

## **SECOND DIVISION**

**[ G.R. No. 138953, June 06, 2002 ]**

**CASTORIO ALVARICO, PETITIONER, VS. AMELITA L. SOLA,  
RESPONDENT.**

### **DECISION**

**QUISUMBING, J.:**

This is a petition for review on certiorari of the decision dated March 23, 1999 of the Court of Appeals in CA-G.R. CV No. 54624, reversing the decision of the Regional Trial Court of Cebu City, Branch 10, for reconveyance. Also sought to be reversed is the CA resolution dated June 8, 1999 denying petitioner's motion for reconsideration.

The facts of this case are as follows:

Petitioner Castorio Alvarico is the natural father of respondent Amelita Sola while Fermina Lopez is petitioner's aunt, and also Amelita's adoptive mother.

On June 17, 1982, the Bureau of Lands approved and granted the Miscellaneous Sales Application (MSA) of Fermina over Lot 5, SGS-3451, with an area of 152 sq. m. at the Waterfront, Cebu City.<sup>[1]</sup>

On May 28, 1983,<sup>[2]</sup> Fermina executed a Deed of Self-Adjudication and Transfer of Rights<sup>[3]</sup> over Lot 5 in favor of Amelita, who agreed to assume all the obligations, duties, and conditions imposed upon Fermina under MSA Application No. V-81066. The document of transfer was filed with the Bureau of Lands.<sup>[4]</sup> The pertinent portions of the deed provide:

X X X

That I, FERMINA A. LOPEZ, of legal age, Filipino, widow of Pedro C. Lopez and a resident of Port San Pedro, Cebu City, Philippines, am the AWARDEE of Lots Nos. 4, 5, 3-B, 3-C and 6-B, Sgs-3451 And being the winning bidder at the auction sale of these parcels by the Bureau of Lands held on May 12, 1982, at the price of P150.00 per square meter taking a purchase price of P282,900.00 for the tract; That I have made as my partial payment the sum of P28,290.00 evidenced by Official Receipt No. 1357764-B representing ten (10%) per cent of my bid, leaving a balance of P254,610.00 that shall be in not more than ten (10) years at an equal installments of P25,461.00 beginning June 17, 1983 until the full amount is paid.

... the Transferee Mrs. Amelita L. Sola, agrees to assume, all the obligations, duties and conditions imposed upon the Awardee in relation

to the MSA Application No. V-81066 entered in their records as Sales Entry No. 20476.

... [I] hereby declare that I accept this Deed of Self-Adjudication and Transfer of Rights and further agree to all conditions provided therein.<sup>[5]</sup>

Amelita assumed payment of the lot to the Bureau of Lands. She paid a total amount of P282,900.<sup>[6]</sup>

On April 7, 1989, the Bureau of Lands issued an order approving the transfer of rights and granting the amendment of the application from Fermina to Amelita.<sup>[7]</sup> On May 2, 1989, Original Certificate of Title (OCT) No. 3439 was issued in favor of Amelita.<sup>[8]</sup>

On June 24, 1993,<sup>[9]</sup> herein petitioner filed Civil Case No. CEB-14191<sup>[10]</sup> for reconveyance against Amelita. He claimed that on January 4, 1984, Fermina donated the land to him<sup>[11]</sup> and immediately thereafter, he took possession of the same. He averred that the donation to him had the effect of withdrawing the earlier transfer to Amelita.<sup>[12]</sup>

For her part, Amelita maintained that the donation to petitioner is void because Fermina was no longer the owner of the property when it was allegedly donated to petitioner, the property having been transferred earlier to her.<sup>[13]</sup> She added that the donation was void because of lack of approval from the Bureau of Lands, and that she had validly acquired the land as Fermina's rightful heir. She also denied that she is a trustee of the land for petitioner.<sup>[14]</sup>

After trial, the RTC rendered a decision in favor of petitioner, the decretal portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against the defendant. Lot 5, Sgs-3451, is hereby declared as lawfully owned by plaintiff and defendant is directed to reconvey the same to the former.

No pronouncement as to damages and attorney's fees, plaintiff having opted to forego such claims.

SO ORDERED.<sup>[15]</sup>

On appeal, the Court of Appeals in its decision dated March 23, 1999 reversed the RTC. Thus:

WHEREFORE, foregoing considered, the appealed decision is hereby REVERSED and SET ASIDE. The complaint filed by plaintiff-appellee against defendant-appellant is hereby DISMISSED.

Costs against plaintiff-appellee.

SO ORDERED.<sup>[16]</sup>

Petitioner sought reconsideration, but it was denied by the CA.<sup>[17]</sup>

Hence, the instant petition for certiorari seasonably filed on the following grounds:

I.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR, REFLECTIVE OF UNMINDFUL RECKLESSNESS WHICH IS THE VERY OPPOSITE OF JUDICIAL CIRCUMSPECTION, IN DECLARING THAT THE DEED OF DONATION DATED JANUARY 4, 1984 (ANNEX "C") IN FAVOR OF PETITIONER WAS EMBODIED ONLY IN A PRIVATE DOCUMENT (Page 6, Decision, Annex "A"), ALTHOUGH, BY A MERE CASUAL LOOK AT THE DOCUMENT, IT CAN BE READILY DISCERNED THAT IT IS NOTARIZED;

II.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN APPLYING ON THE CASE AT BAR THE PRINCIPLE IN LAW THAT IT IS REGISTRATION OF THE SALES PATENT THAT CONSTITUTE THE OPERATIVE ACT THAT WOULD CONVEY OWNERSHIP OF THE LAND TO THE APPLICANT (Pp. 3-6, Decision, Annex "A") BECAUSE THE LEGAL CONTROVERSY BETWEEN PETITIONER AND RESPONDENT DOES NOT INVOLVE CONFLICTING CLAIMS ON SALES PATENT APPLICATIONS;

III.

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND COMMITTED SERIOUS ERROR IN MAKING A FINDING THAT RESPONDENT ACQUIRED THE LAND IN QUESTION, IN GOOD FAITH (Page 7, Decision, Annex "A"), ALTHOUGH THERE IS NO BASIS NOR NEED TO MAKE SUCH A FINDING; and

IV.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN ENUNCIATING THAT POSSESSION MENTIONED IN ARTICLE 1544 OF THE NEW CIVIL CODE INCLUDE SYMBOLIC POSSESSION, UPON WHICH THE APPELLATE COURT BASED ITS CONCLUSION THAT RESPONDENT WAS FIRST IN POSSESSION BECAUSE THE DEED OF SELF-ADJUDICATION AND TRANSFER OF RIGHTS IN FAVOR OF RESPONDENT DATED MAY 28, 1983 WAS EXECUTED MUCH EARLIER THAN THE DEED OF DONATION IN FAVOR OF PETITIONER DATED JANUARY 4, 1984 (Pages 7-8, Decision, Annex "A").<sup>[18]</sup>

The crucial issue to be resolved in an action for reconveyance is: Who between petitioner and respondent has a better claim to the land?

To prove she has a better claim, respondent Amelita Sola submitted a copy of OCT No. 3439 in her name and her husband's,<sup>[19]</sup> a Deed of Self-Adjudication and Transfer of Rights<sup>[20]</sup> over the property dated 1983 executed by Fermina in her favor, and a certification from the municipal treasurer that she had been declaring