

JOSE GEMORA ET AL., PLAINTIFFS AND APPELLANTS, VS. F. M. YAP TICO & CO., LTD., ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 29757. December 29, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This action deals with the ownership and possession of various lots of land described in the complaint, and damages in the sum of P75,000 plus the costs.

The plaintiffs allege that said land belongs to them and that the defendant F. M. Yap Tico & Co., Ltd., in the case commenced by it against Catalina de la Cruz (civil case No. 3602, Court of First Instance of Occidental Negros), prayed for and secured a preliminary attachment on one-half of said property knowing that it did not belong to said Catalina de la Cruz, and the defendant sheriff later sold said half of the said property at public auction to the defendant Antonio C. Quiana, for the sum of P28,000.

The defendants contend that the land claimed in the complaint does not belong to the plaintiffs in its entirety, because one-half thereof belongs to said Catalina de la Cruz as her share in the conjugal property, and that she made no valid transfer of this half belonging to her, and if she did at all alienate it, such a disposal would have been illegal and in fraud of her creditors, and, in particular, of the defendant F. M. Yap Tico & Co., Ltd.

Defendant Go Chiengco, administrator of the estate of the original defendant Antonio C. Quiana, filed a counterclaim in the sum of P6,000 for damages caused by the plaintiffs retaining the said half of the property purchased at the auction sale by said Quiana.

After the trial, Judge Quirico Abeto, presiding over the Court of First Instance of Occidental Negros, rendered judgment dismissing both the complaint, and the counter claim filed by the defendant Go Chiengco, without special pronouncement as to costs.

The plaintiffs appealed from such judgment, and assign several errors to the trial court which they enumerate and discuss in their brief.

The following facts are proven: Catalina de la Cruz and her deceased husband Susano Gemora, acquired as conjugal property the lands which are the subject matter of the complaint (Exhibits 2 and 3). The plaintiffs are children of said spouses.

When Susano Gemora died, proceedings for the settlement of his intestate estate were had (civil case No. 1588), in the course of which Catalina de la Cruz alleged that she was the owner of one-half of the property left by her husband as being her half of the conjugal property (Exhibit 7.)

On April 16, 1920, when Catalina de la Cruz owed a large sum of money to F. M. Yap Tico & Co., Ltd., she made a simulated sale of her portion of the conjugal property to her brother-in-law, Jose Gemora. (Exhibit 8.)

On May 30, 1920, Jose Gemora resold said property to Catalina de la Cruz. (Exhibit 9.)

On January 8, 1921, the court issued an order (Exhibit G) in the course of the aforesaid intestate proceedings of Susano Gemora, adjudicating to the herein plaintiffs, children of Catalina de la Cruz, all the property of the estate without awarding to said Catalina her half of the conjugal property. Although Catalina de la Cruz had previously claimed in such proceedings that half of the conjugal property, she did not appeal from the said order of the court depriving her of her aforesaid portion of the marriage property. F. M. Yap Tico & Co., Ltd., moved for the reconsideration of that order, praying that one-half of that property be adjudicated to its debtor, Catalina de la Cruz; but the court denied the motion. (Exhibits I and H.)

On September 28, 1925, Ricardo Gemora, for himself and in behalf of his brothers, all children of Catalina de la Cruz on the one hand, and Yu Mia, representing and with authority from F. M. Yap Tico & Co., Ltd., on the other, agreed that F. M. Yap Tico & Co., Ltd., would sue Catalina de la Cruz for the collection of her debt which amounted to P46,540; that she would not answer the complaint and would allow judgment by default to be rendered against her so that the property described in the complaint would be attached and sold at auction; that if F. M. Yap Tico & Co., Ltd., purchased such properties at the auction, it would return to the herein plaintiffs one-half of lots, Nos. 721 and 726, plus 40 hectares from the other lots, executing a sale to that effect in favor of said plaintiffs for the price of P8,000; that if any other person bought said property F. M. Yap Tico & Co., Ltd., would pay the present plaintiffs P5,000.

This was done. Judgment by default was rendered against Catalina de la Cruz and one-half of the property was sold at auction to Antonio C. Quiana for the price of P28,000, and, in accordance with the agreement, F. M. Yap Tico & Co., Ltd., paid the Gemoras P5,000.

The lots in question were adjudicated to the plaintiffs in the proper cadastral proceeding. Lots 2105, 2117, 2118, 2120 and 2164 on December 8, 1921; lots 2119, 2165 and 2166 on July 10, 1925; and lots 2126, 2127, 2128, 2129, 2163 and 2361 on December 22, 1925.

The question raised is whether, as the plaintiffs allege, they are the owners of the whole of these lots for having been adjudicated to them by the court, both in the intestate proceedings of their deceased father Susano Gemora, and in the cadastral proceeding; or whether, as the defendants contend, one-half of said property continued to belong to Catalina de la Cruz, and said one-half as property of the latter was attached and sold at auction to satisfy the judgment rendered against her.

We find the following views stated in the appealed judgment to be supported by the evidence of record:

"The court deems the defendants' contention the more reasonable. An examination of the evidence shows that the plaintiffs in conjunction with their mother Catalina de la Cruz, have plotted a number of acts tending to defraud the latter's creditors.

"Catalina de la Cruz already owed Yap Tico & Co., Ltd., a considerable sum of money (Exhibit 4), when the property was adjudicated to her children without her appealing from the order, or even moving for its consideration, notwithstanding that she was the owner of one-half of it; and in the cadastral proceeding also, she neither claimed said half, nor appealed from the judgment adjudicating it to her children and all the time her debt to Yap Tico & Co., Ltd., still subsisted. The way in which the property was divided among the plaintiffs, and the omission, better said, with the consent of Catalina de la Cruz, practically left her creditors, and especially Yap Tico & Co., Ltd., without any means of protecting their rights."

From the proceedings heretofore had it follows that the adjudication to the herein plaintiffs of the whole estate of the deceased Susano Gemora, made in the order Exhibit G, dated January 8, 1921, is void, for, according to the evidence of record, the same was procured by fraud, inasmuch as in the same proceedings in which the order of said court was issued there appears the allegation of the surviving spouse that one-half of said estate belongs to

her as her share of the conjugal property. That the property in question is conjugal property has been sufficiently and satisfactorily proven as in the record. And such a judicial adjudication procured by fraud may be assailed and vacated in a collateral proceeding such as is the present one:

"A judgment obtained by fraud may, however, be void under some circumstances, and subject to collateral attack, as where such fraud appears on the face of the record, or goes to the method of acquiring jurisdiction."
(34 C. J., 566.)

With respect to the adjudication of the title to said lots made in the cadastral proceeding, considering all the circumstances of the case, the possession by the plaintiffs of one-half of said property pertaining to the widow Catalina de la Cruz, and the registration of said half in favor of the herein plaintiffs, should be understood to be in the nature of a trust for the said Catalina de la Cruz. To this case is applicable the doctrine laid down in the case of *Gilbert vs. Hewetson* (79 Minn., 326), cited with approval in the case of *Severino vs. Severino* (44 Phil., 343), as follows:

"A receiver, trustee, attorney, agent, or any other person occupying fiduciary relations respecting property or persons, is utterly disabled from acquiring for his own benefit the property committed to his custody for management."

As to the motion for a new trial filed by the appellants, the court, considering the pros and cons of the proposition, holds that the proffered evidence cannot be treated as newly discovered and therefore denies said motion.

Therefore, the adjudication to the plaintiffs of one-half of the estate of the deceased Susano Gemora made by the Court of First Instance of Occidental Negros in the intestate proceedings is hereby annulled; and the adjudication of the title to the lots here in question, made in the corresponding cadastral proceeding must be understood to be subject to a trust in favor of Catalina de la Cruz and those deriving rights from her. Within sixty days after being notified of this judgment, the plaintiffs shall execute legally sufficient certificates of transfer in favor of the heirs of the deceased Antonio C. Quiana of one-half pro indiviso of the land here in question, and shall deliver to the registrar of deeds the duplicate certificates of title to said lots, if they already have them, in order that the same may be cancelled with respect to the aforesaid half and new certificates issued therefor. The cost of such instruments, cancellations, and issuance of new certificates shall be borne by the plaintiffs.

With these additional instructions, the judgment appealed from is affirmed, with the costs of this instance against the appellants. Sa ordered.

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

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