435 (1918).

[17] Lower court decision as cited in the opinion of the Court of Appeals of April 30, 1964, Annex B to Complaint, pp. 13-14

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