

VICENTE GUASH, PLAINTIFF AND APPELLEE, VS. JUANA ESPIRITU, DEFENDANT AND APPELLANT.*G.R. No. 6960. March 23, 1914*

Ponente: CARSON, J.

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This action was instituted under the provisions of section 712 of the Code of Civil Procedure, by the plaintiff, as administrator of the estate of Jose Jimenez y Mijares, deceased, to set aside a deed of sale of certain personal property described in the complaint. The complaint alleges that the estate of which plaintiff is administrator is insolvent; that the property in question is claimed by the defendant by virtue of an alleged sale made to her by plaintiff's intestate on February 19, 1906; and that the deed of sale was executed without any consideration in fraud of the vendor's creditors, one of whom, the wife of the deceased, had obtained judgment against him for support, prior to the date of the alleged sale. Judgment was rendered in the court below in favor of the plaintiff, the trial judge being of opinion that "the document of sale was only made out for the purpose of attempting to conceal the ownership of the property, to make it impossible for the wife of the deceased to collect the judgment she had obtained against him, and that no consideration was ever given by the defendant for the bill of sale, and that she never became the owner of the property."

This action is in all respects identical with a former action between the same parties, except that in the present action it is alleged and proven that the estate of which plaintiff is administrator is insolvent, while in the former action that fact was not alleged in the complaint nor proven at the trial. In the former action judgment was rendered in favor of the plaintiff by the trial judge on substantially the same grounds upon which a like judgment is rendered in this case, but upon appeal to this court, that judgment was reversed, on the ground that "there was a failure to prove fraud, vitiating the sale, the defendant having established the payment of an apparently good consideration for the transfer;" and on the further ground that even if the court were precluded from examining the transcript of the evidence and reversing the findings of fact by the trial judge, because of certain technical defects touching its certification, nevertheless the facts disclosed by an examination of the pleadings and the findings of the trial judge were not sufficient to sustain his judgment, it not appearing there from that the "plaintiff had no other remedy, or that there was a deficiency of assets," without proof of which the action could not be maintained. (Guash vs. Espiritu, 11 Phil.Rep., 184.)

At the trial of the case at bar, wherein the parties appear to have relied on the same evidence as in the former case, except as to the new allegations of insolvency, a plea of res adjudicata was submitted by the defendant, and as we think, improperly overruled by the court below.

The trial judge in his opinion says:

"It appears to me from the decision rendered in the former action by the Supreme Court that all question with regard to the transfer of this property has been definitely settled, and yet it may be inferred from a portion of the decision that the transfer was in fraud of creditors, but that the plaintiff could not recover for the reason that he had not shown the estate which he was administering to be insolvent: and thus considering the matter I

conclude that the plaintiff, as administrator of the estate of Jose Jimenez y Mijares, deceased, is entitled to the proceeds arising from the sale of the property, made by order of the court, for the reason that the attempted sale was in fraud of creditors and that no sale had ever really been accomplished, but that the property in question belonged to the estate of the deceased."

We agree with the trial judge that "all question with regard to the transfer of this property has been definitely settled" by the former decision of this court, but we do not agree with him that any inference which may fairly be drawn from the reasoning of the opinion in that case sustains his action in reopening the question thus settled.

The judgment in the former case was based on two separate grounds. First, the "failure to prove fraud vitiating the sale, the defendant having established the payment of an apparently good consideration;" second, that even if the court conceded (which it did not) a contention that it was precluded from the examination and review of the testimony, the judgment could not be sustained for lack of allegations in the pleadings or findings of fact as to a deficiency in assets, and the lack of another remedy. But an examination of the opinion clearly discloses that the court squarely held that the evidence of record "failed to prove fraud vitiating the sale," and that holding is manifestly conclusive of the present case, wherein, upon the identical record of the evidence taken in the former case, the trial judge finds the existence of fraud vitiating the sale.

It is true that in the former case the court pointed out that even had the plaintiff made a showing of fraud he could not have recovered in that action for lack of proof that there was no other legal recourse, but nothing that was said in this connection can be construed as reserving a right in the plaintiff to institute a new action wherein he would be permitted to allege and prove that fact. On the contrary, the discussion developed, at its conclusion, a reiteration of the holding set forth at the opening of the opinion, to the effect that "there was a failure to prove fraud, vitiating the sale, the defendant having established the payment of an apparently good consideration for the transfer."

Let judgment be entered reversing the judgment entered in the court below, and dismissing the complaint filed in this action without day, without special condemnation of costs in this instance.

Arellano, C. J., Moreland, Trent, and Araullo, JJ., concur.

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