

**ROMAN AYLES ET AL., PLAINTIFFS AND APPELLANTS, VS. NEMESIO REYES, AS ADMINISTRATOR OF THE ESTATE OF FELIPE GARAY, DECEASED, AND BENITO REYES, DEFENDANTS AND APPELLEES.***G.R. No. 6089. January 07, 1911*

Ponente: ARELLANO, C.J.

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Felipe Garay was a Spaniard who lived in one of the pueblos of the Province of Camarines and was the owner of several real properties situated in the said province. He went to Spain in 1897, leaving here an attorney in fact, with the fullest powers, named Francisco Samesa, who, it appears, was a relative of his.

Felipe Garay's death, being known in the locality in October, 1903, intestate proceedings were begun and Nemesio Reyes was appointed to administer the estate.

The said Reyes, knowing that one of the said properties had been sold to Juliana Mendizabal, brought suit, on July 27, 1905, to recover the same; this action was No. 468 in the Court of First Instance of Ambos Camarines. In the said cause Sinforoso Dondis and Francisco Samesa intervened, and it was found that Dondis had sold the property, the subject matter of the complaint, to Juliana Mendizabal, and that Samesa had sold it to Dondis. In the said case, according to the findings, Dondis knew that Garay had died prior to the time when he (Dondis) purchased the property from Samesa, and that Samesa and Dondis had proceeded with the sale, knowing of the death of Garay, and with no other purpose than that of defrauding the latter's legitimate heirs.

After the case just above cited, another action was prosecuted, No. 604, in the same court, as the result of a complaint filed by the same Nemesio Reyes, also as administrator of the estate of Felipe Garay, against Francisco Samesa and Sinforoso Dondis for losses and damages for depriving Garay's estate of the revenues of the said property through sale of the same to Juliana Mendizabal; upon the termination of the trial, Francisco Samesa and Sinforoso Dondis were sentenced to pay, jointly and severally, to the intestate estate, as an indemnity for losses and damages, the sum of P5,150.75, which judgment was based on the same finding as that established in the preceding case to wit, that the said two defendants, Samesa and Dondis, had made a fraudulent transfer of the property.

This judgment was assented to and became executory, and in proceeding with its execution the sheriff levied upon some property belonging to Sinforoso Dondis, consisting of two rural estates situated, one of them in Camagaca and the other in Ynascan, both of which places are sitios of the pueblo of Buhi in Ambos Camarines, and afterwards sold them at public auction to the administrator of the intestate estate, Nemesio Reyes.

All the preceding facts were presented as evidence in this case, No. 974 of the same court, prosecuted by Roman Ayles and Vicenta Panga for the recovery of possession of the said two rural properties sold at public auction as belonging to Sinforoso Dondis, the herein plaintiffs alleging that they belonged to them and not to Sinforoso Dondis.

The properties, the subject of the present suit, situated as aforesaid, one of them in Camagaca and the other in Ynascan of the pueblo of Buhi in Ambos Camarines, are sufficiently described in the complaint and, as regards their identity, there is not the least disagreement between the parties. The identity of the land being admitted, the litigating parties have raised the issue of the real ownership and possession thereof, that is, the question as to in whom such ownership and possession resided at the time the said properties were attached and sold at public auction and were acquired by the defendant Nemesio Reyes who undoubtedly holds them at present.

The plaintiffs claim that at the beginning the said lands belonged to Felipe Garay; that Garay during his lifetime sold them to Sinforoso Dondis, about the year 1892, and that the latter, on September 5, 1905, sold them to Roman Ayles and Vicenta Panga who, it appears, are his wife's parents.

After the hearing of the case the court pronounced judgment against the plaintiffs, finding that they had no interest whatever in the two disputed rural properties, and ordered the case dismissed, with the costs against them.

From this judgment the plaintiffs appealed and forwarded to this court their bill of exceptions with right to a review of the evidence. On the hearing of the appeal and from the pleadings made before us by both parties, it has been found that two assignments of error have been made against the judgment of the lower court, to wit:

- That the judgment is contrary to law, inasmuch as it is not legally founded on the evidence adduced at the trial.
- That it was found therein that the defendant Nemesio Reyes was entitled to the possession of the land in question, notwithstanding that the evidence clearly showed that the plaintiffs were unquestionably entitled to the ownership of the same.

The appellants base the first alleged error on the fact that, as they acquired the two rural properties aforementioned for a valuable consideration, such an alienation could only be presumed to be fraudulent if a condemnatory judgment had been previously rendered against the transferrer in any instance, or a writ of seizure of property had been issued (art. 1297, Civil Code) ; and since no condemnatory judgment, in any instance, had been rendered nor any writ of seizure of property issued against Sinforoso Dondis, the man who alienated the property, before he did it, the conclusion follows, in accordance with the aforesaid article of the Civil Code, that such alienation could not be considered fraudulent.

They further allege: (1) That the sale made by Sinforoso Dondis to Vicenta Panga took place on April 1, 1902; (2) that on September 5, 1905, Dondis wished to execute and did execute a public instrument of the said sale, on the demand of the purchaser herself; (3) That the judgment against Sinforoso Dondis, in case No. 468, was not rendered until January 29, 1906, and in case No. 604, not until January 14, 1907. So that, according to the appellants, when Dondis made the alienation in favor of Panga, no condemnatory judgment had been rendered or writ of seizure of property issued against the former, and, consequently, the transfer could not be deemed to be fraudulent under the legal provision before cited.

The question before the court was purely one of fact, and was simply whether Sinforoso Dondis had really sold, on the date claimed by the plaintiffs, the two rural properties in dispute.

The proof presented by the plaintiffs consists of an instrument of sale, apparently executed by Sinforoso Dondis in favor of Vicehta Panga, in Buhi on September 5, 1905, and signed by himself in the presence of the witnesses Roman Ayles and Valerio Portacio. It also appears that Sinforoso Dondis ratified this instrument before the justice of the peace of Buhi who filed the original in his court. This ratification was authenticated by the auxiliary justice of the peace of Buhi, Severino Lancaon, on November 2, 1905.

The justice of the peace of Buhi, Juan Carrascoso, testified before the court that the original of that instrument of

sale, ratified before the auxiliary justice of the peace, Severino Lancaon, was not among the records of his office, and that only a copy was kept there on file, as it was not the practice of the said justice of the peace court to keep the original, which was left with the executor. Upon this witness being asked by the court before whom he was testifying, as to whether he had had an opportunity to see the original, he replied: "One morning I was at Dondis' house, in 1906, if I am not mistaken, and among other things he spoke to me of the matter between himself and Garay, and sent to fetch the document from the house of Vicenta Panga, who lived near by, and I saw that amendment in that document," And that amendment is the one he previously mentioned in his testimony in the following terms: "I can not state precisely whether it was the same date (September 5, 1905); I only observed that there was a certain amendment in the document in front of the year, and I can not say whether this amendment was in the ratification or in the date of the document, and instead of 1905 he erased the 5 and put 4."

And this in substance is what the defendant, Nemesio Reyes, categorically stated in his testimony: "and the true date of that document was 1905, and they changed it to 1904."

Moreover, the trial court took into account the oral testimony, and found the preponderance to be in favor of the evidence given by Ramon Constancio and Nemesio Reyes, the first of whom testified that prior to 1902 and subsequent thereto and until the said rural properties were attached, Roman Ayles was merely Dondis' representative in the matter of their cultivation, and that it was he who gave provisions to the cultivators of the hemp when they went to the mountains, and also paid them. This witness, on cross-examination by the defense, testified that Dondis had stated to him that he (Dondis) had sold the said estates to Roman Ayles when they endeavored to attach his (Dondis') property, and when questioned anew on direct examination, the witness replied: "\* \* \* including a document which Mr. Dondis showed me confidentially, putting down the name of Roman Ayles, as a reliable person, because they were not yet married and were merely living together; and, in order to avoid being served with an attachment, he made a private instrument and showed it to me, and I told him that all that was of no value and that the attachment would be served upon him just the same." Question: "Then, on that date, Dondis was still the owner of those parcels of land, but by means of that document he wished to convey them to Roman Ayles in order to avoid that attachment on the part of Garay's administrator?" Answer: "Yes."

The trial court arrived at the conclusion that Dondis, from his antecedents, was a person capable of falsifying documents and of performing any fraudulent act which might be of benefit to himself, inasmuch as it was clearly shown, during the time that he was testifying as a witness in these several cases, that his testimony was false. "Taking these facts into consideration," the trial court continues, "jointly with the fact that Dondis and the plaintiffs are relatives and that they have lived together, I am convinced that the sale made by Dondis in favor of the plaintiff was made fraudulently and that both parties knew of this fact, their intention being to avoid the attachment, and that both knew that Dondis had no other property wherewith to satisfy that judgment." Concluding, it says: "The plaintiff, being an accessory to the said fraudulent conveyance, did not acquire any right or title to the lands in question, and, the said conveyance having been made with the intention of defrauding the heirs of Garay, it is null and void and of no value, and the sheriff did really sell the interests and. rights of Dondis \* \* \*" (pp. 12 and 13, bill of exceptions).

With respect to the conclusions reached by the lower court from this preponderance of evidence, this court finds no error, either of fact or of law, to justify a contrary judgment.

And, moreover, in the consideration of this court due weight is accorded to the construction which should be given to article 1297 of the Civil Code, to wit, that fraud in conveyances may be proved by means different and independent from the cases of presumption established in article 1297; and the trial court having held, from the whole of the evidence, independent of such presumptions, that the debtor went into a complete state of

insolvency, selling the property in question to his wife's parents, and that the sales were simulated, the purchasers being accomplices in the fraud - all with the purpose of frustrating the legitimate rights pertaining to the Garay estate, and the liabilities contracted - it is obvious that there was no infringement of the said article and the doctrine connected therewith, invoked on appeal, in which by putting the question hypothetically and maintaining, against the opinion of the lower court, that fraud on the part of the vendor was not proved. (Decision in cassation, supreme court of Spain, May 16, 1904.) For the foregoing reasons, the judgment appealed from is affirmed, with the costs of this instance against the appellants. So ordered.

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

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