

ARSENIO DE VERA FOR HIMSELF AND AS GUARDIAN AD LITEM OF THE MINORS ARTURO, TEOGINISA, DEOGRACIAS, SIMEON, GUILLERMO AND VICTORIA SURNAMED DE VERA, PLAINTIFFS AND APPELLANTS, VS....

G.R. No. 45170. April 10, 1939

Ponente: MORAN, J.

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MORAN, J.:

Arsenio de Vera, as surviving spouse of the deceased Isabel Domingo, acting for himself and as guardian ad litem of six minor heirs, instituted an action against Cleotilde Galauran in the Court of First Instance of Rizal for the annulment of a deed of sale of a registered parcel of land. It is alleged in the complaint that Arsenio de Vera and his wife Isabel Domingo, now deceased, have mortgaged their property to the defendant to secure a loan received from him, but said defendant illegally made them sign a deed which they then believed to be of mortgage and which turned out later to be of pacto de retro sale; and that the six minor children named in the complaint are the legitimate children and legitimate heirs of the deceased Isabel Domingo. A demurrer was interposed by the defendant alleging that the plaintiffs have no cause of action, for they have not been declared legal heirs in a special proceeding. The demurrer was sustained, and, on failure of plaintiffs to amend, the action was dismissed. Wherefore, this appeal.

Unless there is pending a special proceeding for the settlement of the estate of a deceased person, the legal heirs may commence an ordinary action arising out of a right belonging to the ancestor, without the necessity of a previous and separate judicial declaration of their status as such. (*Rosa Hernandez vs. Padua*, 14 Phil., 194; *Mendoza Vda. de Bonnevie vs. Cecilio Vda. de Pardo*, 59 Phil., 486; *Government of the Philippine Islands vs. Serafica*, 33 Off. Gaz., 334; *Uy Coque vs. Navas L. Sioca*, 45 Phil., 430.) If the deceased turns out to have debts, the creditors or the heirs themselves may initiate a special proceeding. If the heirs are minors, a guardian ad litem may be appointed for them. (Secs. 116 and 117, Act No. 190.)

In the complaint it is asked that a guardian ad litem be appointed for the minor plaintiffs. The lower court should have granted this petition instead of sustaining the demurrer and dismissing the action.

The order of dismissal is hereby reversed and the case remanded to the lower court for further proceedings, with costs against defendant-appellee.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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