

**CONCEPCION FELIX VDA. DE RODRIGUEZ, PLAINTIFF-APPELLANT,
VS. GERONIMO RODRIGUEZ, ET AL., DEFENDANTS-APPELLEES.***G.R. No. 23002. July 31, 1967*

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

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This is an appeal by Concepcion Felix Vda. de Rodriguez from the decision of the Court of First Instance of Bulacan in Civil Case No. 2565, which she commenced on May 28, 1962, to secure declaration of nullity of two contracts executed on January 24, 1934 and for recovery of certain properties.

The facts of this case may be briefly stated as follows:

Concepcion Felix, widow of the late Don Felipe Calderon and with whom she had one living child, Concepcion Calderon, contracted a second marriage on June 20, 1929, with Domingo Rodriguez, a widower with four children by a previous marriage, named Geronimo, Esmeragdo, Jose and Mauricio, all surnamed Rodriguez. There was no issue in this second marriage.

Prior to her marriage to Rodriguez, Concepcion Felix was the registered owner of 2 fishponds located in the barrio of Babañgad, municipality of Bulacan, Bulacan province, with a total area of 557,711 square meters covered by OCT Nos. 605 and 807. Under date of January 24, 1934, Concepcion Felix appeared to have executed a deed of sale conveying ownership of the aforesaid properties to her daughter, Concepcion Calderon, for the sum of P2,500.00, which the latter in turn appeared to have transferred to her mother and stepfather by means of a document dated January 27, 1934. Both deeds, notarized by Notary Public Jose D. Mendoza, were registered in the office of the Register of Deeds of Bulacan on January 29, 1934, as a consequence of which, the original titles were cancelled and TCT Nos. 13815 and 13816 were issued in the names of the spouses Domingo Rodriguez and Concepcion Felix.

On March 6, 1953, Domingo Rodriguez died intestate, survived by the widow, Concepcion Felix, his children Geronimo, Esmeragdo and Mauricio and grandchildren Oscar, Juan and Ana, surnamed Rodriguez, children of a son, Jose, who had predeceased him.

On March 16, 1953, the above-named widow, children and grandchildren of the deceased entered into an extrajudicial settlement of his (Domingo's) estate, consisting of one-half of the properties allegedly belonging to the conjugal partnership. Among the properties listed as conjugal were the two parcels of land in Bulacan, Bulacan, which, together with another piece of property, were divided among the heirs in this manner:

"WHEREAS, the parties have furthermore agreed that the fishpond covered by TCT Nos. 13815, 13816 and 24109 of the Office of the Register of Deeds of Bulacan, containing an area of 557,971 sq. m., which is likewise the conjugal property of the deceased and his surviving spouse; 1/2 of the same or 278,985.5 sq. m. belongs to said Concepcion Felix Vda. de Rodriguez, as her share in the conjugal property; and 3/4 of the remaining half or 209,239.125 sq. m. are transferred in full ownership to Geronimo Rodriguez, Esmeragdo Rodriguez and Mauricio Rodriguez, share alike, while the other 1/4 or 69,746.375 sq. m. of the said remaining

half goes in equal shares to Oscar Rodriguez, Juan Rodriguez and Ana Rodriguez."

As a result of this partition, TCT Nos. 13815 and 13816 were cancelled and TCT Nos. T-11431 and T-14432 were issued in the names of the said heirs of the deceased.

On March 23, 1953, in a power of attorney executed by the children and grandchildren of Domingo Rodriguez, Concepcion Felix Vda. de Rodriguez was named their attorney-in-fact, authorized to manage their shares in the fishponds (Exh. 4).

On July 2, 1954, the heirs ended their co-ownership by executing a deed of partition, dividing and segregating their respective shares in the properties, pursuant to a consolidation and subdivision plan (PCS-3702), in accordance with which, Concepcion Felix Vda. de Rodriguez obtained TCT No. T-12910, for the portion pertaining to her (Exh. L), while TCT No. T-12911 was issued to the other heirs, for their shares. This latter title was subsequently replaced by TCT No. 16660 (Exh. M).

On October 12, 1954, the Rodriguez children executed another document granting unto the widow lifetime usufruct over one-third of the fishpond which they received as hereditary share in the estate of Domingo Rodriguez, which grant was accepted by Concepcion Felix Vda. de Rodriguez.

Then, in a contract dated December 15, 1961, the widow appeared to have leased from the Rodriguez children and grandchildren the fishpond (covered by TCT No. 16660) for a period of 5 years commencing August 16, 1962, for an annual rental of P7, 161.37 (Exh. 5).

At about this time, it seemed that the relationship between the widow and her stepchildren had turned for the worse. Thus, when she failed to deliver to them the balance of the earnings of the fishponds, in the amount of P3,000.00, her stepchildren endorsed the matter to their lawyer who, on May 16, 1962, sent a letter of demand to the widow for payment thereof. On May 28, 1962, Concepcion Felix Vda. de Rodriguez filed the present action in the Court of First Instance of Manila naming as defendants, Geronimo Rodriguez, Esmeraldo Rodriguez, Oscar Rodriguez, Concepcion Bautista vda. de Rodriguez, as guardian of the minors Juan and Ana Rodriguez, and Antonio Diaz de Rivera and Renato Diaz de Rivera, as guardians of the minors Marfa Ana, Mercedes, Margarita, Mauricio, Jr. and Domingo (Children of Mauricio Rodriguez who had also died).

The action to declare null and void the deeds of transfer of plaintiff's properties to the conjugal partnership was based on the alleged employment or exercise by plaintiff's deceased husband of force and pressure on her; that the conveyances of the properties - from plaintiff to her daughter and then to the conjugal partnership of plaintiff and her husband - are both without consideration; that plaintiff participated in the extrajudicial settlement of estate (of the deceased Domingo Rodriguez) and in other subsequent deeds or instruments involving the properties in dispute, on the false assumption that the said properties had become conjugal by reason of the execution of the deeds of transfer in 1934; that laboring under the same false assumption, plaintiff delivered to defendants, as income of the properties from 1953 to 1961, the total amount of P56,976.58. As alternative cause of action, she contended that she would claim for her share, as surviving widow, of 1/5 of the properties in controversy, should such properties be adjudicated as belonging to the conjugal partnership. Thus, plaintiff prayed that the deeds of transfer mentioned in the complaint be declared fictitious and simulated; that the "Extrajudicial Settlement of Estate" be also declared null and void; that TCT No. 16660 of the Registry of Deeds of Bulacan be cancelled and another one be issued in the name of plaintiff, Concepcion Felix Vda. de Felix; that defendants be ordered to pay to plaintiff the sum of P56,976.58, with legal interest thereon from the date of the filing of the complaint, and for appropriate relief in connection with her alternative cause of action.

In their separate answers, defendants not only denied the material allegations of the complaint, but also set up as

affirmative de-fenses lack of cause of action, prescription, estoppel and laches. As counterclaim, they asked for payment by the plaintiff of the un-paid balance of the earnings of the land up to August 15, 1962 in the sum of P 3,000.00 for attorney's fees and expenses of litigation.

On October 5, 1963, judgment was rendered for the defendants. In upholding the validity of the contracts, the court found that al-though the two documents, Exhibits A and B, were executed for the purpose of converting plaintiff's separate properties into conjugal assets of the marriage with Domingo Rodriguez, the consent of the parties thereto was voluntary, contrary to the allegations of plain-tiff and her witness. The court also ruled that having taken part in the questioned transactions, plaintiff was not the proper party to plead lack of consideration to avoid the transfers; that contracts without consideration are not inexistent, but are only voidable, following the ruling in the case of Concepcion vs. Sta. Ana (87 Phil. 787); that there was ratification or confirmation by the plaintiff of the transfer of her property, by her execution (with the other heirs) of the extrajudicial settlement of estate; that being a volun-tary party to the contracts, Exhibits A and B, plaintiff cannot re-cover the properties she gave thereunder. Plaintiff's alternative cause of action was also rejected on the ground that action for res-cission of the deed of extrajudicial settlement should have been filed within 4 years from its execution (on March 16, 1953).

From the decision of the Court of First Instance, plaintiff duly appealed to this Court, insisting that the conveyances in issue were obtained through duress, and were inexistent, being simulated and without consideration.

We agree with the trial Court that the evidence is not convincing that the contracts of transfer from Concepcion Felix to her daughter, and from the latter to her mother and stepfather were executed through violence or intimidation. The charge is predicat-ed solely upon the improbable and biased testimony of appellant's daughter, Concepcion C. Martelino, whom the trial court refused to believe, considering that her version of violence and harass-ment was contradicted by Bartolome Gualberto, who had lived with the Rodriguez spouses from 1917 to 1953, and by the improbability of Rodriguez threatening his stepdaughter in front of the Notary Public who ratified her signature. Furthermore, as pointed out by the appealed decision, the charge of duress should be treated with caution considering that Rodriguez had already died when the suit was brought, for duress, like fraud, is not to be lightly laid at the door of men already dead. (cf. Prevost vs. Gratz, 6 Wheat. [U.S] 481, 498; Sinco vs. Longa, 51 Phil. 507).

What is more decisive is that duress being merely a vice or defect of consent, an action based upon it must be brought within four years after it has ceased;^[1] and the present action was insti-tuted only in 1962, twenty-eight (28) years after the intimidation is claimed to have occurred, and no less than nine (9) years after the supposed culprit died (1953). On top of it, appellant entered into a series of subsequent transactions with appellees that con-firmed the contracts that she now tries to set aside. Therefore, this cause of action is clearly barred.

Appellant's main stand in attacking the conveyances in ques-tion is that they are simulated or fictitious, and inexistent for lack of consideration. We shall examine each purported defect separately.

The charge of simulation is untenable, for the characteristic of simulation is the fact that the apparent contract is not really de-sired or intended to produce legal effects or in any way alter the juridical situation of the parties. Thus, where a person, in order to place his property beyond the reach of his creditors, simulates a transfer of it to another, he does not really intend to divest him-self of his title and control of the property; hence, the deed of transfer is but a sham. But appellant contends that the sale by her to her daughter, and the subsequent sale by the latter to appel-lant and her husband, the late Domingo Rodriguez, were done for the purpose of converting the property from paraphernal to conjugal, thereby vesting a half interest in Rodriguez, and evading the pro-hibition

against donations from one spouse to another during coverture (Civil Code of 1889, Art. 1334). If this is true, then the appellant and her daughter must have intended the two conveyances to be real and effective; for appellant could not intend to keep the ownership of the fishponds and at the same time vest half of them in her husband. The two contracts of sale then could not have been simulated, but were real and intended to be fully operative, being the means to achieve the result desired.

Nor does the intention of the parties to circumvent by these contracts the law against donations between spouses make them simulated ones.

Ferrara, in his classic book, "La Simulacion de los Negocios Juridicos" (Sp. trans. 1926), pp. 95, 105, clearly explains the difference between simulated transactions and transactions in fraudem legis:

"Otra figura que debe distinguirse de la simulacion es el *fraus legis*. Tambien aqui se da una gran confusion que persiste aun en la jurisprudencia, apegada tenazmente a antiguos errores. Se debe a Bahr el haber defendido con vigor la antitesis teorica que existe entre negocio fingido y negocio fraudulento, y haber atacado la doctrina comun que habia una mescolanza con los dos conceptos.

"Se confunde – dice (2) –, el negocio in fraudem legis con el negocio simulado, aunque la naturaleza de ambos sea totalmente diversa. El negocio fraudulento no es, en absoluto, un negocio aparente. Es perfectamente serio: se quiere real-mente. Es mas, se quiere tal como se ha realizado, con todas las consecuencias que corresponden a la forma juridica elegida. Muchas veces, estas consecuencias son incomodas para una u otra de las partes, aunque serian mucho mas incomodas las consecuencias que llevaria consigo el acto prohibido.

xxx xxx xxx

"El resultado de las precedentes investigaciones es el siguiente: el negocio simulado quiere producir una apariencia; el negocio fraudulento, una realidad; los negocios simulados son ficticios, no queridos; los negocios in fraudem son serios, reales, y realizados en tal forma por las partes para conseguir un resultado prohibido: la simulacion nunca es un medio para eludir la ley, sino para ocultar su violacion. La transgresion del contenido verbal e inmediato de la norma se encubre bajo el manto de un negocio licito, lo cual no altera el caracter del *contra legem agere*. Tan verdad es, que si se ha redactado una contraescritura que documenta y declara la verdadera naturaleza del negocio realizado, no queda mas que aplicar pure y simple-mente la prohibicion.

Tambien el fraude quiere perjudicar la ley, pero emplea para ello medios diversos y sigue distintos caminos. No oculta el acto exterior, sino que lo deja claro y visible, tratando de huir sesgadamente de la aplicacion de la ley merced a una artistica y sabia combinacion de varios medios juridicos no reprobados."

Appellant invokes our decision in *Vazquez vs. Porta*, 98 Phil. 490, but to no purpose. The mortgage and foreclosure sale involved in that case were typical simulations, merely apparent but not really intended to produce legal effects, as proved by the Court's finding that the alleged creditor and buyer at the foreclosure sale "Porta himself ostensibly acknowledged by his inertia in allowing the doctor (alleged mortgagor debtor) to exercise dominical power thereon without any protest on his part." (cas cit. p. 495). Not only this, but the mortgagor's wife, when her husband died, "found among his papers Portal's cancellation of the mortgage in his favor and the draft of the complaint for foreclosure." Plainly, the precedent cited is here inapplicable.

Were the two conveyances from appellant to her daughter and from the latter to the spouses Rodriguez void ab initio or inexistent for lack of consideration? We do not find them to be so. In the first transaction, the price of P2,500.00 is recited in the deed itself (Exh. A); in the second (Exh. B), the consideration set forth is P3,000.00. Now, Article 1274 of the Civil Code of 1889 (in force when the deeds were executed) provided that --

"In onerous contracts the causa is understood to be, for each contracting party, the prestation or promise of a

thing or service by the other." (Emphasis supplied.)

Since in each conveyance the buyer became obligated to pay a definite price in money, such undertakings constituted in themselves actual causa or consideration for the conveyance of the fishponds. That the prices were not paid (assuming ad arriendo that Concepcion Martelino's testimony to this effect is true) does not make the sales inexistent for want of causa. As ruled in *Enriquez de la Cavada vs. Diaz*, 37 Phil. 982, "the consideration (causa) need not pass from one (party) to the other at the time the contract is entered into. x x x The consideration need not be paid at the time of the promise. The one promise is a consideration for the other." '

What would invalidate the conveyances now under scrutiny is the fact that they were resorted to in order to circumvent the legal prohibition against donations between spouses contained in Article 1334, paragraph 1, of the Civil Code of 1889, then prevailing. That illegal purpose tainted the contracts, for as held by the Spanish Tri-bunal Supremo in its decision of 2 April 1941,

"ha de ser reputado ineficaz, por exigencias ineludibles del caracter social y moral del Derecho, todo contrato que persiga un fin ilicito o inmoral, sea cualquiera el medio empleado por los contratantes para lograr esa finalidad, no justificada por un interes digno de ser socialmente protegido."

The illicit purpose then becomes illegal causa within the terms of the old Civil Code, for as declared by the same Spanish Court in its de-cision of 14 December 1940 –

"toda vez que lo que caracteriza fundamentalmente la ilicitud de la causa es la lesion de un interns general juridico o moral,"

a ruling reiterated in the decision of 2 April 1941 when the Court ruled:

"El concepto de la causa ilicita, tal como la desenvuelve y aplicca con gran amplitud y flexibilidad ia doctrine mo-derna permite cobijar, no solo las convenciones ilicitas por razon de su objeto o de su motivo x x x sino tambien multiples convenciones que no encerrando en sf ningun elemento de directa antijuricidad son ilicitas por el matiz inmoral que reviste la operacion en su conjunto . . . "

Unfortunately for herein appellant, in contracts invalidated by illegal subject matter or illegal causa, Articles 1305 and 1306 of the Civil Code then in force apply rigorously the rule in *pari delicto non oritur actio*, denying all recovery to the guilty parties inter se. And appellant is clearly as guilty as her husband in the attempt to evade the legal interdiction of Article 1334 of the Code, already cited. Wherefore, her present action to reivindicate the conveyed prop-erties was correctly repulsed by the Court below.

"ART. 1306. If the act which constitutes the illicit consideration is neither a crime nor a misdemeanor, the following rules shall be observed:

1. When both parties are guilty, neither of them can recover what he may have given by virtue of the contract, or enforce the performance of the undertaking of the other party;

x x x."

That Article 1306 applies to cases where the nullity arises from the illegality of the consideration of the purpose of the contract was expressly recognized by this Supreme Court in *Gustilo vs. Maravilla*, 48 Phil. 449-450.[2]

Finally, it cannot be denied that plaintiff-appellant had knowl-edge of the nullity of the contract for the transfer of her properties in 1934, because she was even a party thereto. And yet, her pre-sent action was filed only on May 28, 1962 and after the breaking up of friendly relations between her and defendants-appellees. Appel-lant's inaction to enforce her right, for 28 years, cannot be justified by the lame excuse that she assumed that the transfer was valid. Knowledge of the effect of that transaction would have been obtained by the exercise of diligence.

Ignorance which is the effect of in-excusable negligence, it has been said, is no excuse for laches. (Go Chi Gun, etc., et al. vs. Co Cho, et al., G. R. No. L-5208, Feb. 28, 1955). Even assuming for the sake of argument that appellant held her peace, during the lifetime of her husband, out of legitimate fear for her life, there is no justification for her failure to bring the proper action after his death in 1953. Instead, she entered into a series of agreements with herein appellees, the children of her husband by a prior marriage, of partition, usufruct and lease of their share in the fishponds, transactions that necessarily assumed that Rodriguez had acquired one-half of the litigated fishponds. In the circumstances, appellant's cause has become a stale demand and her conduct placed her in estoppel to question the validity of the transfer of her properties. (Manila, et al. vs. Galvan, et al., G. R. No. L-23507, May 24, 1967; Perez vs. Herranz, 7 Phil. 695-696).

In view of the foregoing, the decision appealed from is affirmed. Costs against appellant Concepcion Felix Vda. de Rodriguez.

SO ORDERED.

Makalintal, Bengzon, JP, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., on official leave, did not take part.

[1] Article 1301 of the Civil Code of 1889, in force when the assailed contracts were executed (1934).

[2] See also Liguez vs. Court of Appeals, 102 Phil. 581-582; Perez vs. Herranz, 7 Phil. 695.

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