

JOSEPH N. WOLFSON, PLAINTIFF AND APPELLEE, VS. THE ESTATE OF FRANCISCO MARTINEZ, DECEASED, DEFENDANT AND APPELLANT.

G.R. No. 5970. October 13, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal by the defendant from a judgment of the Court of First Instance of Manila, the Hon. A. S. Crossfield presiding, reversing the findings of certain commissioners who rejected the claim of the plaintiff presented against the estate of Francisco Martinez, deceased, and finding in favor of the plaintiff for the sum of P12,000.

The learned trial court in the opinion which forms the basis of his judgment said;

"From the evidence presented at the trial it appears that on the 29th day of January, 1906, a judgment was entered in this court by Hon. John C. Sweeney, one of the judges thereof, in favor of Mariano Yap-Tuangco against the deceased Francisco Martinez for the sum of twelve thousand pesos;

"That there was a contract agreement between the plaintiff in that judgment and the above mentioned Joseph N. Wolfson and one Basilio Regalado y Mapa to the effect that said Wolfson and Mapa should have as their fees for prosecuting the case fifty per cent of whatever amount might be obtained;

"That subsequently said Mapa assigned his interest in said contract to the said Wolfson;

"That subsequently and on the 18th day of June, 1907, the plaintiff Mariano Yap-Tuangco, for value received, sold and transferred and delivered to said Wolfson all his right, title and interest in and to the aforementioned judgment."

The question raised on this appeal is whether or not under the provisions of article 1459 of the Civil Code the plaintiff, Joseph N. Wolfson, was prohibited from purchasing the judgment of his client in such manner and to such extent that the contract of which such purchase was a part was absolutely null and void and could be attacked by a person not a party to the transaction. The article in question reads as follow:

"Art. 1459. The following persons can not acquire by purchase, even at public or judicial auction, neither in person nor by an agent:

"1. The guardian or protutor, the property of the person or persons who may be under their guardianship.

"2. Agents, the property the administration or sale of which may have been intrusted to them.

"3. Executors, the property intrusted to their care.

"4. Public officials, the property of the State, municipalities, towns, and also of public institutions, the administration of which has been intrusted to them.

"This provision shall apply to judges and experts who, in any manner whatsoever, take part in the sale.

"5. Associate justices, judges, members of the department of public prosecution, clerks of superior and inferior courts, and officials of justice, the property and rights in litigation before the court in the jurisdiction or territory over which they exercise their respective duties, this prohibition including the act of acquiring by assignment. "From this rule shall be excepted the cases in which hereditary actions among coheirs are involved, or assignments in payment of debts, or security for the goods they may possess.

"The prohibition contained in this number shall include the lawyers and solicitors with regard to the property and rights, which may be the object of the litigation, in which they may take part by virtue of their profession and office."

On this appeal we do not discuss or decide the question whether or not the judgment in question actually falls within the prohibition of the article, it being the disposition of a majority of the court to place the decision wholly upon the proposition that, even if it be conceded that the purchase of the judgment in question was within the prohibition of the article quoted, nevertheless, the contract of purchase and sale is not void but voidable at the election of the vendor. This being so, its voidability can not be asserted by one not a party to the transaction, or his representatives.

Manresa, commenting on this section, says;

"Considering the question from the point of view of the civil law, the view taken by the code, we must limit ourselves to classifying as void all acts done contrary to the express prohibition of the statute. Now then: As the code does not recognize such nullity by the mere operation of law, the nullity of the acts herein before referred to must be asserted by the person having the necessary legal capacity to do so and decreed by a competent court. Chapter 6, title 2, book 4 of the code contains the provisions applicable to the matter under consideration." (Manresa, Spanish Civil Code, vol. 10, p. 108.)

Article 1257 of the Civil Code reads ;

"Contracts shall be valid only between the parties who execute them and their heirs, except, with regard to the latter, the case in which the rights and obligations arising from the contract are not transmissible, either by their nature, or by agreement, or by provision of law.

"Should the contract contain any stipulation in favor of a third person, he may demand its fulfillment, provided he has given notice of his acceptance to the person bound before it may have been revoked."

Commenting on articles 1457, 1458, and 1459 of the Civil Code, Manresa says:

"From this statement of the rule and its relation to the succeeding articles, these consequences logically follow: (1) That there are no incapacities except those expressly mentioned in the law and that such incapacities can not be extended to other cases by implication for the reason that such construction would be in conflict with the very nature of the provision; (2) That as a general rule those who can bind themselves have also legal capacity to buy and sell; (3) That there are certain exceptions to this rule; (4) That the incapacity to buy or sell may be absolute or relative; (5) That such incapacity is absolute in the case of persons who can not bind themselves; (6) That relative incapacity may exist with reference to certain persons or a certain class of property." (Manresa, Spanish Civil Code, vol. 10, p. 87.)

Article 1302 of the Civil Code reads:

"The action for nullity of contracts may be brought by those who are principally or subsidiarily obligated by virtue thereof. Persons with capacity can not, however, allege the incapacity of those with whom they contracted; neither those who caused the intimidation or violence, or employed deceit, or caused the error, can base their action on these defects of the contract."

Manresa, commenting on the latter article, says:

"Two different requisites are required to confer the necessary capacity for the exercise of such action. With each of the said requisites the two paragraphs of this section deal separately. The first requisite is that the plaintiff must have an interest in the contract. The second is that the victim and not the party responsible for the defect is the person who must assert the same." (Manresa, Spanish Civil Code, vol. 8, p. 737.)

"It was declared in a judgment of the 18th of April, 1901, in accordance with the rule hereinbefore stated, that he who is not a party to a contract, or an assignee thereunder, or does not represent those who took part therein, has, under articles 1257 and 1302 of the Civil Code, no legal capacity to challenge the validity of such contract." (Manresa, Spanish Civil Code, vol. 8, p. 788.)

In relation to the same matter the supreme court of Spain on the 23d of November, 1903, published a decision [p. 702] in which appears the following:

"The judgment appealed from in so far as it declares that the instrument of dissolution of the partnership between A and B was null and void for the reason that the plaintiff was not bound, either principally or subsidiarily, by the said instrument, is contrary to the provisions of article 1302 of the Civil Code."

Even if the sale of the judgment in question is found comprehended within the prohibition of article 1459, a question which we do not now decide, still the defendant is not entitled to invoke the terms of said article for the reason, above stated, that such prohibition is personal to the parties to the contract, being available only to them or their representatives.

For these reasons the judgment of the court below is affirmed without special finding as to costs.

Torres, Mapa, Johnson, and Carson, JJ., concur.

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