

CASIMIRO MENENTE AND FLORENCIA MENENTE, PETITIONERS, VS. PAULO TESORO, RESPONDENT.*G.R. No. 48359. March 20, 1944*

Ponente: OZAETA, J.

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Petitioners are the children of Basilio Menente, who. died on February 9, 1918, when they were eight years and one year old, respectively. In life Basilio was a co-owner with his brothers Juan and Esteban Menente of lot 521 of the Murcia cadastre, containing 36.8070 hectares and covered by original certificate of title No. 9787 of the province of Occidental Negros. In the latter part of 1919 respondent Paulo Tesoro took possession of Basilio's participation in said parcel of land, with the exception of a portion of two hectares which he left with Basilio's widow Merced Pinaga, alleging that the same had been sold to him by Basilio Menente for the sum of P1,219.90, as evidenced by a private document (exhibit F) executed by Basilio Menente on May 16, 1917, in the presence of his brother Juan Menente and his father-in-law Leoncio Pinaga. Merced Pinaga appears to have acquiesced in her dispossession by Tesoro.

Thereafter and in 1920, upon petition of Tesoro filed in the corresponding cadastral case, with notice to, but without objection from, Juan Menente as administrator of the intestate estate of Basilio Menente, the court authorized and ordered the register of deeds to transfer to Paulo Tesoro the participation of the deceased Basilio Menente in said lot 521, except the portion of two hectares above mentioned— Tesoro having theretofore acquired also the shares of the other two co-owners, Juan and Esteban Menente, in said lot. Since then the respondent Paulo Tesoro has been in possession as owner of lot 521, with the exception of the portion of two hectares aforesaid, which was adjudicated by the probate court to the widow and children of Basilio Menente.

About eighteen years later, to wit, on May 4, 1938, the present action was commenced by the petitioners to recover from the respondent that portion of lot 521 he had taken from their mother in 1919 as aforesaid, alleging that their father's supposed signature on the private deed of sale (exhibit F) was a forgery and that the transfer of the certificate of title to the respondent in virtue of an order of the court in the cadastral case had been effected thru the connivance of their uncle Juan Menente as administrator of the intestate estate of their father. Both the Court of First Instance and the Court of Appeals found that the alleged connivance had not been proved; and as to the alleged forgery, altho they entertained some doubt as to the genuineness of Basilio Menente's signature, they were persuaded by the evidence that the sale had really taken place and that the price had really been paid to the deceased. Hence both courts successively absolved the defendant from the complaint, and hence this appeal by certiorari.

We gave due course to the petition for certiorari because the decision of the Court of Appeals was three to two, the dissenting Justices (Albert and Enage) being of the opinion that the signature in question was really a forgery, and because of the question of law involved regarding prescription or laches.

After a careful consideration of the brief for the petitioners in relation to the majority and the dissenting opinions

of the Court of Appeals (no brief was filed for the respondent in this instance), we have arrived at the conclusion that the majority opinion is correct. The transfer of the possession and title of the kyid in question from the widow and the administrator of the deceased over eighteen years before the present action was commenced, was accomplished with their consent and by authority of the court. Against the widow, who is the mother and was the natural guardian of the petitioners, no connivance was imputed by the latter; and as to the now deceased administrator, who was the paternal uncle of the petitioners, no proof of the alleged connivance was found by the Court of Appeals, which, on the other hand, expressly found that the sale had really taken place and that the price had been duly paid. Fortifying this conclusion of the majority of the Third Special Division of the Court of Appeals (composed of Justices Padilla, Briones, and Melencio), and strongly militating against the contention of the petitioners, is their inexcusable laches in not bringing this action until after the lapse of more than eighteen years, when the two instrumental witnesses to the document in question had departed this life, notwithstanding that the petitioner Casimiro Menente had attained majority about eight years before. Unquestionably, whatever cause of action he might have, had prescribed; and that is one of respondent's defenses.

In view of the inconclusive finding of the majority of the Court of Appeals as to the authenticity of the signature of Basilio Menente on the deed of sale (exhibit F) and the definite opinion of the minority of said court that said signature was a forgery, and to set our mind at rest upon that phase of the case, we took pains to examine and compare the questioned with the unquestioned signature of Basilio Menente on exhibits F and G, respectively; and after such examination we are satisfied that the questioned signature is genuine. Both signatures were obviously written by a hand that hardly knew how, and was not accustomed, to write. They have the same general pictorial appearance. Altho the unquestioned signature evinces an unsteady flow of the ink as compared with the questioned signature, the difference might have been due to the different qualities of the pen or, perhaps, of the ink used on each occasion. The slight differences in the angles and sizes of the letters are, we believe, not necessarily indicative of forgery, specially in the case of a person admittedly unaccustomed to sign his name. The surname in the questioned signature is misspelled "Menenete." A forger, who writes deliberately, copying from a model, was not likely to commit such a mistake; but an inexperienced hand, such as Basilio Menente's, was. The two instrumental witnesses to the questioned document were Juan Menente and Leoncio Pinaga, brother and father-in-law, respectively, of the deceased. If said document were a forgery, the forger, would not have selected precisely those close relatives of the victim as witnesses. The said instrumental witnesses were still living when the respondent petitioned the court to authorize the transfer of the title upon the strength of the now questioned document. Were it a forgery, Juan Menente and Leoncio Pinaga, paternal uncle and maternal grandfather, respectively, of the petitioners, would not both have kept silent.

The judgment is affirmed and, there being no appearance for the respondent, no pronouncement is made as to costs in this instance.

Yulo, C. J., Moran, Horrilleno, Paras, and Bocobo, JJ., concur.

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