

**POTENCIANA LACSON SAMONTE AND SOL. L. SAMONTE, IN
SUBSTITUTION OF THE DECEASED FELINO SAMONTE, PLAINTIFFS
AND APPELLANTS, VS. FRANCISCO SAMONTE, DEFENDANT AND
APPELEE.**

G.R. No. L-5805. October 07, 1954

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This case was, on appeal, taken directly to this tribunal by the plaintiffs-appellants as per their notice of appeal dated January 21, 1952, from the decision of the trial court dated December 29, 1951. Studying the case, however, we found that several questions of fact have been raised and discussed by the plaintiffs-appellants and discussed by the appellee in their respective briefs. The following assignment of errors by appellants will show this:

I

The trial court erred in finding that the plaintiff is the dummy of the defendant and in not finding that the plaintiff is the owner of the concession and that the defendant is merely the agent of the plaintiff.

II

The trial court erred in finding that the plaintiff did not have any intervention in the operation of his concession.

III

The trial court erred in finding that the defendant operated the concession of the plaintiff with, his (defendant's) money.

IV

The lower court erred in finding that the plaintiff had not invested any money in the operation of his concession.

V

The trial court erred in finding that plaintiff did not have any interest in the equipments used in the operation of the concession.

VI

The trial court erred in not giving more weight to the evidence submitted by the plaintiff than that submitted by the defendant.

In fact, the Attorney for plaintiffs-appellants in his prayer before the trial court for the approval and transmission of his Record on Appeal said the following:

"Wherefore, it is respectfully prayed that this record on Appeal be approved and duly transmitted to the Supreme Court. An issue of fact and of law being raised in this appeal, the whole oral and documentary evidence are hereby included by reference in this Record on Appeal."

In similar cases^[1] where we found that questions of fact were raised either by appellant or appellee, or by both, we have sent the same to the Court of Appeals for their consideration and decision, pursuant to the provisions of Sections 17 and 29 of the Judiciary Act of 1948.

In view of the foregoing, and because the present appeal involves questions both of law and fact, let the present case be sent to the Court of Appeals for consideration and decision.

Paras, C. J., Pablo, Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

[1] Justo et al., vs. Hernando, 89 Phil. 268 and Samson vs. Andal, 89 Phil. 627.

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