

MABIA ANGELES RAMOS, ADMINISTRATRIX OF THE ESTATE OF VIVENCIO RAMOS AFABLE, PLAINTIFF AND APPELLANT, VS. CHO CHUN CHAC ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 32041. March 29, 1930*

Ponente: OSTRAND, J.

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On January 20, 1923, the defendants Cho Chun Chac and Cho Koh Liong obtained a judgment against Pio Martinez, the son of Romana Ascue, widow of the deceased Pedro Martinez. At the instance of the defendants, various writs of execution of the judgment were issued and about P17,000 of the judgment debt was collected. Thereafter, upon the death of Romana Ascue in August, 1925, Pio Martinez inherited a one-tenth interest in her fifty-three parcels of land and in some personal property. Shortly afterwards, on September 1, 1925, Pio Martinez executed a document transferring all of his inheritance to his father-in-law, Dr. Vivencio Ramos Afable, for the alleged consideration of P20,000 (plaintiff's Exhibit A). On August 18, 1926, an alias execution of the judgment above-mentioned was issued, and execution was levied on the rights, interests, and participation of Pio Martinez in his one-tenth share of the property left by Romana Ascue. Doctor Ramos Afable presented a third party claim to the property attached, alleging that he purchased it from Pio Martinez and that the transfer was recorded on October 1, 1926, with the register of deeds of the Province of Batangas, but the defendants herein gave bond, and the property was sold by the sheriff and purchased by them. Thereupon the present action was brought by Dr. Ramos Afable praying that he, by virtue of the transfer from Pio Martinez, be declared the exclusive owner of the property sold and that the defendants be ordered to pay the sum of P25,000 in damages. Shortly afterwards, Doctor Afable died, and one of his daughters, as administratrix of his estate, was substituted as plaintiff.

Upon trial, the Court of First Instance rendered a judgment declaring that the deed in question was executed in fraud of creditors and therefore null and void, and absolved the defendants from the complaint. From this judgment the plaintiff appealed.

The appellant's contention is that beginning with August 2, 1921, Pio Martinez on various occasions borrowed money from his father-in-law, Dr. Ramos Afable; that on September 1, 1925, a liquidation of the loans was made, and it is alleged that the total amount of said loans, with interest at the rate of 6 per cent per annum, reached the sum of P15,676.51; that thereupon, on the same date, the document Exhibit A, assigning the property interests in question to Dr. Ramos Afable, was executed. The consideration is alleged to have been the cancellation of the aforesaid debt plus the sum of P4,323.49, which sum is alleged to have been paid in cash to Pio Martinez.

According to paragraph 2 of article 1297 of the Civil Code, alienation of property for valuable consideration, made by a person against whom an unsatisfied judgment is outstanding, raises a presumption of fraud, and the question here is whether the evidence presented by the plaintiff is sufficient to rebut that presumption.

Except in regard to the loan of P1,800 made on August 2, 1921, the evidence presented by the plaintiff is, in our opinion, insufficient. No receipts or vales for the loans have been shown, and the testimony of Pio Martinez is

practically the only evidence before us. He and his family lived with his father-in-law, who could not have been ignorant of the existence of the judgment against Pio. The haste shown in assigning the latter's inheritance strongly indicates that the transaction was intended to deprive the herein defendants of their rights.

We think, however, that there is sufficient evidence in the record to show that the loan of P1,800 to Pio Martinez on August 2, 1921, was a bona fide transaction. It was secured by an unrecorded mortgage on several parcels of land, and though the document is not in the record, the circumstances of the loan were such that there can be but little doubt of its existence. At the time the loan was made, the defendants had no judgment against Pio Martinez. It was made in good faith and constituted a valid credit in favor of the estate of Dr. Ramos Afafe, and must therefore be considered a prior lien on the one-tenth portion of the estate of Romana Ascue inherited by Pio Martinez and purchased by the herein defendants at the aforesaid execution sale.

For the reasons stated, the appealed judgment is confirmed with the modification that the sum of P1,800, with interest at the rate of 6 per cent per annum from August 2, 1921, shall constitute a prior lien in favor of the estate of Vivencio Ramos Afafe upon the portion of the estate of Romana Ascue purchased by the defendants Cho Chun Chac and Cho Koh Liong, as aforesaid, and that in the distribution of that estate, said sum, with interest, shall be deducted from the one-tenth portion, now held by the defendants, and shall be paid to the estate of Vivencio Ramos Afafe. Without costs. So ordered.

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

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