

MARIA VELARDE, ET AL., PLAINTIFFS AND APPELLANTS, VS. FELIPA PAEZ, ET AL., DEFENDANTS AND APPELLEES.*G. R. No. L-9208-16. April 30, 1957*

Ponente: PARAS, J.

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The plaintiffs Maria Velarde and Luis Velarde instituted in the Court of First Instance of Manila nine separate complaints against several defendants, alleging that the plaintiffs are the niece and nephew respectively of Rosalia Velarde of Jaen, Nueva Ecija, who died in the City of Cabanatuan on January 6, 1950, leaving no descendants or ascendants, brothers or sisters, or surviving spouse, and leaving the plaintiffs as her only intestate heirs, being the nearest relatives at the time of the death of Rosalia Velarde, and that the said plaintiffs have succeeded to the full and exclusive ownership of all her estate, that the deceased Rosalia Velarde was the registered owner of several parcels of land, with improvements thereon, situated in the municipality of Jaen, Nueva Ecija, and more particularly described in each of the separate complaints; that Rosalia Velarde, without her knowledge and through fraud, deceit and misrepresentation of the defendants, and while she was physically and mentally incapacitated and without consideration having been received by her, was made to sign the several documents in English referred to in the complaints, and entitled Deeds of Absolute Sale; that the defendants, taking advantage of the various Deeds of Sale, registered the same in the Office of the Register of Deeds of Nueva Ecija and thereby secured corresponding Transfer Certificates of Title in their names. The different complaints pray that the various deeds of sale allegedly executed by Rosalia Velarde be declared null and void; that the Register of Deeds of Nueva Ecija be ordered to cancel the various Transfer Certificates of Title in the names of the defendants and to revive the Transfer Certificates of Title in the name of the deceased Rosalia Velarde; that the defendants be ordered to render an accounting of the fruits and income of the various properties from February 26, 1950 and to deliver the same to the receiver appointed by the court; that the defendants be ordered to pay the sum of P10,000 as attorney's fees.

On December 17, 1951, the defendants Mariano de Guzman, et al., through Atty. Laura S. Esteban, filed a special appearance and motion to dismiss based on the grounds that venue was improperly laid; that there are other actions pending between the same parties and for the same cause; that the plaintiffs have no legal capacity to sue. On February 26, 1952, the defendants Felipa Paez, et al., through Atty. Mariano Q. Tinio, also filed a special appearance and motion to dismiss. On March 15, 1952, the Court of First Instance of Manila, through Judge Magno S. Gatmaitan, denied the special appearance and motion to dismiss filed by the defendants Felipa Paez, et al. in four cases. The motion to dismiss filed by Mariano de Guzman, et al. was heard before Judge Tiburcio Tancinco, first on January 12, 1952 and subsequently on May 3, 1952, when the matter was submitted for resolution after the plaintiffs had filed an opposition on January 11, 1952 and a supplemental opposition on March 22, 1952. On March 24, 1952, the defendants Felipa Paez, et al. filed their corresponding answer in Civil Cases Nos. 15144, 15147, 15150 and 15152, through Attorney Pedro D. Maldia. On August 21, 1952, Judge Tiburcio Tancinco resolved the special appearance and motion to dismiss filed by the defendants Mariano de Guzman, et al., and issued an order dismissing all the nine cases filed by the plaintiffs. On September 22, 1952, the plaintiffs

filed a motion to set aside this order, to which the defendants Mariano de Guzman, et al. and the defendants Felipa Paez, et al. filed their respective oppositions. On October 15, 1954, the plaintiffs filed a motion to have their motion to set aside the order of Judge Tancinco of August 21, 1952 resolved, to which the defendants Mariano de Guzman, et al. and the defendants Felipa Paez, et al. filed their corresponding oppositions. The plaintiff Maria Velarde having died, attorney for the plaintiffs filed on November 3, 1954 a motion praying that the deceased Maria Velarde be substituted by Lucia Velarde Espinosa and Luz Velarde Espinosa, to which the defendants Mariano de Guzman, et al. filed an opposition. On November 13, 1954, the court granted the motion for substitution of parties, and on February 14, 1955, the plaintiffs' motion to set aside the order of August 21, 1952 was denied by the Court, through Judge Vicente Santiago. The plaintiffs have appealed.

In the motion to dismiss filed by the defendants Mariano de Guzman, et al., it is alleged that when the various complaints were filed in the Court of First Instance of Manila, there were pending in the Court of First Instance of Nueva Ecija Special Proceeding No. 476 for the probate of the will of Rosalia Velarde, involving the same properties referred to in plaintiffs' various complaints, and Intestate Proceeding No. 497, also involving said properties. In the brief for the defendants Mariano de Guzman, et al., it is admitted that, although Intestate Proceeding No. 497 had been withdrawn, Special Proceeding No. 476 is still pending. It is not denied that both in Special Proceeding 476 and in Intestate Proceeding No. 497, the plaintiffs had filed an opposition and intervention. As the plaintiffs in their various complaints filed in the Court of First Instance of Manila alleged that they were the only intestate heirs of the deceased Rosalia Velarde and thereby succeeded to the latter's estate to the exclusion of all others, there was absolutely no sense or necessity in filing in the Court of First Instance of Manila the separate actions for the annulment or rescission of the alleged deeds of sale executed by the deceased Rosalia Velarde covering the properties mentioned in the separate complaints, much less for the appointment of a receiver of said properties; especially because said properties are admittedly located in the province of Nueva Ecija and the parties are residents of the same province; and the matter as to who are the heirs of the deceased Maria Velarde can and should be determined either in the probate or intestate proceeding. Even assuming that the different actions instituted in the Court of First Instance of Manila are in pemonam, as contended by the appellants, there is evidence adduced during the hearing of the defendants' motion to dismiss that the plaintiffs Maria Velarde and Luis Velarde are residents of Nueva Ecija. The actions instituted in the Court of First Instance of Manila must therefore fail not only for lack of proper venue but for the pendency of another action.

Equally decisive against the plaintiffs is the fact that they are not alleged to be forced heirs of the deceased Rosalia Velarde who therefore could dispose of her estate without further limitations than those established by law. The plaintiffs are not parties to the alleged deeds of sale and are not principally or subsidiarily bound thereby; hence they have no legal capacity to challenge their validity. This pronouncement finds support in the following:

"As to the appellant's second and last contention, under the law action to annul a contract entered into with all the requisites mentioned in Article 1261 whenever they are tainted with the vice which invalidate them in accordance with law may be brought, not only by any person principally bound or who made them, but also by his heir to whom the right and obligation arising from the contract are transmitted. Hence if no such rights, actions by obligations have been transmitted to the heir, the latter can not bring an action to annul the contract in representation of the contracting party who made it. In *Wolfson vs. Estate of Martinez*, 20 Phil., 840, this Supreme Court quoted with approval the judgment of the Supreme Court of Spain of April 12, 1901, in which it was held that he who is not a party to a contract or an assignee thereunder, or does not represent those who took part therein, has under Articles 1257 and 1302 of the Civil Code no legal capacity to challenge the validity of such contract/ And in *Irlanda vs. Pitargue*, 22 Phil., 886, we held that the 'the testamentary or legal heir continues in law as the juridical personality of his predecessor in interest, who transmit to him from the moment of his death such of his rights, actions and obligations as are not extinguished thereby.

"The question to be resolved is, therefore, whether the deceased Perpetua Concepcion has transmitted to the plaintiff any right arising from the contract under consideration in order that he can bring an action to annul the sale voluntarily made by her to the defendant with a false consideration.

"We are of the opinion and so hold, that the late Perpetua Concepcion has not transmitted to the plaintiffs any right arising from the contract of conveyance or sale of her lands to the defendant, and therefore the plaintiff can not file an action to annul such contract as representative of the deceased.

"According to the complaint the deceased, in connivance with the defendant and with intent to defraud the plaintiff, (That is, in order not to leave the properties above mentioned upon her death to the plaintiff), sold and conveyed them to the latter, for a false and fictitious consideration. It is therefore, obvious, that the conveyance or sale of said properties to the defendant was voluntarily made by the deceased to said defendant. As the deceased had no forced heir, she was free to dispose of all her properties as absolute owner thereof, without further limitation than those established by law, and the right to dispose of a thing involves the right to give or convey it to another without any consideration. The only limitation established by law on her right to convey said properties to the defendant without any consideration is, that she could not dispose of or transfer her property to another in fraud of her creditors. And this Court, in *Soils vs. Chua Pua Hermanos*, 50 Phil., 636, through Mr. Justice Street, held that 'a voluntary conveyance, without any consideration whatever, is prima facie good as between the parties, and such an instrument can not be declared fraudulent as against creditors in the absence of proof, that there was at the time of the execution of the conveyance a creditor who could be defrauded by the conveyance, 27 C. J. 470.'

"Even a forced heir of the deceased Perpetua Concepcion would have no right to institute as representative of the decedent, an action of nullity of a contract made by the decedent to defraud his creditors, because such a contract being considered illicit under Article 1306 of the Civil Code, Perpetua Concepcion herself had no right of action to annul it and recover the properties she had conveyed to the defendant. But the forced heir would in such case "bring an action to rescind the contract under Article 120(3) of the Civil Code. Manresa, in his comments on Articles 1306 and 1305 of the Civil Code (4th Edition, Volume 3, pp. 717, 718), says: 'As to heirs, is interesting the judgment of May 6, 1902, of the Supreme Court of Spain which denied a forced heir the right to institute an action to annul contracts considered as illicit for having been entered into by his predecessor in interest for the purpose of depriving the forced heir of his legitime. The judgment purported to hold that the proper actions would have been an action to rescind in conformity with what we indicated in commenting on Article 1291', and declared that 'even forced heirs who accept an inheritance under the benefit of inventory are within the rule 2 of Article 1306, that denies to the guilty party the right to recover anything he may have given, or to enforce the performance of any undertaking in his favor, when the other party has nothing to do with the illicit consideration; a doctrine laid down in the judgment of July 4, 1896.'

"The reason why a forced heir has the right to institute an action or remission in that the right to the legitime is similar to a credit of a creditor. As the same Spanish author correctly states in commenting on Article 1291 of the Civil Code: 'The rights of a forced heir to the legitime are undoubtedly similar to a credit of a creditor in so far as the right to the legitime may be defeated by fraudulent contracts and are superior to the will of those bound to respect them. In its judgment of October 28, 1897, the Supremo Court of Spain held that the forced heirs instituted as such by their father in the latter's testament have the undeniable right to institute an action to annul contracts entered into by the father to their prejudice. As it is seen the action is called of nullity, but it is rather an action of rescission taking into account the purpose for which it is instituted and the confusion of ideas that has prevailed in this matter. The doctrine we shall expound in commenting on Articles 1302 and 1306 will confirm what we have just stated'. (Manresa, *Codigo Civil*, 4th edition, Vol. 8, pp. 667 and 668).

"Therefore, as the plaintiff in the present case, not being a forced heir of the late Perpetua Concepcion, can not institute an action to annul under Article 1300 or to rescind under Article 129(3) of the Civil Code the contract under consideration entered into by the deceased with the defendant." (*Concepcion vs. Sta. Ana*, 87 Phil., 787.)

Plaintiffs-appellants invoke the decision in the case of *De Vera vs. Galauran*, 37 Off. Gaz., 1821, in support of the contention that the legal heirs may commence an ordinary action arising out of a right belonging to the deceased without the necessity of a previous and separate judicial declaration of their status as such. This is true, unless (and this was overlooked by appellants) there is a pending special proceeding for the settlement of the estate of such deceased person. In the nine cases now before us, it appears that at the time of the filing of the complaints in the Court of First Instance of Manila there were pending* in the Court of First Instance of Nueva Ecija Special Proceeding No. 476 (Probate of Will) and Intestate Proceeding No. 497; and although the latter proceeding was subsequently withdrawn, Testate Proceeding No. 470 is still pending.

Appellants also contend that as Judge Magno S. Gatmaitan in his order of March 15, 1952, denied the motion to dismiss filed by the defendants Felipa Paez, et al., it was erroneous on the part of Judge Tiburcio Tancinco to issue the order of August 21, 1952 dismissing all the nine cases at bar. This contention is not tenable, for the denial by Judge Gatmaitan referred to the motion to dismiss filed by the defendants Felipa Paez, et al. only in four cases; whereas the dismissal by Judge Tancinco was in virtue of the motion to dismiss filed by the defendants Mariano de Guzman, et al., and there is no pretense that the latter motion had been previously acted upon. The causes of action and question of law involved in the nine separate cases being common, the dismissal by Judge Tancinco should inure to the benefit of the defendants Felipa Paez, et al.

Wherefore, the order of the lower court dated August 21, 1952, is hereby affirmed, with costs against the appellants.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Endencia, JJ., concur.

Felix, J., concurs in the result.

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