

**VALERIANO SOLON, NATIVIDAD SOLON, AND MANUELA IBANEZ,
PLAINTIFFS AND APPELLANTS, VS. APOLONIA SOLON, ZOILO
SOLON, ROBERTA SOLON, FELISA SUICO (MINOR), AND THE
DIRECTOR OF LANDS,...**

G. R. No. 42490. September 09, 1937

Ponente: DIAZ, J.

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DIAZ, J.:

In his lifetime Eugenio Solon, father of the parties surnamed Solon, grandfather of defendant Felisa Suico, and husband of the plaintiff Manuela Ibanezin second marriage contracted on May 23, 1899, bought, on installments, from the Bureau of Lands the parcel of land described as "Lot No. 903 of the Banilad Friar Lands Estate" in transfer certificate of title No. 8379 of the registry of Cebu, situated in the barrio of Cogon, municipality of Cebu, Cebu Province, having an area of 6 hectares, 46 ares and 13 centares, and assessed by said bureau at P403. The sale took place on December 12, 1919, and the time stipulated for the complete payment of its price was thirteen years, the first annual installment being P31, and the subsequent twelve installments to be paid every year being P21 each. On July 30, 1925, with the amount of P126 as part of the agreed purchase price still unpaid, Eugenio Solon, after securing the consent and approval of the Bureau of Lands, sold and conveyed for the sum of P1,000 all his rights, title and interest in the land acquired by him, executing for that purpose in favor of Apolonia Solon who agreed to pay the installments still owing to the Bureau of Lands, the deed of transfer appearing in the record as Exhibit B. Apolonia Solon paid to the Bureau of Lands on the same date of the execution of the deed the amount of P21, and the balance of P105 at one time only a month thereafter. The year following, or on July 10, 1926, Eugenio Solon died, leaving no will, and two years, eight months and eight days later, or on March 18, 1929, the register of deeds of Cebu, upon compliance with the formalities of law, issued transfer certificate of title No. 8379 in the name of Apolonia Solon. The latter took charge of the property, occupying it as her own through tenants from the time she bought the same, according to the evidence for the defendants, and from the death of Eugenio Solon, according to that for the plaintiffs.

Plaintiffs surnamed Solon, all of whom are children of the deceased Eugenio Solon in his marriage with his widow Manuela Ibanez, joining with the latter in maintaining that Exhibit B is false and simulated and that if the same had been executed by Eugenio Solon, it was without just consideration, commenced this suit praying (1) that said document be declared null and void because false and simulated, (2) that they be adjudged the absolute owners of the land in question together with the other heirs of Eugenio Solon, (3) that defendants Apolonia Solon, Zoilo Solon, Roberta Solon and the latter's husband Andres Montalban, be sentenced to pay, jointly and severally, to the plaintiffs the value of the fruits of the land in question from the death of Eugenio Solon, and (4) that said defendants be sentenced to pay, also jointly and severally, to the plaintiffs the sum of P30,000 as damages, besides the costs of the suit.

Defendants, by way of defense, filed an answer containing a general denial and the special defense of prescription based on the fact that plaintiffs had allowed six years to elapse before exercising their right of action.

After trial the lower court rendered judgment dismissing plaintiffs' complaint, without any pronouncement as to costs, and declaring valid in effect the transfer made by Eugenio Solon in favor of Apolonia Solon appearing in Exhibit B. From said judgment plaintiffs appealed to this court after their motion for new trial on the ground that the judgment was contrary to law and not sufficiently supported by the evidence was denied.

In support of their appeal appellants assigned eight errors as committed by the lower court which may be summed up as follows: (1) In giving no credit to the witnesses for the plaintiffs and in making no mention of the falsehoods committed by the witnesses for the appellees in their testimony; (2) in failing to consider the real value of the land in question by reason of its location and value in 1925 when the alleged transfer took place; (3) in failing to take into account the conclusion at which it had arrived during trial, that the land in question, being located near the Osmeiia bridge, was worth P0.25 per square meter in 1925, and declaring afterwards in its decision that it is worth less than P0.01 1/2 per square meter; (4) in not declaring that Eugenio Solon, like other owners of lands" adjacent to his, knew of the plan to construct the provincial capitol on lot No. 850 adjoining lot No. 903 in question; (5) in holding that appellants weakened their side of the case when, after contending that the document Exhibit B is false and simulated, they conceded that although the same may have been executed, it must, at all events, be declared void by reason of the disproportion between the price paid for the land and its true value at the time; (6) in failing to take into account the various facts and circumstances showing that the transaction which took place according to Exhibit E, is fraudulent and false, in view of the fact that the supposed grantor under said deed was an illiterate, 88 years of age and was furthermore the father of Apolonia Solon, and also of the fact that the whole transaction was carried out without the knowledge of his wife and other children; (7) in not holding that Exhibit B is fraudulent and false and that Eugenio Solon, who was 88 years old, ignorant and illiterate, was induced to sign it; and finally (8) in not holding null and void the deed in question and in not finding that the land to which the same refers belongs to all the heirs of the deceased Eugenio Solon.

1.

It is a fact clearly shown by the evidence for the defendants, which appears to us to have more weight than that for the plaintiffs notwithstanding the latter's efforts to show the contrary, that the transfer of the land in question made by Eugenio Solon to Apolonia Solon, according to Exhibit B, had taken place long before the commencement of the suit of Macleod & Co. against Andres Montalban, husband of Roberta Solon, as principal, and Eugenio Solon, as surety of said Montalban. It can not, therefore, be believed, and the lower court did well in refusing to believe, that Andres Montalban had been making statements to the effect that Apolonia Solon had paid nothing for the transfer made in her favor by Eugenio Solon, for the reason that the same was not real but only simulated and that it was made solely for the sole purpose of placing the land in question beyond the reach of any action that might be brought by Macleod & Company against said Eugenio Solon; and that Apolonia Solon had been telling her tenant named Eugenio Labra that there had been an understanding among her brothers of the whole blood that they would cede the said land to her as part of her inheritance from their father, because, in the first place, there was no reason to fear' that Macleod & Company would bring an action against Eugenio Solon for the collection of an amount greater than P5,000 which as surety, he had bound himself to pay; and, in the second place, Apolonia Solon could not have made the above statement attributed to her for the simple reason that she was then already the owner of the land aforesaid by virtue of the purchase appearing in Exhibit B.

When Eugenio Solon bound himself as surety for Andres Montalban for the payment to Macleod & Company of the amount of P5,000 which Montalban owed to the latter, he limited himself to giving as security, by way of mortgage, the land, and no other, belonging to him and described as lot No. 892 of the Banilad Friar Lands Estate in case No. 5988 of the Court of Land Registration and in transfer certificate of title No. 2499 of the registry of property of the Province of Cebu. It is not possible that Macleod & Company could have ever contemplated

bringing an action against Eugenio Solon to obtain possession not only of the land expressly mortgaged to it, which, as has been said, is lot No. 892 described in the certificate of title above-mentioned, which is distinct from lot No. 903, but also of any other land belonging to him or of lot No. 903 itself, for the purpose of collecting its credit against Andres Montalban, because it would not have failed to know, better than any one else, that the contract of suretyship in its favor does not admit of the interpretation that it could make Eugenio Solon liable for an amount greater than P5,000 and that it could require him to pay Montalban's indebtedness, should the latter fail to do so, with lands other than that he had mortgaged. This is so because the clauses of a contract of suretyship determine the extent of the liability of the surety (*Government of the Philippine Islands vs. Herrero*, 38 Phil., 410); because said liability should not be extended farther than the clear terms of the contract of guarantee by mere implications; and because the surety should be liable only in the manner and to the extent, and under the circumstances pointed out in the contract of suretyship or which may be clearly deduced therefrom (*La Insular vs. Machuca Go-Tauco and Nubia Co-Siong*, 39 Phil., 567).

2.

Plaintiffs believe having proved that the value of the land in question in 1925 was P0.25 per square meter. The evidence upon which they rely was the testimony of the engineer, surveyor and real estate broker Thomas F. Breslin, who affirmed that a parcel adjacent to the one under discussion had been sold to a lady named Consolacion Alba de Rodriguez in that year at P0.25 per square meter. It should be noted that, upon cross-examination, said witness had to admit that all he knew concerning the transaction had been obtained from said lady. Although the lower court did not order the striking out of such testimony in spite of a timely motion by defendants to that effect, inasmuch as it limited itself to saying: "It will be taken into consideration," the truth is that when it decided the case dismissing plaintiffs' complaint, it completely disregarded said evidence which is tantamount to having ordered its exclusion on account of its incompetency.

The sales made in 1926 and 1927 of lots Nos. 900 and 1009-A by Jose Vano to Soledad, Salud and Mercedes Espina, and by Maria Solon to Zenon Diaz, respectively, at the rate of P0.20 and P0.24 per square meter, according to Exhibits BB and X, and the sale made by Vidal S. Duterte to the spouses Severino Rodriguez and Consolacion Alba, of lot No. 1009-B, in October, 1925, at P0.25 per square meter, according to Exhibit Y, do not necessarily prove that the land in question was worth that much on the date of its sale. It must be remembered that this had taken place three months before the sale of the land referred to in Exhibit Y, and one and two years before those set forth in Exhibits BB and Y, respectively. Those who acquired said lands, according to their own testimony, desired to speculate because they had heard that the capitol of Cebu would be erected nearby. It is, nevertheless, a fact that since then until the date of the decision appealed from—in the words of the lower court—the capitol had not been erected, nor had any road been opened through said parcels, nor had the rumors that the capitol would be constructed sooner or later in the vicinity had any appearance of truth. However, although there may have been a proposal to erect the capitol thereon, the evidence does not show that Eugenio Solon had ever had knowledge of that fact. Furthermore, knowing that he had paid for the land only P270.70, it is only reasonable to suppose that he was more than satisfied when he received an offer of P1,000 therefor and was paid that amount which is, no doubt, almost three times that which he had invested, not at one time, of course, but in six years. On the other hand, the person to whom he transferred the land was no other than his own daughter. For these reasons, we believe and so hold that the second error is without merit.

3.

There is nothing in the record which proves that the court found that the value of the land in dispute in 1925 was P0.25 per square meter. All that the lower court said during the trial, and it appears only incidentally, in ruling on the objection to a question made for the purpose of finding out the¹ amount at which the land would quote per

.square meter in case the capitol were constructed on parcel No. 850 which is adjacent to the parcel in question, was the following:

"That is extremely remote. I believe that the best proof is that of P0.25 per square meter, in 1925. I believe that that is the real value, and it depends upon whether or not a street will be opened and on whether or not a capitol will be constructed, and if it be depression time, as it is now, it can not possibly sell at P2, so that it is all too problematical."

And it should be added that the lower court said this before hearing the other evidence of plaintiffs and before having any idea of what the evidence of defendants would be. It surely corrected the same thereafter in the manner set forth in the decision appealed from, We hold that the third error is likewise not well taken.

4.

The fourth error is imaginary. As has been said, there is no evidence of record to show that Eugenio Solon had any knowledge of the plan to construct the capitol of Cebu near the land .in dispute upon selling the same to Apolorjia Solon. The argument of plaintiffs that it must be presumed that every land owner has knowledge of all the improvements which are to be made in properties near his own, does not prove anything because it does nowhere appear as a fact that the capitol of Cebu was to be constructed sooner or later in the immediate vicinity of the land in question. But even supposing that Eugenio Solon had guessed that there would be such a plan, this does not imply that the transfer he made to Apolonia Solon was void because the owner has the right to sell what belongs to him to whomever he chooses and for whatever price satisfactory to him.

5.

And it is no error for the lower court to have considered that the cause of the plaintiffs was weakened on account of the fact that they maintain two propositions which are, in reality, incompatible with each other. That the document of transfer Exhibit B was false and simulated, and that it must simply be declared void for the reason that the price paid therefor is disproportionate to its value in 1925 are two irreconcilable things. If the latter were true, then it would be useless to insist that the said document is false or simulated. But the truth is that there is no disproportion between the price paid for it and its real value in 1925. The Bureau of Lands itself sold, on July 28, 1924, lot No. 887 of the same Banilad Friar Lands Estate, located near the land in question and having an area of 3 hectares, 43 ares, 62 centares for the small sum of P190 or less than 6/10 centavo per square meter. (Exhibit II-A.) There is no occasion to repeat here the same reasons for the statement that there is no evidence of record in support of the conclusion that there was a proposal on the part of the Province of Cebu to construct its capitol on' lot No. 850. If there was any disproportion between the price paid and the real value of the land, it was not to the prejudice of Eugenio Solon because he was paid much more than he really paid therefor to the Bureau of Lands notwithstanding that he had not made any improvements thereon or completed the payment he had agreed to make to said office.

6.

The sixth error attributed by appellants to the lower court has been practically shown not to exist for the reasons given in discussing the first five errors. In addition thereto, it may be said that plaintiffs have not adduced any evidence to show that said transfer did not take place. On the other hand, defendants proved that it did take place by means of Exhibit B which, it may be truthfully said, was executed with all the formalities of the law before a notary public and in the presence of an official of the Bureau of Lands in the very office of the latter in Talisay,

Cebu, and in that of another, witness, and by means of the approval of said transfer by the Director of Lands. They further proved through one of the instrumental witnesses to said document and through Apolonia Solon herself that the price appearing in said document Exhibit B was paid to Eugenio Solon; and that the latter had tried to sell the land before that date to other persons for P1,500, but that they did not offer him more than P750. All the foregoing, together with the fact that the last annual payments which Eugenio Solon should have made to the Bureau of Lands were effected by Apolonia Solon and that said defendant took possession of the land immediately after the execution of Exhibit B conclusively show that said document was neither fraudulent nor false. And it is not true that Eugenio Solon was then 88 years old and, therefore, could be easily imposed upon by reason of his mental and physical weakness because the best evidence appearing of record with respect to his age, Exhibit F, shows that he was only 66 years, 2 months and 7 days at the time of the transfer.

7 and 8.

The seventh and eighth errors need no further discussion. The reasons above given clearly show that they do not exist. The inescapable conclusion, therefore, is that the appeal taken by plaintiffs is unfounded and without merit for the reason that the judgment appealed from is in accordance with law and supported by the evidence

.In view of the foregoing, the judgment appealed from is affirmed with the costs of the appeal against the plaintiffs and appellants. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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