

IRENEO ODEJAR, LIBRADA ODEJAR, AND JUANITO ODEJAR, AS HEIRS OF THE DECEASED SPOUSES AMBROCIO ODEJAR AND GLICERIA GIBAS, PETITIONERS, VS. ISIDRO P. GUICO, EMMANUEL GUICO AND LOUR...*G.R. No. 67548. December 20, 1989*

Ponente: NARVASA, J.

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The small estate left by a young military officer killed in action on March 12, 1942, shortly after the invasion of the Philippines by the Japanese armed forces -- consisting of his arrears in pay amounting to P11,377.43, and the sum of P500.00 due as reimbursement of deposit -- is what has given rise to the controversy at bar. That young man was Lt. Roberto Tamisin. He was survived by his wife, Paula Odejar, whom he had married barely a year earlier.

On the misrepresentation of the lieutenant's father (Cecilio Tamisin), his brother (Rufino), and his sisters (Eufrocina and Teresa) -- that he (Lt. Tamisin) had died single -- the aforesaid amount of P11,377.43 due the latter as arrears in pay was adjudicated and paid by the Judge Advocate General of the Philippines to the former, his father and brother and sisters.

As to the reimbursable sum of P500.00, two (2) claims were filed with the Office of the Judge Advocate General. One was submitted by the Tamsins (the deceased officer's father, brother and sisters aforementioned). The other was presented by Ambrocio Odejar and Gliceria Gibas, the parents of Paula Odejar, the lieutenant's widow. They alleged that Paula had married Lt. Tamisin on April 14, 1941 and had herself died on April 8, 1944 without having borne any children. Upon these facts, they laid claim to their daughter's conjugal share in her husband's estate.

What the Judge Advocate General did was to file, on April 10, 1951, an action of interpleader with the Court of First Instance of Laguna,[1] to compel the Odejar Spouses and the Tamsins to litigate their conflicting claims among themselves.[2] In this action, the Odejars set up a claim not only for the P500.00 but also for one-half (1/2) of the deceased lieutenant's arrears in pay (P11,377.43).

During the pendency of the case, or more precisely on June 20, 1951, Cecilio Tamisin died. This prompted the Odejars to institute a special proceeding, numbered 4492, for the settlement of the estate of Cecilio Tamisin, so that they could prosecute their claim to recover their daughter's conjugal share in the money left by Lt. Tamisin.

The interpleader suit resulted in a judgment rendered on March 23, 1953 favorable to the Odejars, sentencing the Tamsins to pay them P5,688.71 -- one-half (1/2) of P11,377.43 (Lt. Tamisin's arrears in salaries) -- with legal interest thereon from March 6, 1951.

On April 10, 1953, about two (2) weeks after rendition of the adverse judgment against him and his co-parties, Rufino Tamisin sold to Fermina Maluto, married to Isidro P. Guico, a parcel of land in consideration of the price

of P3,000.00.[3] Isidro Guico is the brother-in-law of Eufrocina Tamisin, Eufrocina being married to the former's brother, Mauricio. And as already indicated, Eufrocina is Rufino Tamisin's sister. The Guicos registered the sale under Act 3344 on April 14, 1953, and entered upon the possession of the lot. The Tamsins then filed a motion for new trial under date of April 29, 1953. Whether or not they thereafter took possession of the lot is not clear. The Court of Appeals says they did; but the Trial Court found that "(the Guicos') claim that they have been in possession of the property from the time of its sale ** is not supported by evidence." [4]

The Odejars learned of the sale and forthwith filed an Omnibus Motion,[5] advertent to the sale executed by Rufino Tamisin in favor of Fermina Maluto and Isidro P. Guico, describing it as "not only highly suspicious but also made in fraud of creditors," and contending that that act of Tamisin in thus disposing of the property "may be considered as one of the causes for the execution of the judgment during the pendency of this case." [6] On these premises, the Odejars prayed that (1) the Tamsins' motion for new trial be denied, and (2) so that their rights under the judgment in their favor might be amply protected, that said decision be forthwith executed against all the property of the Tamsins. The Court granted the motion, by Order dated June 19, 1953.

Instead of taking an appeal from the decision in the interpleader suit, the Tamsins opted to file directly with this Court a petition for certiorari (with application for preliminary injunction). The step proved disastrous. By this Court's Resolution dated September 8, 1953, the Trial Court's decision was held to have become final and executory because no appeal, the proper remedy, had been perfected therefrom, and the Tamsins' certiorari petition was summarily dismissed for lack of merit.

The Trial Court then ordered execution of the judgment in the interpleader action, on motion of the Odejars. The provincial sheriff accordingly levied on five (5) parcels of land belonging to the Tamsins, including that sold to the Guico Spouses. A last ditch effort by the Tamsins to suspend the execution sale failed. They filed in the Probate Court, in Special Proceeding No. 4492, a motion to suspend the sale of the five (5) parcels of land on the ground that they were in custodia legis, but the Court denied the motion. The auction sale took place on June 11, 1954; the five (5) lots were awarded to the Odejars, as highest bidders; and the Sheriff executed in their favor the corresponding Certificate of Sale.

More than a year afterwards, or on September 7, 1955, the Tamsins betook themselves to the Court of Appeals to ask for the setting aside of the judgment in the interpleader suit and the enjoinder of the sale by the provincial sheriff of the properties levied on in execution. Their action in that Court, docketed as CA-G.R. No. 14357-R, was however dismissed for lack of merit on March 31, 1955. The Tamsins were far from finished, however.

On July 21, 1956, Eufrocina Tamisin, as administratrix of the estate of Cecilio Tamisin (Sp. Proc. No. 4492, supra), filed an action with the same Court of First Instance of Laguna for the annulment of the execution sale of the Tamsins' five (5) parcels of land, above mentioned, and for the reconveyance of the property, the action being docketed as Case No. B-45. This last action fared no better than the others. It was dismissed, after trial. The appeal later perfected to this Court was also unsuccessful, this Court's judgment promulgated on May 31, 1960 being that the administratrix's action was barred by the prior judgment in the interpleader suit, Civil Case No. 9401, supra, and consequently the judgment appealed from should be affirmed.

On June 16, 1960, the Tamsins having failed to redeem the five (5) lots sold on execution to the Odejars within the 12-month reglementary period,¹ the Laguna Provincial Sheriff, Cecilio Bituin, executed in the Odejars' favor the final Officer's Deed.²

Still the Tamsins refused to concede defeat. They filed two (2) other actions with the Laguna Court of First Instance. One, instituted on November 9, 1960 and docketed as Civil Case No. B-268, prayed for the declaration of the nullity of the Sheriff's deed of June 16, 1960, or, alternatively, that they be allowed to redeem the lots sold.

The other, initiated on May 17, 1967 and numbered B-600, sought the annulment of the auction sale in Civil Case No. 9401 and the inhibition of the Odejars from the possession of the property in question pending adjudgment of the case. The first was dismissed by the Trial Court, the dismissal being afterwards affirmed by the Court of Appeals on March 12, 1964. The second was dismissed by the Trial Court on September 21, 1967, the dismissal being also affirmed by the Court of Appeals on February 26, 1974, and the appeal thereafter taken to this Court being also dismissed for lack of merit by resolution dated August 9, 1974.

In all these actions and proceedings, Fermina Maluto and her husband, Isidro P. Guico, to whom one of the five (5) lots in controversy was sold by Rufino Tamisin on April 10, 1953, *supra*, took no part. It was not until March 12, 1975 -- almost twenty-two (22) years after they had purchased the lot from Rufina Tamisin, and after Fermina Maluto had died -- that Isidro P. Guico, Fermina's husband, and their two (2) children, Emmanuel Guico and Lourdes G. Amoranto, finally went to Court to vindicate their rights over the land sold to Fermina Maluto. They filed suit, described by them as one "for annulment of documents and tax declaration and to quiet title to property with damages," which was docketed as Case No. 236-C of the Court of First Instance of Laguna. Their complaint named Ambrocio Odejar and Gliceria Gibas as defendants, but when it was discovered soon thereafter that these two had already died, the pleading was amended so as to include said spouses' heirs as defendants, namely: Ireneo Odejar, Librada Odejar and Juanito Odejar. Also named as defendants were Atty. Juan Baes, the Odejars' counsel, to whom they had conveyed one-half (1/2) interest *pro indiviso* in the five (5) lots; the provincial sheriff, Cecilio Bituin; and the Provincial Assessor of Laguna. The complaint prayed that the sheriff's certificate of sale dated June 16, 1960, and the conveyance to Atty. Juan Baes of an undivided interest over the land sold to Fermina Maluto, be declared null and void.

The complaint was however dismissed after trial in a judgment rendered on October 23, 1978.

The Intermediate Appellate Court reversed the Trial Court's judgment, in a decision promulgated on December 29, 1983.¹ The decision declared that -

" * * even assuming that the sale by Rufino J. Tamisin to Fermina B. Maluto was fraudulent or presumed fraudulent (for a judgment though not yet final had been rendered against Tamisin by the Court of First Instance in Civil Case No. 9401, a case incidentally where neither Maluto nor appellants were parties), and even conceding that the transaction might be rescissible under Art. 1381 (par. 4), Civil Code, still a rescissible contract is VALID TILL RESCINDED (judicially), and since no action for such rescission was instituted within four (4) years (in fact, no such action was ever filed) the transaction remains valid, with consequent beneficial effects on Maluto and her successors-in-interest. Since at the time of the levy and sale the lot did not belong to Tamisin, the end result is obvious. The levy and sale in favor of the appellees must be regarded as prohibited by law and jurisprudence and therefore VOID. And this is true, regardless of the motive of Rufino Tamisin in selling the property to Maluto."

And it closed with the following dispositive portion:

"WHEREFORE, the appealed decision is hereby SET ASIDE, and a new one is hereby rendered:

1. declaring null and void the certificate of sale (and the sale itself) and the officer's Deed insofar as they relate to the property described and enumerated in paragraph 3 of the said Certificate of Sale for the property belongs to the plaintiffs-appellants (the GUICOS);
2. declaring null and void the Deed of Conveyance dated August 3, 1960 executed by Ambrocio Odejar and Gliceria Gibas in favor of Juan A. Baes insofar as it relates to the property mentioned and described in paragraph 3 of the said Deed of Conveyance;
3. cancelling Tax Declaration No. 5934 in the name of the deceased spouses Ambrocio Odejar and Gliceria

Gibas and defendant Juan A. Baes;

4. ordering the Provincial Assessor of Laguna to cancel Tax Declaration No. 5934, and in lieu thereof, to reinstate Tax Declaration No. 3756 in the name of Fermina B. Maluto or issue another in the name of the plaintiffs-appellants (with respect to the lot herein involved);

5. declaring the plaintiffs-appellants to be the sole owners of the property subject of the instant suit;

6. ordering the defendants-appellees to pay the costs of the suit."

The Odejars have come to this Court, on an appeal by certiorari, ascribing to the Appellate Tribunal four (4) errors, to wit:

- 1) deciding the Guicos' appeal on an issue not raised in the Trial Court or assigned as error on appeal;
- 2) applying paragraph 4, Article 1381 of the Civil Code despite concurring in the Trial Court's finding that the sale to Fermina Maluto was fictitious and fraudulent;
- 3) not holding that the sale to Fermina Maluto is null and void, being fictitious and fraudulent, under paragraph 2, Article 1409, Civil Code; and
- 4) not holding that the Guicos' right of action to annul the deeds and documents in question had long prescribed and been barred by prior judgments.

The record discloses certain undisputed facts and circumstances which impel reversal of the decision of the Intermediate Appellate Court.

There is no dispute about the fact that the sale by Rufino Tamisin to Fermino Maluto of the lot in question was made eighteen (18) days after date of the judgment (adverse to Rufino and his co-parties) in the interpleader action; nor about the fact that Fermina Maluto is married to Isidro P. Guico whose brother, Mauricio, is the husband of Eufrocina Tamisin, Rufino's sister.

There is no dispute either about the fact that despite the execution of that deed of sale in favor of Fermina Maluto, the Tamsins continued to treat the property ostensibly sold as their own exclusive property, under circumstances denoting awareness thereof by Fermina Maluto and her family. Thus -

- 1) the Administrator's Bond filed in said Sp. Proc. No. 4492 (Intestate Estate of Cecilio Tamisin) -- instituted as aforestated by the Odejar Spouses -- was prepared and signed before Isidro P. Guico, as Notary Public, on March 16, 1953;¹
- 2) Eufrocina Tamisin -- sister-in-law of Isidro Guico, husband of the ostensible buyer, Fermina Maluto -- as Court-appointed Administratrix of the intestate estate of her deceased father, Rufino Tamisin (Sp. Proceeding No. 4492 of the Court of First Instance of Manila),² included the lot supposedly sold to the wife of her brother-in-law as part of the decedent's estate both in (a) the "Project of Partition"³ and in the (b) "Final Accounting"⁴ submitted by her to the Probate Court;
- 3) in no less than three (3) actions filed subsequent to the sale to Fermina Maluto, litigated over a period of twenty years or so -- Civil Case No. B-45 of the CFI of Laguna (initiated by Eufrocina Tamisin, as administratrix of the estate of Cecilio Tamisin, to annul the execution sale of the five [5] parcels of land owned by the Tamsins pro indiviso, supra), Civil Case No. B-268 (instituted by the Tamsins with the same court for the same purpose, supra), and Civil Case No. B-600 (filed for the self-same objective, supra) -- the Tamsins repeatedly, insistently and publicly held themselves out to be the co-owners of all five (5) parcels of land, including that subject of the sale by Rufino Tamisin in favor of Fermina Maluto;

4) if the five (5) parcels of land were owned in common by the Tamsins, and there appears no reason to suppose otherwise, then the sale of one of them by Rufino Tamsin, alone, of the entire property was an act of supererogation, or was a mere pretext;

5) in Civil Case No. B-600, above mentioned, Fidela Guico, a daughter-in-law of Fermina Maluto and Isidro Guico, signed as one of the sureties of the appeal bond filed by the Tamsins;⁵

6) Atty. Juan Baes, to whom the Odejars transferred one-half (1/2) interest in the five (5) lots, informed Emmanuel Guico, son of Isidro Guico, and Isidro Guico himself, by letters dated September 12, 1966 and September 20, 1966, respectively,⁶ of the judgments in Civil Cases Numbered B-45, B-268 and 9401; and

7) these letters notwithstanding, and despite what the Trial Court pointed out was the "close relationship" between the Tamsins and the

Guicos which made it extremely improbable that the latter could have been "ignorant of the cases involving the property they claim to have bought from Rufino Tamsin and of the proceedings that took place in connection therewith," the Guicos, over a period of twenty years, made no move to file any proceeding or intervene in any of the cases involving the property; they filed suit to vindicate their rights over the land in question only on March 12, 1975, twenty-two (22) years after their predecessor-in-interest Fermina Maluto, had allegedly purchased the property from Rufino Tamsin, her relative by affinity.

The facts above detailed, considered conjointly, irresistibly conduce to the conclusion that Rufino Tamsin and Fermina Maluto never intended to effect a genuine, bona fide transfer of property when they entered into the sale of April 10, 1953, a reality made manifest and according to which the parties, vendors and vendees as well as their privies guided their actions, during the period of twenty (20) years or so following the transaction. The Tamsins' acts clearly show that they considered themselves still the owners of the property and as never having parted therewith even after the sale, publicly and openly proclaiming their title and demanding recognition thereof on several occasions. The Guicos, for their part, tacitly acquiesced, at least never presented any opposition, to such assertions of title by the Tamsins until March 12, 1975, when it had already become apparent that the latter had exhausted every possible recourse for the recovery of the property from the Odejars. All indications, therefore, are that the ostensible conveyance was executed solely to prevent the property of the Tamsins from being levied upon in execution of the judgment in Civil Case No. 9401, or ever applied in satisfaction of the Tamsins' adjudicated liability to the Odejars. Such a stratagem cannot be allowed to succeed.

The defect of the sale of April 10, 1953 thus produced effects transcending mere rescissibility. The sale could not be treated merely as a simple conveyance of "things under litigation ** entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority," rescindible by action within four (4) years.¹ It was in reality "absolutely simulated or fictitious" and hence "inexistent and void" in contemplation of Article 1409 of the Civil Code, and this Court's early rulings in *de Belen v. Collector of Customs and Sheriff of Manila*, 46 Phil. 241,² *Gonzales and Trinidad v. Trinidad and Ynares*, 67 Phil. 682,³ and *Onglengco v. Ozaeta and Hernandez*, 70 Phil. 43.⁴ Since, as Article 1411 of the Civil Code provides, the "action or defense for the declaration of the inexistence of a contract does not prescribe, the Odejars were not precluded from invoking such nullity, as they did, even after the lapse of twenty-two years.

WHEREFORE, the Decision of the Court of Appeals dated December 29, 1983 is REVERSED and SET ASIDE and, as decreed by the Trial Court, the complaint in Civil Case No. 236-C is DISMISSED. Costs against respondents.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] The case was docketed as Civil Case No. 9401

[2] Rule 63, Rules of Court of 1964, formerly Sec. 1, Rule 14, Rules of 1940

[3] The deed was presented in evidence as Exh. A in Civil Case No. 236-C

[4] P. 85, record on appeal

[5] P. 37, record on appeal

[6] Sec. 2, Rule 39, Rules of Court

1 Sec. 30, Rule 39, id.

2 Sec. 35, Rule 39, id., providing in part that if "no redemption is made ** the purchaser ** is entitled to a conveyance and possession of the property," and upon "execution and delivery of said deed the purchaser ** shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor to the property at the time of the levy, except as against the judgment debtor in possession, in which case the substitution shall be effective as of the date of the deed. **."

1 The ponente was Edgardo L. Paras, J. (now Associate Justice of this Court), with whom concurred Pascual and Camilon, JJ.

1 Exh. 5, id.

2 The order of the Probate Court appointing Eufrocina Administratrix of her father's intestate estate is Exh. 6 (SEE Record on Appeal, CC No. 236-CA G.R. No. 64913) N.B. It is noteworthy that the plaintiffs (Guicos) in CC No. 236-C admitted EXHS. 1 TO 20-D, inclusive, submitted by defendants (Odejars) (par. 16, Rec on App)

3 The Project of Partition dated Feb. 13, 1957 was marked as Exh. 7, id.

4 Exh. 8, id.

5 EXHS. 13 and 13-A, id.

6 EXHS. 20, 20-A to 20-D, id.

1 Art. 1380 (4), Civil Code, as was held by the Court of Appeals

2 Where it was held that "A simulated transfer of property constitutes no obstruction whatever to the levy of legal process of any sort directed against a person who has executed such a transfer, and in such case no independent action to rescind or annul is necessary. The explanation of this is apparently found in the circumstance that a simulated or purely fictitious contract lacks the elements prescribed in article 1261 of the Civil Code (of 1889) as necessary to make any contract whatever and it may therefore be treated as non-existent for all purposes. **." (at p. 244)

3 Where it was ruled that a sale executed to save the land subject thereof from attachment by the vendor's creditor is null and void per se as being simulated and fictitious and lacking in consideration.

4 Where it was declared that a sale entered into subsequent to the rendition of judgment against the vendor is not

only presumptively fraudulent but should be declared void where other facts show that the conveyance was purely fictitious.

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