

**CONCEPCION PELAEZ ET AL., PLAINTIFFS AND APPELLEES, VS.
EULALIA BUTAO ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 29506. December 11, 1928*

Ponente: VILLAMOR, J.

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It is an undisputed fact in this case that the plaintiffs are legitimate children of Nicolas Pelaez and his deceased wife Demetria Mercado, just as the defendants are the legitimate children of Pedro de Lara. It is likewise indisputable that Nicolas Pelaez sold the two parcels of land in controversy, together with their improvements, to Pedro de Lara on June 5, 1908. Plaintiffs pray for the annulment of this sale, because they contend that the said two parcels of land were property belonging to their deceased mother Demetria Mercado and therefore their father Nicolas Pelaez could not validly convey it to the defendant's father.

Whether the lands belonged exclusively to the deceased Demetria Mercado or to the conjugal partnership between Nicolas Pelaez and his deceased wife Demetria Mercado, the evidence of both parties is contradictory; but, the trial court held, and to our mind with reason, that the preponderance of the evidence leads to the conclusion that they were the property of the partnership of said, spouses.

The defendants, in turn, allege that the lands claimed by the plaintiffs belonged to the deceased Pedro de Lara who acquired them by a just, legal, and valid title; that they inherited the same as legitimate heirs of their deceased father Pedro de Lara; that they have been in possession of said two parcels for many years, in good faith and to the exclusion of the whole world, publicly and without interruption, and that the action taken by the plaintiffs has prescribed.

In view of the evidence adduced in this case, the trial court decided "that the sale of the two parcels of land in controversy made by Nicolas Pelaez is void, because said land did not at that time belong to the vendor, who was only entitled to one-half thereof after liquidation: wherefore the said two parcels in dispute belong jointly to the plaintiffs and defendants;" and declaring, further, that "the parties may by agreement ask for the division of the two parcels by commissioners to be appointed by the court upon application of said parties." The defendants appealed to this court from such judgment, alleging among other grounds that the trial court erred in holding the deed of sale Exhibit 3 of the defendants, executed by Nicolas Pelaez in favor of the deceased Pedro de Lara, defendants' father upon the land in question, to be null and void.

Admitting the conclusion of the court below, that the property in litigation belonged to the conjugal partnership Nicolas Pelaez and Demetria Mercado, and it appearing from the record that the present sale was made by the surviving spouse in order to pay off certain debts contracted during the illness of his deceased wife Demetria Mercado, we believe the following doctrine laid down in the case of *Noble Jose vs. Noble Jose* (41 Phil., 713), is applicable:

"* * * That the husband, acting as liquidator of the conjugal partnership, and charged with the payment of the community debts, may sell or mortgage all or any part of the conjugal property, real or personal, in the

fulfillment of the duties imposed upon him and give good and valid title to the purchaser or mortgagee."

In the same case, the court said, among other things, that:

"The purchasers in good faith of community property from the surviving husband take a good and valid title which cannot be set aside thereafter upon proof that in making the sale, or in the use made of the proceeds, the husband-liquidator acted in fraud of the rights of the heirs. The heirs must seek their remedy against their father, who is accountable to them for their share of the net remainder of the partnership property, after the affairs of the partnership have been liquidated."

And in *Manuel and Laxamana vs. Losano* (41 Phil., 855), again confirming the doctrine established in the case of *Nable Jose vs. Nable Jose*, the court said:

"In the absence of fraud and collusion, sales or mortgages of community property, either real or personal, made by a husband administrator clothed with the insignia of ownership and in whose name the property is held, after the death of his spouse, are valid and effective, the purchaser being entitled to presume that such sales or mortgages are executed for the purpose of securing money to pay community debts and that the vendor has authority to dispose of the property thus administered by him and held in his name—but all this without prejudice to the right of any interested person to hold the husband responsible for any loss or damage resulting from his failure to liquidate the conjugal partnership and secure judicial sanction for the disposition of the property pending such liquidation, or to compel the husband by appropriate proceedings to proceed to the liquidation of the conjugal partnership in accordance with law."

It is true that on November 24, 1924, the Philippine Legislature approved Act No. 3176, amending section 685 of Act No. 190, and providing a new procedure for the liquidation of conjugal property when the partnership is dissolved by the death of one of the spouses, the first section of which, among other things, provides as follows:

"In case it is necessary to sell any portion of said community property in order to pay the outstanding debts and obligations of the same, such sale shall be made in the manner and with the formalities established by this Code for the sale of the property of deceased persons. Any sale, transfer, alienation or disposition of said property effected without said formalities shall be null and void, except as regards the portion that belonged to the vendor at the time the liquidation and partition was made."

But this is not applicable to the present case, because we are dealing with a contract entered into by the surviving spouse with respect to the conjugal partnership in June 1908, that is, before said Act was published. Therefore, we are of opinion, and so hold, that the contract in controversy is valid and cannot be annulled by the vendor's heirs, that is, the plaintiffs, there being no evidence of record that when the vendor sold the parcels of land now litigated, he did so in bad faith.

By virtue whereof, the appealed judgment is reversed, and the defendants are hereby absolved from the complaint, without special pronouncement of costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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