

TEOFILO ORSAL, ET AL., PLAINTIFFS AND APPELLANTS, VS. AURELIO ALISBO, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 13310. November 28, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On February 8, 1956, while Jose Mogat was driving a funeral car belonging to Aurelio Alisbo and his wife, he ran over Teresita Orsal causing her death as a result of which Mogat was prosecuted and convicted of homicide through reckless imprudence in Criminal Case No. 4923 and sentenced to imprisonment for one year and to pay the parents of Teresita P6,000.00 as indemnity and P342.00 as actual damages.

After the decision had become final, execution was issued against Mogat as regards the indemnity of P6,342.00 which was returned unsatisfied because of his insolvency. On April 10, 1957, the spouses Alisbo sold all their properties to Montano Medel, including two lots situated at Bacolod City covered by a Torrens title. So on May 4, 1957, the spouses Orsal, parents of Teresita, brought an action before the Court of First Instance of Negros Occidental against the spouses Alisbo and Montano Medel not only to recover the indemnity of P6,342.00 from the spouses because of their subsidiary liability but to obtain the rescission of the sale made by them of their properties in favor of Medel on the ground that it was made in fraud of creditors.

Defendants in their answer alleged that the Funeraria Alisbo wherein the car driven by Mogat was used no longer belongs to the spouses Alisbo because it was already sold to Medel, defendant Aurelio Alisbo having become merely the manager of the business after its sale to Medel; that defendant spouses sold their properties to Medel for valuable consideration and without any intention to defraud the plaintiffs; that assuming that the spouses are liable subsidiarily for the indemnity awarded in the criminal case, the sale cannot be considered fraudulent under Article 1387 of the new Civil Code because there was no judgment rendered or attachment issued at the time of the sale against them; and that defendant Medel purchased the properties in good faith and for valuable consideration.

No oral evidence was presented either by plaintiffs or defendants for they merely submitted a stipulation of facts through their respective counsel. And on the strength of this stipulation, the court on October 8, 1957, rendered judgment ordering the spouses Alisbo to pay the plaintiffs the sum of P6,342.00, plus costs. The court dismissed the complaint as to defendant Medel because there is no evidence to show that he acted in bad faith or that the sale in his favor was made without consideration.

Plaintiffs brought the case before us on purely questions of law.

It appears from the stipulation of facts that Jose Mogat, the driver, was prosecuted and convicted in Criminal Case No. 4923 in a decision rendered on January 18, 1957 ordering him to indemnify the parents of the deceased in the amount of P6,342.00. This decision was ordered executed on March 6, 1957 but the execution was returned by the sheriff unsatisfied for the reason that Medel was insolvent. Aurelio Alisbo, owner of the car, received in due time a copy of the decision through his counsel, and on April 10, 1957 he sold all the properties belonging to his

business to Montano Medel such that after the sale no other properties were left with him which may be levied upon to satisfy his subsidiary liability.

Article 1381 of the new Civil Code provides that a contract undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them, may be rescinded, while Article 1387 also provides: "Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued."

There is no question that the spouses Alisbo, owners of the car, are subsidiary liable for the indemnity awarded the plaintiffs in the criminal case under Article 103 of the Revised Penal Code and therefore the trial court did not err in ordering them to pay said plaintiffs the amount of P6,342.00 which their driver was ordered to pay in the criminal case. It cannot also be disputed that said spouses acted in bad faith or to defraud their creditors when they disposed of all their properties in favor of Montano Medel knowing full well that their driver has already been ordered to pay an indemnity of P6,342.00 for which under the law they are subsidiarily liable. It is true that strictly speaking they are not considered parties in the criminal case where the award was made, but virtually they are as held by this Court in the case of *Miranda vs. Malate Garage & Taxicab, Inc.*, Off. Gaz., No. 11, p. 5145, July 31, 1956. In that case, "we said: "It is true that an employer, strictly speaking, is not a party in a criminal case instituted against his employee but in substance and effect he is considering the subsidiary liability imposed upon him by law." And in another case, we made this strong pronouncement:

"After very careful reflection, we have arrived at the opinion that the judgment of conviction, in the absence of any collusion between the defendant and the offended party, should bind the person subsidiarily liable. * * * In other words, the employer becomes ipso facto subsidiarily liable upon his driver's conviction and upon proof of the latter's insolvency, in the same way that acquittal wipes out not only the employee's primary civil liability but also his employer's subsidiary liability for such criminal negligence." (*Martinez vs. Barredo*, 45 Off. Gaz., No. 11, p. 4922)

The question that now arises is: Is there any evidence to show that Montano Medel has acted with complicity or with knowledge of the fraudulent intent of the spouses Alisbo when they sold to him all their properties under the circumstances? Can he be considered as a purchaser in bad faith?

It is regrettable that no oral evidence was presented by either party, especially by plaintiffs relative to the character in which Montano Medel acquired the property in question, while on the other hand the stipulation of facts the parties have submitted contains very meager information on the matter. Nevertheless, there are in this case circumstances or indications which, in-line with a well-known ruling laid down by this Court in a similar case, may be considered as badges of fraud which may affect the validity of the transaction not only as regards the vendor but also the vendee. Thus, in *Oria vs. McMicking*, 21 Phil., 24S, this Court said:

"In the consideration of whether or not certain transfers were fraudulent, courts have laid down certain rules by which the fraudulent character of the transaction may be determined. The following are some of the circumstances attending sales which have been denominated by the courts badges of fraud:

- The fact that the consideration of the conveyances is fictitious or is inadequate.
- A transfer made by a debtor after suit has been begun and while it is pending against him.
- A sale upon credit by an insolvent debtor.
- Evidence of large indebtedness or complete insolvency.
- The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or greatly embarrassed financially.

- The fact that the transfer is made between father and son, when there are present other of the above circumstances.
- The failure of the vendee to take exclusive possession of all the property."

At least three of the circumstances above indicated as determinative of the existence of fraud may be said to be existing in the instant case, to wit: (1) the transfer of the properties was made by the spouses Alisbo after knowing that a judgment of indemnity was rendered against their driver who is insolvent for which they are subsidiarily liable; (2) defendant spouses transferred all their properties without leaving anything behind which may be levied upon to satisfy the judgment of indemnity; and (3) according to the admission of defendants themselves, after the sale of the funeral business to Medel, Aurelio Alisbo continued to be the manager of the business. This is an indication that the transfer is a mere scheme to circumvent the civil liability of the spouses more so when there is no clear evidence that the consideration of the sale has been actually paid.

Considering our ruling in *Abaya vs. Enriquez*, G. R. No. L-8988, May 17, 1957, where the sale was made even after the judgment has been rendered against the vendor, that the transaction cannot be rescinded on the ground of fraud unless the complicity of the buyer in the fraud imputed to the vendor is established by other means than the presumption of fraud under Article 1387, and having in mind on the other hand that there is no clear proof of such direct complicity other than the suspicious circumstances we have pointed out above, which constitute badges of fraud incriminatory to the purchaser, it is the sense of this Court to remand this case to the trial court in order to give the parties an opportunity to present evidence relative to this matter so that no undue harshness may be committed against the purchaser if the sale be now rescinded merely on the strength of those circumstances.

Wherefore, the decision appealed from is modified in the sense that that portion which dismisses the complaint as to defendant Montano Medel for lack of sufficient proof as regards the character in which he bought the properties in question, is set aside. The rest of the decision is affirmed, and the case is remanded to the lower court for further proceedings, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.

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