

TIU PO, PLAINTIFF AND APPELLANT, VS. LILY LIM TAN AND ANITA LIM GOSIACO, ASSISTED BY HER HUSBAND, FELIPE GOSIACO, DEFENDANTS AND APPELLEES.

G.R. No. L-28905. July 22, 1975

Ponente: CASTRO, J.

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CASTRO, J.:

From the order of dismissal of her complaint in civil case 2770-P of the Court of First Instance of Rizal (Branch VII, Pasay City) against the defendants-appellees Lily Lim Tan and Anita Lim Gosiaco, assisted by her husband, Felipe Gosiaco, for annulment of sale and damages, the plaintiff-appellant Tiu Po came on appeal directly to this Court.

On February 28, 1966 the appellant Tiu Po sold her business establishment, known as the Standard Box and Printing Press, to Lily Lim Tan, Anita Lim Gosiaco and Lydia Diaz Yao for the total sum of P410,000. The terms of the sale remained unfulfilled, and this situation gave rise to the two litigations that ensued.

The first suit was commenced by Lily Lim Tan on March 17, 1966 in the Court of First Instance of Quezon Province, docketed as civil case 6919, against Tiu Po for damages. The complaint alleged, in substance, that Lily Lim Tan gave Tiu Po two checks of P50,000 each on February 28, 1966 to cover the first payment agreed upon by the parties for the purchase of the Standard Box and Printing Press; that after the sale agreement was reduced to writing on March 4, 1966, Tiu Po unjustifiably refused to honor it and resisted the demands made by Lily Lim Tan for compliance; that Tiu Po likewise refused to return the two checks given her; and that for these reasons, Lily Lim Tan suffered actual, moral and exemplary damages in the sum of P100,000 plus attorney's fees of P10,000.

In her answer of July 14, 1966, Tiu Po averred that the vendees in the contract for the sale of the Standard Box and Printing Press were not only Lily Lim Tan but also the appellee Anita Lim Gosiaco and another person by the name of Lydia Diaz Yao; that the two checks of P50,000 each were both dishonored by the drawee bank and were not made good by the said three vendees notwithstanding repeated demands on them; and that Lily Lim Tan, Anita Lim Gosiaco and Lydia Diaz Yao unjustifiably reneged on their obligations under the contract of sale with the view of gaining advantage over Tiu Po through the receipts issued by the latter for the two checks of P50,000 each. By way of counterclaim, Tiu Po alleged that Lily Lim Tan, Anita Lim Gosiaco and Lydia Diaz Yao violated the contract for the sale of the Standard Box and Printing Press by paying only P15,000 out of the total purchase price of P410,000 and by refusing to take control and possession of the business establishment subject of the sale. The relief sought by Tiu Po consists in (a) the dismissal of the complaint, (b) the inclusion of Anita Lim Gosiaco and Lydia Diaz Yao as parties-defendants, (c) the enforcement of the contract of sale between the parties or, in the alternative, its rescission plus actual damages of P200,000, and (d) the payment of moral and exemplary damages plus attorney's fees of P20,000. Tiu Po likewise asked the trial court for the issuance of a writ of preliminary attachment against the properties of Lily Lim Tan.

In the meantime, or on July 11, 1966, Lily Lim Tan sold a parcel of land (959 square meters) situated in Pasay City in favor of her sister and co-appellee Anita Lim Gosiaco for P50,000. Tiu Po somehow learned of this sale, and so on August 16, 1966 she brought the action, now subject of this appeal, against Lily Lim Tan and Anita Lim Gosiaco (assisted by her husband Felipe Gosiaco) for annulment of the sale of the real property and damages. This latter action was docketed as civil case 2770-P in the Court of First Instance of Rizal (Branch VII, Pasay City). The complaint alleged that the sale of the land between the two appellees, Lily Lim Tan and Anita Lim Gosiaco, was sham and motivated by a fraudulent desire conceal Lily Lim Tan's properties from whatever writ of preliminary attachment Tiu Po might obtain from the Court of First Instance of Quezon Province in civil case 6919; that the said writ of preliminary attachment was in fact issued in the said case; and that the same could not be enforced against the real property of Lily Lim Tan in Pasay City in view of the fraudulent transfer of the land to Anita Lim Gosiaco. In her prayer, Tiu Po asked the court a quo to annul the deed of absolute sale between Lily Lim Tan and Anita Lim Gosiaco, and to order both of them to pay moral and exemplary damages plus attorney's fees in the sum of P5,000. Instead of answering the complaint, the appellees Lily Lim Tan and Anita Lim Gosiaco moved to dismiss it on the ground, inter alia, of *litis pendencia*, citing the pendency of civil case 6919 in the Quezon Province court. After hearing, the court a quo dismissed the case under order of September 21, 1966. As her motion for reconsideration proved to be of no avail, Tiu Po came directly to us on appeal.

Preparatory to deciding this case, the Court required Tiu Po and Lily Lim Tan on August 23, 1974 to submit separate verified statements on the present status of civil case 6919 of the Court of First Instance of Quezon province. On September 9, 1974, Tiu Po, in a verified statement, informed this Court that civil case 6919 has already been the subject of a decision by the trial court dated September 16, 1970 (certified copy attached to the record), the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered:

"1. Ordering the dismissal of both the complaint and counter-claim in the answer, as well as the counter-claim of Lydia Diaz Yao and Anita Lim Gosiaco in their answers to the third party complaint;

"2. Ordering the rescission of the contract of sale of Standard Box and Printing Press (Exh. 'A') entered into between Lily Lim Tan, Lydia Diaz Yao, Anita Lim Gosiaco as vendees and Tiu Po as vendor;

"3. Ordering Lily Lim Tan, Lydia Diaz Yao and Anita Lim Gosiaco to pay pro-rata the following reduced and reasonable amounts to Tiu Po, subject to the deduction and conditions listed hereunder:

"a) FORTY THOUSAND PESOS (P40,000.00) as actual damages;

"b) TEN THOUSAND PESOS (P10,000.00) as moral damages;

"c) FIVE THOUSAND PESOS (P5,000.00) as attorney's fees;

"d) FIVE THOUSAND PESOS (P5,000.00) as exemplary damages;

"e) Deducting firstly therefrom the amount of FIFTEEN THOUSAND PESOS (P15,000.00) which Lydia Diaz Yao had advanced to Tiu Po, in favor of the former, thus, in resume, Lily Lim Tan and Anita Lim Gosiaco are liable jointly and severally in the amount of FORTY THOUSAND PESOS (P40,000.00), while Lydia Diaz Yao's liability is only FIVE THOUSAND PESOS (P5,000.00), and,

"f) With costs pro-rata against plaintiff Lily Lim Tan, third party defendants Lydia Diaz Yao and Anita Lim Gosiaco."

Tiu Po further informed this Court that none of the parties has appealed from this decision, that the same has long become final and executory, and that out of the P40,000 they were adjudged to pay, Lily Lim Tan and Anita Lim

Gosiaco have so far paid the sum of P20,000, leaving a balance of P20,000.

Lily Lim Tan and Anita Lim Gosiaco have not controverted Tiu Po's verified statement of September 16, 1970.

It is clear from a reading of Tiu Po's complaint in civil case 2770-P now subject of this appeal that the ultimate object of her suit is to make effective the writ of preliminary attachment issued in her favor in civil case 6919 of the Quezon Province court as against the parcel of land in Pasay City subject of the allegedly simulated sale between Lily Lim Tan and Anita Lim Gosiaco. Considering, however, the foregoing development, it is obvious that Tiu Po's action in the court below, as well as her prosecution of the present appeal, have become moot and academic. Firstly, there has ceased to be any writ of preliminary attachment to speak of which Tiu Po wants earnestly to enforce upon Lily Lim Tan's property. Instead, as a judgment creditor, she may now directly proceed to execute upon any property belonging to Lily Lim Tan, including properties held by another person, or standing on the records of the registrar of deeds in the name of any other person, for the full satisfaction of the judgment in her favor, in the manner provided by section 7(b) of Rule 57 of the Rules of Court. Secondly, whether the transfer of the property subject of civil case 2770-P is simulated or not has no practical effect upon Tiu Po's claim as judgment creditor. She can execute upon the land in any case since both the transferor (Lily Lim Tan) and the transferee (Anita Lim Gosiaco) are bound to her jointly and severally per the decision of the Quezon province court.

ACCORDINGLY, the present petition, having become moot and academic, is hereby dismissed. No costs.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., is on leave.

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