

MARSMAN INVESTMENTS LTD., ET AL., PLAINTIFFS AND APPELLANTS, VS. PHILIPPINE ABACA DEVELOPMENT CO., ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-19160. December 26, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal on points of law from an order of the Court of First Instance of Davao, in its Civil Case No. 3513, granting a motion to dismiss the appellants' complaint.

The record is to the effect that on March 23, 1961, Marsman Investments, Ltd., a British corporation but with offices in Makati, Rizal, filed suit in the Court of First Instance of Davao in its own behalf and in that of Marsman & Co., Inc., of which it is a stockholder, and in behalf of any other creditors similarly situated, against the Philippine Abaca Development Co., and its controlling stockholder Mary A. Marsman, both domiciled in Makati, Rizal. Three causes of action are pleaded:

1. That the Philippine Abaca Development Co. (PADCO for short) ended its corporate existence on December 31, 1959, leaving unpaid its debts of P275,898.44 to Marsman & Co. and of P1,276.67 to Marsman Investments Ltd.
2. That PADCO was the owner of a 1023.9917-hectare tract of agricultural land in Kapalong, Davao; that around June 12, 1958, PADCO mortgaged the land to its co-defendant Mary A. Marsman, allegedly for P293,334.58; that one year thereafter, on May 15, 1959, PADCO sold the land to the aforesaid Mary A. Marsman for a stated consideration of P383,428.01, as the alleged accumulated indebtedness of the vendor to the vendee, wherefore Davao T.C.T. No. 3226 was issued to the transferee; that both mortgage and sale were sham, false, simulated, and without consideration, made only to enable Mary A. Marsman, who was in control of PADCO, to acquire the land at no cost or expense to her, and to the prejudice and in fraud of the other creditors of PADCO.
3. That as a result of the fraudulent acts the defendants-plaintiffs incurred litigation expenses of P5,000 and P50,000 attorneys' fees.

Upon motion of defendants, the lower court ordered the complaint dismissed, on the ground of wrong venue for the first cause of action, which was for breach of a personal obligation, and could not be joined with the second cause of action, "for lack of a common venue"; that the second cause of action could not be prosecuted for lack of capacity to sue, because the plaintiffs, as creditors of PADCO, had, on April and May, 1959, released and waived their claims against PADCO, and because of the subsequent repudiation of the suit by Marsman & Co., Inc., as shown during the hearing of the motion to dismiss. The third cause of action, being a consequence of the other two, was also held untenable.

Plaintiffs then duly appealed to this Court, where they assail the dismissal of their complaint as unfounded.

Plaintiffs-appellants first argue that it was error for the court a quo to hold that there was improper joinder of the first and second causes of action. Indeed, it would seem that the indebtedness of PADCO to the plaintiffs was pleaded primarily to establish the latter's personality to sue for the rescission and setting aside of the transactions between PADCO and Mary A. Marsman. Not being parties to either the mortgage or the conveyance, plaintiffs could assail them only by reason of their credits being prejudiced thereby (Civil Code of the Phil., Arts. 1381(3), 1382). This view is strengthened by the allegations in paragraphs XI and XII of the complaint to the effect that when the PADCO's corporate existence ended, it had P825,831.70 notes payable and other outstanding accounts amounting to P64,429.25, with no property available to its creditors for seizure other than the land in question. So that the first and second causes of action had to be combined to lay a proper basis for an action for rescission.

We also agree with appellants that it was naive of the court below to give effect to the repudiation of the present action by Marsman & Co., Inc., when the complaint expressly pleaded that defendant-appellee Mary A. Marsman was "in absolute and complete control of Marsman & Co., Inc.," on account of which Marsman Investments Ltd. was compelled to file a derivative suit, as a stockholder in behalf of Marsman & Co. Inc. If a majority of shareholders is allowed to repudiate the derivative suit of the minority stockholders, no such action would ever prosper.

Nevertheless, the duly accredited waiver and release in 1959 (two years before the present action was filed) by Marsman Investments Ltd. and Marsman & Co., Inc., 11 of the credits they held against defendant PADCO, and the absence of any allegation or evidence of invalidity of these corporate releases, operate to deprive the rescissory action of any legal basis. Until and unless those releases are set aside, the plaintiff corporations ceased to be creditors of the transferor PADCO as of 1959, and were thereafter deprived of any interest in assailing the validity of the transfer of its properties to appellee Mary A. Marsman; for under the Civil Code, only actual creditors can ask for the rescission of the conveyances made by their debtors in favor of strangers. So that with the proof of the release executed by the creditors, plaintiffs appear to have no cause of action against defendants-appellees.

Wherefore, the order of dismissal appealed from is hereby affirmed, with costs against plaintiff, Marsman Investments, Ltd.

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

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