

JULIAN BOÑAGA, PLAINTIFF AND APPELLANT VS. ROBERTO SOLER, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 15717. June 30, 1961*

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-15717/>**REYES, J.B.L., J.:**

From the order dated April 30, 1959 dismissing the complaint in Civil Case No. 2123 of the Court of First Instance of Camarines Sur, Julian Boñaga, Administrator of the estate of the deceased spouses Alejandro Ros and Maria Isaac, appeals directly to this Court.

It appears that following the death of the spouses Alejandro Ros and Maria Isaac in 1935 and 1940, respectively, intestate proceedings for the settlement of their estate were commenced in the Court of First Instance of Camarines Sur, Special Proceeding No. 7194 of that court. In time, Juan Garza was appointed administrator of the estate. Upon application, Juan Garza was authorized by the probate court on August 29, 1944 (Annex "X") to sell certain parcels of land pertaining to the estate. Pursuant thereto, Garza sold said parcels of land on August 30, 1944 in favor of appellee Roberto Soler (Annex "A"), which sale was subsequently approved on October 9, 1944 (Annex "B"). On October 14, 1944, the heirs of the deceased wife, Maria Isaac, after having been declared as such (Annex "B"), sold all their shares and interest over certain parcels of land in favor of appellee Soler (Annex "C").

Sometime during the war, the records of Special Proceeding No. 7194 were destroyed. Upon reconstitution of these records by court order, Julian Boñaga was issued letters of administration on September 6, 1951. On May 9, 1952, the instant action was filed by Boñaga in his capacity as administrator, seeking to annul the sales of August 30, 1944 and October 14, 1944 in favor of Roberto Soler on the ground that said transactions were fraudulent, made without notice to the heirs of Alejandro Ros of the hearing of the application to sell, and that the sales were not beneficial to the heirs for various reasons, and praying for reconveyance of the lands sold, since they were fraudulently registered under Act 496 in the name of Roberto Soler on December 17, 1949 and on January 2, 1952, and for recovery of damages.

A motion to dismiss interposed by Soler on August 29, 1952, alleging lack of legal capacity to sue and failure to state a cause of action as grounds, was denied on September 17, 1952. Soler then filed his answer and counter-claim on September 26, 1952. On June 11, 1953, Soler filed his second motion to dismiss, raising the same grounds contained in the first motion; this was again denied on August 29, 1953. On July 18, 1955, Soler filed his third motion to dismiss, for the first time raising estoppel, prescription of the action, and non-inclusion of necessary parties, as grounds. Upon an order for plaintiff to include the vendors in the sales as parties to the case, the court, on August 22, 1955, denied the motion to dismiss, but apparently without resolving the issues of estoppel and prescription. On February 9, 1959, Soler sought a resolution of his third motion to dismiss. On April 30, 1959, and over plaintiff's objections, the court ordered the dismissal of the action, sustaining the contention that as administrator of the estate succeeding Juan Garza, plaintiff was estopped to file an action to annul the sales, and, moreover, that the action had prescribed. Hence, this appeal.

The sale on August 30, 1944 appears to be of 21 parcels of abaca, coconut, forest and pasture lands, covering an aggregate area of more than 1,001 hectares for the lump sum of P142,800.00, Japanese currency (Annex "A"). Plaintiff-appellant alleges (and the record nowhere indicates the contrary), that these lands comprised almost the entire estate. Nothing in the record would show whether, as required by Rule 90, sections 4 and 7, the application for authority to sell was set for hearing, or that the court ever caused notice thereof to be issued to the heirs of Alejandro Ros. Incidentally, these heirs seem not to have gotten any part of the purchase price since they were then allegedly in Spain. Yet, in the order of declaration of heirs of the wife and approving the sale to Soler (Annex "B"), the declaration of the heirs of the husband Alejandro Ros was expressly held in abeyance, indicating a recognition of their existence. Appellees maintain that the sale was made for the purpose of paying debts, but this, at least, is controversial. Appellant asserts that the total outstanding debts of the estate at the time of the sale amounted to only P4,641.48, a relatively meager sum compared to the large tracts of land sold.

We think the lower court erred in dismissing the action without a hearing on the merits. A sale of properties of an estate as beneficial to the interested parties, under Sections 4 and 7, Rule 90, must comply with the requisites therein provided, which are mandatory. Among these requisites, the fixing of the time and place of hearing for an application to sell, and the notice thereof to the heirs, are essential; and without them, the authority to sell, the sale itself, and the order approving it, would be null and void ab initio (*Arcilla vs. David*, 77 Phil., 718; *Gabriel, et al. vs. Encarnacion, et al.*, 94 Phil., 917; 50 Off. Gaz., [6] 2440, and others cited therein). Rule 90, Section 4, does not distinguish between heirs residing in and residing outside the Philippines. Therefore, its requirements should apply regardless of the place of residence required to be notified under said rule.

The contention that the sale was made under Section 2, Rule 90 (wherein notice is required only to those heirs, etc., residing in the Philippines), is not substantiated by the record. Neither the deed of sale on August 30, 1944, nor the orders issued by the probate court in connection therewith, show whether, as required by said Section 2, the personal properties were insufficient to pay the debts and expenses of administration. There is not even a showing, to start with, that the sale was made for the purpose of paying debts or expenses of administration (or legacies), a condition which circumscribes the applicability of that section. On the face of the reamended complaint at any rate, it does not appear that the contested sale was one under section 2 of Rule 90; and the same can not be invoked to sustain the motion to dismiss. Without reception of further evidence to determine whether the requisites of the applicable provisions of the Rules had been followed, the dismissal of the action was erroneous and improvident. Plaintiff should at least have been given a chance to prove his case.

As to the plea of estoppel, the rule is that a decedent's representative is not estopped to question the validity of his own void deed purporting to convey land (*Chase vs. Cartwright*, 22 Am. St. Rep. 207, and cases cited; *Meeks vs. Olpherts*, 25 L. Ed. [U. S.] 735; 21 Am. Jur. 756, s 667); and if this be true of the administrator as to his own acts, a fortiori, his successor can not be estopped to question the acts of his predecessor that are not conformable to law (cf. *Walker vs. Portland Savings Bank*, LRA 1915 E, p. 840; 21 Am. Jur. p. 820 s. 785).

We also find untenable the claim of prescription of the action. Actions to declare the inexistence of contracts do not prescribe (Art. 1410, N.C.C.), a principle applied even before the effectivity of the new Civil Code (*Eugenio, et al. vs. Perdido, et al.*, 97 Phil., 41; citing *Tipton vs. Velasco*, 6 Phil., 67 and *Sabas vs. Garma*, 66 Phil., 471). The sale on October 14, 1944 by the heirs of Maria Isaac of whatever interests or participation they might have in the four parcels of land covered by the deed may be valid (*De Guanzon vs. Jalandoni and Ramos*, 93 Phil., 1089; 49 Off. Gaz., [12] 5435; *De Jesus vs. Daza*, 77 Phil., 152; *Cea vs. C.A.*, 84 Phil., 798), yet it could not have effected an immediate and absolute transfer of title to appellee Soler over any part of the parcels of land themselves, much less over their entirety. Necessarily, the sale was subject to the result of the administration proceedings, a contingency upon which the deed of sale itself expressly founded the transaction. By its terms, not

only was the existence of possible heirs of Alejandro Ros recognized, but it also provided for the contingency that said heirs could yet be declared or adjudicated in the administration proceedings as the sole owners of the four parcels being sold.

The subsequent registration of those lands covered by the sale of October 14, 1944 and that of August 30, 1944, allegedly in the exclusive name of appellee Roberto Soler, gave rise to an action for reconveyance based on trust. Assuming that this case is one of constructive trust, and under the theory that actions to recover property held in constructive trust would prescribe, there is here no showing as to when the alleged fraud was discovered (Article 1391, N.C.C.). Hence, it cannot be said that prescription has tolled the action.

Finally, neither in the first motion to dismiss on August 29, 1952; nor in the Answer on September 26, 1952; nor in the second motion to dismiss on June 11, 1953, was the defense of prescription raised. From the time the complaint was filed on May 9, 1952 to the third motion to dismiss on July 18, 1955, was a period of more than three (3) years in which it took Soler just to raise prescription as an issue. Not having been set up in the two (2) motions to dismiss or in the answer as affirmative defense, it is deemed to have been waived (Rule 9, Sec. 10; Rule 26, Sec. 8; *Pascua vs. Capuyoc*, 104 Phil., 837; 57 Off. Gaz., [22] 4084). Obviously, prescription in this case does not appear on the face of the pleadings, where failure to plead it would not have constituted a waiver (*Chua Lamko vs. Dioso, et al.*, 97 Phil., 821). On the contrary, it would appear to raise an issue of fact not contained in the pleadings, i.e., the time the fraud was discovered. And this, furthermore, necessitates reception of evidence.

Wherefore, the appealed order dismissing the complaint in Civil Case No. 2123 of the court below is reversed, and the case remanded, with instructions to proceed in accordance with this decision. Costs against appellee Roberto Soler.

Bengzon, C.J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.