

**HEIRS OF SPOUSES LUIS YANAS AND MARIA AGLIMOT,
REPRESENTED BY ABRAHAM YANAS, PETITIONERS, VS. HEIRS OF
SPOUSES ANTONIO ACAYLAR AND GELACIA ACAYLAR, NAMELY,
ANTONIO, JR., CECILIA...**

G.R. No. 54538. April 25, 1985

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the validity of the sale of land executed by Luis Yanas, an illiterate Subano. Yanas, also known as Sulung Subano, had occupied, even before 1926, Lot No. 5408 with an area of 13 hectares located at Sitio Dionom (Lower Gumay), Barrio Sianib, Piñan (Dipolog), Zamboanga del Norte (Exh. L). Through lawyer Leoncio S. Hamoy, Yanas claimed the lot in the cadastral proceeding.

It is adjacent to the Dionom Creek and is about two kilometers from the national highway. He planted the land to rice, corn, coconuts and fruit trees. He built houses thereon. He declared it for tax purposes in his name. Judge Mañalac on September 30, 1941 issued Decree No. N-11330 adjudicating Lot No. 5408 to Yanas "married to Maria Aglimot" (Exh. C).

Lawyer Valeriano S. Concha, Sr., an adjoining owner of Yanas since 1946, who became clerk of court, testified that Yanas had always occupied the lot since 1946 up to his death in 1962 (103 tsn June 4, 1970). His son filed an adverse claim for Yanas.

On August 7, 1950 Yanas thumbmarked in Dapitan a deed of sale and conveyance wherein he purportedly sold to Antonio L. Acaylar of Dapitan for P200 his 13-hectare land. The sale was notarized on the following day, August 8. An instrumental witness was lawyer Hamoy. The sale was approved by Governor Felipe B. Azcuna on May 15, 1953 or 33 months after the sale.

It is the theory of the heirs of Yanas that that deed of sale is fictitious and fraudulent because what Yanas thumbmarked on August 7, 1950 was supposed to be a receipt attesting that he owed Hamoy P200 for his legal services. Hamoy allegedly taking advantage of his illiteracy, made Yanas affix his thumbmark to a deed of sale in English (Exh. 2).

The decree issued by Judge Mañalac in 1941 was registered only on June 5, 1954. On that day, OCT No. 64 was issued to Yanas. On December 21, 1954 Acaylar registered the 1950 deed of sale. He obtained TCT No. T-3338 (Exh. 5). How Acaylar came to have possession of the owner's duplicate of OCT No. 64 and why it was not delivered to Yanas are not shown in the record.

When Yanas discovered that his title was cancelled, he caused on August 28, 1958 an adverse claim to be annotated on Acaylar's title. He stated in his adverse claim that he never sold his land and that the price of P200 was grossly inadequate because the land was worth not less than P6,000 (Exh. D).

Yanas died in 1962. His widow, Maria Aglimot, also a Subano, and his children filed in 1963 an action to declare void Acaylar's title. A notice of lis pendens was annotated on that title. Aglimot died in 1965. The trial court found the sale to be valid and binding. The Appellate Court affirmed the trial court's decision. The heirs of Yanas appealed to this Court.

They contend that the Appellate Court erred in not holding that the deed of sale was fabricated and simulated and, therefore, void ab initio and that Maria Aglimot as surviving spouse could recover the lot.

The heirs of Acaylar, through counsel who did not take part in the trial, maintain that the sale was "true and faithful" and that the widow had no right to recover one-half of the lot.

We hold that the sale was fictitious and fraudulent. Among the badges of fraud and fictitiousness taken collectively are the following: (1) the fact that the sale is in English, the alleged vendor being illiterate; (2) the fact that his wife did not join in the sale and that her name is indicated in the deed as "Maria S. Yanas" when the truth is that her correct name is Maria Aglimot Yanas; (3) the obvious inadequacy of P200 as price for a 13-hectare land (P15.40 a hectare); (4) the notarization of the sale on the day following the alleged thumbmarking of the document; (5) the failure to state the boundaries of the lot sold; (6) the fact that the governor approved it more than two years after the alleged sale; (7) its registration more than three years later, and (8) the fact that the Acaylars were able to occupy only four hectares out of the 13 hectares and were eventually forcibly ousted therefrom by the children and agents of the vendor. It was not a fair and regular transaction done in the ordinary course of business.

The grave flaws in the evidence for defendants Acaylar are the patent contradictions in the testimonies of Antonio L. Acaylar and lawyer Hamoy, their principal witnesses on the validity of the sale. Acaylar testified that he signed the deed of sale and that one Tupas was an instrumental witness (12-13 tsn May 4, 1970). The truth is that Acaylar never signed the deed and Tupas was not a witness. The instrumental witnesses were Hamoy and Paulino Empeynado.

Hamoy at first testified on November 20, 1968 that on August 7, 1950 he was a witness in the deed of sale (Exh. 2 and 6) executed by Yanas who had requested him to look for a buyer of his lot (122-124 tsn). That means that Hamoy met Yanas in August, 1950.

More than a year later, or on June 22, 1970, Hamoy, testifying as a rebuttal witness for Acaylar, declared on direct and cross-examination that he last saw Yanas in 1946 (103-106). He absurdly stated that his name appears as an instrumental witness in the deed of sale but he testified: "That is my name but I did not sign that" (107).

The deed of sale (Exh. 2 and 6) appears as Document No. 113, page 57, Book 3, series of 1950 of Jose G. Empeynado's notarial register. Teofisto Realiza, the clerk in charge of the court archives, testified on November 10, 1966 that Document No. 113 is an affidavit of Lorenzo Bajamunde, not a deed of sale signed by Yanas (4-5 tsn).

However, five days later, or on November 15, 1966, he issued a certified copy of the deed of sale, Exhibit 2, to Acaylar's lawyer. Presumably, the deed of sale was a part of the notarial report of Empeynado but he did not enter the sale in his notarial book.

The fact that the alleged sale took place in 1950 and the action to have it declared void or inexistent was filed in 1963 is immaterial. The action or defense for the declaration of the inexistence of a contract does not prescribe (Art. 1410, Civil Code).

WHEREFORE, the decisions of the trial court and the Court of Appeals are reversed and set aside. The heirs of

Luis Yanas are declared the owners of Lot No. 5408 of the Dipolog cadastre entitled to the possession thereof.

SO ORDERED.

Makasiar, (Chairman), Abad Santos, Escolin, and Cuevas, JJ., concur.
Concepcion, Jr., J., on leave.

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