

ISIDORO M. MERCADO, PLAINTIFF AND APPELLEE, VS. LEON C. VIARDO AND PROVINCIAL SHERIFF OF NUEVA ECIJA, DEFENDANTS AND APPELLANTS. LEON C. VIARDO, PLAINTIFF AND APPELLANT, VS. PIL...

G.R. Nos. L-14127-28. August 21, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

In civil case No. 7611 of the Court of First Instance of Nueva Ecija, entitled Leon C. Viardo vs. Bartolome Driz and Pilar Belmonte, a writ of execution was issued and levy was made "upon all the rights, interest and participation which the spouses Bartolome Driz and Pilar Belmonte have or might have" in a parcel of land covered by original certificate of title No. 3484 of the Registrar of Deeds in and for the province of Nueva Ecija (Exhibit A, p. 3). This certificate of title covers a parcel of land (Lot No. 1, Psu-14371) in the barrios of Nieves and Santo Rosario, municipality of Zaragoza, province of Nueva Ecija, containing an area of 1,192,775 square meters, more or less. The land is registered in the names of "Leonor Belmonte, Felisa Belmonte, Pilar Belmonte and Ines de Guzman, subject * * * to the condition that 1/4 share [that] belongs to Ines de Guzman is usufructuary 'correspondiendo la nuda propiedad a sus tres hijas arriba citadas en participaciones iguales quienes se consolidara el dominio despues del fallecimiento de su madre" (Exhibit A, p. 2).

On 25 February 1941, by virtue of the writ of execution above mentioned, the provincial sheriff of Nueva Ecija sold at the public auction one-half (1/2) of the following property:

TAX DECLARATION NO. 11313 OF THE MUNICIPALITY OF ZABAGOZA, PROVINCE OF NUEVA ECIJA AND COVERED BY ORIGINAL CERTIFICATE OF TITLE NO. 3484 OF THE LAND RECORDS OF NUEVA ECIJA.

A parcel of land, situated in the sitio of Valdez, barrio of Sto. Rosario, municipality of Zaragoza, Province of Nueva Ecija. Bounded on the North by property of Felisa Belmonte; on the East by Sapang Dalagot; on the Southeast by Ines de Guzman; on the South by the property of Felisa Belmonte; and on the West by the property of Cirilo Acosta; containing an area of THIRTY (30) HECTARES, more or less. Declared under tax No. 11313 in the name of Pilar Belmonte with an assessed value of P8,400.00.

The highest bidder at the auction sale was the judgment creditor, Leon C. Viardo, who paid P2,125.64 for the interest sold and P83.15 for the land tax corresponding to such interest (Exhibit B). When the judgment debtors failed to redeem the property within the statutory period of one year from the date of sale (21 February 1941), the provincial sheriff of Nueva Ecija executed on 12 May 1943 a Final Bill of Sale of the property described in Exhibit B in favor of Leon C. Viardo (Exhibit C). On 13 May 1943 a co-owner's copy of the certificate of title was issued to Leon C. Viardo (Exhibit A, p. 3).

On 28 December 1945 the Court of First Instance of Nueva Ecija, in Land Registration Case No. 918, G. L. R. O. Record No. 17910, acting upon a verified petition of Leon C. Viardo, ordered the Registrar of Deeds in and for

Nueva Ecija—

to cancel Original Certificate of Title No. 3484 and to issue another in lieu thereof in the name of and in the proportion as follows: LEONOR BELMONTE, 1/4 share; FELISA BELMONTE, 1/4 share, PILAR BELMONTE, 1/8 share; LEON C. VIARDO, 1/8 share; and INES DE GUZMAN, 1/4 share, upon the payment of the corresponding fees" (Exhibit D).

However, it appears from Original Certificate of Title No. 3484 (Exhibit A) that the above-mentioned order was not carried out and that said original certificate of title was not cancelled.

On 27 May 1946 Bartolome Driz and Pilar Belmonte filed in the Court of First Instance of Nueva Ecija a complaint against Leon C. Viardo (civil case No. 161) praying that judgment be rendered against the defendant:

(a) Ordering the defendant to reconvey the property in question in favor of plaintiffs herein upon payment by the latter of the lawful redemption price in accordance with law, or the sum of P2,125.64 with interest at the rate of one per centum (1%) per month for twelve (12) months from February 27, 1941 to February 27, 1942. (Exhibit E.)

On 4 June 1946 Patricio Blando, attorney for the plaintiffs Bartolome Driz and Pilar Belmonte, requested the Registrar of Deeds in and for Nueva Ecija for—

the annotation of a Notice of Lis Pendens on the back of ORIGINAL CERTIFICATE OF TITLE NO. 3484 of the Office of the Register of Deeds for the Province of Nueva Ecija, affecting the undivided one-half (1/2) portion of the property of the plaintiffs in the above-entitled cause, situated in the Sitio of Valdez, Barrio of Sto. Rosario, Municipality of Zaragoza, which is involved in the said controversy against the defendant Leon C. Viardo, and which is more particularly described under paragraph (4) of the plaintiffs' complaint, a copy of which is hereby presented, hereunto attached. (Exhibit F.)

On 6 June 1946 the Registrar of Deeds made the following annotation on the back of original certificate of title No. 3484:

ENTRY NO. 3347/O-3484; Kind—Lis Pendens: Executed in favor of Bartolome Driz and Pilar Belmonte; Conditions—All the rights, interests, and participation of Leon C. Viardo in this title is the object of a complaint filed in Civil Case No. 161 of the C. F. I. of N. E. now pending for action. Date of the instrument—June 4, 1946; Date of the inscription—June 6, 1946 at 3:18 (?) p.m. (Sgd.) F. C. Cuizon, Acting Register of Deeds. (Exhibit A, p. 3.)

While the above-mentioned case was pending in the Court of First Instance of Nueva Ecija, Pilar Belmonte, one of the plaintiffs, entered into the following contracts involving her interest or rights over the parcel of land covered by original certificate of title No. 3484:

(1) Entry No. 10984: Kind—Sale; Executed in favor of—Isidro M. Mercado and Trinidad Isidro; Conditions—Pilar Belmonte sold a portion of Seven and One Half (7 1/2) hectares of the property described in this title for the sum of P5,500.00 (D-126: P-90: B-11: s-1948, Herminio E. Algas, N. E.) Date of the Inst—June 28, 1948 at 1:30 p.m. (Sgd.) P. C. Cuizon, Register of Deeds.

(2) Entry No. 10985/O-3484: Kind—Sale with right of repurchase: Executed in favor of—Federico Aquino; Conditions—Pilar Belmonte sold with a right of repurchase seven and one half (7 1/2) hectares of her share, interest and participation in this title for the sum of P3,600.00 (D-127: P-90: B-II; S-48, H. Algas, N. E.) Date of the Inst—June 28, 1948; Date of the Inscription—June 28, 1948 at 1:30 p.m. (Sgd.) F. C. Cuizon, Register of Deeds.

(3) Entry No. 15110/O-3484: Kind—Resale: Executed in favor of—Pilar Belmonte: Conditions—Federico Aquino resold his share in this title consisting of 7 1/2 Has. for the sum of P3,600.00 (D-63: P-15: B-6: S-1949, Jose E.

Castañeda, Manila) Date of the Inst—March 8, 1948: Date of the Inscription—April 8, 1949 at 11:30 a.m. (Sgd.) F. C. Cuizon, Register of Deeds.

(4) Entry No. 15111/O-3484: Kind—Sale; Executed in favor of—Dominador Asuncion and Tomasita Dansil: Pilar Belmonte sold a portion of seven (7) Has. of her share and participation in this title for the sum of P7,000.00. (D-64: P-15: B-6: S-1949, J. E. Castañeda, Manila) Date of the Inst.—March 9, 1949; Date of the Inscription—April 8, 1949 at 11:30 a.m. (Sgd.) F. C. Cuizon, Register of Deeds. (Exhibit A, p. 4)

On 11 April 1950 the Court of First Instance of Nueva Ecija rendered judgment in civil case No. 161, as follows:

IN VIEW OF THE FOREGOING, the Court absolves the defendant from the complaint of the plaintiffs, in the same manner that plaintiffs are absolved from the counter complaint of the defendant. Defendant is the legal owner of the land in question and the right of redemption of the plaintiff of said land had already elapsed. With costs to the plaintiff. (Exhibit G.)

Not satisfied with the judgment dismissing his counterclaim, the defendant Leon C. Viardo appealed to the Court of Appeals. While the appeal was pending, the following transactions involving the interest or rights of Pilar Belmonte over the parcel of land covered by original certificate of title No. 3484 took place:

(1) Entry No. 7967/NT-15162: Kind—Partition—executed in favor of—Felisa Belmonte et al; Conditions—By virtue of a deed of partition, the share of the deceased Ines de Guzman and Isidro Beimonte has been adjudicated in favor of the heirs of said deceased. (D-891: P-77: B-V: S-1948, Manuel E. Castañeda, Manila) Date of the Inst.—March 31, 1948: Date of the Inscription—Feb. 18, 1954 at 10:18 a.m. (Sgd.) F. C. Cuizon, Register of Deeds.

(2) Entry No. 7968/NT-15162: Kind—Agreement: Executed in favor of—Felisa Belmonte et al: Conditions—By virtue of an agreement of the parties concerned in the partition, Lots Nos. 1-D and 1-J, with an area of 300,000 sq. m. and 80,000 sq. m., more or less, respectively in the subdivision plan Psd-36340, a portion of lot 1 described on plan Psu-14371, of this title, have been adjudicated in favor of Felisa Belmonte and Lot 1-G with an area of 75,000 sq. m., more or less, of the same subdivision, has been adjudicated in favor of Isidoro Mercado, See TCT No. 15162 and 15163, Vol. No. 76. (D-211: P-44: B-IV; S-1952, P. Bautista, Cab. City) Date of the Inst-Jan. 22, 1952: Date of the Inscription—Feb. 18, 1954 at 10:18 a.m. (Sgd.) F. C. Cuizon, Register of Deeds.

(3) Entry No. 9715/NT-15746: Kind—Sale; Executed in favor of—Sp. Zacarias Belmonte and Teresita Flores; Conditions—Dominador Asuncion and Tomasita Dansil sold all their rights and interest in this title consisting of seven hectares for the sum of P6,000.00. (D-177: P-37: B-IV; S-1952, R. S. Pengson, N. E.) Date of the Inst—Feb. 4, 1952; Date of Inscription—May 13, 1954 at 10:08 a.m. (Sgd.) F. C. Cuizon, Register of Deeds.

(4) Entry No. 12168/NT-15162: Kind—Project of Partition—Executed in favor of Pilar Belmonte: Conditions—By virtue of a project of partition re-estate of the late Ines de Guzman, a portion of 13.2775 hectares of the land described in this title has been adjudicated in favor of Pilar Belmonte. (D-891: P-77: B-V; S-1948, Manuel E. Castañeda, Manila) Date of the Inst—March 31, 1948: Date of the Inscription—Aug. 23, 1954 at 2:00 p.m. (Sgd.) F. C. Cuizon, Register of Deeds.

(5) Entry No. 12169/NT-16440: Kind: Sale; Executed in favor of—Joaquina Driz: Conditions—Pilar Belmonte sold Lot 1-B of the subdivision plan of this title Psd-36340 a portion taken from her undivided 13.2775 hectares with an area of 52,775 sq. in., more or less, for the sum of P800.00. See TCT NT-16440, Vol. No. 83. (D-160: P-33: B-I: S-1954, Adolfo San Juan, Cab. City) Date of the Inst—Aug. 23, 1954; Date of the Inscription—Aug. 23, 1954 at 2:00 p.m., (Sgd.) F. C. Cuizon, Register of Deeds.

(6) Entry No. 12370/NT-16488: Kind—Sale; Executed in favor of—Patricia Driz: Conditions—Pilar Belmonte sold Lot 1-A of the subdivision plan Psd-36340 being a portion of Lot 1 described in plan Psu-14371,

G.L.R.O. Cad. Record No. 17910, of this title for the sum of P1,000.00 with an area of 80,000 sq. m. with respect to her share of 13.2775 hectares. See TCT No. NT-16488, Vol. 83. (D-440: P-90: B-V: S-1954, H. V. Garcia, Cab. City) Date of the Inst—Aug. 31, 1954; Date of the Inscription—Sept. 2, 1954 at 3:00 p.m. (Sgd.) F. C. Cuizon, Register of Deeds.

(7) Entry No. 12512/NT-16546: Kind—Sale; Executed in favor of—Patricia Driz: Conditions—Pilar Belmonte sold Lots Nos. 1-H and Lot 1-1 of the subdivision plan Psd-30340 of the property described in this title for the sum of P850.00 See TCT No. NT-16524, Vol. 83. (D-167: P-35: B-I: S-1954, Adolfo San Juan, Cab. City) Date of the Inst—Sept. 9, 1954; Date of the Inscription—Sept. 9, 1954 at 11:50 a.m. (Sgd.) F. C. Cuizon, Register of Deeds.

(8) Entry No. 12569/NT-16546: Kind—Sale; Executed in favor of—Patricia Driz; Conditions—Pilar Belmonte sold Lot 1-E of the subdivision plan Psd-30340 of the property described in this title, with an aiea of 79,848 sq. m., more or less of the subdivision plan of this title, was sold for the sum of P2,000.00. See TCT No. NT-16546, Vol. 83. (D-172: P-36: B-I: S-1954, Adolfo San Juan, Cab. City) Date of the Inst—Sept. 11, 1954; Date of the Inscription—Sept. 13, 1954 at 8:20 a.m. (Sgd.) F. C. Cuizon, Register of Deeds. (Exhibit A, pp. 4-5.)

On 22 September 1954, a few days after the last transactions mentioned above, the Court of Appeals passed a resolution granting the prayer of defendant-appellant Leon C. Viardo that the children and only heirs, namely, Artemio, Patricia, Mario, Domingo, Joaquina and Catalina, surnamed Driz, who were all of age, be substituted for the deceased appellee Bartolome Driz, (the husband of Pilar Belmonte). (Exhibit H-1.)

On 25 September 1954 the Court of Appeals rendered judgment awarding damages prayed for in the counterclaim of Leon C. Viardo. The judgment made the following findings and conclusions:

* * * The area of the contested property is 15 hectares. By computation, this is capable of producing 750 cavans of palay a year.

On the basis of 70-30, defendant is entitled to 225 cavans of palay a year. Therefore, plaintiffs are under obligation to deliver to de-fendant this quantity of palay every agricultural year from the filing of defendant's answer on August 5, 1946, up to the time he vacates said land, or pay the equivalent value thereof at P12.00 a cavan.

Having been declared owner of the land in dispute, defendant is entitled to its possession. Inasmuch as the court below did not order plaintiffs to restore the possession of the land in question, we hereby order them to vacate the same and restore possession thereof to defendant. (Exhibit H.)

This judgment of the Court of Appeals became final and executory and the records were remanded to the lower court. On 16 December 1954 the Court of First Instance of Nueva Ecija issued a writ of execution (Exhibit W). The return made by Chief of Police of the Municipality of Zaragoza on 14 February 1955 states that Leon C. Viardo had been placed in possession of the parcel of land referred to in the writ and that levy was made on a total of 86 cavans and 74 kilos of palay, and that the same were deposited in a warehouse (Exhibit X).

On or about 4 January 1955 Isidoro M. Mercado filed a third party claim with the Provincial Sheriff of Nueva Ecija (Exhibit Y). The affidavit attached to the claim states that Isidoro M. Mercado and his wife purchased from Pilar Belmonte on 28 June 1948 seven and one-half hectares of her undivided share in the land described in original certificate of title No. 3484, that on the same day the deed of sale was registered, that a transfer certificate of title was issued in their names, and that since 1948 up to the time of the levy on execution he had been in actual possession of the parcel of land, paying the corresponding taxes thereon and had exclusively benefited from the harvest therein (Exhibit Y-1). The sheriff was requested not to continue with the levy on the harvest in the parcel of land they were claiming.

On 2 February 1955 Isidoro M. Mercado filed in the Court of First Instance of Nueva Ecija a complaint, docketed as civil case No. 1718, against Leon C. Viardo and the Provincial Sheriff. The complaint alleged that improper levy had been made on the harvest in plaintiff's parcel of land and prayed that judgment be rendered ordering the defendants to return the palay levied upon, together with damages. On 26 February 1955 the defendants answered that plaintiff's purchase of the parcel of land in question from Pilar Belmonte was subject to whatever judgment the courts might render in civil case No. 161 between Pilar Belmonte and Leon C. Viardo. On 17 October 1955 the Court of First Instance of Nueva Ecija entered an order suspending the trial of the case, in view of the information by counsel for the defendant that his client Leon C. Viardo would file a complaint against all persons claiming ownership of or interest in the parcel of land covered by original certificate of title No. 3484 (Record on Appeal, pp. 2-11).

On 5 December 1955 civil case No. 2004 was filed by Leon C. Viardo against Pilar Belmonte, Patricia Driz, Joaquina Driz, Isidoro Mercado, Trinidad Isidro, Zacarias Belmonte, Teresita Flores, Philippine American General Insurance Co., Inc. and the Philippine National Bank, as parties claiming some right, participation, share or interest in the parcel of land covered by original certificate of title No. 3484, or by transfer certificate of title derived therefrom. The defendants filed their answers. After trial,[1] on 24 August 1956 the trial court rendered judgment in civil cases Nos. 1718 and 2004, the dispositive part of which reads as follows:

IN VIEW OF THE FOREGOING CONSIDERATIONS, in Civil Case 2004, Leon C. Viardo, Isidoro M. Mercado, Zacarias Belmonte and Patricia Driz are hereby declared Co-owners Pro-indiviso of lots 1-A PSD-16864, which is the 1/4 share of Pilar Belmonte in Lot 1, PSU-14371, OCT No. 3484 in the following proportions: one-half for Leon C. Viardo; 7 1/2 hectares for Isidoro M. Mercado; 7 hectares for Zacarias Belmonte, and the remainder for Patricia Driz, it being understood that whatever is adjudicated to Patricia Driz in the partition shall be subject to the mortgage in favor of the Philippine National Bank; the deeds of sale executed by Pilar Belmonte in favor of Patricia Driz, Exhibits R and S are declared NULL AND VOID; the deeds of partition Exhibits L and N, are set aside, and the certificates of title issued in favor of Zacarias Belmonte, Isidoro M. Mercado and Patricia Driz, Exhibits P, Q, R-1 and S-1 are ordered cancelled. And in civil case 1718 Isidoro M. Mercado is hereby declared to be entitled to the products which had been levied upon by the Provincial Sheriff. No damages are awarded. The parties in civil case 2004 shall come to an amicable settlement with respect to the partition. Upon their failure to arrive at an amicable settlement, commissioners shall be appointed by this Court in accordance with law to make the partition.

With cost against the dependants in both cases.

Only Leon C. Viardo, plaintiff in civil case No. 2004 and defendant in civil case No. 1718, appealed to the Court of Appeals. On 21 May 1958 the latter certified and forwarded the appeals to this Court because the facts are not in dispute and "the questions raised by appellant in his brief are purely legal in nature."

In his first assignment of error the appellant contends that the trial court "erred in not annulling the sale executed by Pilar Belmonte to Isidoro M. Mercado, marked as Exhibit I, and to Dominador Asuncion and Teresita Dansil (Exhibit J) and the sale by Dominador Asuncion to Zacarias Belmonte and Teresita Flores in a Deed of Sale marked Exhibit M." In support thereof he argues that the three sales took place and were registered after he had become the absolute owner of an undivided one-half interest in the parcel of land owned by Pilar Belmonte and after notice of lis pendens had been recorded on the title of Pilar Belmonte.

The argument is without merit. It is true that the appellant became the absolute owner of an undivided one-half interest in the undivided one-fourth interest owned by Pilar Belmonte in the parcel of land described in original certificate of title No. 3484; that before Pilar Belmonte sold parts of her undivided share in the parcel of land to Isidoro M. Mercado and Dominador Asuncion and the last in turn sold his part to Zacarias Belmonte, there was notice of lis pendens recorded on the certificate of title; and that this notice is binding upon all who should acquire

an interest in the property subsequent to the record of the lis pendens. The notice of lis pendens (Exhibit A), however, was limited to one-half interest acquired by Leon C. Viardo from Pilar Belmonte. The other one-half undivided interest of the latter was not in litigation and therefore the trial court correctly held that Pilar Belmonte, as the owner of this undivided one-half interest, had a right to sell it and could convey absolute title thereto or to parts thereof. Of course, the deeds of sale executed by Pilar Belmonte appears to convey definite or segregated parts of her remaining interest in the parcel of land described in original certificate of title No. 3484, which she could not do, because this one-fourth in interest had not yet been subdivided to show the interest acquired by Leon C. Viardo, amounting to one-half of the said one-fourth interest. This defect, however, does not result in the nullity of the deeds of sale she had executed relating to her remaining interest of one-eighth. The sales were valid, subject only to the condition that the interests acquired by the vendees were limited to the parts which might be assigned to them in the division upon the termination of the co-ownership (Article 493, Civil Code).

In the second assignment of error the appellant contends that the trial court "erred in not annulling the sales executed by Pilar Belmonte in favor of her daughters Joaquina and Patricia Driz of lots 1-B and 1-A, Exhibits U and V of Plan PSD 36340."

Lots 1-B and 1-A of Plan PSD-36340 are taken, not from the original one-fourth interest of Pilar Belmonte in the parcel of land covered by original certificate of title No. 3484, which interest was levied upon and thereafter acquired by Leon C. Viardo to the extent of one-half, but from another one-fourth interest in the same parcel of land, which belonged originally to Ines de Guzman, the mother of Pilar Belmonte. This one-fourth interest subsequently devolved upon Pilar Belmonte and her two sisters. The three sisters partitioned this one-fourth interest among themselves and Lots 1-A and 1-B were assigned to Pilar Belmonte who, in turn, sold them to her daughters. These sales, the appellant contends, are fictitious and in fraud of his rights as creditor.

The only evidence adduced by the appellant in support of this contention is that the sales were made by the mother to her daughters. This is not enough evidence to hold the sale fictitious and fraudulent. There is no evidence whatsoever that Pilar Belmonte, at the time she sold the lots, had outstanding debts or was in an otherwise embarrassing financial position. Even the credit of Leon C. Viardo, the appellant, was established only after the sales were executed, when the Court of Appeals modified the judgment of the trial court in civil case No. 161 by awarding damages to him. There is no merit, therefore, in the second assignment of error.

In the third assignment of error the appellant contends that the trial court "erred in declaring that the 'product raised in the portion under the occupancy of Isidoro Mercado, therefore, pertains to him and was not subject to the levy or execution in favor of Leon C. Viardo in Civil Case No. 161.'" In support of this assignment the appellant again harps on the fact that at the time Isidoro Mercado acquired an interest in the property, there was notice of lis pendens, and therefore Isidoro Mercado "is not a purchaser in good faith."

This contention has been overruled in the first assignment of error when the notice of lis pendens (Exhibits A and F) was held to refer not to the remaining one-eighth interest of Pilar Belmonte in the parcel of land described in original certificate of title No. 3484, but to the one-eighth interest which Leon C. Viardo had acquired from Pilar Belmonte, and which the latter was trying to recover from him in civil case No. 161. It was Pilar Belmonte who caused the notice of lis pendens to be recorded to subject "all the rights, interest and participation of Leon C. Viardo in this Title" to the result of the litigation in the aforesaid civil case No. 161, Pilar Belmonte did not thereby subject her remaining one-eighth interest to the result of civil case No. 161 which she had filed against Leon C. Viardo. If the latter wanted to subject the remaining one-eighth interest of Pilar Belmonte to the outcome of his counterclaim in civil case No. 161, he should have asked for it.

The view held by this Court in passing upon the third assignment of error renders it unnecessary for the Court to

discuss the respective rights and liabilities of co-owners when one co-owner, without the knowledge and/or consent of the other co-owners, plants or builds on the property owned in common.

The appellant further contends that the trial court erred "in concluding that the heirs of Bartolome Driz could not be held personally liable for the judgment rendered against the plaintiffs in Civil Case No. 161 and therefore Lots 1-A and 1-B cannot be subject to the payment of the judgment in favor of Leon C. Viardo."

The only ground of appellant for this contention is that the present owners of these lots are the children of the spouses Pilar Belmonte and Bartolome Driz, the plaintiffs in civil case No. 161, and that, upon the death of Bartolome Driz during the pendency of the appeal in civil case No. 161, these children were substituted as parties. This assignment of error is without merit. The substitution of parties was made obviously because the children of Bartolome Driz are his legal heirs and therefore could properly represent and protect whatever interest he had in the case on appeal. But such a substitution did not and cannot have the effect of making these substituted parties personally liable for whatever judgment might be rendered on the appeal against their deceased father. Article 774 of the Civil Code provides:

Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law. (Italics supplied.)

The trial court, therefore, correctly ruled that the remedy of Leon C. Viardo, the creditor was to proceed against the estate of Bartolome Driz.

Moreover, it appears from the evidence that Bartolome Driz was only a formal party to civil case No. 161, the real party in interest being his wife Pilar Belmonte. The subject matter in litigation was Pilar Belmonte's interest in the parcel of land described in original certificate of title No. 3484, which appears to be her paraphernal property.

The appellant's fifth and last assignment of error is that "the trial court erred in not awarding damages to the plaintiff Leon C. Viardo in Civil Case No. 2004." Obviously the appellant refers to the prayer in his complaint that P5,000 be awarded to him against Pilar Belmonte for attorney's fees. He maintains that appellee Pillar Belmonte had disposed of all her property with the intent of avoiding payment of her liability or debt to him.

A review of the record lends credence to the appellant's claim. Appellee Pilar Belmonte had one-fourth interest in a parcel of land containing an area of 119.2775 hectares. On 12 May 1943 Leon C. Viardo acquired one-half interest of Pilar Belmonte's one-fourth interest. In a partition, where the appellant did not participate but which he does not impugn, Pilar Belmonte's original one-fourth interest was segregated and delimited. She was assigned in that partition and subdivision, Lot 1-A of Plan PSD-16864, containing an area of 30 hectares (Exhibit K). Upon the death of her mother, she acquired another 13.2775 hectares. These 13.2775 hectares she sold to her two daughters and the validity of the sales has been upheld by this Court. With the original 30 hectares, however, Pilar Belmonte did not act in good faith when she sold more than 15 hectares to her daughter Patricia Driz. Knowing that one-half of said 30 hectares or a total of 15 hectares belonged to the appellant Leon C. Viardo, she nevertheless proceeded to enter into the following transactions: (1) sale of seven and one-half hectares to Isidoro Mercado, dated 28 June 1948, Exhibit A; (2) sale of seven hectares to Dominador Asuncion, who later sold the same parcel or interest to Zacarias Belmonte, dated 9 March 1949, Exhibit A; (3) subdivision and partition of her lot 1-A, PSD-16864, into lots 1-E, 1-F, 1-G, 1-H and 1-I, without the knowledge of her co-owner Leon C. Viardo, Plan PSD-36340, Exhibit O; (4) sale in favor of her daughter Patricia Driz of lots 1-H and 1-I, Plan PSD-36340, containing an area of 20,000 and 55,152 square meters, respectively, dated 9 September 1954, Exhibits R and A; and (5) sale in favor of her daughter Patricia Driz of lot 1-E, Plan PSD-36340, containing an area of 79,848 square meters, dated 11 September 1954, Exhibit S and A.

It will thus be seen that on 9 March 1949, after Pilar Belmonte had sold seven hectares on Dominador Asuncion, she had only one-half hectare left to dispose of, since out of her original thirty hectares (Lot 1-A, PSD-16864) the appellant Leon C. Viardo had acquired one-half or fifteen hectares, Isidoro Mercado, seven and one-half hectares, and Dominador Asuncion, seven hectares.

Fully aware that one-half hectare remained her only property, Pilar Belmonte nevertheless proceeded to sell to her daughter Patricia Driz three lots containing a combined area of more than fifteen hectares. It is obvious, therefore, that the sales to Patricia Driz cannot be sustained, regardless of whether Pilar Belmonte was aware or suspected that she would be held liable for damages to Leon C. Viardo In civil case No. 161, as in fact she was held liable by the Court of Appeals about two weeks after she had executed the sales in favor of her daughter. The sales above referred to stand on a different footing from the sales made in favor of Isidoro Mercado and Dominador Asuncion, because in the latter sales Pilar Belmonte still had something to sell, namely, her remaining fifteen hectares. But after she had disposed of fourteen and one-half hectares to Mercado and Asuncion she had only one-half hectares left and therefore could not sell another fifteen hectares.

The trial court, however, did not completely annul the sales made by Pilar Belmonte in favor of her daughter. It merely reduced the sales of fifteen hectares to a sale of one-half hectare, obviously in the belief that the sales should be sustained to the extent of Pilar Belmonte's remaining interest. The record shows that both Pilar Belmonte and her daughter Patricia Driz knew that one-half hectare only remained as the former's property, but they nevertheless proceeded to sell and purchase more than fifteen hectares. When it is considered further that the final judgment in civil case No. 161 awarded damages to Leon C. Viardo amounting to 225 cavans of palay from 1946 (Exhibit H) and that when this judgment was executed in 1954 no property of Pilar Belmonte could be found to satisfy the damages (p. 11, t.s.n.), it is evident that Pilar Belmonte and her daughter Patricia Driz had conspired to dispose of all the property of Pilar Belmonte in order to frustrate any award of damages the Court of Appeals might make in favor of Leon C. Viardo and that this conspiracy must have taken place at the latest on 9 September 1954 when Pilar Belmonte proceeded to sell to her daughter Patricia Driz parcels of land which no longer belonged to her.

The judgment appealed from is modified by holding and declaring that (1) Leon C. Viardo, Isidoro M. Mercado, Zacarias Belmonte and Pilar Belmonte (not Patricia Driz) are the co-owners pro indiviso of lot 1-A, Plan PSD-16864, which is the one-fourth share of Pilar Belmonte in lot 1, PSD-14371, original certificate of Title No. 3484, in the following proportion: one-half or fifteen hectares owned by Leon C. Viardo, seven and one-half hectares by Isidoro M. Mercado, seven hectares by Zacarias Belmonte, and one-half hectares by Pilar Belmonte, subject to the rights of Leon C. Viardo to the balance of his judgment credit against Pilar Belmonte; and (2) Leon C. Viardo is awarded damages of P1,000 against Pilar Belmonte. In all other respects, the judgment appealed from is affirmed, with costs against appellee Pilar Belmonte and Patricia Driz.

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

[1] On 30 June 1956 the complaint against the Philippine American General Insurance Company, Inc. was dismissed because the company no longer had any interest in the parcel of land in dispute. It was made a defendant because it was the mortgage of a part of the land. When the mortgage debt was paid, it released the mortgage.

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