

**AUREA M. NERONA, MARIO NERONA, AND FRANCISCO NERONA, JR,
PETITIONERS, VS. HONORABLE INTERMEDIATE APPELLATE COURT,
FOURTH CIVIL CASES DIVISION, ALEJANDRO SUEÑO AND FAUSTO
HORTIZU...**

G.R. No. 67145. December 26, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petition to review the decision of the Intermediate Appellate Court which affirmed that of the defunct Court of First Instance of La Union in Civil Case No. 77-V entitled, Nerona, et al. vs. Sueño, et al. for rescission of deed of sale. The judgments of the trial as well as the appellate court denied rescission; hence the instant petition.

The factual background is as follows:

In Criminal Case No. 4617 of the Court of First Instance of La Union, Alejandro Sueño (one of the private respondents herein) was accused of homicide for the death of Francisco Nerona (whose heirs are the petitioners herein). In a decision dated March 11, 1974, Alejandro Sueño was adjudged guilty of homicide, sentenced to an indeterminate prison term and ordered to pay the heirs of Francisco Nerona the sum of P12,000.00 as indemnity for his death. The decision was promulgated on March 29, 1974, and the accused was committed to the provincial jail on the same day. The record does not show whether or not he appealed.

To enforce the judgment on the indemnity a writ of execution dated May 9, 1974, was issued by the trial court but it was returned unsatisfied because it turned out that two parcels of land covered by Tax Declaration Nos. 70154 and 67673 in the name of Alejandro Sueño had been sold to Fausto S. Hortizuela, Alejandro's half-brother by the same mother.

The deed of sale between Alejandro and his half-brother Fausto was executed on April 26, 1974, and registered in the Office of the Register of Deeds of La Union on April 29, 1974.

In the light of the foregoing, the heirs of Nerona instituted the civil case aforementioned to annul the sale between the half-brothers on the ground that it was made in fraud of creditors. And as stated the heirs were denied relief not only by the trial court but also by the appellate court.

The Intermediate Appellate Court in denying the appeal of the plaintiffs said in part:

"The records show that before the execution of the Deed of Sale (Exh. "F") on April 26, 1974, defendants have (had) already executed a private document in which Alejandro Sueño sold the said property to his co-defendant. In fact, the Deed of Sale (Exh. "F") specifically made the following provision, to wit:

"That the above described real properties was absolutely, irrevocably and actually sold by us to the above-named FAUSTO S. HORTIZUELA sometime in the year 1972 in the total amount of P2,300.00 as the buying price thereof, but the proper transfer and conveyance in his name was not affected at the time due to circumstances beyond our control, although actual ownership thereof was already vested upon him when the

above-described properties were sold in his favor.' (Exhibit "F").

"It is thus evident that long before the conviction of defendant Alejandro Sueño in Criminal Case No. 4617, he had already conveyed the subject property to Fausto Hortizuela." (Rollo, p. 68.)

The petition is highly impressed with merit. The conveyance made by Alejandro to Fausto is manifestly fraudulent; it was made to defeat an extant judgment against Alejandro.

Impressive are the following facts: that the seller and the buyer are half-brothers; that the decision against Alejandro was promulgated on March 29, 1974; that the sale was executed and registered on April 26 and 29, 1974, respectively. Under these facts, there can be only one conclusion, i.e. that the sale was made to defeat the creditors of Alejandro.

It is said that Alejandro had sold the lands to Fausto as early as May 27, 1972, by means of a private document - Exhibit 4. Only a person who was born yesterday will believe such a tale. A private document can be easily produced with any date which is convenient.

WHEREFORE, the petition is granted. The decision of the Intermediate Appellate Court is hereby set aside and judgment is rendered declaring the sale in question null and void with costs against the private respondents.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

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