

JOHANNA HOFER BORRROMEO, PLAINTIFF AND APPELLANT, VS. DR. VENUSTIANO H. J. BORRROMEO, DR. JOSE C. BORRROMEO AND ESTATE OF DR. MAXIMO BORSOMEIO, DEFENDANTS AND APPELLEES.

G.R. No. L-7548. February 27, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

Johanna Hofer Borrromeo, widow of the late Dr. Maximo Borrromeo who died on July 31, 1948, brought this action alleging (1) that during her marriage with the deceased, the latter bought a certain real property situated in Cebu, this property becoming one of the conjugal properties of her husband and herself; (2) that in June, 1948, before his death and at the time when he was seriously ill and bedridden, her husband signed, or was made to sign, a fictitious deed of sale of said property in favor of Dr. Venustiano H. J. Borrromeo and Dr. Jose C. Borrromeo purporting to convey said property to them for P3,000; (3) that the property was assessed at P42,480 and had a market value of P80,000, and there was a mortgage thereon of P125,000 in favor of the Rehabilitation Finance Corporation ; (4) that the sale was fictitious, as no payment of the stated price was made, and the price stated was inadequate; (5) that defendants took possession of the property in bad faith and deprived plaintiff and the estate of the deceased of the fruits and rentals amounting to not less than P100 a month, and praying that the sale be declared null and void, and the registration of the sale and the title issued to them be cancelled. The complaint includes Canuto C. Borrromeo, executor of the estate of the deceased husband, for the alleged reason that he refuses to join as party plaintiff. The defendants moved to dismiss the action on three grounds, (1) that plaintiff has no legal capacity to sue; (2) that the complaint states no cause of action; and (3) that the action is premature. The trial court dismissed the complaint on the ground that the interest of the wife in the community property is a mere expectancy, which does not ripen into a legal title, until a liquidation has been had of the conjugal partnership. It is against the order of dismissal that, the appeal to this Court is prosecuted.

The decision appealed from cites the case of Nable Jose vs. Nable Jose, 41 Phil., 718, as authority for dismissing the action. In this Court the appellees also invoke our decisions in the cases of Baello vs. Villanueva, 54 Phil., 213, and De la Cruz vs. Buenaventura, et al., 46 Off. Gaz., No. 12, p. 6032. But the principles decided in the above cases are not applicable to the case at bar because the facts involved are entirely different. In Nable Jose vs. Nable Jose, the question involved was the rights of the heirs of the deceased wife to the conjugal property pending liquidation thereof by the husband as administrator. Clearly the heirs of the deceased wife have no direct title or interest in the communal property as such, until a liquidation is made and the net remainder is distributed. In the case of Baello vs. Villanueva, et al., a donation of conjugal property was made by the deceased husband to the grand children of a brother, so we held that while the gift is illegal, the action for its illegality can be brought by the wife only after the liquidation of the conjugal partnership, if she is prejudiced by the donation, because the illegal gift should be charged against the husband donor and deducted from his capital pursuant to Article 1419 of the old Civil Code. The prejudice can be ascertained only after liquidation, so an action to annul the gift before liquidation is premature. In the De la Cruz vs. Buenaventura, et al., case, the sale sought to be annulled was

alleged to be "fictitious and fraudulent", but this Court overlooked the allegation of fictitiousness and merely considered the contract as "illegal and fraudulent", void only if it would exceed the amount which the husband would be entitled to upon liquidation. It was, therefore, decided that the case fell under the second paragraph of Article 1413 of the old Civil Code, and that the action would lie only after the liquidation of the conjugal partnership.

The case which most resembles the case now under consideration is that of Pascual vs. Pascual, 73 Phil., 561. In that case the sale sought to be annulled by the wife was made by the deceased husband during his lifetime without consideration. We said that as the sale is alleged to be fictitious, with absolutely no consideration, it should be regarded as non-existent, not merely annulable.

"El concepto de la causa falsa se confunde por lo relacionado que estan, con el de la simulacion, segun advertimos comentando el articulo 1.265 y por tanto, a este precepto, o sea al 1.276, y a sua concordantes, habra de referirse la solucion en nuestro derecho acerca de la simulacion. Reconociendo' esta analogia tiene declarado la Jurisprudencia que los contratos simulados, o sea celebrados con causa falsa, no confieren derechos ni pueden surtir efecto alguno legal (sentencias de 31 de Octubre de 1865 y 21 de Marzo de 1884), y en la de 23 de Noviembre de 1877 esta declarado que "la simulacion de un contrato Heva consigo neesariamente la falsedad de la causa del mismo, y pueden alegarla todos aquellos a quienes interese, salva la jresponsabilidad que en su caso eontraigan." De estas declarapiones muy importantes, de la jurisprudencia, se deduce la ineficacia total de los' contratos con causa falsa, que, corao expresion del criterio segnido en el derecho anterior al Codig-o Civil, no quedc aplicarse a contratos bajo el imperio de este, aunque si a los anteriores; pero en lo demas, eomo no se oponen al articulo 1,276, que solo contradice aquella ineficacia. afoosluta, sirven para expresar la relacion de la simulacion eon la causa falsa y para regular el ejercicio de la accion de nulidad fundada en esta, puntp del eual trataremos mas adelante." (Manresa, Cwdigo Civil Espanol, Tomo 8, paginas 623-623.)

In the case at bar the sale is alleged to be fictitious because no payment of the stated price was made. The sale therefore, was non-existent, because one of the elements, that of consideration, was absent. To such effect is Article 1261 of the old Civil Code which provides:

"There is no contract unless the following requisites exist:

- The consent of the contracting parties;
- A definite object which is the subject-matter of the contract;
- A consideration for the obligation established."

The theory that the right of the widow to contest the simulated sale arises only after the liquidation of the conjugal partnership, is based on Article 1413 of the old Civil Code, which provides:

"In addition to his powers as manager the husband may for a valuable consideration alienate and encumber the property of the conjugal partnership without the consent of the wife.

"Nevertheless, no alienation or agreement which the husband may make "with respect to such property in1 contravention of this code or in fraud of the wife shall prejudice her or her heirs."

It will be noted from the above Article that the husband, as the administrator, is given the power to dispose of conjugal property under onerous title without the consent of the wife. In the second paragraph this power is limited by the reservation that the wife's rights will not be prejudicated by the assignment or sale made by the husband, when the said assignment or agreement violates the provisions of the Code or is in fraud of the rights of the wife. The instances, therefore, to which said paragraph two refers are those sales, conveyances or assignments which have, been made tvnder onerous title in violation of the provision of the Code or in fraud of

the rights of the wife. Said contracts or agreements have the three essential requisites of contracts, namely, consent of the parties, subject-matter and consideration, although they are subject to annulment because they violate the provisions of the Code or are in fraud of the rights of the wife. These kinds of conveyances or contracts must be distinguished from those in which no consideration exists, as already pointed out above; in these latter cases, the contracts or agreements lack one of the essential elements for their validity, namely, cause or consideration, and, therefore, they are considered as non-existent. It is under this category (of non-existent contracts) that the fictitious sale, alleged in the case at bar to have been executed by the husband without consideration or with false consideration, falls. In other words, in accordance with the allegations of the complaint filed the simulated sale has non-existent, because there was no consideration for the execution thereof. The sale executed by the deceased husband was not sale by onerous title, executed in violation of the provisions of the Code or in fraud of the rights of the wife; if it was not a sale or conveyance which suffers from invalidity by reason of the violation of the provisions of the Code or of fraud to the rights of the wife. It is, according to the allegations of the complaint, a non-existent contract which never came into being or effect because of the express provision of Article 1261 of the Civil Code. As the deed of sale executed by the deceased husband was, according to the allegations of the complaint, without consideration because the supposed price did not exist and was not paid, it follows that the sale is not the one contemplated by the provisions of paragraph 2 of Article 1413 of the old Civil Code, and it is not, therefore, correct to hold that the right of the wife to assail its effectiveness is made to depend upon the outcome of the liquidation of the conjugal partnership. The case at bar falls clearly under the principle stated in the case of Pascual vs. Pascual, supra, where the wife, who had an interest in the conjugal property subject of the sale, was allowed to bring the action, making the executor a party-defendant because of Ma refusal to institute the suit.

In view of the foregoing considerations, the order dismissing the complaint is hereby reversed and "fee case remanded to the Court of First Instance of Cebu for further proceedings. With costs against the defendants-appellees.

Parás, C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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