

RESURRECCION JARDER, IN HIS OWN BEHAF AND AS ADMINISTRATOR OF THE ESTATE OF THE DECEASED APOLONIO JARDER, PLAINTIFF-APPELLEE. VS. CORNELIA JARDER, CATALINO ECHAVEZ, DEFENDANTS-A...

G.R. No. L-4626. February 27, 1952

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from an order of the Court of First Instance of Iloilo dismissing the complaint in the above-entitled cause on the ground that the action was barred by the Statute of Limitations.

The complaint filed by the plaintiff in his personal capacity and as judicial administrator of the estate of Apolonio Jarde, reads as follows:

"Comparece el demandante en el asunto arriba titulado, y como motivos de accion alega:

"Que el demandante es mayor de edad y residente de esta Ciudad y Provincia de Iloilo, Filipinas, y es administrador judicial del finado Apolonio Jarde, expediente No. 369 de este Juzgado, y los demandados son marido y mujer y residentes de esta misma ciudad y provincia de Iloilo, Filipinas;

"Que el demandante es uno de los dos hijos en segundas nupcias del finado Apolonio Jarde, y la deiaandada Cornelia Jarde es una de las hijas en primeras nupcias de dicho finado, y el otro demandado Catalino Echavez es esposo de dicha Cornelia Jarde;

"Que hacia el mes de Septiembre de 1937, Apolonio Jarde otorgo a favor de Cornelia Jarde y su esposo Catalino Echavez un documento, copia del cual marcado como Anexo 'A' se une a esta demanda formando parte integrante de la misma;

"Que en virtud de dicha documento, Apolonio Jarde vendio a favor de Cornelia Jarde y su esposo Catalino Echavez las parcelas de terreno descritas en el mismo, y a raiz de dicha venta, Cornelia Jarde y Catalino Echavez tomarb posesion de las referidas parcelas de terreno;

"Que desde el mes de Septiembre de 1937 hasta esta fecha, los demandados han estado en posesion de los referidos terrenos y han estado aprovechandose de sus productos;

"Que en la epoca en que se otorgo la escritura de venta arriba referIda, el vendedor Apolonio Jarde estaba muy enfermo, y, por tanto, no estaba en el pleno goce de sus facultades mentales, y que los demandados consiguieron la firma del vendedor Apolonio Jarde en el document de venta anexo 'A' mediante falsas y fraudulentas representaciones;

Que no obstante la estipulacion en el documento anexo 'A' de que los demandados pagaron a Apolonio Jarde la cantidad de P2,000.00 como precio de la venta, en realidad de verdad dichos demandados no han pagado nada a Apolonio Jarde, pues los mismos, en aquella epoca, era muy pobres, por cuya razon el documento de venta Anexo 'A' carece de consideracion;

"Que en la referida escritura anexo 'A', Apolonio Jarder vendio y traspaso siete (7) parcelas de terreno, todas palayeras y situadas al borde de la carretera provincial por la suma de P2,000,00 solamente, cuando en realidad de verdad el valor razonable de estas siete parcelas de terreno palayeras, era en aquelxa epuca, P10,000.00 por lo menos;

"Que la escritura de venta anexo 'A' priva a los demas herederos de Apolonio Jarder, tanto en primeras como en segundas nupcias, de sus derechos sobre los terrenos vendidos, y, por tanto, dicho documento anexo 'A' es contrario a la ley;

"Que sobre la nulidad de este document anexo 'A', el demandante, hacia el mes de mayo de 1941 habia presentado una demanda en este juzgado contra los mismos demandados, pero estando pendiente de vista el asunto, estallo la guerra y los expedientes de este juzgado incluyendo el expediente de la causa presentada por el aqui demandante contra los demandados tambien aqui, fueron llevados a Passi, y alli todos dichos expedientes se quemaron durante la invasion japonesa de Panay ocurrida en Abril de 1942;

"Que los demandados nan estado recogiendo de los terrenos en cuestion no menos de 100 bultos de palay cada uno, a contar desde el ano de 1937 hasta la fecha y no nan entregado al demandante su correspondiente participacion de dichos productos.

"Por tanto, el demandante pide se dicte sentencia declarando nulo y sin ningun valor el documento anexo 'A'; ordenando al Registrador de Titulos de esta Provincia de Iloilo la can celacion de todos los registros hechos en dicha oficina a favor de los demandados o de otras personas de los lotes descritos en el anexo 'A'; ordenando a los demandados a rendir cuenta de todos sus productos o de su valor durante los anos en que nan estado en posesion de los terrenos en cuestion hasta la fecha y ordenando a los demandados a pagar las costas del presente juicio. El demandante tambien pide se le conceda cualquier otro remedio que en justifica y equidad sea procedente."

The court below holds that this is of the class of cases contemplated by Section 43 (3) of Act No, 190, known as the Code of Civil Procedure and that "the four-year period should be counted from the date of sale, when the parties supposed to have been defrauded could have brought the action for annulment, and not from the date plaintiff herein discovered such fraud." The court goes furthers "Even assuming, as urged upon this Court by the plaintiff that the second ground for annulment alleged in the complaint - to wit, that the deed of sale lacked consideration inasmuch as the amount of P2,000 mentioned therein had not in reality been paid - removed this case from the purview of Section 43 of Act No. 190 and brings it under Section 44, which provides that an action for relief not herein provided may be brought within 10 years after the cause of action accrues, still the present action has already prescribed, more than that period of time having elapsed from September 1, 1937 until the filing of the complaint on November 27, 1948."

There is confusion in the complaint as to plaintiff's theory. His answer to the motion to dismiss and appeal brief do not help to clarify the issues.

It is alleged that the seller no estaba en el pleno goce de sus facultades mentales, which would suggest that there was no consent to the sale. In the same breath and the same sentence, it is averred that Apolonio Jarder's signature was obtained "mediante falsas y fraudulentas representaciones," which would denote consent if given through misapprehension of facts.

In the next two paragraphs, the plaintiff complains that the property was worth P10,000 and that even the alleged consideration of P2,000 said to have been paid was not received by the vendor. And in the subsequent paragraph it is asserted that the sale deprived Apolonio Jarder's other children of their right to the land sold and that the sale, consequently, was contrary to law.

The last two allegations would seem to imply not only that Apolonio Jarder was fully aware of what he was doing

but that he conspired with the defendant, his daughter, to simulate a sale in her favor to the prejudice of the seller's other children.

However the case may be, there is no avoiding that fraud is alleged, or involved in the transaction, and that the applicable provision of the limitation of actions is Section 43 (3) of Act No. 190. The plaintiff must realize that fraud is the foundation of his complaint when he makes the overall prayer that the deed of conveyance be pronounced invalid. The question on which the parties differ, and the plaintiff disagrees with the court below, is the starting point of the period of prescription. The defendant and his Honor, the Judge, maintain that the period ran from the date of the sale or, at the latest, the date of the discovery of the alleged fraud by the seller, while the plaintiff would have the period begin on the date he and his co-heirs discovered the fraud.

Neither the parties nor the court are entirely wrong, in our opinion, as to the commencement of the running of the period of limitation. It all depends upon which fraud one has in mind. As has been pointed out, at least two frauds are deducible from the averments of the complaint. In the first part of the complaint the defendant is charged with deceiving Apolonio Jarde. Action for relief against that fraud should be counted from the date of the discovery of the deceit by the seller. The other theory of the plaintiff, not quite compatible with the one just mentioned, is that the seller himself in connivance with the defendant was the deceiver, and the victims were the plaintiff and the seller's other heirs. On this premise the cause of action accrued upon the discovery of the fraud by the parties defrauded, namely, the plaintiff and his co-heirs.

Nevertheless, all discussion on how and when the limitation of the statute should be computed is academic. Whether the period of four years under Section 4-3 be counted from the date of the document, from the date of the discovery of the alleged fraud by Apolonio Jarde, or from the date of such discovery by his successors in interest, the present action is barred. The complaint does not allege when the seller died, or whether the deceased ever learned of the fraud; and neither does it say when Apolonio's heirs came to know it. But the plaintiff cannot claim ignorance of the fraud after May, 1941, for in that month, according to the very complaint, an action similar to or identical with this one, was brought though not tried due to the outbreak of war. That complaint did not operate to stay the running of the period because the case was not prosecuted to its final termination. Said case not having been reconstituted or reinstated after the record thereof had been destroyed or lost, it was deemed abandoned. For the purpose of interrupting the period of limitation, it was as good as if it had never been instituted.

Having reached the conclusion that the present action is governed by Section 43(3) of Act No. 190, there is no need to take up plaintiff's challenge to the correctness of the trial court's obiter dictum, that even if the ten-year period provided in Section 44 be applied, the suit has prescribed.

Wherefore, the order of the lower court dismissing the complaint must be, and it is, affirmed, with costs.

Paras, Feria, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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