

AGRIPINA GALLION, PLAINTIFF AND APPELLEE, VS. NARCISO L. GAYARES ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 29503. March 23, 1929*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Occidental Negros by the plaintiff, Agripina Gallion, against the defendants, Paz Nava, her husband, Narciso L. Gayares, and Jose Millarez, register of deeds of said province, for the purpose (1) of annulling a document of sale, executed by the deceased husband of the plaintiff, purporting to convey lot No. 804 of the cadastral survey of Isabela, in said province, to the defendant Paz Nava; (2) of securing the cancellation of the transfer certificate of title of said lot issued in the name of Paz Nava; and (3) to obtain a judicial declaration to the effect that the plaintiff is the owner of said lot. To this complaint the defendants answered with a general denial and alleged that the sale of lot No. 804, executed by Faustino Limoncito in favor of Paz Nava, was a valid conveyance.

Upon trying the cause the lower court rendered judgment: (1) Declaring that the conveyance of lot No. 804, executed by Faustino Limoncito to Paz Nava, was simulated and of no legal effect and that the plaintiff, Agripina Gallion, is the owner of said lot; (2) ordering that, upon the judgment becoming final, a copy thereof should be presented by the plaintiff in the cadastral case of Isabela, Occidental Negros, to the end that the corresponding transfer of the certificate of title might be effected; and (3) requiring the defendants Narciso L. Gayares and Paz Nava to pay the costs. From said judgment the defendants appealed.

On February 17, 1895, Faustino Limoncito, now deceased, and the plaintiff, Agripina Gallion, were united in marriage. Eleven children were subsequently born to them, of whom only one, Marta Limoncito, now lives. During marriage the couple acquired certain real and personal property, of which the lot in question, No. 804 of the cadastral survey of Isabela, Occidental Negros, forms a part. In the year 1921 or 1922 the pair separated, and from that time continued apart, the wife living with her daughter, Marta Limoncito, the husband living in illegal connection with another woman as concubine. While they were thus living separately, Faustino Limoncito, on June 26, 1924, acknowledged, before a notary public, a document of sale of lot No. 804 in favor of Paz Nava, a niece by marriage, for the purported consideration of P8,000.

On September 9, 1924, Agripina Gallion filed against Faustino Limoncito a criminal complaint for concubinage, and the next day, September 10, 1924, a civil complaint for the separation of the conjugal properties. Notice of the pendency of the latter action was filed with the register of deeds of Occidental Negros in December, 1924. On March 19, 1925, the Court of First Instance rendered judgment in the criminal case for concubinage, convicting Faustino Limoncito and sentencing him to imprisonment; and the case having been appealed, the Supreme Court, on December 31, 1925, affirmed the decision of the trial court^[1] and sentenced the accused to one year, eight months and twenty-one days of imprisonment. Faustino Limoncito commenced to serve his sentence in February, 1926, in Bilibid Prison, Manila. While he was thus imprisoned, the trial court issued, on April 20, 1926, an order in the case for the separation of the conjugal properties, appointing Agripina Gallion manager and receiver of said

properties.

Some time in May, 1926, Faustino Limoncito died in Bilibid Prison; and shortly thereafter his daughter, Marta Limoncito, presented in the Court of First Instance of Occidental Negros a petition for the appointment of an administrator and for the settlement of his estate. Upon this petition she herself was appointed administratrix, and about the same time she was substituted as a party instead of her father in the case for the separation of the conjugal properties instituted by her mother. On September 30, 1926, Marta Limoncito joined with her mother in presenting in court a project of partition; and on November 27, 1926, the trial court rendered judgment in said case, ordering the separation of the conjugal properties and approving the project of partition. As a consequence of this step the lot No. 804 was adjudicated to the plaintiff, Agripina Gallion, and the remainder, to Marta Limoncito, as sole heir of Faustino Limoncito. The properties, which corresponded in the division to Faustino Limoncito and which were adjudicated to Marta Limoncito, included lots Nos. 813 and 1105 of the cadastral survey of Isabela, 1430, 1436, 1626 and 1946 of the cadastral survey of Hinigaran, Occidental Negros, 15 head of carabaos and 50 head of cattle and other rights of Faustino Limoncito. A copy of this decision was received by the register of deeds on December 24, 1926. The document of sale of the lot in question in favor of the defendant, Paz Nava, which was executed by Faustino Limoncito on May 26, 1924, and acknowledged on June 26, 1924, was presented for registration in the latter part of the year 1926 and the new certificate of title in the name of Paz Nava was issued on December 21, 1926.

On January 12, 1927, the plaintiff, Agripina Gallion, instituted the present action in the Court of First Instance of Occidental Negros against Paz Nava, her husband, Narciso L. Gayares and Jose Millarez, the register of deeds, for the purposes and with the result stated in the first two paragraphs of this opinion.

Although the trial court did not state, as a conclusion of fact, in so many words, that the deed executed by Faustino Limoncito in favor of Paz Nava, covering lot No. 804 of Isabela cadastral, was simulated and made without consideration, such finding is nevertheless at the basis of the decision; and upon examining the proof, we are compelled to declare that such conclusion is to be properly deduced from the evidence. In this connection we note that, before this transfer had been made, Faustino Limoncito had made a threat that he was going to seek means of disposing of the conjugal property in a way that would prevent his wife from obtaining any benefit from it. Moreover, the trial court is supported by the evidence in the finding that, notwithstanding the alleged sale to Paz Nava, the property continued thereafter in the possession and enjoyment of Faustino Limoncito until he surrendered it upon occasion of his being committed to prison. Furthermore, after the alienation of lot 804 had been effected, Narciso L. Gayares, the husband of the grantee, continued to deal with the property in the character of attorney-in-fact for Faustino Limoncito, and these series of transactions are set forth in the opinion of the court in detail. The attitude thus indicated on the part of Gayares seems to be absolutely inconsistent with the idea that, previously to the doing of these acts, the property had been conveyed to Gayares' wife. Moreover, we note an admission on the part of Paz Nava herself that, in addition to the explicit terms of the instrument of conveyance itself, it was understood between herself and her uncle Faustino, the grantor, that he should have the right to "repurchase" the property at any time and that the income of the property for the year following the execution of the conveyance should belong to him. From these circumstances and other facts appearing of record we are convinced that the deed which is the subject of attack in this case represents a fictitious or simulated transaction, made without consideration, and unaccompanied by any intention on the part of the parties to the instrument to transfer the title or to enter into contractual relations. We are furthermore of the opinion that the transaction, in question had its origin in the purpose of Faustino Limoncito to hinder and obstruct his wife, the present plaintiff, in the enforcement of her conjugal rights in said property, and inasmuch as Paz Nava is not a purchaser for value, the fraudulent design of the grantor infects the title in her hands.

In the light of the facts above stated, there can be no doubt that the conveyance which is the subject of attack in this case is obnoxious to article 1413 of the Civil Code. In the first paragraph of said article it is stated that the husband, as manager of the conjugal property, may, "for a valuable consideration," alienate and encumber the conjugal property without the consent of the wife. He is not given any power to alienate and encumber the property without any consideration. In the second paragraph of the same article it is, among other things, declared that no alienation of the conjugal property made by the husband in fraud of the wife shall prejudice her or her heirs. In the case before us the wife is still living, and we are therefore not here concerned with rights of her heir or heirs.

The question, then, is, what are the rights of the wife when confronted with a fictitious or simulated alienation executed by the husband in fraud of her rights?

The answer to this question, in so far as it relates to the present controversy, depends, in our opinion, upon the two circumstances, first, that the sale of lot No. 804 by Faustino Limoncito to Paz Nava was a simulated transaction and, secondly, that the certificate of title issued by the register of deeds to Paz Nava has the fact noted thereon that the title acquired by the grantee is subject to the *lis pendens* created by the action instituted by the present plaintiff for the separation and liquidation of the properties pertaining to the conjugal estate between herself and Faustino Limoncito. It is established doctrine in this court that a simulated transfer of property made without consideration, and with intent to defraud the creditors of the grantor may be treated as non-existent (*De Belen vs. Collector of Customs and Sheriff of Manila*, 46 Phil., 241). A wife who is damnified by a fraudulent conveyance of property, effected by her husband, is substantially in the position of a creditor who is defrauded by a fictitious transfer executed by his debtor. We are of the opinion, in short, that the wife, so defrauded, has a remedy, under article 1413 of the Civil Code, to annul the transfer and cancel the Torrens title issued in favor of the grantee. With respect to the judicial partition it is worthy of note that the proceedings instituted to that end were conducted, and lot 804 awarded to the plaintiff, without any intervention on the part of Paz Nava for the assertion of her rights under her deed, which was more than 2 years old when the partition was consummated. Indeed, the instrument under which Paz Nava claims was not presented for registration until in the latter part of the year 1926, when the liquidation proceedings had about reached their conclusion.

In *Uy Coque vs. Navas L. Sioca* (45 Phil., 430), it was held that, in a proceeding to annul a conveyance made by a husband in fraud of his wife, the heirs of the wife are entitled to recover only one-half of the property so conveyed away; and it may be urged, with some plausibility, that this rule should be applied in this case. But in view of the fact that the sale in question was a simulated transfer which was kept secret by the grantee while the liquidation proceedings were being conducted, we are of the opinion that the trial court did not err in setting aside the deed in its entirety. Where a partition is effected in a judicial proceeding, the partitioners occupy a position similar to that of purchasers for value with respect to the portion, or portions, assigned to them respectively. In other words, the plaintiff in this case is a purchaser for value of lot 804 in consideration of the assignment of other parcels of the estate in liquidation to her daughter; and to deprive the plaintiff now of any part of said lot as a consequence of the fictitious conveyance made to Paz Nava would be prejudicial to the plaintiff to the extent of the value of the part so taken from her. This would be a direct violation of the second paragraph of article 1413 of the Civil Code. The *lis pendens* noted on the certificate issued in favor of Paz Nava was notice to her that she was acquiring title subject to the result of the liquidation proceeding, and her rights must be determined accordingly.

It is insisted by the attorneys for the appellants that, even admitting that the conveyance which is subject to attack in this case was made in fraud of the plaintiff and was in fact a simulated transaction, the proper remedy of the plaintiff was to cause the alienated property to be included in the inventory and to have it collated, in accordance with the second paragraph of article 1419 of the Civil Code, with the result that said lot would have been assigned

to, or charged against, the husband, while other property of equal value would have been assigned to the wife. This process, it is urged, would have had the effect of avoiding any damage to the wife. In this connection emphasis is laid upon the fact that in the liquidation proceeding other property having, supposedly, equal value with lot 804 was assigned to Marta Limoncito; and this, it is urged, should have been assigned to the plaintiff. This argument overlooks the fact that Paz Nava did not see fit to come forward and show her hand in the liquidation proceedings, and on the contrary kept the conveyance in question under cover until the judicial proceedings had been concluded. It could hardly be expected of the parties to the partition proceeding to cause the alienated property to be brought into collation and assigned to the husband, when no definite knowledge then existed to the effect that the property had in fact been conveyed away.

The attorneys for the appellants cite a passage from Manresa, wherein the author expresses the view that the only remedy of the wife in a case of this kind is to obtain compensation in the manner indicated in the second paragraph of article 1419 (Manresa, Comm., Civ. Code, vol. 9, pages 678 et seq.). If the situation were one where a conveyance had been executed by the husband with intent to defraud his wife, and it appeared that the grantee was an innocent purchaser for value, we would have no difficulty in accepting the conclusion of Manresa, to the effect that the wife must seek compensation in the manner indicated. But this idea is not, in, our opinion, applicable to the situation where the conveyance was fictitious and the grantee is found to have been a party to the fraud.

From what has been said it follows that the appealed judgment must be affirmed. It is so ordered, with costs against the appellants Narciso L. Gayares and Paz Nava.

Johnson, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

[1] People vs. Limoncito, G. R. No. 24355, not reported.

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