5 Phil. 625

[G.R. No. 2250. February 17, 1906]

PEDRO REGALADO, PLAINTIFF AND APPELLANT, VS. LUCHSINGER & CO., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

This is the second appearance of this case in this court. The decision upon the first appeal is reported in 1 Phil. Rep., 619. The facts out of which the litigation grew are therein stated, and need not be repeated.

Jose Regalado, the father was prosecuted for the crime of estafa, alleged to have been committed in the sale of the warehouse to his son Pedro, the plaintiff in this case. The decision in that case is reported in 1 Phil. Rep., 125, under the name of United States vs. Jose Regalado y Santa Ana. It was charged in that criminal case that the father had sold a warehouse to his son, representing it as free from incumbrance, when in fact it was encumbered by the attachment which the defendants Luchsinger & Co. secured in the present case. In the criminal case this court acquitted the defendant, basing its decision exclusively upon the proposition that there was no evidence in the case that the attachment in question had ever been recorded in the office of the registrar of property; and not having been so recorded no incumbrance existed. The question as to whether there was any actual fraud or deceit on the part of the father was not involved nor considered in that case.

The first claim made by the plaintiff and appellant in this case is that the judgment in the criminal case to the effect that the writ of attachment never had been recorded in the office of the registrar of property is conclusive against the defendants in this case, and therefore was not subject to investigation.

The court in this case found,. as a matter of fact, that
the attachment had been recorded. No such finding was

made in the criminal case.

Section 306 of the Code of Civil Procedure is as follows:

> "*Effect of judgment.*—The effect of a judgment or final order in an action or special proceeding before a court or judge of the Philippine Islands or of the United States, or of any State or Territory of the United States, having jurisdiction to pronounce the judgment or order, may be as follows:
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> "1. In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title of the thing, the will, or administratiori, or the condition or relation of the person: *Provided*, That the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate.
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> "2. In other cases the judgment so ordered is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity."

In view of this section, in order that the judgment in the criminal case upon this point should be binding and conclusive upon the parties, it was necessary for the plaintiff here to show that the parties in that case were the same as the parties in this case. This was not done. In that case the only persons who could possibly be called parties were the father, Jose" Eegalado, the defendants Luchsinger & Co., and the Government. The plaintiff, Pedro Regalado, who seeks the benefit of that judgment, was not a party to that proceeding, and does not claim under any .one of the parties by a title subsequent to the commencement thereof. He therefore does not come within the provisions of section 306, and that judgment is not a conclusive adjudication in his favor in this case. The appellant also makes the point that the evidence was not sufficient to sustain the finding of the court below to the effect that this attachment had in fact been recorded. The books of the registry having been lost or destroyed, the parties had to resort to other testimony. The defendants presented a witness who swore positively that an order for the record of the attachment had been issued by the Court of First Instance, and that it had been returned by the registrar of property as having

been complied with, and that he had seen such return. The only evidence to overcome this testimony was a statement made by the former clerk of the Court of First Instance to the effect that he drew the final judgment in the case in which the attachment was issued, and that it was his custom to make mention in final judgments of every proceeding in the case, and that the final judgment in question did not contain any reference to the recording of this attachment. In view of this condition of the evidence we can not say that it preponderates against the decision of the trial court.

The real question in this case is whether the sale made in 1900, by Jose Regalado, the father, to the plaintiff, Pedro Regalado, his son, of the warehouse in question, was fraudulent as to the defendants Luchsinger & Co., who were then creditors of the father.

Article 1297 of the Civil Code is as follows:

> "Contracts by virtue of which the debtor alienates property, gratuitously, are presumed to be executed in fraud of creditors.
>
> "Alienations for valuable considerations, made by persons against whom a condemnatory judgment, in any instance, has been previously rendered, or a writ of seizure of property has been issued, shall also be presumed fraudulent."

It appears in this case that a final judgment in the proceeding by Luchsinger & Co. against the father, Jose' Regalado, in which the attachment above mentioned was issued, was entered in 1896 in the Court of First Instance. An appeal was taken to the Royal Audiencia of Manila, and the judgment was there affirmed in 1897. It thus appears that each one of the cases mentioned in the last paragraph of article 1297 existed in this case, and that in 1900, when the father sold the warehouse to the son, there had not only been a judgment entered against him in the first and second instance but also a writ of execution had been issued, which had been levied upon this very warehouse. The sale by the father to the son, therefore, is presumed to have been fraudulent. That presumption of fraud has not been overcome by the evidence which has been presented in this case. A large amount of testimony was introduced as to the value of the warehouse in 1900, when the sale was made. The court below, after considering that evidence, decided that it was worth at least 25,000 pesos, 10,000 more than the amount claimed by the plaintiff to have been paid by him for it. We have examined this evidence, and we think that it preponderates in favor of the decision made by the trial court. It is to be observed, moreover, that it is more than

probable that at the time of the sale in question Pedro Regalado, the son, did not have 15,000 pesos, or any other sum of importance, with which to buy, or pay for this property.

The plaintiff also relies upon article 1291 of the Givil Code, which speaking of contracts that may be rescinded, declares as follows:

> "The following may be rescinded:
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> * * * * * * *
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> "3. Those executed in fraud of creditors, when the latter can not recover, in any other manner, what is due them."

And he claims that the evidence in the case shows that at the time of the sale in question, and at the time of the trial of this case the father, Jos6 Regalado, had property other than the warehouse in question, out of which the defendants could have collected their debt against him. By the terms of article 1291 it is true that an action to set aside the contract on the ground that it is fraudulent as to creditors is subsidiary, and can not be maintained if the debtor has other property with which to pay the debt; but in this case we agree with the court below that the evidence shows that the father had no such other property, either at the time the sale was made or at the time this action was tried out of which the defendants could have collected this debt. The only property which it is said he had consisted of various debts owing to him, as he claimed, from third persons. All of these debts were created prior to the year 1888. One of them, the most important, for 10,000 pesos, was in litigation.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the lower court for execution. So ordered.

Arellano, C. J., Torres, Johnson, and *Carson, JJ.,* concur.

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