

**FRANCISCA H. RAFOLS, FLO-RACION RAFOLS, AMPARO RAFOLS,
CESAR CIMA FRANCA, CRISOSTOMO RAFOLS AND RI-CARDO
RAFOLS, PLAINTIFFS-APPELLANTS, VS. MARCELO A. BARBA,
DEFENDANT-APPELLEE.**

G.R. No. L-28446. December 13, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

Plaintiffs-appellants Rafols are the wife and the four (4) children of Nicolas Rafols, a resident of Cebu City, who died testate on May 2, 1947. His estate was the subject of administration in Sp. Proc. No. 154-R of the Court of First Instance of Cebu, entitled "Testate Estate of Nicolas Rafols" in which a certain Vital T. Montayre, now deceased, was appointed administrator.

In a motion dated May 22, 1948, Vidal T. Montayre, thru counsel, sought authority from the probate Court to sell a parcel of land belonging to the estate in order to pay taxes, expenses of administration and other indebtedness of the estate. The said motion was granted by the Court in its order dated May 22, 1948. The land authorized to be sold was a parcel of cogon land with an area of approximately 100 hectares assessed at P7,800.00 under Tax Declaration No. 05805, situated in Barrio Bunga, Toledo City. The sale of the said parcel of land, however, was not effected despite the lapse of more than three (3) years from the time that the Court had authorized the sale allegedly due to the lack of interested buyers.

On August 14, 1951, herein defendant-appellee Marcelo A. Barba purchased the land for the stated consideration of P18,000.00. The deed of sale executed in his favor by administrator Vidal T. Montayre was submitted to the Court for approval on August 15, 1951. The said sale was approved by Judge Juan L. Bocar who manifested such approval on the face of the deed of sale.

On November 24, 1966, or more than fifteen (15) years after the execution of the deed of sale in favor of defendant-appellee, herein plaintiffs-appellants instituted Civil Case No. 124-T in the Court of First Instance of Cebu against defendant-appellee Marcelo A. Barba for the declaration of the nullity of the said deed of sale and for the recovery of damages and attorney's fees. They anchor their complaint on the principal contention that the sale was null and void inasmuch as plaintiffs-appellants were not notified of the hearing of the application to sell the said parcel of land, nor of the order dated May 22, 1948 and the approval of the sale which had been stamped on a deed of sale on August 15, 1951.

Defendant-appellee filed an answer alleging, among others, the affirmative defenses that he bought the land in good faith, that the plaintiffs-appellants are in estoppel, and that the action had already prescribed. Subsequently, he filed a motion to dismiss the complaint on the following grounds, to wit, (1) plaintiffs-appellants have no legal capacity to sue; and (2) the cause of action is barred by the statute of limitations. In an order dated June 29, 1967, the trial court dismissed Civil Case No. 124-T on the grounds that it is barred by the statute of limitations and by estoppel by laches. This order of dismissal is the subject-matter of the instant appeal.

Plaintiffs-appellants assail the ruling of the trial court that their cause of action is barred by the statute of limitations by alluding to the decisions of the Supreme Court in *Boñaga vs. Soler, et al.*, G.R. No. L-15717, promulgated on June 30, 1961; *De Jesus, et al. vs. de Jesus, et al.*, G.R. No. L-16553, promulgated on November 29, 1961; and *Corpuz, et al. vs. Beltran, et al.*, G.R. No. L-7487, promulgated on October 27, 1955, which held that the sale of properties pertaining to an estate must be done only upon prior compliance with the requisites provided for in the Rules, such as written notice to the heirs, devisees and legatees of the application to sell and of the time and place for the hearing thereof; and that without compliance therewith, the authority to sell itself and the order approving it would be null and void. They further argue that an action to declare the inexistence of such a void contract is inprescriptible pursuant to Article 1410 of the new Civil Code.

Answering these contentions of plaintiffs-appellants, de-fendant-appellee argues that the plaintiffs-appellants are already in estoppel by their inaction and failure to question the sale despite the lapse of more than fifteen (15) years from the time of its execution and by conducting themselves in a manner as to show consent and assent to the consummation of the sale; and that defendant-appellee acquired the land in good faith with judicial approval and for valuable consideration. Moreover, assuming that the plaintiffs-appellants may have a good cause of action, the same had already prescribed.

The appeal taken by the plaintiffs-appellants must fail, both on legal and equitable considerations.

1. It is true that when an application is made by an administrator to sell real property of the estate for the payment of debts, expenses and other obligations of the estate, an application must be filed with the probate court which may grant the same on written notice to the heirs, devisees and legatees. (Section 2, Rule 89, Rules of Court, formerly Section 2, Rule 90, of the old Rules of Court which was the rule in force at the time of the transaction herein involved.) It is also the rule that a sale of property of the estate without such notice to the heirs, devisees and legatees is void. (*Estate of Gamboa vs. Lorenza*, 12 Phil. 191; *Santos vs. Roman Catholic Church*, 45 Phil. 895; and *Ortalez vs. Register of Deeds*, 55 Phil. 33.) Equally unassailable is the statutory pronouncement that an action declaring the inexistence of a void contract does not prescribe. (Art. 1410, New Civil Code.)

Nevertheless, plaintiffs-appellants' cause of action may not derive support from the aforementioned doctrines. There is no clear showing that the authority granted by the probate court to sell the parcel of land in question way back since May 22, 1948 was without written notice to the heirs, devisees and legatees. Plaintiffs-appellants offered no proof as to such alleged lack of notice. They rely solely on Exhibits "A", "B", "C", "D" and "D-1" which were presented not by them but by defendant-appellee during the hearing of the motion to dismiss to support such contention. Exhibit "A" is the motion of Atty. Emilio Lumontad, counsel for the administrator, praying that the administrator be authorized to sell the land in question. Exhibit "B" is the order of Judge Higinio B. Macadaeg granting said authority for the purpose of meeting the obligations of the estate. Exhibit "C" is another motion of Atty. Lumontad praying that the sale in favor of defendant-appellee be approved. Exhibit "D" is the deed of sale and Exhibit "D-1" is the approval of said sale indicated by Judge Juan L. Bocar on page 2 thereof. Plaintiffs-appellants capitalize the fact that in none of said documents or papers does it appear that they were served or given notice of the same.

To Our mind, the circumstance pointed out by plaintiffs-appellants does not suffice to annul the sale in question. The lack of any indication on the documents mentioned that they were served with copies of the same does not necessarily mean that they had no notice thereof. In the absence of a positive showing that the requirements for securing the authority to sell had not been complied with, it is appropriate to apply the presumptions that the law had been obeyed; that official duty has been regularly performed; and that private transactions had been fair and regular. (Sec. 5, pars. m, p and ff, Rule 131, Rules of Court.)

“When, by the order of the court, a property of the estate is sold under this provision, the purchaser in good

faith may rest on the presumption of the legality of the court's order.'" (Esguerra vs. de Leon, 69 Phil. 493.)

2. The record reveals sufficient indicia that the plaintiffs-appellants were fully aware of the sale of the subject land in favor of defendant-appellee despite which they questioned the validity of the same only after the lapse of fifteen (15) years from its execution. They could not have been ignorant of the fact that the estate of their deceased father was under settlement proceedings with a court-appointed administrator who is required by law to render an accounting of his administration. The record shows that on August 18, 1951 or just three (3) days after the execution of the deed of sale in favor of defendant-appellee, herein plaintiffs-appellants Ricardo, Crisostomo and Amparo, all surnamed RAFOLS, filed a motion praying that the administrator be ordered to pay each of them the sum of P1,000.00, plus P600.00 for their lawyer. This motion was granted by Judge Bocar on the same date. (Rollo, p. 31.) It also appears that after the death of Vidal T. Montayre, who was the one originally appointed administrator of the estate, he was substituted in such capacity by Ricardo Rafols, one of the plaintiffs-appellants herein.

On January 8, 1954, the administrator filed a "REPORT ON THE PRESENT STATUS OF THE ESTATE OF NICOLAS RAFOLS." (Rollo, pp. 33-37.) In the said report, mention is expressly made of the sale of the parcel of land in question in favor of defendant-appellee for the sum of P18,000.00 (at page 3 thereof). Plaintiffs-appellants do not claim that they had no notice of such report, nor of the final accounting and motion for closing of administration filed by Ricardo Rafols as administrator on September 17, 1962. (Rollo, pp. 38-39.) It was not until November 24, 1966 that the plaintiffs-appellants commenced the present action in the Court of First Instance of Cebu.

The motivation for having instituted this action was placed in issue by the actuation of Ricardo Rafols who, during the pendency of the present appeal in this Court, filed a motion to withdraw appeal on April 27, 1968. In said motion, he stated, among others, the following:

"d) That the Deed of Sale of the land in question was executed by the Administrator selling the same to defendant Marcelo Barba for the consideration of EIGHTEEN THOUSAND PESOS (P18,000.00), and the sale was approved by the Court on August 15, 1951;

"e) That all of us, heirs of the late Nicolas Rafols, knew all the time that the estate had no money with which to pay the claims of the creditors, to pay the estate and inheritance taxes and other expenses of the administration and the only way to raise money to meet all obligations of the estate is to sell the land in question situated in Toledo, Cebu, or that other land situated in Dumanjug, Cebu;

"f) That all of us, heirs of the late Nicolas Rafols, knew that the consideration of EIGHTEEN THOUSAND PESOS (P18,000.00) paid by Marcelo Barba for the land in question was the best price offered for the land was unproductive;

"g) That out of the proceeds of the sale, the inheritance and estate taxes, creditor's claim, other expenses of the administration and the attorney's fees were paid and the surplus amount left were divided by all of us, heirs of Nicolas Rafols;

"h) That, in conscience, I cannot allow myself to be a party to an injustice for deep down in my heart I and all of us, heirs of the late Nicolas Rafols, are conscious that the transaction was on the level and it helped the estate in meeting its obligations." (Rollo, pp. 42-43.)

3. The infirmity of the subject deed of sale is premised on the alleged nullity of the order of the court authorizing the sale. The validity of said order may not be attacked in a collateral proceeding, the supposed ground for declaring it void for lack of jurisdiction not being apparent on the face thereof. To enable the plaintiffs-appellants to rely on the rule that the action to declare the inexistence of a contract does not prescribe, it must first be shown

that the subject contract is indeed null and void. As aforesaid, the basis of this supposition, to wit, the nullity of the authority granted by the probate court to sell the property, had not been adequately shown.

In the least, plaintiffs-appellants are already guilty of laches as would effectively derail their cause of action. While it is true that, technically, the action to annul a void or inexistent contract does not prescribe, it may nonetheless be barred by laches. As was stated in *Nielson & Co. v. Lepanto Consolidated Mining Co.*, L-21601, December 17, 1966, 18 SCRA:

"The defense of laches applies independently of prescription. Laches is different from the statute of limitations. Prescription is concerned with the fact of delay, whereas laches is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on the same change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity, whereas prescription applies at law. Prescription is based on fixed time; laches is not."

The essential elements of the principle of laches are all present herein, to wit:

"xxx xxx xxx (1) conduct on the part of the defendant, or one under whom he claims, giving rise to the situation that led to the complaint and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held barred." (*Yusingco vs. Ong Hing Lian*, 42 SCRA 589.)

The defendant-appellee purchased the parcel of land in question giving rise to the complaint of herein plaintiffs-appellants. The latter delayed the assertion of their supposed right to annul the sale for a period of over fifteen (15) years despite knowledge or notice of such sale. They had all the opportunity within that period of time to take action to set aside or annul the sale. Defendant-appellee was never apprised of any intention on the part of plaintiffs-appellants to annul the sale until this action was filed. Finally, the defendant-appellee stands to lose the property in question if the suit filed against him by plaintiffs-appellants shall not be deemed barred.

WHEREFORE, the order appealed from is hereby **AFFIRMED**. With costs against plaintiffs-appellants.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

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