

TEODORICA REINARES, PLAINTIFF AND APPELLANT VS. JOSE ARRASTIA AND LIBERTY T, HIZON, DEFENDANTS. LIBERTY T. HIZON, DEFENDANT AND APPELLEE.

G. R. No. L-17083. July 31, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

Plaintiff Teodorica Reinare's and defendant Jose Arrastia, are husband and wife. On June 25, 1958, defendant husband sold to defendant Liberty T. Hizon, different parcels of sugar lands, belonging to the conjugal partnership. On June 18, 1959, alleging lack of consent, fraud and prejudice to her conjugal share, plaintiff, instituted an action against her husband and Hizon, averring:—

"7. That after the annotation of this notice on said TCT Nos. 3760 and 4067, the plaintiff received a letter from the defendant Liberty T. Hizon dated June 25, 1958, stating that she (defendant Liberty T. Hizon) has purchased the above-described conjugal property from the defendant Jose Arrastia for the sum of P32,300.00 in addition to her assumption of a mortgage indebtedness of the vendor in the amount of P108,925.30 or a total of P141,225.30; and that she (Liberty T. Hizon) was ready to deliver 1/2 of the cash purchase price upon the plaintiff giving her marital consent; that as per the letter dated 25 June 1958, the sale of the above-described parcels of land by Jose Arrastia to Liberty T. Hizon is evidenced by that document known as Deed of Sale with Assumption of Mortgage dated January 25, 1958, and acknowledged before Notary Public Reginaldo V. Eddalin (Doc. No. 833, Page No. 68, Book No. XIII, Series of 1958; a copy of which letter and Deed of Sale are hereto attached as Annexes 'A' and 'B' respectively, and made integral parts of this complaint;

"8. That the above-described properties covered by TCT 3760 and 4067 and now TCT 7630 and TCT 7631, respectively in the name of Liberty T. Hizon are the sole and only properties of the conjugal partnership between the plaintiff Teodorica Reinales and the defendant Jose Arrastia; that on the other hand said defendants at the time of the execution of said deed of sale, did not, and does not own, have any property or assets of whatever nature in his name;

"9. That the total purchase price for which the above-described conjugal properties were sold by defendant Jose Arrastia to Liberty T. Hizon is grossly inadequate and prejudicial to the interest of the plaintiff in the said conjugal properties;

* * * * *

"11. That the defendant Jose Arrastia has no property, real or personal, which may be charged for the damages caused the plaintiff by reason of the illegal sale made by him to Liberty T. Hizon upon liquidation of the conjugal partnership property; that the sale of the subject parcels of land are therefore, prejudicial to the rights of the plaintiff therein, since the sale includes the whole share of the plaintiff in the conjugal properties, which as mentioned above is composed solely of the parcel of land, subject matter of this complaint.

"12. That the defendant Liberty T. Hizon is purchasing the above-described properties notwithstanding her prior actual knowledge of the fact that the plaintiff would not consent to the sale of said conjugal properties for

the reasons aforesated, acted in bad faith, with malice, and in wanton disregard of the conjugal rights and interest of plaintiff in said properties because of the exceedingly low price accepted by Jose Arrastia;

"13. That since said sale was made in fraud of the conjugal rights and participation of the plaintiff in said conjugal rights and participation of the plaintiff in said conjugal properties, it is therefore, void; * * *".

In her prayer, she asked, (1) the sale made by her husband to Hizon be declared null and void; (2) delivery of the properties to her; (3) damages in the sum of P13,000.00; (4) costs of the suit.

Under date of July 14, 1959, defendant Hizon moved to dismiss the complaint on the ground that it states no cause of action against her. In support of the said motion, it was argued that even granting (without admitting) the truth of the allegations in the complaint, there is no cause of action because (1) the consent of the wife is not necessary for alienations made by the husband of properties acquired before the effectivity of the new Civil Code (Art. 166); (2) the authority of the husband to alienate conjugal property is full, absolute and complete (Art. 1413, old Civil Code); (3) estoppel on the part of the plaintiff, for she had allowed her defendant husband to mortgage the properties in question without objection. Plaintiff presented an Opposition to the Motion to Dismiss, contending that while Article 1413 of the old Civil Code gives the husband authority to alienate conjugal properties without the consent of the wife, same provision, however, establishes exceptions. A reply to the opposition was filed by defendant Hizon, further pointing out that the action referred to in article 1413 would lie only after liquidation of the conjugal partnership, which is not the fact obtaining in the case under consideration; and that there is no showing of the supposed prejudice, because same can only be determined upon liquidation of the partnership.

The lower court heard the motion to dismiss in argument. Counsel for movant-defendant manifested that for the complaint to prosper, there must be a valid allegation of fraud, but there is none in said complaint. Also during the hearing of the motion, it was brought out, for the first time, that the Arrastia spouses had given one Eufemia Rivera, an option to sell the land now in controversy, two days immediately before the sale to Hizon was executed.

On March 7, 1960, the lower court dismissed the complaint, stating—

"As regards the first basis of plaintiff's complaint that the properties are conjugal, in the absence of proof, the Court can assume that these properties are conjugal, with respect to the second basis of plaintiff's complaint that her consent as not obtained for the sale to the defendant Liberty T. Hizon, by her co-defendant Jose Arrastia, this was also admitted by the pleadings of the parties. But the question arises as to whether there is a necessity for this consent before Jose Arrastia could sell the properties to Liberty T. Hizon. It appears that these properties were acquired sometime in the year 1938 by defendant Jose Arrastia and Teodorica Reinales. Under the second paragraph of Article 166 of the new Civil Code, the consent of the plaintiff as the wife of the defendant Jose Arrastia in the sale of the properties is not a necessary prerequisite. There is, therefore, no necessity of securing the consent of the plaintiff before the sale by Jose Arrastia could be effected.

With respect to the third basis of her complaint that she suffered damages and prejudice because of the inadequacy of the purchase price of said properties, the question arise as to whether the plaintiff can raise this issue as against the defendant Liberty T. Hizon. * * *. It is apparent that the plaintiff in this case cannot question the sale made by the other defendant Jose Arrastia to defendant Liberty T. Hizon. While it is true that no evidence was submitted and it is not apparent from the fact of the complaint, it cannot be denied that the photostatic copy of the 'option to sell land' given by defendant Jose Arrastia and plaintiff Teodorica Reinales to one Eufemia Rivera with a total area of 94.9396 hectares and covered by Transfer Certificate of Title No. 3760 and 4067 confers on the latter authority to sell to anyone the parcels of land covered by the present complaint. The deed of sale executed in favor of Liberty T. Hizon by Jose Arrastia was on June 25, 1958 or two days after the plaintiff and her husband authorized Eufemia Rivera to sell the lands. The claim of inadequacy of price in the complaint of the plaintiff is of course not shown to be proven yet because there is no trial, but the signature

of the plaintiff on the option to sell land is undeniable and the price fixed is P150,000.00 which is just about the price that the properties were sold to defendant Liberty T. Hizon at P141,225.30."

The above order is now before Us for review on two points of error allegedly committed by the lower court, viz: (1) by considering matters other than those contained in the complaint; and (2) by dismissing the complaint upon mere motion, on the ground that the complaint states no cause of action.

In the order under review, the lower court took into account a photostatic copy of an alleged Option to Sell Land Executed by the Arrastia spouses, to sustain the Motion to Dismiss. It will be noted that the option was not mentioned at all in the complaint and in the pleadings of the defendants. It was only during the hearing of the motion to dismiss that the existence of the option was brought to the attention of the trial court. Where the complaint is dismissed not as a result of the trial on the merits, but merely on a motion to dismiss filed by the defendant for failure to state a cause of action, the sufficiency of the motion should be tested on the strength of the allegation of facts contained in the complaint and no other (*De Jesus, et al. vs. Belarmino, et al*, 95 Phil., 365; 50 Off. Gaz., 3064; *Francisco vs. Robles*, G.R. No. L-5388, Feb. 15, 1954). A motion to dismiss a complaint on the ground that it fails to state a claim must be limited to the pleadings and the court may not consider other matters outside of the complaint (*I Francisco Rules of Court*, Rev. Ed., p. 451, citing American cases). The averments that the properties are conjugal; that her share, rights and participation in the properties are prejudiced; and that defendant Hizon is buying the property in spite of her knowledge that plaintiff was not consenting to its sale to her, are deemed admitted by the presentation of the motion to dismiss. These allegations sufficiently point out the right of action of plaintiff. If the allegations in a complaint furnish sufficient basis by which said complaint can be maintained, the same should not be dismissed, regardless of the defenses that may be averred by the defendant (*De Jesus vs. Belarmino*, *supra*). At most, in the instant case, the option to sell land could only bolster the defense of defendant Hizon, and should not have been taken as decisive in determining the presence or absence of a cause of action.

Defendant lays much emphasis on article 1413 of the old Civil Code giving the husband authority to alienate conjugal properties, without the consent of the wife. The provisions relied upon, however, states that "no alienation or agreement which the husband may make with respect to such property in contravention of this Code, or in fraud of the wife, shall prejudice her or her heirs." Fraud was prominently averred in the complaint and phrases conveying the same meaning and/or amounting to fraud, were used and/or stated (pars. 11, 12 and 13 of the complaint, *supra*). And since a motion to dismiss on the ground of lack of cause of action impliedly admits the truth of the allegations (*Liquete vs. Dario*, 5 Phil., 221; *Francisco vs. Robles*, *supra*), the claim that no valid allegation of fraud is made, finds no support in the record.

Under the circumstances at bar, the ends of justice will be better served if the plaintiff is allowed to prove her allegations in a hearing on the merits. This will be more in consonance with the intent and spirit of the rules.

Wherefore, the order of dismissal is hereby set aside, and another entered remanding the case to the court a quo for further and appropriate proceedings. No costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala and Makalintal, JJ., concur.

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