

**ALEIDA SAAVEDRA, IN HER OWN BEHALF AND IN HER CAPACITY AS
GUARDIAN AD LITEM OF THE MINORS MAXIMINA, ALFONSO,
AUGUSTO AND MARIA IBAÑEZ, PLAINTIFFS AND APPELLANTS, VS.
RAFAEL MART...**

G.R. No. 37854. November 17, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

Aleida Saavedra and her four minor children named Maximina, Alfonso, Augusto and Maria Ibañez, brought this action in the Court of First Instance of Leyte to annul certain deeds of sale and mortgages executed by the defendants; to have the corresponding transfer certificate of title issued therein as well as the annotations of the mortgages cancelled; and to recover from the aforesaid defendants indemnity for damages in the amount of P50,000. As ancillary remedies the plaintiffs' also prayed for the issuance of a writ of preliminary injunction and of attachment.

The plaintiffs appealed from the judgment rendered therein, absolving all of the defendants from the complaint, with the costs.

The spouses Aleida Saavedra and Ceferino Ibañez had nine (9) children, three (3) of whom died. The coplaintiffs herein, Maximina, Alfonso, Augusto and Maria, are minors and for this reason they are represented by their mother as their guardian ad litem.

Family dissensions, the nature of which is foreign to the case, compelled the said spouses to live separately, the plaintiff Aleida having her four (4) minor children in her custody.

On September 6, 1929, Aleida Saavedra and her minor children instituted civil case No. 7057 in the Court of First Instance of Cebu praying that she and her four children be granted a monthly allowance of P330 from the said month of September; that the same allowance be given them during the pendency of the suit; that a former judgment for support, then amounting to P21,600 together with interest thereon, which they obtained against the defendant, Ceferino Ibañez, be revived; that a writ of preliminary injunction be issued therein to prevent the defendant from disposing of his own property and that belonging to the conjugal partnership; that the defendant render an accounting of his administration of the conjugal partnership property and deliver to his wife her corresponding share of the proceeds thereof. Upon filing the complaint, the counsel for the plaintiffs requested the register of deeds of Leyte to enter a notice of lis pendens on the transfer certificate of title No. 265 corresponding to the Hacienda de Burabod belonging to the conjugal partnership of the spouses. The aforesaid official made the necessary annotation on the certificate of title in question. On March 31, 1930, judgment was rendered therein ordering the defendant to pay to his wife and children a monthly allowance of P200 from the month of September, 1929, to the month of March, 1930, and the same amount every month thereafter, payable within the first ten days thereof, plus the sum of P2,000 for attorney's fees, the costs and the transcript of stenographic notes. The defendant Ibañez was notified of the decision thus rendered on April 2, 1930. The plaintiffs took exception to the

allowance adjudicated therein and appealed from the judgment. On September 4, 1931, this court decided the appeal and rendered judgment in case G. R. No. 33795, the dispositive part of which reads as follows:

"It being understood, therefore, first, that the amount of maintenance accruing to the plaintiff from the date of the institution of this action is at the rate of P330 per month, amounting to P7,920, to the date of the promulgation of this decision, which amount the defendant is directed to pay to the plaintiff, secondly, that from and after this date she is entitled to recover the sum of P830 per month, which the defendant is ordered to pay into court on or before the 10th day of each month, beginning October, 1931; thirdly, that the plaintiff is entitled to have the encumbrance indicated in this right to maintenance inscribed on the registry of property; and, fourthly, that this judgment is without prejudice to the right of the plaintiff to be reimbursed for any amount, or amounts, which she may have expended from the proceeds of her paraphernal property, or for which she may have become indebted upon account of the necessary maintenance of herself and children prior to the bringing of this action, the judgment appealed from, as thus modified is affirmed." (56 Phil., 33.)

During the pendency of the appeal, but after judgment had been rendered by the Court of First Instance of Cebu in civil case No. 7957, Ceferino Ibañez again conceived the idea of selling the properties belonging to the conjugal partnership. So, about the beginning of the month of April, 1930, he offered to sell the Hacienda de Burabod, consisting of two parcels of land and the cattle and carabaos he possessed, to the other defendant Rafael Martinez. Inasmuch as Martinez was not acquainted with the hacienda, both of them went to inspect it. Sometime later, during the first half of the month of April, both went to the law office of Kapunan to whom Martinez expressed his desire to purchase the aforesaid properties and inquired whether it was possible for him to acquire them without fear of being involved in a subsequent litigation. Ceferino Ibañez brought with him all the deeds relating to the hacienda and cattle, including a copy of the decision rendered in case No. 7957, all of which he showed to the said attorney. The aforesaid attorney, after examining them, told Martinez that he could buy the properties in question provided Ceferino Ibañez paid first the full amount of the judgment then totalling about P3,600, excluding the costs and the amount due on the transcript of stenographic notes. In view of this advice, Ceferino Ibañez went to Cebu and attempted to settle his case with Attorney Gullas who represented the plaintiffs. Ceferino Ibañez bound himself to Gullas to pay the monthly allowance and his fees of P2,000 and proposed that the judgment be considered satisfied after the payment thereof. Gullas accepted the proposition on condition that Ceferino Ibañez execute a document whereby he would bind himself not to alienate any of the properties belonging to the conjugal partnership. Ceferino Ibañez did not agree therewith but before returning to Leyte he deposited the sum of P2,000 with Jose Oquiñena requesting him to pay it to Gullas and to advance whatever might be lacking to satisfy the judgment. Oquiñena accepted the charge and offered to make payment thereof to Gullas who refused to accept the offer insisting on the condition he had imposed, to wit; that Ceferino Ibañez would not dispose of the conjugal partnership property.

Upon his return to Leyte, Ceferino Ibañez again sought Martinez and informed him that the judgment had already been satisfied and that they could then consummate the sale. On April 30, 1929, they both returned to Attorney Kapunan's law office and informed him that the judgment had already been satisfied. Kapunan told them that the sale could be effected after the cancellation of the notice of lis pendens appearing on the back of the transfer certificate of title No. 265. On May 2d of the same year, Ceferino Ibañez went to the office of the register of deeds who, *motu proprio*, cancelled the notice of lis pendens. Pursuant thereto, Attorney Kapunan, on the said date of May 2d, prepared the deed of sale, Exhibit C, whereby Ceferino Ibañez conveyed the Hacienda de Burabod, together with his cattle and carabao to Rafael Martinez, for the sum of P45,000. Martinez paid him P30,000 in cash and constituted a mortgage on the said hacienda in favor of the vendor, for the unpaid balance of P15,000. Sometime later, Martinez went to Cebu and was informed by Oquiñena that the judgment was still unsatisfied. Ceferino Ibañez reassured Martinez that he would pay it, but the truth of the matter is that he never satisfied the same. Subsequently, the plaintiffs obtained a writ of attachment and the sum of P2,000 in the hands of

Oquiñena was attached and delivered to the provincial sheriff in whose possession it still remains. Ceferino Ibañez planned to move to Mindanao and requested Martinez to secure the money with which to pay the remaining P15,000. On May 13, 1930, Martinez obtained a loan of P15,000 from the other defendant, W. S. Price, which he paid to Ceferino Ibañez in payment of the balance he owed him, cancelling the mortgage in favor of the said Ceferino Ibañez and executing the mortgage deed, Exhibit E, in favor of Price. After the execution of the deed of sale, Martinez obtained the cancellation of transfer certificate of title No. 265 and the register of deeds issued in his name transfer certificate of title No. 294 on the reverse of which and on the original an annotation of the mortgage in favor of Price was made. After these transactions, Ceferino Ibañez left for Spain, where he is now residing, leaving no known property whatsoever.

The appellants assign fourteen (14) alleged errors as committed by the trial court in the decision appealed from. To discuss them separately would consume much unnecessary time. We are of the opinion that the whole question may be reduced to whether or not Martinez and Price had notice of the judgment rendered in civil case No. 7957 and of the fact that it still remained unsatisfied.

Article 1297 of the Civil Code presumes fraudulent alienations 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. In view of the court's findings, there is not the least shadow of a doubt that the sale made by Ceferino Ibañez in favor of Martinez bears the earmarks of such presumption on the ground that it was made after judgment had been rendered against him in civil case No. 6957. Furthermore, before Martinez bought the hacienda and the cattle, he had full knowledge of the fact that the judgment in question had not yet been satisfied. He had notice thereof from Ceferino Ibañez as well as from the advice given by Attorney Kapunan aside from the presumption that he must have read the copy of the judgment in the hands of Ceferino Ibañez together with the other deeds or documents relating thereto. That he was led to believe the false manifestation of Ceferino Ibañez to the effect that he had already paid the amount of the judgment is immaterial and does not exempt him from liability. Under the circumstances he was in duty bound to verify by means of appropriate documents which, in this case, should be either a certificate of the sheriff who executed the judgment, or of the clerk of the court, or a statement of the judge who tried the case, whether or not the judgment had really been satisfied.

Such is not the case with Price. When he granted the loan and the mortgage deed, Exhibit E, was executed in his favor, the register of deeds had already cancelled the annotation of *lis pendens* on transfer certificate of title No. 294. Under such circumstances, Price can not justly be charged with having acted in bad faith. Neither do the foregoing facts justify the presumption or inference that he had notice of the fact that the judgment rendered against Ceferino Ibañez still remained unsatisfied. In view of all the facts and circumstances surrounding the case, we are compelled to conclude that Price is a mortgage creditor in good faith and that he granted the loan of P15,000 in the absolute belief that Martinez was the true registered owner of the hacienda in question.

We concur in the trial court's opinion that the register of deeds, Ciriaco Ibañez, acted properly and in good faith in cancelling the annotation of *lis pendens*, on the ground that the action brought by the plaintiffs in that particular case was not of such nature as to entitle them to have the encumbrance in question noted.

Lastly, we concur with the trial court in that the evidence presented does not justify the plaintiffs' claim for the indemnification of damages sought by them.

Wherefore, the judgment appealed from is hereby modified to the effect that the deed of sale, Exhibit C, executed by Ceferino Ibañez in favor of Rafael Martinez is declared rescinded and without force and effect, and the register of deeds of Leyte is hereby ordered to cancel transfer certificate of title No. 294 issued in favor of the said Martinez, and to issue, in lieu thereof, another transfer certificate of title in favor of Ceferino Ibañez and his wife,

Aleida Saavedra, with a notation thereon of (1) the mortgage constituted in favor of W. S. Price to secure the payment of the sum of P15,000 and (2) the judgment rendered by this court in case G. R. No. 33795, civil case No. 7957 of the Court of First Instance of Cebu; without prejudice to any right of action which Rafael Martinez may have against Ceferino Ibañez in accordance with the law. As thus modified, the judgment appealed from is hereby affirmed in all other respects, with the costs of both instances against Ceferino Ibañez and Rafael Martinez. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, and Hull, JJ., concur.

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