

ALEJANDRA CUARTO, PLAINTIFF-APPELLANT, VS. ESTELITA DE LUNA, LEONARDO DE LUNA, IRENE CASTILLO, BONIFACIO NAKPIL AND AIDA SOLIMAN, DEFENDANTS, BONIFACIO NAKPIL AND AIDA SOLIMAN, ...*G.R. No. L-23279. January 31, 1968*

Ponente: CONCEPCION, C.J.

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Appeal from two orders of the Court of First Instance of Rizal.

Plaintiff Alejandra Cuarto is the widow of Sotero de Luna. In her complaint, against Estelita de Luna, Leonardo de Luna, his wife, Irene Castillo and the spouses Bonifacio Nakpil and Aida Soliman – hereinafter referred to as the Nakpils – it is alleged that plaintiff and her deceased husband had, during his lifetime, acquired, as conjugal properties, Lots 11-A and 12, Block 53, of the San Juan Heights Subdivision, containing 433 and 503 square meters, re-spectively, and are more particularly described in Transfer Certificates of Title Nos. 12999 and 10383 of Rizal; that, by virtue of a simulated deed of sale, dated November 13, 1947, Sotero purported to sell said lots, for an alleged consideration of P1,000.00, which was never paid, either wholly or partly, to his daughter by a previous marriage, defendant Estelita de Luna, in whose favor, upon cancellation of said transfer certificates of titles, TCT Nos. 6544 and 6545, were issued; that, subsequently, Estelita de Luna simulated another sale of said properties to her brother Leonardo de Luna – another offspring of Sotero de Luna by a previous marriage – and his wife, Irene Castillo, in whose favor TCT Nos. 24871 and 74965 were, in turn, issued, upon cancellation of TCT Nos. 6544 and 6545; that, on December 29, 1962, Mr. and Mrs. Leonardo de Luna simulated a third sale, for a stated consideration of P20,000.00, to the Nakpils, in whose names TCT Nos. 106286 and 106287 were issued, in lieu of TCT Nos. 24871 and 74965; that all of these transactions are fictitious and simulated, as well as without any consideration; that before the properties in ques-tion were placed in their name, the Nakpils knew that the title of their codefendants was void or defective and that plaintiff has a valid claim over said properties or, at least, to over one-half thereof; that plaintiff was not cognizant of these simulated transactions until February, 1963, when she came to know about the same; and that, in view of the conjugal nature of the properties in question, she is entitled to, at least, one-half (1/2) thereof. Hence, she prayed that the transactions above-referred to be declared simulated, and, accordingly, null and void, insofar, at least, as her share therein is concerned and, in the event that the Nakpils be found to have validly acquired title to the other half of said properties, that she be authorized to redeem the same.

The Nakpils moved to dismiss the complaint, alleging that plaintiff's action is for the recovery of title to real property, which is barred by extinctive as well as by acquisitive prescription, under sections 40 and 41 of Act No. 190. De-spite plaintiff's opposition to said motion, the same was, on September 5, 1963, granted by the lower court, which dismissed the complaint upon the theory that the questioned transactions are merely voidable, that the properties involved therein are covered by certificates of title, which had no infirmity or de-fect, and that more than ten (10) years have elapsed from the first transaction. A reconsideration of this order having been

denied, on October 18, 1963, plaintiff appealed from the order of this date and that of September 5, 1963, to the Court of Appeals. The trial court, however, certified the Record on Appeal to the Supreme Court, only questions of law being raised in the appeal.

The orders appealed from should be reversed. A motion to dismiss admits, hypothetically, the truth of the allegations of the complaint,[1] pursuant to which the three (3) transactions therein impugned are "fictitious, simulated and without any consideration." Under these allegations, said transactions are, not merely voidable, but inexistent. It is well-settled, not only in our jurisprudence,[2] but, also, by specific legal provision[3] that "the action or defense for the declaration of the inexistence of a contract does not prescribe."

As regards the acquisitive prescription invoked by the defendants, it should be noted that real property cannot be acquired by this means unless there is "actual, adverse possession" by one "claiming to be the owner" of said property, "uninterruptedly" and continuously for ten (10) years. In the case at bar, the complaint does not show that the lands in litigation have been so held by defendants herein. On the contrary, this is impliedly, but, necessarily negated by the allegations in the complaint – which are hypothetically admitted in the motion to dismiss – to the effect that each and every one of the transactions above referred to are fictitious, simulated, and without consideration, and that the defendants are and were aware of such fact.

WHEREFORE, the orders appealed from should be and are hereby reversed and the records of this case remanded to the lower court for further proceedings, with the costs of this instance against defendants Bonifacio Nakpil and Aida Soliman.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Dizon, J., did not take part.

[1] Republic of the Philippines vs. Patanao, L-22356, July 21, 1967; Vda. de Valencia vs. Deudor, et al., L-21598, May 19, 1966; Alquique vs. De Leon, et al., L-15059, March 30, 1963; Reinales vs. Arrastia, et al., L-17083, July 31, 1962; Pascual vs. Secretary of Public Works & Communications, L-10405, Dec. 29, 1960; Tupas vs. Parreño, L-12545, April 30, 1959; Wise & Company vs. City of Manila, 54 Off. Gaz., 4245; Carreon vs. Province of Pampanga, et al., 99 Phil., 809; Community Investment & Finance Corp. vs. Garcia, 88 Phil., 215; Piñero vs. Enriquez, 84 Phil., 774.

[2] Quetulio vs. Ver, L-6831, June 29, 1956; Corpus vs. Beltran, 97 Phil., 772; Tipton vs. Velasco, 6 Phil., 67.

[3] Article 1410, Civil Code of the Philippines.

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