

MACARIA SOLIS, PLAINTIFF AND APPELLANT, VS. CHUA PUA HERMANOS AND CARLOS ILUSTRE, DEFENDANTS AND APPELLEES.*G.R. No. 27054. September 09, 1927*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of the Province of Batangas by Macaria Solis against Chua Pua Hermanos and Carlos Ilustre, the latter in the character of sheriff, for the purpose of annulling an attachment levied by the sheriff, at the instance of his codefendants, Chua Pua Hermanos, upon a house and lot in the town of Lipa, Batangas, and described in the second paragraph of the allegations of the complaint, and to recover the sum of P20,000 as damages for the improper levy of said attachment upon the property. To this complaint the defendant Ilustre put in an answer, admitting that, in his official capacity, he had levied an attachment upon the property described; while Chua Pua Hermanos answered with a general denial, special defense, and counterclaim, in which they asserted that the deed under which the plaintiff claimed was simulated and fictitious and prayed that the court should so declare and that the attachment levied upon the property should be continued in force. Upon hearing the cause the trial court found that the deed of conveyance of February 6, 1921, executed by Jose H. Katigbak in favor of Macaria Solis and Pablo S. Katigbak was simulated and fictitious, and that it had been executed for the purpose of hindering and delaying the creditors of Jose H. Katigbak. His Honor therefore absolved the defendants from the complaint, with costs; and from this judgment the plaintiff appealed.

The facts appearing of record, or found by the trial court, are in substance these: The property with which the litigation is concerned consists of a lot in the town of Lipa, bounded on the north by properties of Latorre brothers, on the east by Sikatuna Street, on the south by the provincial road from Lipa to Malvar, and on the west by a lot belonging to Teresa Solis, together with a house of strong materials, with galvanized iron roof and stone wall, located thereon. This property formerly belonged to Justo Reyes and his wife Maria Laygo, who by notarial act executed on December 23, 1918, conveyed the same to Jose H. Katigbak and his sister Mercedes Katigbak for the purported consideration of P10,600. On February 6, 1921, Jose H. Katigbak executed a conveyance, which he acknowledged on the next day before a notary public, purporting to convey the same house and lot to Macaria Solis and Pablo S. Katigbak, for the purported consideration of P40,000. Macaria Solis is an aunt of Jose H. Katigbak, while Pablo S. Katigbak is his brother; and the house in question is the common abode of both Macaria Solis and Jose H. Katigbak. Pablo S. Katigbak was in America when this case was tried in the lower court; but when in the Philippines, he resides in the same place.

Nearly a year after the conveyance last above-mentioned had been executed, Chua Pua Hermanos instituted a civil action in the Court of First Instance of Batangas for the purpose of recovering from Jose H. Katigbak a sum of money; and in connection with said action the plaintiff caused an attachment to be levied upon the house and lot mentioned as the property of Jose H. Katigbak. Thereupon Macaria Solis put in a third party claim; but Chua Pua Hermanos indemnified the sheriff, and the sheriff maintained his levy. Macaria Solis then instituted the present

action to secure the annulment of the attachment, with the result stated in the opening paragraph of this opinion.

Upon examining the proof we are of the opinion that the finding of the trial court to the effect that Katigbak's deed of February 6, 1921, was simulated and fictitious in the sense that Macaria Solis in all probability did not pay the consideration of P40,000 stated therein, is well founded; but the court's declaration that said conveyance had been made in fraud of creditors is lacking in legal basis. In this connection we note that there is no proof to the effect that Chua Pua Hermanos was a creditor of Jose H. Katigbak at the time the conveyance was executed. All that is known here is that Chua Pua Hermanos had instituted an action against Katigbak to recover a sum of money,—an action begun long after the questioned instrument was executed,—and there is no proof showing that the debt from Katigbak to Chua Pua Hermanos had been contracted prior to the execution of said deed. The mere fact that an action had been instituted by Chua Pua Hermanos and that, at the instance of the plaintiff in said action, an attachment had been levied upon the property described in complaint, does not dispense with the necessity for proof in the present action showing that Chua Pua Hermanos was in fact a creditor of Katigbak at the time the conveyance was made. It must be remembered that even a voluntary conveyance, without any consideration whatever, is good as among the parties; and such an instrument cannot be declared to be fraudulent as against creditors in the absence of proof that there was a creditor who could be defrauded by the conveyance. (27 C. J., 470.)

It is true that, under the first paragraph of article 1297 of the Civil Code, a contract by virtue of which the debtor gratuitously disposes of property is presumed to be made in fraud of creditors. Nevertheless, this provision assumes the existence of creditors and this must be proved as one of the bases of the judicial pronouncement of nullity. "It is also true that, under the second paragraph of the same article, an alienation by any person against whom a writ of attachment had been issued is also presumed fraudulent; but this provision also rests upon the assumption of the existence of creditors to be defrauded. Moreover, it must be remembered that before a conveyance can be declared fraudulent as against creditors, it must appear that the debtor had no other sufficient means to which creditors might have recourse for the collection of their claims. The action for the rescission of a conveyance as in fraud of creditors is essentially subsidiary. (Art. 1294, C. C.) In the case before us there is no proof that Chua Pua Hermanos were, or are, really creditors of Jose H. Katigbak, nor is there any proof that Katigbak lacked other, means to satisfy them. The anomaly here presented arose, no doubt, from the circumstance that the plaintiff's third party claim was interposed in the pending attachment case, and the lower court doubtless took notice of the findings in the attachment case. We may assume, therefore, that it was a mere oversight that the record in the attachment case was not introduced in evidence in this case.

It results that the judgment appealed from must be reversed, and the cause will be remanded for a new trial, in order to give Chua Pua Hermanos an opportunity to supply the defects in the record, if they should see fit to continue the contest.

We note that, by their cross-complaint, Chua Pua Hermanos seek to obtain the rescission or annulment of the deed under which the plaintiff Macaria Solis claims; and the relief given, in the lower court was really in response to this cross-complaint. Owing to the turn thus given to the case, the majority of the members of the court participating in this decision are of the opinion that Jose H. Katigbak should be brought in as a party defendant to the defendants' cross-complaint, as is usually required in an action for the rescission or nullity of contract; and it is so ordered.

The judgment appealed from is accordingly reversed and the cause remanded for further proceedings in conformity with this opinion. So ordered, without special pronouncement as to costs.

Avanceña, C. J., Johnson, Malcolm, Villamor, Johns, and Romualdez, JJ., concur.

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