

ESTEBAN GARANCIANG, AND ERMANA BUENAFLO, PLAINTIFFS-APPELLANTS, VS. CATALINO GARANCIANG, AND RUFINA NOCIS, DEFENDANTS-APPELLEES.*G.R. No. L-22351. May 21, 1969*

Ponente: MAKALINTAL, J.

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This is a pauper's appeal from the order dated August 20, 1963 of the Court of First Instance of Pangasinan dismissing the plaintiffs' complaint in Case No. U-661. The pertinent allegations in said complaint are as follows: that the plaintiffs were the owners of several parcels of land (specifically referred to by their respective lot numbers and certificates of title); "that on three occasions, thru misrepresentation, fraud and deceit (they) were re-requested to sign some papers purportedly to be (sic) an application for their pension and passport of their grandson to go to America;" that said documents, which turned out to be deeds of sale of their lands, were executed without any consideration; "that the possession of the said properties were transferred to the defendants, some as a gesture of kindness... for the reason that Catalino Garanciang is the only son of the plaintiffs;" that the defendants were able to register the documents and to obtain the corresponding transfer certificates of title; that the plaintiffs discovered the "anomalous execution" of the deeds of sale on or about September 10, 1958, whereupon they filed an adverse claim with the Register of Deeds; and that despite repeated demands, the defendants failed and refused to deliver possession of the lands to the plaintiffs. The relief prayed for was for recovery of possession; for a declaration that the deeds of sale and the transfer certificates of title issued pursuant thereto were null and void; and for damages, attorney's fees and costs.

On August 7, 1963 the defendants moved to dismiss the complaint on the ground of prescription and lack of cause of action. The plaintiffs opposed. On August 20, 1963 the trial court granted the motion and dismissed the complaint on the first ground relied upon. The plaintiffs moved to reconsider but were turned down; hence the instant appeal.

In dismissing the complaint the trial court relied on Article 1391 of the Civil Code, which provides that an action for annulment (of a contract) on the ground of fraud prescribes in four years, computed from the discovery of the fraud. According to the complaint the fraud was discovered by the plaintiffs on September 10, 1958, so that when this action was filed on July 2, 1963, more than four years had passed. However, the complaint alleges not only fraud in the execution of the deeds of sale sought to be annulled, but total absence of cause or consideration. This allegation, if true, would render the contracts not merely voidable but absolutely void and inexistent (Arts. 1352, 1409(3), Civil Code). Indeed the sales were, on the face of the complaint, worse than fictitious, since the plaintiffs had no intention - not even a simulated one - of executing them. And the action to set aside a contract that is fictitious, or absolutely void or inexistent, does not prescribe. (Art. 1410, Civil Code; *Borromeo vs. Borromeo*, et al., 98 Phil. 432; *Mapalo vs. Mapalo* G. R. No. L-21628, May 19, 1966).

In view of the said allegation, which was deemed hypothetically admitted for purposes of the defendants' motion

to dismiss, the trial court erred in dismissing the complaint.

Wherefore, the order appealed from is set aside and the case is remanded to the court of origin for further proceedings. Costs against appellees in this instance.

Reyes, J.B.L. (Acting C.J.), Dizon, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.

Teehankee and Barredo, JJ., did not take part.

Concepcion, C.J., and Castro, J., are on official leave.

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