

AQUILINA P. MARIN AND ANTONIO S. MARIN, SR., PETITIONERS, VS. JUDGE MIDPANTAO L. ADIL, BRANCH II, CFI, ILOILO; PROVINCIAL SHERIFF, CFI, SOUTH COTABATO; REGISTER OF DEEDS, GENERA...

G.R. No. L-47986. July 16, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the rescission of a deed of exchange. In a 1963 document, Aquilina P. Marin assigned to the brothers Manuel P. Armada and Ariston P. Armada her hereditary share in the testate estate of her deceased mother, Monica Pacificar Vda. de Provido, situated in Janiuay, Iloilo in exchange for the land of the Armadas located in Cotabato covered by TCT No. 7252 and other properties in that province.

The exchange would be rescindible when it is definitely ascertained that the parties have respectively no right to the properties sought to be exchanged. The exchange did not mean that the parties were definitely entitled to the properties being exchanged but it was executed "in anticipation of a declaration of said right". The deed of exchange reads as follows:

"DEED OF EXCHANGE WITH QUITCLAIM

KNOW ALL MEN BY THESE PRESENTS:

This DEED OF EXCHANGE WITH QUITCLAIM, made and entered into by and between:

AQUILINA P. MARIN, of legal age, Filipino, married, to Antonio S. Marin, with residence and postal address at Bo. 8, Marbel, Koronadal, Province of Cotabato, hereinafter designated as MARIN;

- and -

MANUEL P. ARMADA, Filipino, of legal age, single, with residence and postal address at the Municipality of Janiuay, Province of Iloilo, Philippines, for him and in behalf of his brother, ARISTON P. ARMADA, likewise Filipino, of legal age, single, with residence and postal address at Stockton, California, U.S.A., hereinafter designated as the ARMADAS;

WITNESSETH:

WHEREAS, AQUILINA P. MARIN, is one of the legitimate children and compulsory heirs of the deceased MONICA PACIFICAR VDA DE PROVIDO, who died testate in the Municipality of Janiuay, Province of Iloilo, Philippines, on June 3, 1960;

WHEREAS, AQUILINA P. MARIN was named as an heir in that certain LAST WILL AND TESTAMENT executed by the said MONICA PACIFICAR VDA DE PROVIDO, on October 20, 1959, and duly acknowledged on the same date, before Sr. MANUEL B. LAURO, Notary Public for and in the Province of Iloilo, as per Doc. No. 262, Page No. 95, Book No. I, Series of 1959, of his Notarial Register, a photostatic copy of which is hereto attached and made an integral part of this AGREEMENT as Annex A;

WHEREAS, it is specifically provided in the attached LAST WILL AND TESTAMENT OF MONICA PACIFICAR VDA DE PROVIDO that AQUILINA P. MARIN will share equally with her co-heirs the estate of the decedent consisting of personal properties and registered and unregistered lands situated in the Municipality of Janiuay, Province of Iloilo, Philippines;

WHEREAS, the ARMADAS desire to acquire all the rights, interests, titles and participations that AQUILINA P. MARIN may have over the real and personal properties of MONICA PACIFICAR VDA DE PROVIDO aforementioned because of the proximity of the said properties to them, being residents of Janiuay, Iloilo, while AQUILINA P. MARIN is presently residing in Cotabato, Philippines;

WHEREAS, AQUILINA P. MARIN does by these presents hereby WAIVE and QUITCLAIM all her rights, interests, titles and participations in all the real and personal properties of her deceased mother, MONICA PACIFICAR VDA DE PROVIDO, in favor of the ARMADAS, in exchange for whatever rights, interests, titles and participations the latter may have or could have in any real or personal properties situated at Cotabato, Philippines;

NOW, THEREFORE, for and in consideration of the foregoing premises, and for such other good and valuable considerations, the parties hereto hereby covenant and stipulate as follows, to wit:

1. That AQUILINA P. MARIN hereby transfers, assigns, cedes, conveys and quitclaims unto the said ARMADAS, their heirs, successors and assigns, all her rights, titles, interests and participations in any and all real and personal properties representing her legitimate share in the estate of her deceased mother, the late MONICA PACIFICAR VDA DE PROVIDO, situated at the Municipality of Janiuay, Iloilo;
2. That the ARMADAS by virtue of these presents hereby likewise cede, transfer, assign, convey and quit-claim in favor of the said AQUILINA P. MARIN, by way of exchange, all their rights, interests, titles and participations, that they may have or could have in any and all real and personal properties situated at the Province of Cotabato, Philippines, more particularly in that parcel of land formerly covered by TCT No. V-2354 and now covered by TCT No. 7252 of the Cotabato Registry;
3. That the ARMADAS know for a fact that the properties being assigned and quitclaimed in their favor by AQUILINA P. MARIN have long been and continue to be productive and are more valuable than the properties which they are exchanging under this document;
4. That both parties hereto hereby acknowledge that the exchange contained herein operates to their individual and mutual benefit and advantage, for the reason that the property being ceded, transferred, conveyed and quitclaimed by one party to the other is situated in the place where either is a resident resulting in better administration of the aforementioned properties;
5. That both parties furthermore acknowledge that the exchange contemplated herein is made in perfect good faith, and not attended by fraud, mistake, misrepresentation or the like and that they have no further claim for additional price or consideration against each other, both declaring that the properties received by way of exchange under this document is adequate consideration for the properties quitclaimed;
6. That the parties hereto intend this AGREEMENT to be absolute and irrevocable, except only when it is eventually ascertained and finally determined that they have respectively no right, interest, title or participation in any property, real or personal, which they have assigned or quitclaimed in favor of each other, and in the event of mutual restitution by reason of the above eventuality, the parties hereto are not liable for any fruits or benefits which they may have received from the aforementioned properties during the existence and efficacy of this AGREEMENT and that no damage could be claimed by one against the other;
7. That it is specifically understood and agreed that the execution of this document by the parties hereto shall in no way be construed as an acknowledgment on his or her part that the other is or are entitled in the properties heretofore quitclaimed but only in anticipation of a declaration of said right;

8. That the parties hereto shall take possession of and make use of the properties subject of this DEED OF EXCHANGE AND QUITCLAIM upon the signing of the same;

9. That the parties hereto hereby agree that the lawful ownership and possession of each shall be protected by the other against any and all claims of any person or persons;

10. That to make this AGREEMENT valid, binding and effective, both parties hereby authorize each other the registration of this document with the Register of Deeds of Iloilo, and the ARMADAS likewise grant a similar authority to MARIN.

IN WITNESS WHEREOF, the parties hereto have affixed their hands on this 13th day of June, 1963.

(SGD.) AQUILINA P. MARIN (SGD) MANUEL P. ARMADA

(For himself and in behalf of his brother, Ariston P. Armada)

With my marital consent:

(SGD) ANTONIO S. MARIN"

(Witness and Notarial Acknowledgment are omitted)

As background, it should be stated that the Armadas and Mrs. Marin are first cousins. The Armadas in 1963 expected to inherit some lots in General Santos City from their uncle, Proceso Pacificar, who died in 1954. Mrs. Marin, who resided in Koronadal Cotabato, had here ditary rights in the estates of her parents, the deceased spouses, Francisco Provideo and Monica Pacificar, of Janiuary, Iloilo, who died in 1938 and 1960, respectively. Manuel P. Armada resided in Janiuary.

In 1963, when the deed of exchange was executed, the estate of Proceso Pacificar, in which the Armadas expected to inherit a part, had been adjudicated to Soledad Provideo-Elevencionado, a sister of Mrs. Marin and a first cousin also of the Armadas, Soledad claimed to be the sole heir of Proceso. So, the Armadas and the other heirs had to sue Soledad.

The protracted litigation ended in a compromise in 1976 when the Armadas were awarded Lots 906-A-2 and 906-A-3, located in Barrio Lagao, General Santos City with a total area of 8,124 square meters. Mrs. Marin never possessed these two lots. They were supposed to be exchanged for her proindiviso share in her parents' estate in Janiuary.

Did Mrs. Marin inherit actually anything from her parents? The answer is nothing. She chose to forget the deed. Her conduct showed that she con-sidered herself not bound by it. Five years after that deed, or on November 14, 1968, she agreed to convey to her sister, Aurora Provideo-Collado, her interest in two lots in Janiuary in payment of her obligation amounting to P1,700.

Then, in the extrajudicial partition of her parents' estate on June 25, 1977 (when the instant case for rescission was already pending), her share, with a total area of 9,000 square meters, was formally adjudicated to Aurora. It was stated therein that Mrs. Marin "has waived, renounced and quitclaimed her share" in favor of Aurora. As already stated, that share was supposed to be exchanged for the two lots in General Santos City which the Armadas received in 1976 after a pestiferous litigation.

The Armadas filed the instant rescissory action against Mrs. Marin on December 7, 1976. They overlooked the fact that Ariston P. Armada was not bound at all by the deed since Manuel, who signed the deed for him, had no

authority to do so. Manuel was not the attorney-in-fact of Ariston (See Art. 1403 [1], Civil Code).

There was no trial. The case was submitted on the pleadings. The sole issue resolved by the trial court was prescription. It held that the Armadas' action had not prescribed because their right to rescind accrued only in 1976 when they discovered that Mrs. Marin could not perform her obligation under the deed since she had assigned her hereditary rights to her sister.

Judge Midpantao L. Adil rescinded the deed of exchange, ordered restitution of whatever might have been received by Mrs. Marin, released the Armadas from their obligation under said deed and ordered Mrs. Marin to pay the Armadas P10,000 as moral and exemplary damages and P3,000 as attorney's fees. Mrs. Marin appealed to this Court on legal issues (L-49018).

Judge Adil issued an order of execution pending appeal which Mrs. Marin assailed by certiorari in this Court. The enforcement of the execution was restrained by this Court (L-47986). The two related cases have been consolidated.

It is evident from the deed of exchange that the intention of the parties relative to the lots, which are the objects of the exchange, cannot be definitely ascertained. We hold that this circumstance renders the exchange void or inexistent (Art. 1378, 2nd par. and Art. 1409 [6], Civil Code).

Thus, as already noted, it is provided in paragraph 7 that the deed should not be construed as an acknowledgment by the Armadas and Mrs. Marin that they are entitled to the properties involved therein and that it was executed "in anticipation of a declaration of" their rights to the properties.

Then, it is stipulated in paragraph 8 that the parties should take possession and make use of the properties involved in the deed.

The two provisions are irreconcilable because paragraph 7 contemplates that the properties are still to be awarded or adjudicated to the parties whereas paragraph 8 envisages a situation where the parties have already control and possession thereof.

It should be noted that in paragraph 7 of Mrs. Marin's answer with affirmative defense she avers therein that her 1968 agreement with her sister means that she would convey her properties to the latter (Aurora) when the Armadas should be "adjudged to be without rights or interests to any properties in General Santos City" (p. 47, Rollo of L-49018). Such a qualification is not found in her agreement with her sister.

The instant rescissory action may be treated as an action to declare void the deed of exchange. The action to declare the inexistence of a contract does not prescribe (Art. 1410, Civil Code).

The properties covered by the deed should have been specified and described. A perusal of the deed gives the impression that it involves many properties. In reality, it refers only to 8,124 square meters of land, which the Armadas would inherit from their uncle in General Santos City, and to the 9,000 square meters representing the proindiviso share of Mrs. Marin in her parents' estate. As we have seen, Mrs. Marin rendered impossible the performance of her obligation under the deed.

Because of that impossibility, the Armadas could rescind extrajudicially the deed of exchange (Art. 1191 Civil Code; 4 Tolentino, Civil Code, 1973 Ed., pp. 171- 172). If Mrs. Marin should sue the Armadas, her action would be barred under the rule of *exceptio non adimpleti contractus* (plaintiff is not entitled to sue because he has not performed his part of the agreement).

As no evidence was presented in this case, we cannot sustain the award of P10,000 as moral and exemplary damages and P3,000 as attorney's fees.

WHEREFORE, the trial court's judgment and the order of execution pending appeal are set aside. The deed of exchange is hereby declared void and inexistent. The annotation thereof on TCT Nos. 10833 and 10834 should be cancelled. The Armadas' claim for damages and attorney's fees is denied. Aquilina Provido-Marin's counter-claim is dismissed. No costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, Escolin, and Cuevas, JJ., concur.

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