

THE NATIONAL EXCHANGE CO., INC., PLAINTIFF AND APPELLEE, VS. JOSE H. KATIGBAK ET AL., DEFENDANTS AND APPELLANTS.*G. R. No. 31871. March 15, 1930*

Ponente: OSTRAND, J.

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It appears from the record that on February 7, 1927, in civil case No. 30642 of the Court of First Instance of Manila, the plaintiff obtained a judgment against Jose H. Katigbak, as principal, and Gabino Barretto, as surety, for the sum of P19,807.85, with interest at 12 per cent per annum from January 1, 1922, and with the costs. On April 29, 1927, a writ of execution was issued in said case against the defendant Jose H. Katigbak, but the sheriff being unable to find any property pertaining to said defendant, the writ was returned unsatisfied on May 13, 1927. Another writ of execution was issued on March 27, 1928, with the same result.

On January 20, 1928, Katigbak obtained a judgment in case No. 31998 against Po Sun Suy and Po Ching for the sum of P28,500, with legal interest from the filing of the complaint, and a copy of the judgment was furnished his attorney, Vicente Sotto, on January 31, 1928. Nine days thereafter Sotto, on behalf of Katigbak, filed a motion in the latter case setting forth that Katigbak had transferred all his rights, interests, and participation in the judgment to one Po Sun Tun, his codefendant in the present case, in consideration of the sum of P20,000. Six days later, Sotto, in representation of Katigbak, filed a petition in the aforesaid case No. 31998 alleging that the defendants in that case were about to transfer and alienate their property with the intention of defrauding the plaintiff and praying that an attachment be levied on their property, and upon the filing by Katigbak of a bond in the sum of P3,000, the petition was granted on February 17, 1928.

The present action was brought on April 19, 1928, the plaintiff setting forth the facts above related and further stating, in substance, that the alleged transfer by Katigbak to Po Sun Tun was fictitious and made with the deliberate purpose of defrauding Katigbak's creditors. The plaintiff therefore prayed that said transfer be declared null and void and that a preliminary attachment be levied on all rights, interests, and participation in the judgment obtained by Katigbak against Po Sun Suy and Po Ching. Upon filing by the plaintiff of a bond of P3,000, the desired writ of attachment was issued.

Upon trial the court below held that the transfer to Po Sun Tun was fraudulent under article 1297 of the Civil Code and rendered judgment setting aside said transfer. From such judgment the defendants appealed.

The contention of the appellants is that it had not been proven (1) that Katigbak had no other property than that transferred to Po Sun Tun and (2) that fraud had been committed by the defendants-appellants. The first point is sufficiently refuted by calling attention to the fact that in endeavoring to accomplish the writs of execution in case No. 30642 the sheriff was unable to find any property upon which execution could be levied, and it has not been intimated that he was negligent in the performance of his duty. The second point raised by the appellants is equally without merit.

The second paragraph of article 1297 of the Civil Code provides that "alienations for valuable considerations,

made by a person against whom any judgment in any instance has been previously rendered, or against whom any writ of attachment has been issued, shall also be presumed fraudulent." The defendants in the present case made no attempt to rebut the presumption established by the provision quoted, and it follows that it sufficiently proves the fraudulent character of the transaction in question. A rebuttable presumption can only be overcome by evidence to the contrary, and the burden was on the defendants to present such evidence. The case of *Sobrevilla vs. Montinola* (22 Phil., 124), is not in point.

The appealed judgment is affirmed with the costs against the appellants. So ordered.

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

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