

ISIDORA L. CABALIW AND SOLEDAD SADORRA, PETITIONERS, VS. SOTERO SADORRA, ENCARNACION SADORRA, EMILIO ANTONIO, ESPERANZA RANJO, ANSELMO RALA, BASION VELASCO, IGNACIO SALMAZAN, AN...

G.R. No. L-25650. June 11, 1975

Ponente: MUNOZ PALMA, J.

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MUNOZ PALMA, J.:

Isidora Cabaliw was the wife of Benigno Sadorra by his second marriage solemnized on May 5, 1915, before the Justice of the Peace of Bayambang, Pangasinan. This couple had a daughter named Soledad Sadorra. During their marriage, the spouses acquired two (2) parcels of land situated in Iniangan, Dupax, Nueva Vizcaya. One parcel with an area of 14.4847 hectares was acquired by a Sales Patent and covered by Original Certificate of Title No. 1 of the Land Records of Nueva Vizcaya issued in the name of Benigno Sadorra. The other piece of land of about 1-1/2 hectares and covered by Tax Declaration Nos. 6209 and 6642 was secured through purchase.

Having been abandoned by her husband, Isidora Cabaliw instituted an action for support with the Court of First Instance of Manila, entitled "Isidora Cabaliw de Orden versus Benigno Sadorra" docketed therein as Civil Case No. 43193. On January 30, 1933, judgment was rendered requiring Benigno Sadorra to pay his wife, Isidora Cabaliw, the amount of P75.00 a month in terms of support as of January 1, 1933, and P150.00 in concept of attorney's fees and the costs.

Unknown to Isidora Cabaliw, on August 19, 1933, Benigno Sadorra executed two (2) deeds of sale over the two parcels of land above described in favor of his son-in-law, Sotero Sadorra, the latter being married to Encarnacion Sadorra, a daughter of Benigno Sadorra by his first marriage. These deeds were duly registered and Original Certificate of Title No. 1 was cancelled and replaced with T.C.T. No. 522 of the Register of Deeds of Nueva Vizcaya.

Because of the failure of her husband to comply with the judgment of support, Isidora Cabaliw filed in Civil Case 43192 a motion to cite Benigno Sadorra for contempt and the Court of First Instance of Manila in its Order of May 12, 1937, authorized Isidora to take possession of the conjugal property, to administer the same, and to avail herself of the fruits thereof in payment of the monthly support in arrears. With this order of the Court, Isidora proceeded to Nueva Vizcaya to take possession of the aforementioned parcels of land, and it was then that she discovered that her husband had sold them to his son-in-law Sotero.

On February 1, 1940, Isidora filed with the Court of First Instance of Nueva Vizcaya Civil Case No. 449 against her husband and Sotero Sadorra for the recovery of the lands in question on the ground that the sale was fictitious; at the same time a notice of lis pendens was filed with the Register of Deeds of Nueva Vizcaya.

In May of 1940, Benigno Sadorra died.

On June 7, 1948, the above-mentioned notice of lis pendens was cancelled by the Register of Deeds of Nueva

Vizcaya upon the filing of an affidavit by Sotero Sadorra to the effect that Civil Case No. 449 had been decided in his favor and that he was adjudged the owner of the land covered by T.C.T. No. 522, but that his copy of the decision was lost during the war.

On October 1, 1954, Isidora and her daughter Soledad filed with the Court of First Instance of Nueva Vizcaya Civil Case 634 to recover from the spouses Sotero and Encarnacion Sadorra the aforementioned two parcels of land; they also caused the annotation of a cautionary notice and notice of lis pendens over T.C.T. 522.[1]

On November 22, 1955, the complaint was amended and named additional party-defendants were the children of Benigno Sadorra by his first marriage. The amended complaint prayed among others; (1) that the deeds of sale executed by Benigno Sadorra be declared null and void; (2) that defendant-spouses Sotero and Encarnacion Sadorra be directed to yield the possession of the lands in question; and (3) that said lands be ordered partitioned among plaintiffs and defendants who are children by the first marriage of Benigno Sadorra in the proportions provided by law.[2]

During the pendency of civil case 634 certain parties intervened claiming that they had purchased parts of the land covered by T.C.T. 522.

After trial, the lower court rendered judgment and among other things: (1) declared the deeds of sale executed by Benigno Sadorra to be simulated and fictitious; (2) recognized and upheld the rights of the intervenor-purchasers who acquired their portions prior to the registration of the notice of lis pendens on October 1, 1954, but dismissed the claims of the intervenors who allegedly bought parts of the land subsequent thereto; and (3) ordered the partition of the remaining unsold lands between Isidora Cabaliw, Sotero Sadorra, on one hand and the children by the first marriage of Benigno Sadorra on the other.[3]

From the foregoing decision of the lower court in civil case 634 spouses Sotero and Encarnacion Sadorra appealed to the Court of Appeals and so did the intervenors whose claims were dismissed. (CA-G.R. No. 26956-R) On November 29, 1965, the appellate court by a vote of 3 to 2 reversed the decision of the trial court, and dismissed the amended complaint of Isidora Cabaliw.[4]

Hence, this petition filed by Isidora Cabaliw and her daughter, Soledad Sadorra, for the Court to review the adverse judgment of the Court of Appeals.

Several errors have been assigned by petitioners, but the vital question upon which depends the outcome of this appeal is given in Error I, to wit:

The Honorable Court of Appeals gravely erred in holding that the fraud could not be presumed in the transfer of the lots in question by the late Benigno Sadorra to his son-in-law Sotero Sadorra, even if this transfer was done shortly after judgment was rendered against the former and in favor of your petitioner Isidora Cabaliw. (p. 1, Petitioner's Brief)

The Court of Appeals sustained the validity and efficacy of the deeds of sale executed by Benigno Sadorra in favor of his son-in-law (Exhibits I and I-1) on the ground that these are public documents and as such are presumed by law to have been fair and legal; that the vendee Sotero Sadorra, is presumed to have acted in good faith, citing Art. 44, Spanish Civil Code, Art. 627 New Civil Code; that fraud is never presumed, and it is settled in this jurisdiction that fraud is never presumed, and it is in this jurisdiction that strong and convincing evidence is necessary to overthrow the validity of an existing public instrument. The appellate court continued that inasmuch as under the old Civil Code in force at the time of the sale, the husband was empowered to dispose of the conjugal property without the consent of the wife, the sales made by Benigno Sadorra were valid, and the wife Isidora cannot now recover the property from the vendee.

The judgment of the Court of Appeals cannot be sustained.

The facts narrated in the first portion of this Decision which are not disputed, convincingly show or prove that the conveyances made by Benigno Sadorra in favor of his son-in-law were fraudulent. For the heart of the matter is that about seven months after a judgment was rendered against him in Civil Case No. 43192 of the Court of First Instance of Manila and without paying any part of that judgment, Benigno Sadorra sold the only two parcels of land belonging to the conjugal partnership to his son-in-law. Such a sale even if made for a valuable consideration is presumed to be in fraud of the judgment creditor who in this case happens to be the offended wife.

Article 1297 of the old Civil Code which was the law in force at the time of the transaction provides:[5]

"Contracts by virtue of which the debtor alienates property by gratuitous title are presumed to be made in fraud of creditors.

"Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated and need not have been obtained by the party seeking rescission." (Italics supplied)

The above-quoted legal provision was totally disregarded by the appellate court, and there lies its basic error.

We agree with petitioners that the parties here do not stand in equipoise, for the petitioners have in their favor, by a specific provision of law, the presumption of a fraudulent transaction which is not overcome by the mere fact that the deeds of sale in question were in the nature of public instruments. As well said in the dissenting opinion of Justice Magno Gatmaitan, the principle invoked by the majority opinion that to destroy the validity of an existing public document "strong and convincing evidence is necessary", operates "where the action was brought by one party against the other to impugn the contract . . . but that rule can not operate and does not, where the case is one wherein the suit is not between the parties inter se but is one instituted by a third person, not a party to the contract but precisely the victim of it because executed to his prejudice and behind his back; neither law, nor justice, nor reason, nor logic, should so permit, otherwise, in such a suit, the courts would be furnishing a most effective shield of defense to the aggressor." (pp. 30-31, CA Decision)

Furthermore, the presumption of fraud established by the law in favor of petitioners is bolstered by other indicia of bad faith on the part of the vendor and vendee. Thus (1) the vendee is the son-in-law of the vendor. In the early case of *Regalado vs. Luchsinger & Co.*, 5 Phil. 625, this Court held that the close relationship between the vendor and the vendee is one of the known badges of fraud. (2) At the time of the conveyance, the vendee, Sotero, was living with his father-in-law, the vendor, and he knew that there was a judgment directing the latter to give a monthly support to his wife Isidora and that his father-in-law was avoiding payment and execution of the judgment.[6] (3) It was known to the vendee that his father-in-law had no properties other than those two parcels of land which were being sold to him.[7] The fact that a vendor transfers all of his property to a third person when there is a judgment against him is a strong indication of a scheme to defraud one who may have a valid interest over his properties.[8]

Added to the above circumstances is the undisputed fact that the vendee Sotero Sadorra secured the cancellation of the *lis pendens* on O.C.T. No. 1, which was annotated in 1940 at the instance of Isidora Cabaliw, and the issuance of a transfer certificate of title in his favor, by executing an affidavit, Exhibit H, on June 7, 1948, wherein he referred to Isidora as "the late Isidora Cabaliw" when he knew for a fact that she was alive, and alleged that Civil Case 449 of the Court of First Instance of Nueva Vizcaya was decided in his favor when in truth there was no such decision because the proceedings in said case were interrupted by the last world war. Such conduct of Sotero Sadorra reveals, as stated by the lower court, an "utter lack of sincerity and truthfulness" and

belies his pretensions of good faith.

On the part of the transferee, he did not present satisfactory and convincing evidence sufficient to overthrow the presumption and evidence of a fraudulent transaction. His is the burden of rebutting the presumption of fraud established by law, and having failed to do so, the fraudulent nature of the conveyance in question prevails.[9]

The decision of the Court of Appeals makes mention of Art. 1413 of the old Civil Code which authorizes the husband as administrator to alienate and bind by onerous title the property of the conjugal partnership without the consent of the wife, and by reason thereof, concludes that petitioner Isidora Cabaliw can not now seek annulment of the sale made by her husband. On this point, counsel for petitioners rightly claims that the lack of consent of the wife to the conveyances made by her husband was never invoked nor placed in issue before the trial court. What was claimed all along by plaintiff, Isidora Cabaliw now petitioner, was that the conveyances or deeds of sale were executed by her husband to avoid payment of the monthly support adjudged in her favor and to deprive her of the means to execute said judgment. In other words, petitioner seeks relief not so much as an aggrieved wife but more as a judgment creditor of Benigno Sadorra. Art. 1413 therefore is inapplicable; but even if it were, the result would be the same because the very article reserves to the wife the right to seek redress in court for alienations which prejudice her or her heirs.[10] The undisputed facts before Us clearly show that the sales made by the husband were merely a scheme to place beyond the reach of the wife the only properties belonging to the conjugal partnership and deprive her of what rightly belongs to her and her only daughter Soledad.

PREMISES CONSIDERED, We find merit to this Petition for Review and We set aside the decision of the appellate court for being contrary to the law applicable to the facts of the case. The decision of the trial court stands affirmed with costs against private respondents.

SO ORDERED.

Castro, (Chairman), Makasiar, Esguerra and Martin, JJ., concur.

Teehankee, J., took no part.

[1] Record on Appeal, CA-G.R. 26956-R pp. 1-11.

[2] Pp. 30-41, *ibid*.

[3] PP. 145-184, *ibid*.

[4] Nicasio Yatco, J. ponente with Antonio G. Lucero and Hermogenes Concepcion, Jr., JJ. concurring; Gregorio S. Narvasa and Magno Gatmaitan, JJ. dissenting.

[5] See also Art. 1387 of the new Civil Code which states:

"Art. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

"Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.

"In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by the law of evidence."

[6] See dissenting opinion of Justice Gatmaitan p. 28, CA Decision.

[7] P. 29, *ibid*.

[8] *Oria vs. McMicking*, 21 Phil. 243.

[9] *Bachrach vs. Peterson, et al.* 7 Phil. 571; *Panlilio vs. Victorio*, 35 Phil. 706; *Alpuerto vs. Perez Pastor, et al.* 38 Phil. 785; *National Exchange Co. vs. Katigbak*, 54 Phil. 599.

[10] Article 1413. In addition to the powers which the husband has an administrator he may alienate and bind by onerous title the property of the conjugal partnership without the consent of the wife.

Nevertheless, every alienation or compromise which the husband may make in respect to said property in violation of this Code or in fraud of the wife shall not prejudice her or her heirs. (old Civil Code)

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