

**DOLORES VASQUEZ, PLAINTIFF AND APPELLEE, VS. JAIME L. PORTA
DEFENDANT AND APPELLANT.***G.R. No. L-6767. February 28, 1956*

Ponente: REYES, J.B.L., J.

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In a direct appeal to this Court, Jaime L. Porta prays for the reversal of the decision of the Court of First Instance of Iloilo, in its Civil Case No. 1599, setting aside as fictitious the P30,000 mortgage on seventeen (17) parcels of registered land in Sta. Barbara and San Miguel, Iloilo, valued at P80,000, executed in his favor by the late Dr. Mariano B. Arroyo, as mortgagor, on July 3, 1939; annulling the judicial proceedings had in Civil Case No. 11630 of Iloilo for foreclosure of the aforesaid mortgage, including the judgment of foreclosure and the sale thereunder of the mortgaged properties in favor of the mortgagee Porta, for having been obtained by fraud and collusion, and ordering the cancellation of the mortgage in question.

The appealed judgment was rendered by Judge Querube Makalintal (now of the Court of Appeals), upon suit filed on June 28, 1949, by Dr. Arroyo's widow, Dolores Vasquez de Arroyo, both in her own behalf and as judicial administratrix of her husband's estate. The Judge made a thorough and exhaustive study of the evidence and his findings are to the effect that the mortgage was simulated and fictitious, and that the foreclosure suit, judgment, and sale (which was never judicially confirmed), were the result of a connivance between the mortgagor Dr. Arroyo, and mortgagee Jaime L. Porta (appellant herein).

It is not controverted that appellee Dolores Vasquez had obtained against her husband Mariano B. Arroyo a judgment for separate maintenance at P500 a month. Dr. Arroyo repeatedly sought to evade fulfilling the judgment by simulated sales of his properties, two of which were finally set aside by the Courts¹ before the last war. Later, in 1938, the husband attempted to make a simulated sale of the very properties here in question in favor of his step-mother Dña. Trinidad Vda. de Arroyo, but the latter refused to accept the simulated conveyance (Exhibit Z).

The evidence now before us fully supports the findings of the trial Court that, after the rebuff from his stepmother, the late Dr. Arroyo persisted in his plan of fictitiously encumbering his properties to defeat the judgment in favor of his wife, appellee herein. Hence on July 3, 1939, he executed a second mortgage (Exhibit F) on the lands in question in favor of appellant Jaime L. Porta, and ratified it before. Notary Public Advincula, whose office was in the same room as Arroyo's lawyer, Jose G. Ganson. The consideration recited was P30,000, and receipt thereof was acknowledged; but no money was paid over when the mortgage was signed. At that time, on the contrary, the mortgagor remarked to Advincula, in appellant's presence that the recited P30,000 "did not exist." Appellant said nothing against this manifestation. The testimony of Attorney Advincula and stenographer Figueroa is corroborated to the fact that on the day the mortgage deed was signed the balance, of Porta's banking account stood at only P326.03; and the first mortgage in favor of the National Bank was never paid. Porta's explanation that the price was paid in installments between April and September 1939 is contradicted by the mortgage deed and the deposition of witness Ligio Gramonte (Exhibit 20),.

It appears also that the foreclosure complaint (Civil Case No. 11630) was filed on October 11, 1939, only three months after the execution of the mortgage deed; yet according to the tenor of the contract the debt was payable in five (5) years, i.e., on July of 1944. The alleged default of the mortgagor in the payment of quarterly interest since April 1939, is contradicted by Porta's own testimony that the P30,000 was not fully delivered to the mortgagor until September of 1939, only one month before the suit. To cap it all, the complaint, according to Advincula and Figueroa, was prepared in the office of Arroyo's own Attorney, Ganzon, though signed by Porta's lawyer, Cabaluna (who did not testify); and these witnesses are confirmed on this point by the subsequent finding of an unsigned copy of the complaint of foreclosure (Exhibit G—1), among the papers that Arroyo left at his demise.

Summoned on October 17, 1939, Arroyo answered just four days later, with a simple general denial. Thereupon on October 27, 1939, plaintiff Porta's lawyer moved for judgment on the pleadings, and with the assent of Arroyo's counsel, judgment was rendered, as prayed for, on October 31, 1939. Execution was issued in 1940; the foreclosure sale was had, and the certificate of sale in favor of the mortgagee was issued on January 18, 1941 (Exhibit L); but no order confirming the sale is of record, though the defendant's file of the proceedings appears otherwise complete. However, prior to the execution and sale, the appellant Porta appears to have executed a cancellation of the mortgage debt, dated December 1939 (long before the foreclosure sale); and the signed copy of this cancellation, though not notarized, was found by the widow among the papers of her late husband (Exhibit K). This explains why Arroyo continued possessing as owner the mortgaged properties, even after their sale to Porta; he leased them to one Miguel Cupang in 1945, and in 1947 sold them to Tirso Jamandre for P80,000 (Exhibit Q), altho this sale was cancelled in 1948 by agreement between Jamandre and Arroyo's widow.

In view of these facts, the Court below correctly concluded :

"By direct testimony of witnesses, by the undeniable implications of the documents presented by the plaintiff and by the logical import of events and of the actuations of the parties to the mortgage, the proof of its fraudulent and simulated character is overwhelming. It was executed on July 3, 1939, for a term of five years. Less than four months thereafter it was foreclosed for alleged non-payment of interest. Judgment was confessed by the mortgagor. The mortgagee, who seemed to be in such a hurry to protect his rights, thereafter lost all interest and allowed the mortgaged properties to remain in the possession of the mortgagor, for him to do with them as he pleased—leasing them, getting all their fruits, filing a war claim in respect to the products taken by the army during the occupation, all in his name and for his benefit without the least intervention on the part of the mortgagee to whom the said properties had already been ostensibly sold." (Rec. App. 60-61.)

It is thus incontestable that the mortgage in favor of appellant Porta was simulated, fictitious and without consideration ; and that the foreclosure proceedings in Case No. 11630, the judgment and the sale of the supposedly mortgaged properties were the result of collusion and connivance between Arroyo and appellant Porta. Consequently, the judgment of foreclosure in said case can not constitute *res iudicata* nor be a valid defense to an action to set aside the judgment (Kule 123, section 45; *Almeda vs. Cruz*, 47 Off. Gaz., 1179, 84 Phil., 636; *Anuran vs. Aquino*, 38 Phil., 89; *Garchitorena vs. Sotelo*, 74 Phil., 25).

The appellant asserts that the appellee, Dolores Vasquez, as administratrix and representative of the late Mariano Arroyo, can not now impugn the fraudulent transactions of her husband; but in so doing the defense loses sight of the fact that the mortgage and sale in favor of appellant Jaime L. Porta were fictitious, simulated and without consideration. They were, therefore, not merely voidable but totally void *ab initio*, and inexistent in law. Consequently, the lands involved remained, the property of the late Dr. Arroyo as Porta himself ostensibly acknowledged by his inertia in allowing the doctor to exercise dominical power thereon without any protest on his part. Wherefore, as administratrix of Arroyo's estate and as liquidator of the conjugal partnership, appellee Vasquea had the right to sue for the recovery of said lands, in consonance with her duty to marshal his assets (Rule 88, section 2; Rule 75, section 2).

The principle "in pari delicto non oritur actio" does not apply to bar appellee's action: first, because she sued not only as administratrix of the deceased, but also in her own behalf; secondly, because the maxim applies only in case of existing contracts with illegal consideration. (Articles 1805, 1306, Civil Code of 1889; Articles 1411 and 1412, new Civil Code) and is not applicable to simulated or fictitious contracts nor to those that are inexistent for lack of an essential requisite (consideration in this case). The fact that the collusive agreement between Arroyo and Porta had the illegal purpose of defrauding Arroyo's wife does not bring the case within the purview of the maxim and the articles mentioned, since an illegal purpose can not supply the want of consideration that renders the contract inexistent (Gonzales vs. Trinidad, 67 Phil., 682).

While the appellee Dolores Vasquez agreed in 1940 to a liquidation of her conjugal partnership with Mariano Arroyo and relinquished all her claims to the seventeen parcels of land now in question, in consideration of the sum of P15,000, payment of which was guaranteed by appellant Porta but has not been fully paid so far, it is clear that she did so in the erroneous belief that the mortgage to Porta was a valid and subsistent transaction. Not having knowledge of the true facts, her assent can not constitute confirmation or ratification, specially because only voidable contracts can be validly confirmed or ratified, inexistent contracts not being susceptible of confirmation or ratification (old Civil Code, Article 1309, 1311; new Civil Code, Articles 1892, 1393 and 1409, last paragraph).

Anent the defense of prescription, suffice it to say that, even under the prior legislation (Act 190), the statute of limitations only commenced to run against the appellee from the time of her discovery of the fraudulent maneuvers of which she was a victim; and she had no inkling of them until 1948, when her husband died and she found among his papers Porta's cancellation of the mortgage in his favor, and the draft of the complaint for foreclosure. Having initiated these proceedings in 1949, the four year limitation from the discovery of the fraud had not yet elapsed, and her action was not extinguished or barred.

Wherefore, the decision appealed from is affirmed. Appellant, Jaime L. Porta, will pay the costs in both instances. So ordered.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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