

MONICO CONCEPCIÓN, PLAINTIFF AND APPELLANT, VS. PACIENCIA STA. ANA, DEFENDANT AND APPELLEE.*G.R. No. L-2277. December 29, 1950*

Ponente: FERIA, J.

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An action was instituted by Monico Concepción vs. Paciencia Sta. Ana to annul the sale made by the late Perpetua Concepción, sister of the plaintiff, of three parcels of land with the improvements thereon to the defendant. The complaint alleges, among others, that the plaintiff is the only surviving legitimate brother of Perpetua Concepción, who died on or about January 28, 1948, without issue and without leaving any will; that in her life time or on or about June 29, 1945, said Perpetua Concepción, in connivance with the defendant and with intent to defraud the plaintiff, sold and conveyed three parcels of land for a false and fictitious consideration to the defendant, who secured transfer certificates of title of said lands issued under her name; and that the defendant has been in possession of the properties sold since the death of Perpetua Concepción, thereby causing damages to the plaintiff in the amount of not less than two hundred (P200) pesos.

Defendant filed a motion to dismiss the complaint on the ground that it does not state a cause of action, because the deceased being the owner of the properties sold had the right to enjoy and dispose of them without further limitation than those established by law.

The Court of First Instance of Manila granted the motion to dismiss and dismissed the complaint on the ground that "the plaintiff is not a party to the deed of sale executed by Perpetua Concepción in favor of the defendant. Even in the assumption that the consideration of the contract is fictitious, the plaintiff has no right of action against the defendant. Under article 1302 of the Civil Code, 'the action to annul a contract may be brought by any person principally or subsidiarily bound thereby.' The plaintiff is not bound by the deed of sale executed by the deceased in favor of the defendant. He has no obligation under the deed."

Plaintiff appealed from the order of the court dismissing his complaint, and now assigns as erroneous the order appealed from on the following grounds: (1) that a simulated or fictitious sale for a fictitious or false consideration is null and void per se or non-existence, hence it cannot transfer ownership; and (2) that according to article 1302 of the same code "the action to annul a contract may be brought by a person principally or subsidiarily bound thereby," and as under article 1257 of the Civil Code "contracts shall be binding only upon the parties who make them and their heirs," the plaintiff as heir of the deceased contracting party can bring action to annul the contract of sale under consideration.

(1) The plaintiff's contention that a simulated or fictitious contract of sale with a false consideration is null and void per se, or is a contrato inexistente, not merely a contrato nulo, is not correct. Article 1276 of the Civil Code^[1] expressly provides that "the statement of a false consideration in contract shall be ground for annulment," and article 1301 of the same code provided for the limitation of actions for annulment of a contract.

In support of his contention that the contract of sale under consideration being a fictitious contract or contract with

a false consideration is null per se or non-existent, plaintiff quotes Manresa's comment on articles 1274 to 1277, Vol. 8, p. 623, which says: "Recognizing this analogy, it was held by the Supreme Court of Spain that a fictitious contract, or contract entered into with false consideration does not confer any right or produce any legal effect, citing the judgments of the Supreme Court of Spain of October 31, 1865, of March 21, 1884, and of November 23, 1877." Appellant's conclusion is not correct. By stating that contracts with false consideration confer no right and produce no legal effect, Manresa does not mean to say that they are null and void per se or non-existent as contradistinguished from annulable, for the effects of both non-existent and annulable contracts that have been annulled are the same: they confer no right and produce no legal effect. What Manresa says on page 700 of the same volume, commenting on article 1301, is the following: "The expression of a false cause or consideration in the contract does not make it non-existent, and it shall only be a ground for an action for nullity as provided by article 1276 and confirmed by article 1301 of the Civil Code. There are some who consider this somewhat confused under the Code; for us it is very clear, for the code repeatedly provides that the effect of a false consideration is limited to making the contract voidable, and we have already pointed out that in this particular, our Civil Code has deviated deliberately from the French Code, which includes indistinctly in one and the same provision contracts without consideration and contracts in which the consideration is illicit or false."

In the case of *De Belén vs. Collector of Customs and Sheriff of Manila* (46 Phil. 241), this court, through Mr. Justice Street, said that "The distinction between entire absence of contract (*inexistencia*) and the situation requiring an action of rescission or nullity is fully expounded by Manresa in his comment on article 1300 of the Civil Code (q.v.)."

(2) 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 or 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., 340, this Supreme Court quoted with approval; the judgment of the Supreme Court of Spain of April 18, 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. 383) we held that "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 Concepción 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 Concepción has not transmitted to the plaintiff any right arising from the contract of conveyance or sale of her lands to the defendant, and therefore the plaintiff cannot 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 *Solis vs. Chua Púa 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 Concepción 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 Concepción herself had no right of action to annul it and recover the properties she had conveyed to the defendant. But the forced heir could in such case bring an action to rescind the contract under article 1291(3) of the Civil Code. Manresa in his comments on articles 1305 and 1306 of the Civil Code (4th edition, volume 8, pp. 717, 718), says: "As to heirs, it is interesting that 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 action 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 1806, 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 of rescission is 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 rights 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 Supreme Court of Spain held that the forced heirs instituted as such by their father to 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 action 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 Código 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 Concepción, can not institute an action to annul under article 1300 or to rescind under article 1291(3) of the Civil Code the contract under consideration entered into by the deceased with the defendant.

In view of all the foregoing, the judgment of the lower court is affirmed with costs against the appellant. So ordered.

Moran, C.J., Bengzon, Padilla, Tuason, Reyes and Bautista, Angelo, JJ., concur.

Montemayor, and Jugo, JJ., concur in the result.

PABLO, M. :

Concurro con la parte dispositiva.

Judgment affirmed.

[1] We are referring in this decision to the old Civil Code applicable in the present case.

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