

FAUSTO VELOSO ET AL., PLAINTIFFS AND APPELLANTS, VS. JOSE P. AVILA, DEFENDANT AND APPELLEE.

G. R. No. 39327. June 23, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Cebu in an action of reivindicacdn in which the plaintiffs, who are the heirs of Vicente Veloso, pray that they be declared the owners of an undivided half interest in lot No. 778 of the cadastral survey of Cebu and praying further for the cancellation of certificate of transfer No. 8679 issued to the defendant.

The parties filed an agreed statement of facts which is as follows:

"Que en la Oficina del Registrador de Titulos de Cebu obran archivados los siguientes documentos:

"(a) Un certificado original de titulo No. 1004 referente al Lote No. 778 expedido a favor de Josefina Gantuangco, viuda. Dicho certificado de titulo se expidi6 en Manila el dia 26 de enero de 1918 en virtud del decreto No. 63838 y de la decision, que ya es firme, del Juzgado de Primera Instancia de Cebu de fecha 29 de noviembre de 1916.

"(b) Un documento de donacion de dicho Lote No. 778 otorgada por Josefina Gantuangco, como donante, y Jose P. Avila, como donatario. Dicho documento fue otorgado el dia 17 de abril de 1929 y ratificado ante notario piiblico el dia 27 de dicho mes. El referido documento se ha inscrito en la Oficina del Registrador de Titulos de Cebu el dia 14 de mayo de 1929.

"(c) En virtud del documento de donacdn mencionado en el inciso (6), seexpidi6 por el Registrador de Titulos de Cebu el certificado de transferencia de titulo No. 8679 referente al mencionado Lote No. 778 a favor del demandado Jose P. Avila. Dicho certificado fue expedido el dia 14 de mayo de 1929.

"Ambas partes convienen en la autenticidad de los dncumentos mencionados en los incisos (a), (b) y (c). Los demandantes, sin embargo, impugnan la validez de dichos docuraentos."

As well stated in the brief of the appellants, the principal question involved in this case is whether lot No. 778 aforesaid was community property of the spouses Vicente Veloso and Josefina Gantuangco or paraphernal property of the latter. If community property, the appellants as the heirs of the deceased Vicente Veloso, are entitled to an undivided half interest in the same. It is to be noted that the genuineness of the deed of gift made by Josefina Gantuangco in favor of the defendant is not questioned nor do we find in the brief of the appellants any serious claim that Josefina had no interest in the lot which she could donate to the defendant.

Upon the decisive issue whether said lot was the community property of the spouses or the paraphernal property of Josefina, the evidence both documentary and oral is conflicting. It appears that Vicente Veloso and Josefina Gantuangco were lawfully married in the year 1877 and lived for about two years in the municipality of Carcar in the Province of Cebu; that they had no resources of their own and lived with the mother of Josefina named Placida

Regis. In 1879 Vicente served for one year as assistant teacher with a salary of P10 a month. But as he was given to drinking excessively and maltreated his wife, they separated in the year 1880 and never lived together again. Vicente left home without bidding farewell and since that time Josefina had no news of him. She lived in the barrio of Valladolid in the municipality of Carcar with her mother until the year 1890 when she moved to Manila. Later she moved to Romblon where she remained till the year 1902 when she returned to Cebu where she lived with her mother till her (Josefina's) death in April, 1929.

Lot No. 778 was acquired in part in the name of Josefina by her mother and after the death of the mother Josefina purchased the remaining outstanding interest of Victoriana Regis with funds Josefina inherited from her mother. We think the trial court was entirely correct in rejecting the testimony of Dorotea Veloso, one of the plaintiffs, who was the only witness who attempted to assert that Vicente Veloso had any interest in lot No. 778.

It is to be noted that Josefina obtained a Torrens title to lot No. 778 by virtue of a final decree of the Court of First Instance of Cebu dated November 29, 1916. Vicente Veloso died on October 16, 1921, and Josefina on April 29, 1929. This suit was filed on June 21, 1929. The fact that Vicente Veloso, in his lifetime, and his heirs for so many years after his death, took no action to challenge the Torrens certificate issued to Josefina by decree of the Court of First Instance of Cebu in the year 1916 is a circumstance strongly corroborating the direct evidence that Vicente Veloso had no interest in lot No. 778.

The judgment appealed from is affirmed with costs against the appellants.

Villa-Real, Abad Santos, Hull, and Diaz, JJ., concur.

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