

PAZ DE SANTOS, CONSUELO DE SANTOS, AND JOSE MARIANO DE SANTOS, PETITIONERS AND APPELLANTS, VS. THE BANK OF THE PHILIPPINE ISLANDS, OPPOSITOR AND APPELLEE. FELIPE DE SANTOS, INTE...

G.R. No. 44065. July 30, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The case before us arose from a decision of this court in the case entitled, *De Santos vs. Bank of the Philippine Islands* (58 Phil., 784), the dispositive part of which reads:

"Wherefore, the order appealed from is hereby reversed and the case ordered remanded to the court a quo in order to give the herein oppositor-appellee, Bank of the Philippine Islands, an opportunity to contest the partition in accordance with the provisions of article 403 of the Civil Code, without special pronouncement as to costs. So ordered."

Upon the return of the case to the court of origin, in accordance with the order in the above-mentioned decision, and upon a new trial at which documentary and oral evidence was adduced, the appealed resolution was entered containing the following dispositive part:

"Wherefore, the court declares that the extrajudicial partition made by the petitioners together with the intervenor and his coowner Isidoro de Santos, on April 21, 1931, is void and illegal for fraud and, as a consequence, the court also decrees void and illegal all the proceedings taken after its execution, thus keeping intact and alive the right, interest and participation which Isidoro de Santos had in the nine properties above-described at the time of the issuance of the attachment in favor of the oppositor bank, and orders that the said attachment of the right, interest and participation of Isidoro de Santos should remain registered and noted on the back of transfer certificates of title Nos. 34394, 34395, 34396, 34397, 34398, 34399, 34400, "4403 and 34530, which are the only valid ones, and as such should be restored in the same condition in which they were found before their cancellation, to the end that the oppositor Bank may enforce the execution of its judgment on the right, interest and participation which Isidoro de Santos had when the attachment was issued in favor of the oppositor bank on April 18, 1931."

The herein applicants Paz de Santos, Consuelo de Santos and Jose Mariano de Santos, by a motion filed in the corresponding cadastral case, seek the annulment of the notation of the preliminary attachment made in the respective certificates of title issued in their name by virtue of an order approving the partition entered into between them and their coowners, their brothers Felipe de Santos and Isidoro de Santos, of the properties held by all of them in common.

The principal question to be decided in the present appeal is whether or not the partition of the aforesaid properties, made among the coowners, the brothers and sisters Paz de Santos, Consuelo de Santos, Jose Mariano de Santos, Felipe de Santos and Isidro de Santos, is fraudulent.

The said brothers and sisters De Santos were the undivided owners of the parcels of land described in transfer certificates of title Nos. 34394, 34395, 34396, 34397, 34398, 34399, 34400, 34403 and 34530, issued by the register of deeds of the City of Manila, with the exception of the parcel described in certificate No. 84400, 14/75 parts, of which belong in undivided ownership to said brothers and sisters and 5/75 parts belong to one, Mercedes Meyer y Alas, married to Asrapito Novenario.

On October 16, 1930, the said brothers and sisters, owners in common, executed a deed whereby they constituted a first mortgage, in favor of Luis Mirasol, of the lots described in the transfer certificates of title Nos. 34396 and 34398. with, the buildings and other improvements existing thereon, to secure the payment of a loan for P20,000 contracted by all of them, of the interest thereon at the rate of 10 per cent per annum, and of other obligations in said deed, the said principal being payable jointly and severally within one year from the said date, October 16, 1930 and the interest in advance every month, between the 16th and 20th of each month, at the residence of the creditor.

On January 27, 1931, a writ of preliminary attachment vps issued by the Court of First Instance in civil case No. 37869, entitled, "Philippine Guaranty Co., Inc. vs. Isidoro de Santos", for the recovery of the sum of P4,000 with interest and the costs, attaching the right, Interest and participation which said Isidoro de Santos had or might have in the properties described in transfer certificates of title Nos. 34399 and 34400.

On March 16, 1931, at the instance of Jose de Leon, attachment was levied on all the right, interest and participation which Isidoro de Santos had or might have in the properties described in transfer certificates of title Nos. 34395, 34397 and 34530, by virtue of a writ issued in civil case No. 4276 of the Court of First Instance of Bulacan, entitled "Jose de Leon vs. Isidoro de Santos et al.," for the recovery of the sum of P11,200.

On April 7, 1931, all the coowners, brothers and sisters, constituted a first mortgage in favor of the Philippine Guaranty Co., Inc., on the property described in transfer certificate of title No. 34403, "with the buildings and other improvements which now or hereafter may be found thereon, to secure the payment of a loan for seven thousand five hundred pesos (P7,500) as principal, of its interest at the rate of ten per cent (10%) per annum, and of other obligations mentioned in the deed, the principal being payable within one year from April 7, 1931, and the interest every month, from the 1st to the 5th of each month."

On April 18, 1931, a writ of preliminary attachment was issued in favor of the plaintiff in civil case No. 39435 of the Court of First Instance of Manila, entitled "Bank of the Philippine Islands vs. Isidoro de Santos," for the recovery of the sum of P49,500, with interest thereon and the costs, attachment being levied on all the right, interest and participation which said Isidoro de Santos had or might have in all the parcels or properties described in the nine transfer certificates of title above-mentioned, which were held in common by all the said five brothers and sisters De Santos.

On April 21, 1931, the aforesaid five coowners, brothers and sisters De Santos, agreed among themselves to extrajudiciary partition the nine parcels already mentioned, with the buildings and other improvements thereon, into five parts, taking into consideration the value and income of each parcel. To this effect they executed the private deed of partition Exhibit R-1, Appendix A.

In accordance with the aforesaid deed of partition, the said coowners, brothers and sisters, on the same date, April 21, 1931, carried out the partition agreed upon by lot (Exhibit R-1, Appendix B), it having fallen to the lot of Consuelo de Santos a part of the property described in certificate of title No. 34395 and that described in certificate No. 34398, with a total value of P93,545 and an annual income of P12,408; to Jose Mariano de Santos, a part of the property described in certificate of title No. 34395, with another property and a coconut land which are not involved in this case, with a total value of P100,275 and an annual income of P12,252; to Isidoro de

Santos, a part of the property described in certificate of title No. 34530 and that described in certificate of title No. 34397, with a total value of P39,444 and an annual income of P12,768; to Felipe de Santos, a part of the property described in the certificate of title No. 34530 and that described in the certificates of title Nos. 34403 and 34400, with a total value of P63,872 and an annual income of P12,396; and to Paz de Santos, the properties described in the certificates of title Nos. 34399, 34394 and 34396, with a total value of P77,104 and an annual income of P14,832.

In the aforesaid deed of partition, Isidoro de Santos stated in the fourth clause thereof the following:

"4. I, Isidoro de Santos, also individually state that I bind myself to release the mortgages, within five days from the adjudication by lot referred to in subparagraph (c) of this deed, on the properties mentioned in the second paragraph of this same deed which did not fall to my lot in the adjudication."

On April 22, 1931, the register of deeds of Manila recorded the aforesaid writ of preliminary attachment issued on April 18, 1931, by the Court of First Instance of Manila in civil case No. 39435, at the instance of the plaintiff therein Bank of the Philippine Islands against Isidoro de Santos.

On June 25, 1931, judgment was entered in the said case No. 39435 of the Court of the First Instance of Manila in favor of the plaintiff Bank of the Philippine Islands, ordering the defendants Isidoro de Santos and Paulino Candelaria to pay the said plaintiff the sum of P45,000 with interest at 9 per cent per annum from August 8, 1930, plus P1,000 as attorney's fees, and the costs.

On July 31, 1931, upon motion of the coowner Felipe de Santos, the court entered in these same cadastral cases before us an order approving the aforesaid extra judicial partition and ordered the issuance of new certificates of title upon cancellation of the old ones. These new titles were issued in the name of the following persons: in the name of Paz de Santos the new transfer certificate of title No. 39885 (Exhibit B), with the notation on the back thereof of the preliminary attachment issued against Isidoro de Santos in civil case No. 39435, entitled "Bank of the Philippine Islands vs. Isidoro de Santos"; in the name of Consuelo de Santos the new transfer certificate of title No. 39879 (Exhibit C), with the same notation and that of the preliminary attachment issued in civil case No. 4276 of the Court of First Instance of Bulacan, entitled "Jose de Leon vs. Isidoro de Santos"; in the name of Jose Mariano de Santos the new transfer certificate of title No. 89880 (Exhibit C), with the notation of the same attachments; in the name of Isidoro de Santos the new transfer certificates of title Nos. 39881 and 39883 (Exhibits J and E), with the notation of the same two attachments (Exhibits L and N); and in the name of Felipe de Santos the new transfer certificates of title Nos. 39822, 93884 and 41305 (Exhibits J, H and I), with the same notations (Exhibit M).

On August 29, 1931, there was issued in civil case No. 39435, entitled "Bank of the Philippine Islands vs. Isidoro de Santos et al.," an order of execution of the judgment because the latter had become final and executory.

On September 30, 1931, there was issued in the same civil case No. 39435 an order denying the motion filed by Felipe de Santos wherein he asked for the cancellation of the notation of the preliminary attachment levied by the Bank of the Philippine Islands against Isidoro de Santos on the certificates of title to the properties which have not been adjudicated in the partition to said Isidoro de Santos. From this order nobody appealed.

On December 19, 1931, the properties described in transfer certificates of title Nos. 34530 and 34397, pertaining to Isidoro de Santos, were sold at public auction, the same having been acquired by Jose de Leon, as the highest bidder, for the sum of P6,825. This sale was made by virtue of an order of execution issued by the Court of First Instance of Bulacan on November 11, 1931, in the aforesaid civil case No. 4276 of said court, entitled "Jose de Leon vs. Isidoro de Santos et al." (Exhibits O, P and Q.)

On August 31, 1933, the Court of First Instance of Manila rendered judgment in civil case No. 41033, entitled "El Hogar Filipino etc. vs. Isidoro de Santos et al.," approving the stipulation of facts submitted by the parties, wherein the therein defendant and debtor Isidoro de Santos made a statement of the annual income and expenses of his properties which had to answer for his indebtedness the recovery of which was the subject matter of said litigation, as follows:

Income

P88,540.00

Expenses

13,619.88

Net Income

74,920.12

In said stipulation was recognized the credit of the herein respondent Bank of the Philippine Islands, declared in a decision rendered in the aforesaid civil case No. 39435, "Bank of the Philippine Islands vs. Isidoro de Santos et al." the payment of which credit was subordinated to that of the Hogar Filipino but made in preference to that of the other creditor John Gordon. From the income of the properties aforementioned, and after deducting the expenses, the payment agreed upon to be made to said creditors, under clause 5 of the aforesaid agreement, is the following: "65 per cent to the Hogar Filipino, as first mortgagee; 7 per cent to the Bank of the Philippine Islands, as holder of a lien which occupies the second place over the properties which are the subject matter of this action; and 12 per cent to John Gordon, as second mortgagee, which mortgage, however, was registered subsequent to the lien acquired by the Bank of the Philippine Islands." However, in the tenth clause of the said agreement, it is said:

"10. The Bank of the Philippine Islands reserves the right to execute its judgment upon the other properties which it has attached when it can do so, unless it enters into a transaction with the persons in whose name the attached properties are found and which are not the subject matter of this agreement, to the end that what it may obtain from said executions and transactions may reduce the balance owing¹ to it as acknowledged in this 'agreement.'"

The project of extrajudicial partition Exhibit R-1 has been presented as evidence by the respondent itself, the Bank of the Philippine Islands, who admits its authenticity. No evidence whatever has been presented on the allegation of the oppositor and appellee that there was fraud in the drawing of lots made for the adjudication of the properties which have been partitioned.

From the fact that when the extrajudicial partition was made of the properties possessed in common by the brothers and sisters De Santos, the writ of preliminary attachment had already been issued in favor of the oppositor and appellee Bank of the Philippine Islands; from the fact that the said partition was made on April 21,

1931, one day before the said writ of preliminary attachment was noted in the registry of deeds; from the fact that in the aforesaid partition the share of Isidoro de Santos was the property described in the certificate of title No. 34397 and a part of that described in certificate of title No. 34530, upon which existed a preliminary attachment in favor of Jose de Leon and which were later on sold at public auction under a writ of execution of a judgment, the same having been acquired by the said Jose de Leon as the highest bidder ; and from the fact that Isidoro de Santos, in the deed of partition, undertook to release the mortgaged properties should they be adjudicated to any one of the co8wners, the lower court has drawn the conclusion that the said partition was effected through conspiracy among the said coowners in order to defraud the Bank of the Philippine Islands of its credit against Isidoro de Santos, one of the said coowners.

It is a well established rule in the law of evidence that fraud is not presumed and that it is incumbent upon him who alleges fraud to prove its existence conclusively, by means of evidence admissible in law.

The applicants and appellants have shown by oral and documentary evidence that on April 21, 1931, they entered into a written agreement whereby they would partition the nine parcels of land with the buildings and other improvements thereon, held by them in common, and to this end they executed the private deed of partition (Exhibit R-1, Appendix A), wherein five subdivisions were made of said nine parcels, and stating therein that the adjudication would be made by lot, which was done on the same date, the result thereof having been stated in the deed Exhibit E-1, Appendix B. The appellee Bank of the Philippine Islands does not dispute the authenticity of the said deed, nor has it established that the drawing of lots was not carried out; hence, we have to admit its contents.

A coowner has the right of ownership over each portion of the thing owned in common with others. In making the partition it cannot be said that he alienates his right under an onerous title, for all that he does is to bring into one portion all the portions belonging to him in said thing. He does not part with his right in exchange for one belonging to another. Inasmuch as Isidoro de Santos has not alienated his right in the properties owned in common under an onerous title, the presumption established in article 1297 of the Civil Code is without application. But even granting, for the sake of argument, that the partition is an alienation which a coowner makes of his right of ownership in the property owned in common with others, still as Isidoro de Santos has other properties upon which the Bank of the Philippine Islands may enforce its credit, as stipulated in the case of *El Hogar Filipino, etc. vs. Isidoro de Santos et al.*, civil case No. 41033 of the Court of First Instance of Manila, the rescission of said partition does not lie under article 1291, No. 3, of the Civil Code. That the Bank of the Philippine Islands has reserved its right to collect its credit from the other properties attached by it, does not give it any right to avail itself of the two remedies inasmuch as it is not authorized to do so by law.

The fact that the partition was made on April 21, 1931, one day before the registration in the registry of deeds of the writ of preliminary attachment issued in favor of the oppositor and appellee Bank of the Philippine Islands on the 22d of said month and year, does not in any way show that the coowners wanted to be ahead of the registration of the said writ of preliminary attachment, for, as said by the lower court itself in its decision, article 1297 of the Civil Code does not require the registration in order that, a debtor having alienated his property under an onerous title, the presumption of fraud may arise, but it is enough if the said writ has been issued.

Nor is it indicative of fraud that to Isidoro de Santos had been allotted the property described in the certificate of title No. 34397 and a part of that described in the certificate of title No. 34530 upon which existed the preliminary attachment levied by virtue of a writ issued in favor of Jose de Leon prior to that issued in favor of the Bank of the Philippine Islands, because according to the oral and documentary evidence adduced by the applicants and appellants, the adjudication was made by drawing lots, the said two properties having fallen to the lot of Isidoro de Santos a procedure which shows the good faith of the coowners.

Far from showing fraud, good faith is evidenced by the fact that Isidoro de Santos, in the deed of partition, undertook to release the mortgage lien existing on the mortgaged properties should these fall to the lot of any of the coowners, for it is not true that Isidoro de Santos did not have properties to back up his promise inasmuch as his properties deposited in the aforesaid case of *El Hogar Filipino etc. vs. Isidoro de Santos et al.*, civil case No. 41033 of the Court of First Instance of Manila, amounted to more than one million pesos, the product of which was applied to pay his debts.

Whether singly or jointly considered, the facts from which the lower court has drawn its affirmative conclusion, do not constitute fraud.

Wherefore, we conclude that, not having established that in the partition made by the coowners, the brothers and sisters De Santos, of the properties held by them in common there was any intention to defraud the Bank of the Philippine Islands of its credit against the coowner Isidoro de Santos, the said bank cannot invoke the right given to it by article 403 of the Civil Code.

In view thereof, the appealed resolution is reversed and the petition filed by the applicants and appellants is granted; ordering, as it is hereby ordered, the cancellation of the notation of the preliminary attachment in favor of the oppositor and appellee Bank of the Philippine Islands in the transfer certificates of title, issued in the name of said applicants and appellants, of the properties which were allotted to them in the partition entered into by the coowners De Santos on April 21, 1931, with the costs to the appellee Bank of the Philippine Islands. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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