

PRESENTACION TECSON, PLAINTIFF AND APPELLANT, VS. SILVINO TECSON ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 41925. August 21, 1935

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Pampanga in an action for partition.

In her petition filed on September 26, 1931, the plaintiffappellant alleged that she and the defendants were the owners in common of thirty-five tracts of land more particularly described in the petition, an undivided half interest therein belonging to the defendant Silvino Tecson and the other undivided half interest belonging to the plaintiffappellant and the defendants Tomas Tecson and Magdalena Tecson by right of inheritance. On January 27, 1932, the plaintiff filed an amendment to her petition in which it is recited that the lands in question were the conjugal property of Silvino Tecson and Juana Gomez whose only child was the deceased Modesto Tecson; that the only heirs of Modesto Tecson are Jose Tecson, Tomas Tecson and Magdalena Tecson; that Jose Tecson died in the year 1931, leaving as his sole heir the plaintiff, his legitimate daughter.

On January 27, 1932, the defendants filed an amended answer consisting of a general denial and the following special defenses: first, that the plaintiff, Presentacion Tecson, is not the legitimate daughter of Jose Tecson; and, second, that Jose Tecson on December 30, 1930, executed and delivered an absolute conveyance for the consideration of P5,000 transferring to Silvino Tecson, the defendant, whatever interest he had or might have in the estate of Juana Gomez. On the first trial of this cause the lower court held that the plaintiff is the legitimate child of the spouses Jose Tecson and Dolores Joaquinio but that it was not proven that the properties described in the petition belonged to Juana Gomez wholly or in part. The court made no finding with relation to the second special defense referred to above.

An appeal was taken to this court and under date of November 10, 1933,[1] the first division of this court rendered its decision concurring with the trial court as to the legitimacy of the plaintiff but reversing the finding of the trial judge that it was not proven that Juana Gomez had any interest in the lands involved. The concluding paragraph of our decision is as follows:

"The decision of the case therefore turns upon the validity of the alleged sale of the interest of Jose Tecson to Silvino Tecson, but the trial judge made no finding as to this point. In the interest of justice, the judgment of the lower court is set aside, and the case is remanded for the reception of such-additional evidence as either party may desire to present with respect to the sale of the rights of Jose Tecson in the estate of Juana Gomez to Silvino Tecson, and for the finding of the trial judge as to the validity of said sale. No special finding is made as to the costs of this instance."

On the retrial of this cause the Court of First Instance. under date of February 26, 1934, found that the deed signed by Jose Tecson on December 30, 1930, in the presence of two witnesses and Acknowledged before a notary public, selling and conveying to Silvino Tecson all his right, title and interest in the estate of Juana Gomez was a

valid conveyance, and it rendered judgment for the defendants. The case before us, therefore, on this second appeal presents the single question as to the validity of said conveyance which appears in the record as Exhibit 2.

When the case was called for trial, the plaintiff presented no witnesses except the defendants Silvino Tecson and Magdalena Tecson. Silvino Tecson testified in substance that Jose Tecson requested a notary in San Juan del Monte to prepare Exhibit 2 for his signature; that Jose Tecson signed and acknowledged this instrument on the date mentioned therein in San Juan del Monte in the presence of the witnesses whose names appear thereon. He also testified that the mother of Jose and others were present when Jose signed the deed. He testified further that besides P4,000 which had been previously advanced to Jose Tecson, he paid the additional sum of P1,000 at the time of the execution of Exhibit 2.

Magdalena Tecson testified in substance that Exhibit 2 was prepared in her presence by the notary Eduardo San Pascual in San Juan del Monte upon the order of Jose Tecson; that when Jose executed and delivered the same to Silvino Tecson there were present the witnesses Fabian Gonzalez and Nicolas Cordero, herself, her mother, and her grandfather Silvino Tecson; that P1,000 was delivered to Jose Tecson in bank notes, and she counted the money at the request of Jose Tecson; that she and her mother were taking care of Jose Tecson who was ill at the time; that Jose Tecson died in February, 1931, some two months after Exhibit 2 was executed.

The appellant's first assignment of error is as follows:

"El Juzgado a quo erro al no declarar que el Exhibit 2 es tan solo un documento privado cuya autenticidad no ha sido debidamente probada."

San Juan del Monte., where the document was executed, is a suburb of the City of Manila situated in the adjacent Province of Rizal. The notary who took the acknowledgment to Exhibit 2 was appointed for the City of Manila. The acknowledgment recites that Jose Tecson appeared before him in the City of Manila on December 30, 1930. The appellant correctly argues that an acknowledgment taken outside the territorial limits of the officer's jurisdiction is void as if the person taking it were wholly without official character. (1 R. C. L., 276, 277.) It therefore follows from article 1223 of the Civil Code that Exhibit 2 must be regarded as a private document requiring proof of its execution. Appellant argues that none of the witnesses declared that they saw Jose Tecson place his signature on the document. As to this, we agree with the trial court that although the witnesses did not use the precise words which appellant insists are necessary, their testimony can have no other meaning.

The second assignment of error to the effect that Exhibit 2 must fail for total lack of consideration is not supported by the plaintiff's own evidence. An attempt is made in the appellant's brief to impeach the testimony of Silvino Tecson and Magdalena Tecson as to the payments made to Jose Tecson, but besides their testimony on this point above recited, it is to be noted that in Exhibit 2 Jose Tecson himself acknowledges the receipt of P5,000 "que me ha pagado mi abuelo Don Silvino Tecson".

The appellant's third assignment of error is as follows:

"El Juzgado a quo erro al no declarar que la venta Exhibit 2 viola el articulo 1459 delCodigo Civil."

The record in this case nowhere shows that Silvino Tecson was the executor (albacea) of the estate of His deceased wife, Juana Gomez, at the time of the execution of Exhibit 2. Even if he had been, the case of Naval vs. Enriquez (3 Phil., 669, 673-675), would control.

As to the appellant's fourth and fifth assignments of error, we find no convincing evidence in the record that Silvino Tecson practiced any fraud to obtain the conveyance Exhibit 2. We therefore affirm the findings of the trial court and direct that the petition be dismissed with costs de oficio.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

Judgment affirmed,

[1] Tecson vs. Tecson, G. R. No. 37215 (58 Phil., 974).

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