

**PEDRO ESCUTIN, DOMINGA ESCUTIN, ASSISTED BY HER HUSBAND
JOSE BAUSON, CONSUELO ESCUTIN, ASSISTED BY HER HUSBAND
GREGORIO CASTANEDA, AND CAROLINA ESCUTIN, PLAINTIFFS AND
APPELLEES...**

G. R. No. 40791. November 20, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

Plaintiffs brought this action in the Court of First Instance of Capiz for the annulment of the deed of sale, Exhibit A, executed in the municipality of Capiz, Capiz Province, by Sabas Escutin, now deceased, on February 26, 1932, and ratified before the notary public, Rafael Lozada, on the same date, whereby he conveyed to the defendant lot No. 1801 of the cadastral survey of Dao, Capiz Province, for P1,925.

The trial judge found the deed in question to be null and void because it was simulated and fraudulent, and that the land therein described was the property of the plaintiffs.

It appears from the evidence that Sabas Escutin was married forty years ago to Paula Arboly, who is still living, by whom he had four children, the plaintiffs herein. Formerly Sabas Escutin lived with his wife and children in the municipality of Dao, but he left them and for many years prior to his death on March 10, 1932, had been living with his mistress, Juana Yap, in Capiz. The defendant Socorro Escutin is the daughter of Juana Yap, and lived in the same house with Sabas Escutin and her mother. Sabas Escutin was sick for a long time before he died. On February 26, 1932, twelve days prior to his death, Sabas Escutin executed the public instrument in question, which purports to evidence the sale to the defendant for P1,925 of a parcel of registered land in the municipality of Dao, having an area of 19 hectares, 21 ares, and 43 centares, more or less. The reasonable market value of this land, a part of which was used for growing rice and the rest of it for raising corn, was P3,750.

The contention of the appellant is that the consideration of P1,925 was delivered to Sabas Escutin in cash at the time of the execution of the deed; that the document was signed by Sabas Escutin in the presence of two employees of the Court of First Instance of Capiz and the notary public, Rafael Lozada. No money was paid over in the presence of the witnesses. The notary public testified, however, that the defendant took a bundle of bank notes from a wardrobe in the room where the document was signed and handed the money to Sabas Escutin, who counted it.

The document in question was presented to the register of deeds of the province on April 27, 1932, but no transfer certificate of title was issued in favor of the defendant, nor did the defendant take possession of the land.

To state the fact euphemistically, we cannot credit the testimony of the notary public respecting the delivery of the money by the defendant to the deceased Sabas Escutin. The evidence shows that neither the defendant, who is unmarried, nor her mother had any occupation or profession or any real property or other source of income which might have enabled the defendant to pay the sum stipulated in the document in question. The defendant and her

mother lived in the house with Sabas Esmtin and at his expense. When the family of the deceased came to remove his body to Dao for burial, the defendant and her mother stated that Sabas Escutin had not left any money, and his family had to defray the expenses of his interment.

Daniel Amancio, an inspector of the Capiz Motor Bus Co., testified that in February, 1932 Juana Yap told him that Sabas Escutin had a parcel of land in Lacaron, in the municipality of Dao, which he was trying to sell; that he answered that he did not have any money with which to buy it; that Juana Yap then told him that he was not to be the real purchaser, but only a figurehead, because in case of the death of Sabas Escutin he would convey the land to Socorro Escutin; that when he refused, the defendant said that he did not have any pity for her, although she regarded him as a brother.

Sofronia Escolin testified that¹ she took care of Sabas Escutin during his last illness; that she was present when Juana Yap and the defendant begged him to convey the land in the barrio of Lacaron, municipality of Dao, to the defendant, but he did not answer them; that three days later the defendant and her mother cried and again requested Sabas Escutin to convey the land in Lacaron to the defendant; that Juana Yap left the house but came back two hours later with a document, which was placed by her on a book on a pillow, and Sabas Escutin then signed it; that no money was paid by the defendant or her mother to Sabas Escutin; that the defendant told her that the document was executed in order that she might have something to live on in case of the death of her father; that the defendant requested her not to mention the matter to anyone.

Neither the defendant nor her mother took the witness stand, although they were present in court when Daniel Amancio and Sofronia Escolin testified, and the case for the defendant as to the payment of the consideration rests upon the uncorroborated testimony of the notary public. In our opinion the evidence fully sustains the findings of the lower court that the consideration stated in the deed was fictitious, and the document was executed in fraud of the plaintiffs. It is therefore without force or effect in accordance with article 1275 of the Civil Code, which provides that contracts without consideration or with an illicit consideration produce no effect whatsoever.

It was held in the case of *Ocejo, Perez & Co. vs. Flores and Bas* (40 Phil., 921), that a contract of purchase and sale is null and void and produces no effect whatsoever where it appears that the same is without the cause or the consideration which should have been the motive thereof, or that the purchase price which appears therein as paid was never in fact paid by the purchaser to the vendor.

In the case of *De Belen vs. Collector of Customs and Sheriff of Manila* (46 Phil., 241), this court held that a simulated transfer of property made without consideration and with intent to hinder, delay, or defraud the creditors of the grantor constitutes no obstacle to the levy of legal process of any sort directed against the grantor; that in such case no independent action to rescind or annul the transfer is necessary; that a simulated contract lacks some of the elements necessary to make any contract whatever and may be treated as non-existent for all purposes.

In the case of *Gallion vs. Gayares* (53 Phil., 43, 48), this court said: "* * * It is established doctrine in this court that a simulated transfer of property made without consideration and with intent to defraud the creditors of the grantor may be treated as non-existent (*De Belen vs. Collector of Customs and Sheriff of Manila*, 46 Phil., 241). A wife who is damnified by a fraudulent conveyance of property, effected by her husband, is substantially in the position of a creditor who is defrauded by a fictitious transfer executed by his debtor. We are of the opinion, in short, that the wife, so defrauded, has a remedy, under article 1413 of the Civil Code, to annul the transfer and cancel the Torrens title issued in favor of the grantee * * *

It is true, as alleged in the fourth assignment of error, that if the contract in question were valid in all other respects, its validity would not be affected by the fact that the notary public before whom it was acknowledged

was not eligible for appointment in the provincial capital because he was not an attorney-at-law. The decision appealed from does not rest, however, upon the erroneous holding of the lower court respecting the acknowledgment, but upon the lack of consideration. This disposes of the casP on its merits.

In the first and second assignments of error the defendant and appellant alleges that the trial court erred in denying her motion, dated April 4, 1933 (Bill of Exceptions, p. 9), to strike out paragraph III of the complaint and the words, "with his paramour, their daughter", contained in paragraph IV of the complaint and also the words, "his illegitimate daughter and the paramour of the said deceased," contained in paragraph VI of the complaint; and in admitting evidence tending to investigate the paternity and filiation of the appellant with regards to the deceased Sabas Escutin over the objection of the defendant and appellant.

We think these two assignments of error are well taken, because the allegations in the complaint to the effect that Sabas Escutin was the father of the defendant were immaterial and irrelevant, and should have been stricken out in accordance with section 107 of the Code of Civil Procedure. The purpose for which the action was brought was to annul a deed of sale executed by Sabas Escutin in favor of the daughter of his mistress. The question of the paternity of the defendant was not involved.

As to whether or not the prohibition of article 141 of the Civil Code of any inquiry into the paternity of illegitimate children who do not have the legal qualification of natural children is applicable in a case like the present, we do not now need to decide. "Generation is a mysterious act of nature." (Borres and Barza vs. Municipality of Panay, 42 Phil., 643, 651; decision of the Supreme Court of Spain, April 20, 1892.) Plaintiffs had no means of establishing the truth of their allegations respecting the paternity of the defendant. The testimony of plaintiffs' witnesses that Sabas Escutin was the father of the defendant is of no probative value and the finding of the trial judge that the defendant is an adulterous child of the deceased Sabas Escutin is clearly not justified by the evidence. The errors complained of are not, however, reversible errors, because they in no way affect the proof that the contract in question was without consideration.

The decision of the lower court is therefore affirmed, with the costs against the appellant.

Avanceña, C. J., Abad Santos, Hull, and Diaz, JJ., concur.

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