

ADRIANO AFRO AND TEODORICO DAVI, PETITIONERS, VS. HON. COURT OF AP-PEALS, NICETAS DAVI, GLORIA DAVI, FLOR-DELIZA ELFA, RICAR-DO ELFA, AND EDUARDO ELFA, RESPONDENTS.

G.R. Nos. L-38046-47. August 23, 1978

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Petition for certiorari and prohibition with preliminary injunction to annul and set aside the resolution of the respondent Court of Appeals in cases CA-G.R. Nos. 42549-50-R, denying the petitioners' motion to dismiss the appeal of the private respondents, as well as the resolution denying the motion for its reconsideration; and to restrain the respondent appellate court from further proceeding with the appeal of the private respondents.

On April 26, 1963, Adriano Afro and Teodorico Davi filed an application for the registration of 2 parcels of land, Lots Nos. 1 and 2, Psu-154387, LRC Case No. N-1897; LRC Rec. No. N-24187, situated in the sitio of Pinagbarilan, barrio Sto. Cristo, San Jose del Monte, Bulacan. The application was opposed by Nicetas Davi, Gloria Davi, Flordeliza Elfa, Ricardo Elfa, and Eduardo Elfa who had also filed an application for the registration of the same parcels of land, designated as Lot Nos. 1 and 2, Psu-149407, Case No. N-1920, LRC Rec. No. 24192, on June 7, 1963.

The cases were heard jointly, and on January 26, 1972, the Court of First Instance of Bulacan rendered judgment ordering the dismissal of the application filed by Nicetas Davi, Gloria Davi, Flordeliza Elfa, Ricardo Elfa and Eduardo Elfa, and the registration of the disputed parcel of land in the names of Adriano Afro and Teodorico Davi.

By reason thereof, Nicetas Davi, Gloria Davi, Flordeliza Elfa, Ricardo Elfa, and Eduardo Elfa appealed to the Court of Appeals, where their appeal was docketed as case CA-G.R. Nos. 42549-R.

On July 30, 1973, Adriano Afro and Teodorico Davi, appellees therein, filed with the Court of Appeals, a motion to dismiss the appeal on the ground that the record on appeal fails to show upon its face that the appeal was perfected on time, in that the motion for extension of time to file record on appeal was filed one day after the expiration of the period sought to be extended; and that there is nothing in the record on appeal to show that appellants' motion for extension of time to file record on appeal was granted by the court below, which motion was denied on December 7, 1973. The appellees then filed a motion for the reconsideration of the said resolution, but the said motion was also denied. Whereupon, the appellees Adriano Afro and Teodorico Davi filed the instant petition for certiorari and prohibition with preliminary injunction. As prayed for, a temporary restraining order was issued by the Court on January 17, 1974.

After the parties had filed the necessary pleadings, the Court deemed the case submitted for decision.

On July 5, 1978, the parties submitted, for the approval of the Court, a compromise agreement which reads, as follows:

"KASUNDUAN SA PAGSASAAYOS NG USAPIN

"ANG MGA MAY USAPIN, katulong ng kani-kanilang manananggol, ay nagkakasundo –

"1. Na ang paksa ng kasunduang ito ay dalawang (2) lagay ng lupa na nasa Sto. Cristo, San Jose del Monte, Bulacan, na may lawak na 10,605 metrong parisukat, humigit kumulang, at kinikilala bilang Lote 1 at 2 ng plano Psu-149407;

"2. Na ang naturing na mga lote ay samasamang aariin ng mga may usapin sang-ayon sa sumusunod na pagbabahagi:

2/5 ng kabuuan - magagawi kay ADRIANO AFRO, Pilipino, may sapat na gulang, kasal kay Simeona Policarpio at naninirahan sa San Jose del Monte, Bulakan;

2/5 ng kabuuan - magagawi kay TEODORICO DAVI, Pilipino, may sapat na gulang, kasal kay Dionisia Herrera at naninirahan sa San Jose del Monte, Bulakan;

1/15 ng kabuuan - magagawi kay NICETAS DAVI, Pilipino, may sapat na gulang, kasal kay Maximo Avena at naninirahan sa San Jose del Monte, Bulakan;

1/15 ng kabuuan - magagawi kay GLORIA DAVI, Pilipino, may sapat na gulang, kasal kay Dominador Fernando at naninirahan sa San Jose del Monte, Bulakan;

1/45 ng kabuuan - magagawi kay FLORDELIZA ELFA, Pilipino, may sapat na gulang, kasal kay Magno Española at naninirahan sa San Jose del Monte, Bulakan;

1/45 ng kabuuan - magagawi kay RICARDO ELFA, Pilipino, may sapat na gulang, kasal kay Lolita Capa at naninirahan sa San Jose del Monte, Bulakan, at

1/45 ng kabuuan - magagawi kay EDUARDO ELFA, Pilipino, may sapat na gulang, binata at naninirahan sa San Jose del Monte, Bulakan.

"3. Na ang nabanggit na MAGNO ESPAÑOLA, asawa ni Flordeliza Elfa, ay siyang kinatawan ng mag-asawang NICETAS DAVI at MAXIMO AVENA, sa bisa ng isang pangkalahatang kapangyarihan ng kinatawan ng nilagdaan nilang mag-asawa noong Hunyo 6, 1977 na kalakip at ginagawang bahagi ng kasulatang ito.

"DAHIL DITO, mapitagang ipinapakiusap ng mga may usapin na pagtibayin ng Kagalang-galang na Hukuman ang kasunduan sa pagsasayos ng usaping ito at magbaba ng isang pasiya alinsunod sa nilalaman nito.

"Maynila, Pilipinas, Disyembre 18, 1977.

ADRIANO AFRO TEODORICO DAVI GLORIA DAVI

FLORDELIZA ELFA RICARDO ELFA EDUARDO ELFA

NICETAS DAVI

Sa pamamagitan ni:

MAGNO ESPAÑOLA

Kinatawan nina Nicetas Davi
at Maximo Avena

SANG-AYON KAMI:

DOMINADOR FERNANDO

Asawa ni Gloria Davi

MAGNO ESPAÑOLA

Asawa ni Flordeliza Elfa

KATULONG SINA:

JESUS I. SANTOS

Abugado nina Adriano Afro et al.
Marilao, Bulakan

ARTURO F. GOCE

Abugado nina Nicetas Davi et al.
Gusaling Bañas
815 Abenida Rizal, Maynila"

The foregoing compromise agreement appears to be in order and is hereby approved.

WHEREFORE, judgment is hereby rendered ordering the registration of the parcels of land in dispute in the names of Adriano Afro, Teodorico Davi, Nicetas Davi, Gloria Davi, Flordeliza Elfa, Ricardo Elfa, and Eduardo Elfa, pro indiviso, in the proportion stated in the compromise agreement. The temporary restraining order heretofore issued is lifted. No costs.

SO ORDERED.

Castro, C.J., Fernando, Teehankee, Barredo, Makasiar, Muñoz Palma, Aquino, Santos, Fernandez, and Guerrero, JJ., concur.

Antonio, J., no part.

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