

**BLANDINA GAMBOA HILADO, PLAINTIFF AND APPELLANT, VS.
SALIM JACOB ASSAD AND JACOB JOSEPH ASSAD, DEFENDANTS AND
APPELLANTS.***G.R. No. L-6397. August 30, 1955*

Ponente: LABRADOR, J.

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This action was brought by the widow of the late Justice Serafin P. Hilado to annul a sale of an urban real estate executed by the latter On May 3, 1943. The property contains 4,141 square meters of land and is situated on Libertad Street, Pasay City. At the time this action was filed on April 23, 1945 there were two duplex apartments and a residential building thereon. On or before May 3, 1943 the property was registered under Transfer Certificate of Title No. 31069 (Exhibits 13 and 14), in the name of Serafin P. Hilado. There was a mortgage thereon in favor of the Philippine Sugar Estates Development Company, Ltd., in the amount of P50,000. It was also assessed in the name of Serafin P. Hilado at P35,990 (Exhibit 16).

On May 3, 1943 the late Justice Serafin P. Hilado executed the deed of sale, Exhibit A, in favor of Salim Jacob Assad, a Filipino citizen. The description of the vendee in the deed is as follows: "Mr. Salim Jacob Assad, soltero, mayor de edad, con residencia oficial en la ciudad de Treater Manila en 747 Tabora, Manila, y ciudadano filipino segun el 'Certificate of Naturalization No. 358' de fecha 20 de Febrero de 1937, y expedido, y firmado por Jose Casimiro, escribano del Juzgado de Primera Instancia de Manila, sus herederos, compraderan y cesionaries." The broker who negotiated the sale was Maria Umali, one of the witnesses to the deed,. The notary public who ratified the instrument of sale is Susano A. Velasquez,

Justice Hilado was taken away from his residence by the Japanese on January 2, 1945, and since then he never returned. It is believed that he must have died. He left his widow, plaintiff herein, Blandina Gamboa Hilado and two children named Jesus and Lourdes.

In the original complaint plaintiff alleges that the property in question is exclusively her own, that she is possessed thereof, and that her late husband sold it to defendant Salim Jacob Assad without her knowledge and consent. In an amended complaint filed on October 5, 1945, she further alleges that the said property and its improvements were paid for out of money belonging to her; that defendant Jacob Assad, being of Syrian nationality and therefore disqualified to purchase said property, caused the deed of sale of the property to be executed in the name of Salim Jacob Assad, using the latter as dummy, and thus circumventing the law prohibiting the sale of lands to aliens; that defendant Jacob Assad, represented himself as Salim Jacob Assad, and thereby secured possession of the land and the buildings thereon, except the last one now in possession of plaintiff; and that the sale executed by her late husband is null and void.

In their amended answer defendants specifically deny the allegations of the amended complaint and by way of special allegations of the amended complaint and by way of special defense allege that Salim Jacob Assad purchased the land through his co-defendant as an agent; that plaintiff had knowledge of the sale; that after the

sale the family of the late Serafin P. Hilado continued in possession of an apartment thereon, paying a monthly rental of P150, and that the latter moved to another, promising to pay P400, and subsequently leased the other buildings on the land to other persons. They pray for the dismissal of the complaint and for a judgment against plaintiff for the rents of the premises occupied by her and for the rents she had received for the other building leased by her. In a supplemental pleading, plaintiff alleges that her children Jesus and Lourdes have waived and relinquished their right to the property in her favor.

Plaintiff's claim that the property is her own paraphernal property is supported by her testimony only. On the other hand, the documents submitted show that it was purchased during coverture and the title was in husband's name (Exhibit 14). The building contract for the construction of the two duplex apartment also shows that these were built in 1939 also during coverture (Exhibits 7-8). The trial judge, therefore, applied the presumption contained in Article 1407 of the old Civil Code and found it to belong to the conjugal partnership. It also hold that plaintiff's husband had the power to sell the property for valuable consideration (Article 1413, old Civil Code) and that as she allowed the property to be placed in her husband's name, she may not now complain that her husband lacked authority to sell the same.

The claim that defendant Jacob Assad bought the property for himself and only used his uncle as a dummy could not be substantiated by any direct evidence. The circumstances under which the deed was prepared and executed were described by the witness for the parties differently. Francisco Oira, Justice Hilado's secretary, declared it was he who prepared the deed of sale; while the notary said it was by his stenographer under his direction. Their testimonies run as follows:

Francisco Oira.—He prepared the deed of sale, Exhibit A; no power of attorney was produced by the purchaser at the time of the preparation or execution of the deed of sale, and neither did the buyer ever mention that he was then acting or buying the property for a principal. On cross-examination, he could not tell which of the two, Justice Hilado or the buyer, informed him as to the price of the sale; as there was then a regulation prohibiting sale of real properties to aliens, he must have asked the purchaser about his personal circumstances, and Justice Hilado his own; he did not know whether the title of the property was in the name of Justice Hilado; he can not be sure who were present at the time of the execution of the sale, except the purchaser, and a woman with a bayong; he could not remember if any papers were given him and neither did he know that the property was mortgaged; and he does not remember if the sale included other properties.

Susano A. Velasquez, the notary public who ratified the deed of sale Exhibit A.—The deed was prepared in his office by his stenographer, upon request of Justice Hilado; on the day previous to the execution (May 2), Justice Hilado telephoned him asking him to prepare a deed of sale, promising to send the data through one Gonzalo Mateo; that same day Gonzalo Mateo brought him the data, which included the technical description of the property as well as the personal circumstances of the parties, both of which were written in Spanish in Justice Hilado's handwriting; as the data were in Spanish, he prepared the deed in Spanish; the following day, Justice Hilado and Gonzalo Mateo passed at his office and asked if the document was ready, but as it was not yet ready, Justice Hilado went ahead to the Bank of the Philippines Islands; after the document was finished and he and Mateo parted, he passed by Justice Hilado at the bank and together they went to Justice Hilado's office at the Court of Appeals Building; when they reached the office only Francisco Oira was there, but after a while Jacob Assad and Maria Umali arrived, the latter with a bayong; the counting of the money was done, and part of it was given to Hilado's son to pay the indebtedness at the Bank of the Philippine Islands; after a while Hilado's son came with the title and a deed of cancellation; and Jacob Assad did not read the deed, but said he relied on Justice Hilado.

The court a quo made the following findings: that the real purchaser of the property is Jacob Assad and that Salim

Jacob Assad is a mere dummy of the former; that the sale is contrary to law and public policy and therefore null and void. It, therefore, declared the sale null and void and ordered the return of the same to plaintiff upon reimbursement of the value of the price said, which it fixed at P88,000.

The appeal raises both question of fact and law. It is urged that the finding that defendant Jacob Assad is the real purchaser, the defendant Salim Jacob Assad being a mere dummy, is not supported by the evidence. The finding of fact made by the trial court is based by it on the following considerations: Justice Hilado is dead and his lips forever sealed; as the supposed power of attorney in favor of Jacob Assad was not produced, and because there are so many sources from which a copy could have been produced, the same did not exist and the court can not make any finding as to its contents; defendant Jacob Assad did not have in his hands, sufficient funds belonging to his co-defendant Salim Jacob Assad, the vendee, such that he could have made the purchase for the latter; that Jacob Assad represented himself to Justice Hilado as Salir Jacob Assad and secured the purchase of the property for himself, through his co-defendant as a dummy. Let us examine the evidence on each and every one of the disputed facts.

The first premise on which the court bases its conclusion that Jacob Assad bought the property for himself, using his uncle Salim Jacob Assad as a mere front or dummy, is the fact of the vendor's death. However, much we stretch our imagination, we fail to understand why and how such death should create or help create a belief that he was the victim of fraud. The deed expressly names Salim Jacob Assad as vendee, and his personal circumstances must have been obtained from naturalization papers furnished by Jacob Assad to the vendor. No witness ever testified that Jacob told the deceased that he was Salim. Jacob testified he was buying the property for his uncle (Salim Jacob Assad) and this is confirmed by the deed. The court's reasoning seems to run thus: as the vendor is dead, he must have been defrauded, as he is not now in a position to deny the fraud of which he is the victim. Fraud is never presumed; it must be proved by satisfactory evidence. There could have been no personal reason why the deceased wanted to sell the property to Jacob but not to the latter's uncle, who was qualified to buy the property. There was, therefore, no need for Jacob to represent himself as Salim Jacob.

The second premise, i.e., that the supposed power of attorney executed by Salim Jacob Assad in favor of Jacob Assad does not exist, because copy thereof was not produced, is also without legal or logical foundation. No less than two witnesses testified to having seen it, namely, Jacob Assad and Maria Umali, the broker who negotiated the sale. Loss of the power of attorney was proved by the testimony of the one who kept it and who declared that it was burned in his house. We have declared that such evidence is sufficient proof of loss (*Micheal & Co. vs. Enriquez*, 33 Phil., 87, 90). The fact that Salim Jacob Assad had left the Philippines in 1940, leaving his business interests and his properties behind to the care of his nephew Jacob Assad, confirms the need of a power of attorney in favor of the latter. The power of attorney must have been a general power of attorney, not a special one, authorizing administration and care of the properties and interests left behind. The conclusion of the trial court that no power of attorney had ever existed in favor of Jacob Assad is, therefore, incorrect.

The third premise is that Jacob Assad did not have enough funds belonging to Salim Jacob with which to purchase the property at its price of P110,000. Apparently this could have been the impelling reason why the trial judge believed that Jacob bought the property for himself. The premise seems to have been made from the fact that, according to Jacob Assad himself, Salim left only around P20,000 in cash, and from the further fact that according to his income tax returns, Salim had a net income of P4,796.73 for 1941 and P11,228.72 for 1942. Assuming the above net incomes to be correct, although we surmise that there should have been more as people do not ordinarily disclose their total earnings, the real fact is that the income of an individual assessed for income tax purposes is the net gain from his business operations, and does not indicate the actual amount of funds or money or properties he may possess. The net gain does not reflect the capital used, or the funds or properties he has

available. Thus we see from the income tax returns, of the partnership J. C. & J. Assad, that in the year 1941 said partnership sold goods valued at P477,532.84 and bought goods valued at P339,719.29, and that in the year 1942 it sold P227,698 and purchased P103,703.65 worth of goods (See Exhibits G & R). The working capital of the partnership in 1941 therefore amounted to almost half a million pesos. This capital appears to have been withdrawn from the business gradually. In 1942, only P117,218.56 was used to purchase new stock, so no less than P330,314.28 (P447,532.84 minus P117,218.56) was withdrawn from the business. As one third of the business belonged to Salim Jacob Assad, it is evident that there were sufficient funds corresponding to the tatter's share from which the sum of P110,000, the price of the property, could have been taken, without using Jacob Assad's own money. It is to be remembered also that according to Jacob, Salim had left around P15,000 in cash in 1940. We find, therefore, that the court's fourth premise is false.

The last premise is the product of mere speculation. The court's conclusion evidently was induced by the testimonies of two witnesses, that of the secretary of the deceased Justice and that of the sheriff that served the summons at the residence of defendant Jacob Assad at the time when Salim was yet in the United States. Justice Hilado's secretary declared that the only person present at the time of the execution of the sale, the signing of the deed, Exhibit A, and the payment of the price, was Jasob Assad. The sheriff also testified that when the first summons was served by him at Jacob Assad's residence, upon Salim Jacob Assad the only defendant then mentioned in the original complaint, Jacob Assad represented himself as Salim Jacob Assad, the defendant The belief of Justice Hilado's secretary that Jacob was Salim is no proof that Jacob said he was Salim. And the mere fact, even if it were true, that Jacob Assad told the sheriff he was Salim, does not prove that Jacob also represented himself to Justice Hilado as Salim Jacob Assad (Sec.- 17, Rule 123, Rules of Court.) . The rule is that fraud cannot be presumed; that it must be alleged and proved, at least satisfactorily, if not conclusively by one who alleges its existence (*De Roda vs. Lalk*, 48 Phil., 104; *De Santos vs. Bank of the Phil. Islands*, 66 Phil., 38; *La Cia Gral. de Tabacos vs. Obed*, 13 Phil. 391; *Mensi & Co. vs. Bastida*, 63 Phil., 16; and *Arroyo vs. Granada and Centro*, 18 Phil., 484).. The rule is founded on public policy to guard against the speculative tendencies of the human mind and its readiness to accept as fact theories that appeal to the imagination. The reasoning that had led the court a quo to believe in the existence of fraud may have been as follows: Jacob Assad must have wanted to get the property, as real property prices were then increasing by leaps and bounds, and as he could buy it himself, he resolved to use his uncle as a dummy, representing himself to the late Justice Hifado that it was his uncle, a Filipino citizen, that was buying the property, Were there evidence that Justice Hilado would not have sold it to Jacob Assad's uncle, Salim, fee fraud could have been, conceived by Jacob Assad to secure Justice Hilado's consent to the sale. But there is no, evidence to this effect; plaintiff. herself insinuated that the sale was induced by the desire of Justice Hilado to raise money to meet his personal needs. Justice Hilado could not have been interested in who the buyer would be. There is no evidence of this essential fact" In other words, the identity of the buyer was immaterial to him. All that he was interested in was to have a buyer who was a Filipino citizen so that there would be no need for securing the previous approval of the sale by the Japanese Military Administration. And he was satisfied with the purchaser, Salim Jacob Assad, when the latter's naturalization and registration papers as a Filipino citizen were shown him.

As seen from the above, all of the premises on which the finding of the trial court of Jacob Assad's representing himself as Salim Jacob Assad in order to purchase the property are incorrect. On the other hand, we find from the testimonies of Jacob Assad and Maria Umali regarding the circumstances of the sale that Justice Hilado never showed interest in finding out who the purchaser was, whether it was Salim Jacob, or it was Jacob Assad with whom he made the contract and who paid the price. One fact, however, is certain and that is that once the sale was prefected he received from Jacob the naturalization papers of Salim Jacob and he copied the data therein on a piece of paper which he furnished the notary who prepared the deed of sale.

Jacob Assad testified that he informed Justice Hilado that he was buying the property for his uncle and thereupon gave him the power of attorney and the naturalization papers. Maria Umali, the broker, corroborated the testimony. Both of them further testified that Justice Hilado said that the naturalization papers were enough, keeping these and returning the power of attorney to Jacob Assad. No evidence was given to contradict the the above testimonies. The trial court evidently rejected them, without cause or reason, on the assumption that Jacob Assad was merely circumventing the law, as he wanted to buy the property for himself. A court of Justice can not, should not, make that assumption. The legal "presumption is that men act in good faith and intend the consequences of their acts (Sec. 69, par. c, Rule 123, Rules of Court). A violation of the law is never presumed. If we are to render justice, therefore, we must find, because of the absence of any fact or circumstance to the contrary sufficiently sustained by the evidence, that Jacob Assad bought the property for his uncle Salim Jacob Assad. And we hold that in view of the above and the express identification of Salim Jacob Assad as the vendee in the very deed of sale, the sale was in truth and in fact made to said vendee.

Our conclusion as to the actual identity of the vendee renders consideration of the other questions (like the supposed invalidity of the sale) raised by the defendants-appellants in their briefs, unnecessary, except the claim for the rentals of the apartments occupied by the plaintiff and her family, and of the house she had leased to another. Evidence for defendant-appellant Salim Jacob Assad shows that plaintiff owes him rentals for houses Nos. 35 and 37 at the rate of P400 from March 1, 1945 to September, 1946 and for house No. 37 from October, 1946 to March 16, 1947 at the rate of P200 a month, or a total of P8,700. Defendant-appellant Salim Jacob Assad is entitled to this amount on his counterclaim.

The decision of the Court of Appeals in C. A.-G. R. No. 4034-R (Exhibit 23) ordered Salim Jacob Assad to pay to plaintiff herein Blandina Gamboa Hilado P250 a month from August 16, 1947. This amounts corresponds to the rents for the apartment occupied by N. W. C. Schweigher. The maunots paid heretofore to plaintiff-appellee on this count should be returned.

The plaintiffs also appealed from that portion of the decision of the trial court ordering her to return the price paid by defendants-appellants for the property. It is not necessary to consider the appeal in this respect, in view of our conclusion upholding the validity of the sale.

For the foregoing considerations, the judgment of the court a quo is hereby reversed, the complaint dismissed and the defendants absolved therefrom. Judgment is also hereby rendered sentencing plaintiff to pay Salim Jacob Assad on the latters counterclaim the sum of P8,700 and return to him the amounts paid to her by virtue of the decision of the Court of Appeals in C.A.-G.R. No. 4034. Without costs.. So ordered.

Bengzon, Acting C. J., Padilla, Montemayor, Concepcion, and Reyes, J.B.L., JJ., concur.

Judgment reversed, defendants absolved.

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