

**DAMASO DESCUTIDO, ET AL., PLAINTIFFS AND APPELLEES, VS.
JACINTO BALTAZAR, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 11765. April 29, 1961*

Ponente: DIZON, J.

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Appeal from the decision of the Court of First Instance of Iloilo, the dispositive part of which reads as follows:

"IN VIEW THEREOF, the court hereby declares the deed of sala executed by Jose Descutido and Matea Dolduco in favor of Pedro Diamante (Exh. B) and the deed of sale executed by Pedro Diamante in favor of Bonifacia Descutido (Exh. C) null and void and non-existent. By virtue of the deed of partition (Exh. D) Damaso Descutido is hereby declared owner of the Lot No. 790 of the Cadastral Survey of Dumangas. The register of deeds of Iloilo is hereby ordered to cancel the transfer certificate of Title No. 25284 in the name of Bonifacia Descutido and to issue another one in the name of Damaso Descutido married to Regina Decierdo, of age, Filipino and resident, of Dumangas, Iloilo, Philippines. No costs and damages. The counter-claim is hereby dismissed."

The spouses Jose Descutido and Matea Dolduco were the registered owners of Lot No. 790 of the Cadastral Survey of Dumangas, Iloilo, covered by Original Certificate of Title No. 31060 issued in their name. Said title was cancelled upon registration of a deed of sale (Exh. B) dated December 10, 1937 allegedly executed by said spouses in favor of Pedro Diamante, in whose name Transfer Certificate of Title No. 20491 was issued. Subsequently, this transfer certificate of title was also cancelled upon registration of another deed of sale executed by Diamante in favor of Bonifacia Descutido on June 1, 1940 (Exh. C), and Transfer Certificate of Title No. 25284 was issued on May 28, 1941 in the name of the latter (Exh. 2).

Upon the evidence the lower court found that Jose Descutido died in the month of August, 1944 leaving three children, namely, Damaso—appellee herein—, Pedro and Bonifacia, the latter married to appellant Jacinto Baltazar. The other appellants surnamed Baltazar are the children of the Baltazar spouses and were included as defendants in the complaint as surviving heirs of Bonifacia. The other defendants were the spouses Pedro Diamante and Cristina Doctolero.

Dámaso Descutido and his wife Regina Decierdo commenced this action to annul the deeds of sale Exhibits B and C upon the ground that they were fraudulent, fictitious and were not supported by any valid and sufficient consideration. Jacinto Baltazar and his children, after making specific denials of some material averments of the complaint and admitting others, alleged the following affirmative defenses: (a) that plaintiffs' cause of action was barred; (b) that plaintiffs had no legal capacity to sue for the annulment of the sales mentioned in their complaint; and (c) that they are purchasers in good faith and for valuable consideration of Lot No. 790 of the Cadastral Survey of Dumangas. Their answer also contained a counterclaim which they erroneously designated as cross-complaint. The substance of the allegations made therein is that the Baltazar spouses bought Lot 790 of the Cadastral Survey of Dumangas from Pedro Diamante; that by virtue of the deed of sale and its registration, Diamante's title was cancelled and Transfer Certificate of Title No. 25284 was issued in their name; that after the

sale they took possession of the property, but in the year 1941 the spouses Dámaso Descutido and Regina Decierdo, by force and intimidation, took possession of the property and have remained in possession thereof up to the date when the answer was filed (April 21, 1956); that they have thus been deprived by the plaintiffs of the products of the property from the year 1941 to December 31, 1950 consisting of forty cavanos of palay yearly, besides other products with a total value of P4,977.50. They prayed that the complaint be dismissed and for judgment "ordering the plaintiffs to pay to the defendants the sum of P4,977.50 as the amount of the production of Lot 790 from 1941 to December 31, 1950; and 40 cavanos of palay yearly from January 1951 until the same are delivered to the possession of the herein defendants".

For their part, Diamante and his wife filed their own answer which, as reproduced in the record on appeal, reads as follows:

"Come now the defendants Pedro Diamante and Cristina Doctolero in the above entitled case, and in answer to the amended complaint to this Honorable Court most respectfully state:

"1. That the defendants Pedro Diamante and Cristina Doctolero admit the allegation mentioned in paragraphs 1 and 2 of the complaint;

"2. That they have no sufficient knowledge or information to form the belief as to the truth of the material allegation mentioned in paragraphs 3, 4, 5, 6 and 7 of the complaint, and specifically deny the allegations in paragraphs 8, 9, 10, 11, 12, 13 and 14 thereof;

"3. That the defendants Pedro Diamante and Cristina Doctolero are not aware that Lot No. 790 of the Cadastral Survey of Dumangas was ever bought by them from the original registered owners, Jose Descutido and Matea Dolduco, the truth of the matter being that said defendants never bought nor have been in possession of said land even for a single minute of their life.

"4. That said defendants never sold the property aforementioned to Bonifacia Descutido married to Jacinto Baltazar;

"5. That the alleged sale, if any, of the property subject of this litigation from the original registered owners to the defendants herein (Pedro Diamante and Cristina Doctolero) was fraudulently engineered by defendant Jacinto Baltazar, son-in-law of the registered owners and Notary Public Carlos Divinagracia, who is the son-in-law of spouses Pedro Diamante and Cristina Doctolero;

"6. That with the cooperation of the said Jacinto Baltazar and Carlos Divinagracia, the defendants spouses herein were made to sign the alleged document of sale and other transactions relative thereto, if ever they sign at all, of which we were not aware and for which we received no consideration.

"WHEREFORE, it is most respectfully prayed that defendants spouses Pedro Diamante and Cristina Doctolero be absolved from the complaint and Lot No. 790 of the Cadastral Survey of Dumangas, be reconveyed to the plaintiffs."

After a trial on the issues thus raised, the lower court rendered the decision from which only the Baltazars appealed.

In their brief appellants submit five assignments of error, the third of which might be said to raise questions of fact dependent upon the credibility of appellees' witnesses. It appears, however, that in their original notice of appeal appellants stated that they were appealing to the Court of Appeals, but in their petition of October 10, 1956 they asked for leave—which was granted—to change the words "Court of Appeals" to "Supreme Court" for the reason that "the questions herein raised on appeal are all practically questions of law" (Rec. on Ap., pp. 41, 46). They must, therefore, be deemed to have waived their right to raise questions of fact and, as a result, are bound by

the findings of fact made by the lower court. In this connection the lower court found that the following additional facts have been established:

In the year 1937 Pedro Descutido bought a fishpond from Pedro Diamante for P3,000.00, of which he paid P500.00 on the date they entered into the contract, and obligated himself to pay the balance of P2,500.00 later on, the payment to be secured by a mortgage to be executed by Jose Descutido—Pedro's father. It turned out, however, that Jose was made to sign instead the deed of sale Exhibit B. In 1940, in view of Pedro's inability to pay the unpaid balance, he agreed to return the fishpond to Diamante, the P500.00 paid on account of the purchase price to be considered as payment of rentals. Diamante was made to sign a document which he believed to be one cancelling the mortgage which Jose Descutido was supposed to have executed in his favor, but it turned out to be a deed of sale in favor of Bonifacia Descutido, now in the record as Exhibit C. After the execution thereof Diamante delivered the same with the certificate of title and other papers pertaining to the property subject matter of the instrument to Jacinto Baltazar, husband of Bonifacia, who claimed to be the representative of his father-in-law.

The lower court also found that Diamante had not paid any part of the sum of P3,360.00 to Jose Descutido mentioned as consideration in the deed of sale Exhibit B, nor had he received from Bonifacia the sum of P200.00 mentioned as consideration of the sale evidenced by Exhibit C; that he had never been in possession of the property subject matter of the aforesaid deeds of sale; and that he came to know that the document he was made to sign as a cancellation of mortgage was in fact a deed of sale in favor of Bonifacia Descutido only in 1950 when Dámaso Descutido and his brother-in-law Jacinto Baltazar had a dispute over the possession of the property which became the subject of an investigation by the Chief of Police of Dumangas. The lower court further found that Dámaso became aware of the existence of the deeds of sale Exhibits B and C and of the transfer certificate of title in the name of her sister Bonifacia only in 1951 when Jacinto Baltazar attempted to take away the possession of the property from him.

In view of the facts thus found by the lower court, it declared Exhibits B and C to be fraudulent, fictitious and executed without any lawful consideration.

Appellants' claim in the first assignment of error that the present action was already barred when it was commenced on January 3, 1952 is untenable; It having been found by the lower court that the fraud vitiating the contracts in question was discovered by appellees only in 1950 or 1951, it is clear that the action was instituted well within the period of four years from such discovery.

In the second assignment of error appellants contend that appellees had no right to sue for the annulment of Exhibits B and C because they are not parties thereto. True it is that appellees had no part in the execution of said deeds of sale, but it appears that the lower court also found that on April 30, 1944 the spouses Jose Descutido and Matea Dolduco, on the one hand, and their three children (Pedro, Damaso and Bonifacio), on the other, executed the private instrument of partition Exhibit D by virtue of which the property in question—Lot 790—was assigned to Dámaso who had been in possession thereof continuously, openly and adversely from April 30, 1944 up to the date of the decision. Therefore, in his capacity as successor in interest of his parents, Dámaso had the right to sue for the annulment of the aforesaid deeds of sale (Manresa, Spanish Civil Code, vol. 8, p. 373).

With respect to the fourth assignment of error, suffice it to state that it is not true that the lower court held that the private deed of partition dated April 30, 1944 (Exh. D) is superior to the transfer certificate of title issued to Bonifacia Descutido since May 28, 1941. What the court held was, firstly, that said certificate of title should be cancelled and voided because it was issued on the strength of fraudulent and fictitious deeds of sale and, secondly, that by virtue of the deed of partition already mentioned, Dámaso Descutido was entitled to bring the present

action.

Finally, appellants claim that the lower court erred in not declaring appellees in default upon their cross-claim (counterclaim) because the latter never filed an answer thereto. It is true that appellees filed no answer to said pleading, but it is nonetheless true that appellants never asked the lower court to declare them in default. Upon the other hand, the allegations made in the so-called cross-complaint clearly show that appellants' cause of action stated therein was already barred in view of the express allegation to the effect that since the year 1941 appellees had been in possession of the property in question up to the filing of appellants' answer (April 21, 1956), appropriating for themselves all the products harvested therefrom. The last assignment of error is, therefore, clearly without merit.

Wherefore, the decision appealed from is hereby affirmed, without costs.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, and Paredes, JJ., concur.

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