

JOSE T. JAMANDRE, PETITIONER, VS. HON. COURT OF APPEALS AND MARIA JAMANDRE-YAMSON, RESPONDENTS.

G.R. No. L-24606. August 31, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Defendant Jose Jamandre seeks a review on certiorari of a resolution of the Court of Appeals, the dispositive part of which reads:

"ACCORDINGLY, we hereby set aside our decision of October 16, 1963, and enter another (1) declaring the appellee Maria Jamandre-Yamson the exclusive and absolute owner of the store combined with the loan business, and entitled to the possession thereof; (2) declaring the deed of sale, exh. Y, to be fictitious and without consideration; (3) declaring Maria Jamandre-Yamson the absolute owner of the house and lot subject of the deed of sale, exh. Y, and entitled to the peaceful possession thereof; and (4) ordering the appellant Jose Jamandre to pay to the appellee the sum of P1,000 as attorney's fees. No pronouncement as to costs."

The factual background is set forth in the aforementioned decision, promulgated on October 16, 1963, in the following language:

"The plaintiff Maria Jamandre-Yamson filed a complaint against her brother Jose T. Jamandre, for the purposes of (1) recovering possession of a store, known as the "Marivic" store, together with all its contents and unrealized profits therefrom in the sum of P10,000, and (2) annulling a deed of sale (exh. Y) of her house and lot (lot 26-A of the La Carlota Cadastre). The plaintiff claims that Jose has been living with her in her house at La Carlota, Negros Occidental, where he also maintains his law office; that prior to February 8, 1956, she was already managing and operating the said store which is now located on the first floor of her house and which was registered in her name with the Bureau of Commerce; that on February 8, 1956, due to some serious family trouble, she was maltreated by both Jose and their father and was thus compelled to abandon her house and store to Jose; and that she returned together with the provincial commander of Negros Occidental and some soldiers to recover possession of her house and store, but Jose refused to deliver them to her. The plaintiff further alleges that she was the owner and in possession of lot 26-A of La Carlota Cadastre, with an assessed value of P18,000 and of the house thereon of strong materials, with an assessed value of P30,000; that sometime in September 1955, Jose talked to her and brought for her signature several blank sheets of paper which he represented to her to be a contract of sale of her truck; that she signed because Jose, being her brother, enjoyed her full trust and confidence; and that she later learned that the blank sheets of papers she signed constituted a contract of sale of her house and lot in question, and not a contract of sale of her truck, which she was then contemplating to sell.

"The defendant Magdalena Tejico, mother of the plaintiff and the defendant was allowed to intervene. In their answer, Jose Jamandre and Magdalena Tejico deny that the plaintiff is the owner of the store, and aver that, the capital of the said store, together with the loan business, belongs to them, and only the management thereof was entrusted to the plaintiff; that to give the plaintiff a personality in her dealings with the public, the defendants acquiesced in the registration of the store in her name; that due to her maintaining illicit relations with a married man, their father chastised her, and it is for this reason that she left. The defendants'

counterclaim is to the effect that when the plaintiff left, she took with her promissory notes, vales, chits, loan documents and cash, all belonging to the store, in the total sum of P20,000. The defendants further allege that the plaintiff sold to Jose the house and lot in question by virtue of the deed of sale (exh. Y); that Jose approached the plaintiff about this sale and not about the alleged sale of her truck, as the plaintiff does not own any truck; and that being a college graduate, the plaintiff should be presumed to know that what she was signing was a contract of sale of her house and lot.

"After the filing of the complaint, and upon filing by the plaintiff of a bond, the lower court, in its order of attachment dated June 1, 1956, required the defendant Jose to deliver the store in question with all its contents to the sheriff. To stay this order, Magdalena Tejico, after she was allowed to intervene, filed a counterbond on June 29, 1956, in the same amount, subscribed by the Luzon Surety & Fidelity Co., Inc. Thereafter, Magdalena was allowed to retain the store. During the trial, she filed an application with the Bacolod branch of the Bureau of Commerce to change the name "Marivic" store to "Magda" store, but due to the pendency of this suit, the application was denied.

"On September 14, 1957, the lower court rendered judgment as follows:

'IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered for the plaintiff and against the defendant Jose Jamandre and Magdalena Tejico, and the deed of sale, Exh. 'Y' is hereby declared null and void, for being simulated and fictitious, under article 1409 (2), Civil Code, and the defendant Jose Jamandre is hereby ordered to vacate Lot No. 26—A, La Carlota Cadastre, and to deliver to the plaintiff the house located thereon, including its contents which are valued in the sum of P3,610.00 as listed in the inventory, marked Exh. 'U and to desist from molesting or disturbing the peaceful possession thereof by the plaintiff.'

'The defendant Magdalena Tejico is hereby ordered to deliver the Marivic Store, now Magda Store, to the plaintiff, together with its contents in the total sum of P12,550.00, and the vales, promissory notes, valued at P9,000.00, Exhibit 'U', or the amounts received therefor from February 8, 1956, and to pay the plaintiff the sum of ₱ 5,800.00 the amounts received therefor from February 8, 1956, until the store is finally delivered to the plaintiff.

'Finally, it is hereby ordered that the two defendants herein, each, pay the plaintiff P5,000.00, by way of moral damages, and P2,500.00, each by way of attorney's fees, or a total of P10,000.00 moral damages and P5,000.00 attorney's fees, and to pay the cost of this suit. The separate counterclaim of the two defendants are hereby dismissed.'

On September 16, 1957, the plaintiff moved for execution pending appeal, which was granted by the lower court in its order dated September 20, 1957. To lift this order of execution, the defendants filed a motion for reconsideration dated September 21, 1957 and a supplemental motion dated September 24, 1957. Acting on these two motions, the lower court issued two orders, both dated September 30, 1957, one order fixing the amount of the supersedeas bond at P85,000 to be filed by the defendants for the lifting of the order of execution, and the other denying the motion for reconsideration. Pursuant to the last two orders, the defendants delivered the store with all its contents, together with the house and lot in question, to the plaintiff.

"On January 3, 1958, the defendants filed with this Court a petition for mandamus and certiorari with injunction. This petition, docketed as CA-G.R. 22191-R, sought to have declared null and void the lower court's order of execution as well as the order denying their appeal bond and record on appeal. On April 26, 1958, this Court rendered a decision in said case in favor of the defendants as follows:

'IN VIEW OF ALL THE FOREGOING, the petition is granted. The preliminary injunction heretofore issued is to remain in force until Civil Case No. 3902 of the Court a quo is definitely terminated; respondent judge is ordered to approve petitioners' appeal bond and amended record on appeal; and respondent Clerk of Court to forthwith certify said record on appeal to this Court, together with all the testimonial and documentary

evidence presented by the parties at the trial. With costs, which shall be paid by respondent plaintiff, Maria Jamandre-Yamson.' (Italics supplied.)

"Notwithstanding this decision in G.R. 22191-R, the plaintiff, for unexplained reasons, remained in possession of the property in question. Thereafter, the defendants filed two motions before this Court, one dated September 6, 1958 and the other dated October 16, 1958, both praying for the cancellation of their counterbond on the ground that since they had already redelivered to the plaintiff the properties covered by said counterbond, said counterbond is no longer necessary. Acting upon these two motions, the Fifth Division of this Court, in a resolution dated November 7, 1958, denied said motions.

"In this appeal, the defendants, Jose Jamandre and Magdalcna Tejico, in their voluminous brief, impute 29 errors to the lower court. We believe, however, that the determination of this appeal hinges only on two pivoial issues, to wit, ownership of the store, and the validity or invalidity of the deed of sale (exh. Y)."

In its decision, the Court of Appeals resolved the issues therein adverted to against plaintiff Maria Jamandre-Yamson and in favor of defendant Jose Jamandre and intervenor Magdalena Tejico. We quote the dispositive part of said decision:

"ACCORDINGLY, the judgment a quo is annulled and set aside. Another judgment is hereby entered. (1) declaring Jose Jamandre (he legitimate owner of the house and lot in question by virtue of the deed ot sale exh. Y; (2) ordering Maria Jamandre-Yamson to immcdiatelv vacate the said house and lot and deliver them to Jose Jamandre; (3) declaring Jose Jamandre and Magdalcna Tejico the legitimate owners of the "Mamie" (or "Magda") store and loan business; (4) ordering Maria Jamandre-Yamson to make immediate delivery of the said store and loan business to Jose Jamandre and Magdalena Tejico; (5) ordering Maria Jamandre-Yamson to render a detailed accounting of the entire operations and business of the said store and ;oan buisness to Jose Jamandre and Magdalena Tejico, such accounting to be completed within one year from the date this judgment becomes final; and (6) condemning Maria Janiandre-Yamson to pay 10 Magdalena Tejico moral damages in the amount of P5,000, and attorney's fees in the amount of P2,00() to both Jose Jamandre and Magdalena Tejico. Costs against Maria Jamandre-Yamson."

Within the reglementary period/plaintiff filed a motion for reconsideration to which was annexed intervenor's affidavit— dated November 11, 1963—of retraction of her testimony in the trial court. Defendant countered with a verified statement of the same intervenor—dated December 9, 1963—stating that she had signed her previous affidavit without reading its contents. Plaintiff replied thereto with a third sworn statement of intervenor, dated February 13, 1964, stating that her affidavit of December 9, 1963, is not true. Not to be outdone, defendant submitted a fourth affidavit of intervenor, dated March 21, 1964, retracting the story given in her sworn statement of February 13, 1964. Thereafter, or on January 22, 1965, the Court of Appeals promulgated the appealed resolution, setting aside its decision of October 16, 1963, and entering another one in favor of the plaintiff and against the defendant and the intervenor, as pointed out at the beginning ol this decision. Hence, the present petition for review on certiorari filed by the defendant.

The latter maintains that the lower court erred "in taking the aforementioned affidavits of retraction as evidence;" but, this pretense is based upon a false premise. Said affidavits were not considered as evidence. The existence thereof merely led the Court of Appeals to deem it advisable to undertake a more careful re-cxamination of the evidence on record. The findings of fact and conclusions made by the appellate court in its appealed resolution are based upon said evidence, not upon the aforementioned affidavits ol' the intervenor. In the language of the Court of Appeals:

"The affidavit made at the instance of the plaintiff was naturally favorable to her, and the one prepared at the instance of the defendant was in turn naturally favorable to him. While these affidavits are unavailing to prove

the allegations of both parties, being necessarily self-serving, they nevertheless served to persuade this Court to review once more the entire case. We accorded great weight to the intervenor's testimony given in the court below, and to other circumstances which had not been explained by the parties in their briefs. However, the affidavits of the intervenor now convince us that she could be easily influenced, and any of her contending children could persuade her to do what is asked of her. Hence, we are now compelled to withdraw the conclusions which we, highly influenced by her testimony, had previously arrived at, and to re-examine with much more than painstaking care the evidence, oral and documentary, submitted by the parties."

Defendant next assails the conclusion of the Court of Appeals, in its aforementioned resolution, to the effect that Exhibit Y—which purports to be a deed of absolute sale, in his favor, of the house and lot therein described—is null and void upon the ground that: (1) the Court had "disregarded or totally ignored the testimony of notary public Enrique Marino on the due execution of" said instrument; (2) the evidence, on the strength of which the Court of Appeals had annulled said Exhibit "Y", "is not clear nor convincing"; and (3) said Court erred "when it held that there were badges of fraud in the deed of sale . . . Exhibit Y, that the same was fictitious, and that there was inadequacy of consideration."

It should be noted, however, that the ruling of the Court of Appeals to the effect that Exhibit Y is "fictitious and without consideration" is a finding of fact, which is final and conclusive upon us. [1] Indeed, pursuant to the Judiciary Act of 1948, [2] decisions of the Court of Appeals in cases appealed thereto, "shall be final", subject to the discretionary power of review of the Supreme Court, but, only on "a question of law." Hence, said decisions of the Court of Appeals cannot be appealed except "by certiorari", [3] and "only questions of law may be raised" in such appeal. [4]

Then, too, the failure of the resolution appealed from to make any direct reference to the testimony of Atty. Enrique Marino, does not necessarily indicate that the same had been "disregarded or totally ignored" by the Court of Appeals. The latter evidently felt—and, we think, correctly—that said testimony was too inadequate to offset the circumstances pointed out in said resolution, clearly showing that Exhibit Y had been fraudulently made and was not acknowledged by the plaintiff before Atty. Marino, contrary to his testimony on the witness stand. In fact, such testimony was contradicted by the defendant, who said that he delivered the sum of P8,740.00 to the plaintiff as soon as she signed on Exhibit Y and that "there was nobody present except the two of us" at that time. It may not be amiss, also, to note that Atty. Marino was defendant's "law partner," in addition to being his attorney of record in the proceedings for the frustrated registration of Exhibit Y.

Then, again, in sustaining plaintiff's claim, to the effect that Exhibit Y is fictitious and without consideration, the Court of Appeals took into account the following circumstances, to wit:

(1) The sale price stated in Exhibit Y is P30,000, of which P20,000 had allegedly been previously lent by the defendant to the plaintiff. Although Exhibit Y says that the former delivered the balance of P10,000 to the latter, at the time of the execution of the instrument, the same stipulates that plaintiff should apply this sum to pay the debt in favor of the RFC, to which the property was mortgaged, the balance of which debt amounted to P12,000. Thus, plaintiff, in effect, received nothing when she signed Exhibit Y. Why, then should she execute the same?

(2) Said debt of P20,000, in favor of the defendant, allegedly consisted of: (a) P12,000 he claimed to have advanced for the construction of her house; and (b) P8,000 he lent to her subsequently thereto. Plaintiff denied both. The Court of Appeals agreed with the observations made by His Honor the Trial Judge, who believed her testimony and considered that of the defendant unworthy of credence. Indeed, said Judge found that:

(a) Defendant stayed in plaintiff's house "in her charity," free board, lodging and laundry, as testified to by plaintiff, and corroborated by Fe Deopines and Vivencio Rodriguez.

(b) Defendant was not in good financial condition for, from 1952 to 1956, he had an outstanding obligation of P9,000 in favor of the Maa Sugar Central and from 1939 to 1956 he had not filed any income tax return, thus indicating that his yearly income did not exceed P1,000.

(c) To offset these circumstances, defendant declared that he borrowed from his father, Cirilo Jamandre, and one Mrs. Goite; but, he did not introduce the testimony of any of them, or explain why he had not done so. Worse, still, "it is undeniable that Cirilo Jamandre is insolvent and is actually facing two civil suits for non-payment of his obligations," in the language of His Honor the Trial Judge;

(d) Plaintiff was comparatively better off financially, for her business was fairly good, it provided her with sufficient cash, and she had accounts receivable amounting to P9,000. In fact, according to her income tax-return for the year 1955, her net income therefor was P5,813.07. She had, therefore, no necessity or reason to sell her house and lot, appraised at P37,000, for, practically, P20,000, assuming that defendant had really lent her this sum, which he was in no position to do.

(e) Exhibit Y provides that, upon the signing thereof, defendant "shall have complete control and possession of the house and lot subject matter" thereof. Yet plaintiff retained said possession and control until several months later, when she admittedly left the place to avoid further beating from her father.

(f) Although Exhibit Y purports to have been executed on November 7, 1955, defendant did not try to register it until April 17, 1956. Still, he failed in his attempt, due to plaintiff's opposition thereto, upon the ground of fraud and deceit on his part. Instead of initiating the proper action, even if only to vindicate his name, as a respectable citizen and as a member of the bar, he did nothing about it. Plaintiff had to file the present action, on May 30, 1956, to annul said instrument.

(g) Plaintiff alleged and testified that she owned a passenger truck, named "Jamandre 10," which was operated under a TPU permit of her cousin Vicente Jamandre; that the latter told her, in July, 1955, that someone wanted to buy, for P15,000, the five trucks (four of which belonged to him) being operated under said permit; and that he (Vicente) was willing to give her P2,500 for her truck; that, in August, 1955, she was told that the buyer was ready to consummate the transaction; that the defendant—who is a member of the bar and has been her lawyer since 1939—advised her that he would attend to said transaction in Bacolod City, so that it may not be necessary for her to leave La Carlota, where she resided; that he, accordingly, persuaded her to sign on several blank sheets of paper on which, he said, he would cause to be written the deed of sale of her aforementioned truck; and that defendant later informed her that the deal did not go through.

In an effort to discredit her, defendant testified that plaintiff did not even own any truck; but her testimony about it was corroborated by Vicente Jamandre, who is, also, related to the defendant and had no possible reason to testify against him, whereas Fe Deopines corroborated her as regards the circumstances under which she signed Exhibit Y.

(h) The testimony of the defendant and the intervenor "are unreliable and vacillating and are not corroborated by any disinterested witnesses, and most of their documentary evidence belong to the plaintiff herself", who must have found them and taken possession thereof in her house, when she left the same under the circumstances already adverted to. Upon the other hand, plaintiff's testimony was corroborated by Fe Deopines, Vicente Jamandre, Vivencio Rodriguez, Nestor Samontino, Socorro Demerino, and Aida Ramos, as well as by documentary evidence.

The foregoing circumstances, which are fully borne out by the record, amply justify the conclusion that plaintiff's signature on Exh. Y had been obtained through fraud and deceit on the part of the defendant, and that the contract

appearing thereon is fictitious and absolutely devoid of consideration, for which reason it is null and void ab initio, and without any force or effect.

WHEREFORE, the resolution appealed from should be as it is hereby affirmed, with the costs of this instance against defendant Jose Jamandre.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.

Ruiz Castro, J., did not take part.

Resolution affirmed.

[1] Hodges v. People, 68 Phil. 178; Onglengco v. Ozaeta, 70 Phil. 43; Nazareno v. Samahang Magwagui, 71 Phil. 101; Gerio v. Gerio, 71 Phil. 106; Garcia de Ramos v. Yatco, 71 Phil. 178; Zubiri v. Quijano, 74 Phil. 47; Castro v. Tamparong, 78 Phil. 804; Alas v. People, 78 Phil. 868; Tan Si Kiok v. Tiacho, 79 Phil. 696; De Vera v. Fernandez, 88 Phil. 668, 671; Velasco v. CA, 90 Phil. 688, 690; Fonacier v. CA, 96 Phil. 417, 420-421, 435; De Luna v. Linatoc, 74 Phil. 15; Villaroman v. Techico, 83 Phil. 901; Lirri v. Calaguas, 83 Phil. 796; Pornellosa v. Land Tenure Administration, L-14040, Jan. 31, 1961; Lota v. CA, L-14803, June 30, 1961; Galang v. CA, L-17248, Jan. 29, 1962; Gonzales v. De Leon, L-17250, Jan. 31, 1962; Grande v. CA, L-17652, June 30, 1962; Abela v. CA, L-17311, Aug. 31, 1962; Ramcar v. Millar, L-17760, Oct. 31, 1962; Collado v. CA, L-14698, Mar. 30, 1963; Difiosa v. CA, L-17738, April 22, 1963; De Gala-Sison v. Manalo, L-18181, July 31, 1963; M Ruiz Highway Transit v. CA, L-16086, May 29, 1964; Hollero y, CA, L-16579, June 29, 1964; Galace v. Bagtas, L-15400, Aug. 31, 1964; Astraquillo v. Javier, L-20034, Jan. 30, 1965; Solis & Yarisantos v. Salvador, L-17022, Aug. 14, 1965; Ago v. CA, L-19718, Jan. 31, 1966; Conejero v. CA, L-21812, April 29, 1966; Buencamino v. Matias, L-19397, April 30, 1966; Sabido v. Custodio, L-21512, Aug. 31, 1966; Phil. Refining Co., Inc. v. Garcia, L-21871 & L-21962, Sept. 27, 1966; Air France v. Carrascoso, L-21438, Sept. 28, 1966; Abordo v. CA, L-22288, Nov. 29, 1966; Santa Ana v. Hernandez, L-16394, Dec. 17, 1966; Ramos v. Pepsico, L-22533, Feb. 9, 1967; Tan v. CA, L-22793, May 16, 1967; Monroy v. CA, L-23258, July 1, 1967; Manalo v. CA, L-27492, July 31, 1967; Phil. Surety & Insurance Co. v. Zabal, L-21556, Oct. 31, 1967.

[2] Section 29 of Republic Act No. 296.

[3] Section 1, Rule 45 of the Rules of Court.

[4] Section 2, Rule 45 of the Rules of Court; Guico v. Mayuga, 63 Phil. 328; Mateo v. Collector of Customs, 63 Phil. 470; Mamuyac v. Abena, 67 Phil. 289; Lo Ching v. Court of Appeals, 81 Phil. 601.

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