

ESTER D. WRIGHT, PLAINTIFF-APPELLANT VS. CONCHITA TINIO, IN HER CAPACITY AS ADMINISTRATRIX OF THE ESTATE OF SOLEDAD TINIO, DEFENDANT-APPELLANT.*G.R. No. L-4004. May 29, 1952*

Ponente: BENGZON, J.

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On August 19, 1943, Robert N. Wright notarized the document Exh. 1 whereby for the sum of P140,000 he sold to Soledad Tinio his house and lot on Taft Avenue, Manila, together with some furniture described in a list attached thereto. Dr. Wright was ill, stayed with his family in the premises until he died in Feb. 1944. The purchaser took possession in June 1944.

In May 1945 his widow Ester D. Wright, and their two daughters, instituted this action to revoke the sale alleging, in short, that a portion of the purchase price (P22,000) had not been paid. Defendant was Conchita Tinio (Conchita Juachon) as judicial administratrix of the estate of Soledad Tinio, who had died in the battle of liberation.

After due hearing, the court of first instance of Manila declared that of the purchase price, P22,000 had not been paid. And finding reasons that justify the grant of a term within which the vendee may pay the unpaid balance, it gave defendant 60 days to pay. However, it declared that "upon the failure of the defendant to do so, the Court hereby declares and decrees the resolution of the sale of said property, without the plaintiffs having to return the amount of P118,000 in Japanese military notes, because under the present conditions it is impossible to do so."

Both parties appealed to the Court of Appeals; however as the property or amount involved is greater than P50,000 that court forwarded the expediente to us.

The principal questions at issue are: (a) was the total purchase price fully paid? (b) If P22,000 had not been paid and the sale is rescinded, should not the plaintiffs be required to return the part of the price delivered by Soledad Tinio? and (c) the unpaid purchase price, and the amount to be returned in case of rescission, should they be reduced into genuine currency in accordance with the Ballantyne schedule?

The first is essentially a question of fact. For the plaintiffs only the widow of Dr. Wright testified. Defendants attorney objected to her competency, citing the rule that parties to a case against the representative of a deceased person upon a claim or demand against the estate of such deceased person cannot testify as to any matter of fact occurring before the death of such deceased person. Declining to pass on the objection, the judge allowed the testimony, saying the point would be taken into account upon final adjudication. But another judge rendered the decision, said nothing about the objection and believed and upheld the testimony of the widow. This is the the»e of defendant-appellant's first assignment of error.

Surely the widow was incompetent to declare about the nonpayment of the purchase price, under Rule 123, sec, 26 of the Rules of Court. But as the attorney for defendant chose to cross-examine her, the objection is considered

waived^[1] and her testimony may not be entirely thrown out as incompetent or inadmissible.

Mrs. Wright swore substantially as follows My husband and I met Soledad Tinio in August 1943 when she came accompanied by Mrs. Paz Ocampo to purchase our house. We agreed upon the price: P140,000. She promised to come back with the money. Four days later she returned and delivered to me P70,000 in the presence of Mrs. Paz Ocampo, saying she would afterwards pay the remainder. About the fifteenth of August she paid to me P43,000 in the presence of my sister. We ordered the preparation by Atty. Ocampo of a deed of sale with mortgage (which is Exh. E,) but Soledad Tinio insisted that she wanted a clean absolute sale so that she could mortgage the property and discharge the balance. So my husband notarized the deed Exh. 1. Soledad Tinio executed no promissory note for the unpaid balance, explaining that anyway we could stay in the house so long as such balance remained unpaid. But when my husband died in Feb. 1944 she insisted upon our leaving the house. I objected, because of the unsatisfied purchase price. She resorted to the Japanese, but I was fortunate in securing the assistance of Attorney Recto who interceded for me. But in June 1944 Soledad gave me this check Exh. A for P16,000 promising to deliver in addition four sacks of rice (priced at 4,000). So I left the house, specially because I was frightened when one of my servants was murdered. The check was dishonored by the Bank. The sacks of rice were never delivered. I called Soledad several times about the matter. After the liberation in Manila I talked with the defendant Conchita Tinio about the check her sister (Soledad) had given me, and I was informed that Soledad was already dead.

Presenting a certified copy of the title to the property, which Soledad Tinio had obtained in due course, Conchita Tinio (Conchita Juachon) declared: In March 1945 Mrs. Wright interviewed me about the check Each. A "which was in payment of the furniture sold by her to my sister Soledad sometime in June 1944 before she left her house in Taft Avenue"; Mrs. Wright never claimed that the check referred to the purchase price of the house and lot; she merely wanted me to acknowledge the check, but I told her I could not do it because at that time my application as guardian of Soledad's children had not yet been approved.

Mrs. Wright, in rebuttal, denied having stated to Conchita Tinio that the check Exh. A had been issued for the payment of furniture. She admitted, however, that she did not inform Conchita that the check was party payment of the house and lot.

The document Exh. 1 is entitled "Escritura de venta absoluta." It is signed by Robert N. Wright in the presence of two witnesses, and duly acknowledged before a notary public as of Aug. 19, 1943. It recites that in consideration of the sum of one hundred and forty thousand pesos "que en este acto he recibido a mi entera satisfaccion de Doria Soledad Tinio xx," I hereby sell and convey, absolutely and forever, free from all encumbrance etc.

That recital in a public document is strong proof of full payment of the purchase price. It may only be overcome by "clear, convincing and more than preponderant evidence" to the contrary.^[2]

Has the plaintiff Mrs. Wright sufficiently rebutted the documentary proof?

As heretofore stated, due to waiver, her testimony may not be wholly discarded. However, admissibility is not synonymous with credibility. A husband's testimony in favor of his wife is admissible, but is not so credible as that of a disinterested witness. The accused is competent to testify that another person already dead - not he - has committed the crime under investigation; but his assertions are taken with a grain of salt, for the deceased can not appear to contradict him. Because Soledad Tinio is now dead, we carefully scrutinized the testimony of Mrs. Wright. We have found it unconvincing. The Wrights never knew Soledad Tinio before, and yet they surrendered the title to their only home without requiring her to sign a memorandum for the unpaid price. From Aug. 1943 to June 1944, they took no steps to protect their credit (annotation of a mortgage or a promissory note) and did not sue for rescission notwithstanding they knew that Soledad had already obtained a new certificate of title in her own

name. There is proof that Mrs. Wright had the advice of lawyers: Ocampo and Recto and others. Her patience or tolerance is all the more unexplainable if we consider that at the end of 1943 and in 1944 money was rapidly depreciating.

Furthermore she could not ignore that in June 1944 her house could be sold for more than double the price (P140,000), and it was clearly advantageous to rescind for non-payment of the price. The Wrights, we are told, were then in dire need of money. Then after the check had bounced in June 1944, she failed to take steps to sue or to rescind the sale until liberation, and only after she had discovered that Soledad Tinio had died.

It is significant that when she interviewed Conchita Tinio in March 1945 she mentioned the check, without mentioning the four sacks of rice, and did not claim that the check was the last payment on the purchase price of their house and lot. In that interview who was informed that Soledad had died. Afterwards she insisted that the check was in payment of the house and lot.

Again it is significant that, according to Conchita Tinio, Mrs. Wright told her the check was in payment of some furniture which Soledad had purchased from her in June 1944 because upon leaving the house she (Mrs. Wright) did not care to bring such furniture with her, because they were heavy pieces. This statement rings with probability, because Mrs. Wright herself admitted that they conveyed to Soledad in Aug. 1943 the house and lot with some furniture not all the furniture therein.

Finally, it is noteworthy that the plaintiffs refused to present Mrs. Paz Ocampo who allegedly witnessed the payment of P70,000; and did not explain why they failed to call upon Mrs. Wright's sister to corroborate her statement that Soledad gave P43,000 on a particular day. It was plaintiffs' duty to overcome by more than preponderant evidence the recital of full payment in the public instrument Exh. 1. Yet they failed to sustain that burden. Wherefore the document must be accorded plenary force and effect. We hold that the consideration for the sale has been fully paid.

In view of this finding, it becomes unnecessary to take up the other questions.

The appealed decision is hereby reversed, and the complaint is dismissed, with costs against the plaintiffs.

Paras, Feria, Pablo, Tuason, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

[1] *Abrenica v. Gonda* 34 Phil. 739; *Tongco v. Vianzon* 50 Phil. 698; *McFarlane v. Green* 54 Phil.

[2] *Mendezona* case 41 Phil. 475; *Bank of the Philippine Islands v. Fidelity* 51 Phil. 57.

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