

JOSE NARCISO Y ANGELES ET AL., PLAINTIFFS AND APPELLANTS, VS. FLORENTINO MAU-RICIO, DEFENDANT AND APPELLEE.

G.R. No. 48155. November 28, 1942

Ponente: PARAS, J.

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PARAS, J.:

- FICTITIOUS, NOT MERELY NULL, SALES; RIGHT OF INTESTATE HEIRS TO HAVE SAID SALES DECLARED NULL AND VOID AND TO ASK FOR PARTITION OF PROPERTY.—Inasmuch as the complaints allege that the sales executed by the deceased in favor of the defendants are fictitious—and this allegation is deemed admitted by the demurrer and the motion to dismiss—it necessarily follows that said sales are non-existent, not merely null, and there is, therefore, nothing to be annulled by action. Inasmuch, also, as the complaints allege that said deceased died intestate without leaving any descendant or ascendant, and that the plaintiffs and the defendants are her collateral (and therefore intestate) heirs,—and these allegations are deemed admitted by the demurrer and the motion to dismiss—it necessarily follows that they are entitled to succeed to the properties described in the complaints which should, as sufficiently prayed for by the plaintiffs, be divided among the latter and the defendants in accordance with law.

- ID.; ID.—Moreover, article 1257 of the Civil Code provides that "Contracts shall be binding only upon the parties who execute them and their heirs, excepting, with respect to the latter, cases in which the rights and obligations arising from the contract are not transmissible, either in consequence of their nature, or by agreement, or by provision of law." When these two cases are decided on the merits, upon issues properly joined, it may indeed be necessary to determine the validity of the sales in question, but this would only be incidental to the main and ultimate relief sought by the plaintiffs, namely, the partition of the properties left by the deceased.

APPEAL from two orders of the Court of First Instance of Manila. Roxas, J.

Decision penned by Associate Justice Ricardo Paras.

Mariano A. Aguilar for appellants,

Guillermo B. Guevara for appellees.

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