

SEVERO ARCE AND ANASTACIO FERIA, PLAINTIFFS AND APPELLANTS, VS. SALVADOR B. ELIAZO AND GENOVEVA B. BALLESTEROS, DEFENDANTS AND APPELLEES.*G.R. Nos. 13035 and 13740. November 28, 1959*

Ponente: BARRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-13035/>**BARRERA, J.:**

These are two appeals interposed by the spouses Severo Arce, and Anastacia Feria, from the decisions of the Court of First Instance of Zambales, in Civil Cases Nos. 1666 and 1690, dismissing, in the first case, the spouses' complaint for annulment of the deed of sale (Exh. A, and Exh. 3) conveying to their daughter Emperatriz Arce, one rice thresher and a tractor both described in the complaint, and likewise dismissing, in the second case, the spouses petition for injunction to restrain the sale of the same thresher and tractor by the deputy provincial sheriff of Zambales in virtue of the extrajudicial foreclosure of the chattel mortgage executed by the said Emperatriz Arce in favor of the appellee Genoveva B. Ballesteros as security for the payment of a loan of P10,000.00, with interest and attorney's fees in case of default. Both cases were submitted and decided on the same evidence presented by both parties. There being but one sole pivotal issue in these two appeals, which is the validity of the deed of sale (Exh. A. and Exh. 3) sustained by the lower court in both cases, these appeals will be disposed of in this single decision.

The deed of sale sought to be annulled dated September 3, 1953, in a duly notarized document, registered in the Office of the Register of Deeds of Zambales, wherein it appears that Severo Arce and Roque de Jesus, father and brother-in-law respectively of Emperatriz Arce, had sold, ceded, transferred and conveyed to the latter, in consideration of the sum of P20,000.00 paid in hand, receipt whereof was acknowledged and confessed, the aforementioned rice thresher and tractor which, it was declared, had been acquired by the vendors from one Marcial Feria as evidenced by another public document (Exh. 1).. Upon the strength of this deed, Emperatriz Arce, on February 9, 1954, obtained a loan in the sum of P10,000.00 from appellee Genoveva Ballesteros^[1] and on the same date executed a chattel mortgage which was later duly registered in the Office of the Register of Deeds of Manila and with the Register of Deeds of Zambales. The mortgagor having failed to settle the loan on May 9, 1954, the due date, the mortgagee took steps to foreclose the same by having the deputy provincial sheriff of Zambales publish the sale in public auction of the mortgaged thresher and tractor.

Upon learning this, appellants filed their action on July 31, 1954 for annulment of the sale on the alleged ground of lack of consideration, it being alleged that the P20,000.00 mentioned in the deed of sale had not in fact been paid. The defendant Emperatriz Arce did not appear or answer the complaint, for which reason the plaintiffs petitioned and obtained on August 27, 1954, an order declaring her in default. .

After reception of plaintiffs' evidence by the Clerk of Court who was authorized for the purpose, and the submission of the Clerk's report to the Court, the latter, observing that the deed of sale being repudiated was a public document duly notarized, *motu proprio* re-set the case for further hearing citing the notary public to appear

in court for examination.

In the meantime, the auction sale of the mortgaged properties was set for December 6, 1954, and so on" December 2, 1954, appellants filed a separate action for injunction (in Civil Case No. 1690 of the same court) for the purpose of enjoining the provincial sheriff and defendant Ballesteros from proceeding with the announced sale. Upon the filing of a corresponding bond, the lower court issued a preliminary writ of injunction. Defendant Ballesteros seasonally filed answer setting up in her defense and counterclaim the same deed of sale in favor of Emperatriz Arce and the chattel mortgage executed by the latter upon which the foreclosure proceeding was predicated; and prayed for the dismissal of the action instituted by the plaintiffs against their daughter allegedly to defraud the creditors of the latter.

Later, Ballesteros intervened in the annulment case (No. 1666), asserting her interest in the subject matter in virtue of the chattel mortgage in her favor.

After trial, both cases were submitted upon the same evidence introduced in Civil Case No. 1666 which consisted, on the part of the plaintiffs-appellants, solely in their own uncorroborated testimony to the effect that they were the owners of the rice thresher; that Roque de Jesus had no right or interest therein; that Severo Arce did not remember having signed the deed on September 3, 1953, nor had he seen notary public Artemio Marañon and the latter's wife on the same day; that he (Severo) had not received the P20,000.00 mentioned in the document; and that they learned of the said sale only when the Sheriff came to get the rice thresher. They further declared that the tractor included in the sale belonged to their son Recto Arce,[2]

The notary public and his wife, who acted as a witness to the deed of sale, both testified and attested to the due execution thereof. Appellee Ballesteros also testified detailing the circumstances attending the granting of the loan and the execution of the chattel mortgage in her favorr presenting in corroboration, the deed, of sale in favor of Seyero Arce and Roque de Jesus concerning the rice thresher; the questioned deed of sale of the same and the tractor to Emperatriz Arce; the first mortgage executed by Emperatriz in favor of the previous mortgagee, its cancellation and the subsequent chattel mortgage in her (Ballesteros) own favor, all of which are public documents and, except the first deed of sale to Severo and Roque, duly registered in the corresponding Registers of Deeds.

Upon this evidence, the lower court, as heretofore stated, rendered its decisions dismissing both complaints. Hence, these appeals.

Appellants in this instance charge the lower court,-of having abused its discretion in re-setting or re-hearing the case *motu proprio* without lifting its previous, order declaring defendant Emperatriz Arce in default and without giving her an opportunity to be heard; in denying their motion for new trial and, consequently, upholding the validity of the disputed deed of sale. There is no merit in this contention.

It is elementary that trial courts, before rendering judgment, have full control of the proceedings before them and, as judges of Courts of First Instance are judges of both fact and law, if after hearing all the evidence adduced by the attorneys, the court is not satisfied, he may, in the exercise of his sound discretion, on his own motion and in furtherance of justice call additional witnessed or recall some of the same witnesses, for the purpose of questioning them himself in order to satisfy his mind with, reference to particular facts or issues involved in the case.[3] This is more so where the defendant is in default and not in a, position to controvert or scrutinize the evidence of the plaintiff. And the opening of a case for the reception of further evidence, before any judgment has been entered therein, is not the granting of a new trial as would require a formal motion by any of the parties. [4]

On the other hand the evidence appellants desire to introduce in the new trial requested by them after rendition of

the judgment, is an admission by Emperatriz Arce that the contract was actually simulated and without consideration, as appearing in the affidavit dated November 5, 1955 which was attached to plaintiffs' motion for new trial. The trial court acted correctly in denying the motion, for certainly this kind of evidence cannot be considered as newly discovered under Rule 37 of the Rules of Court. For purposes of securing a new trial, evidence may be considered newly discovered only if it satisfies the following requisites: (1) that such evidence has been discovered after trial; (2) that it could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (3) that if presented, It would probably alter the result (1 Moran's Comments on the Rules of Court, pp. 510-511, 1957 ed., citing *Bersabal vs. Bernal*, 13 Phil., 463).

It cannot rightly be claimed in the instant cases that appellants obtained knowledge of the information Emperatriz Arce intended to give at the new trial, i.e., the contract's lack of consideration, only after, the original hearing or only when such affidavit was executed. Precisely, the action for annulment was based on that ground. Logically, appellants should know, and in fact it was so alleged in the complaint, that Emperatriz, in whose favor the contract was drawn, herself caused or at least was aware of such deficiency. To sustain their claim, therefore, they should have presented Emperatriz Arce during the hearing to testify on this point or obtained an admission from her under the Rules.

Appellants, however, claim that as the defendant in that case did not file an answer, they were not in a position to know what averments of the complaint were admitted or would be admitted by the said defendant. This contention is beside the point and does not justify their dispensing with the basic available evidence in support of their allegation. The defendant's failure to file an answer or her having been declared in default does not necessarily insure the plaintiff's obtaining the remedy prayed-for in the complaint; it is also essential for said plaintiffs to adduce evidence in support of their contentions (*Sideco vs. Sande*, 91 Phil., 159.)

Similarly, it cannot be argued that, as the defendant in the annulment case, it would be difficult if not impossible for appellants to secure the testimony of Emperatriz Arce to sustain their (appellants) case. The hostility of a witness does not exempt the party that should have offered his (the witness) testimony from complying with the requirements of Rule 37. The circumstances that a person, known to be hostile to the movant, has decided after trial to break his silence and put an end to his hostility, did not make the testimony of such witness "newly discovered" for the reason that "the failure of applicant to inquire what a person supposed to have knowledge of a matter in controversy knew about it or to call or examine him as a witness is not excused ordinarily by the fact that their relations were unfriendly, or that the witness was believed to be hostile". (Moran's Comments on the Rules of Court, p. 511, 1957 ed.; *Tek (Joan vs. Azores)*, 76 Phil., 363.) The facts to be testified to by defendant, which were existing before and during the trial, and which plaintiffs-appellants could have presented at the hearing, cannot be considered newly discovered evidence. The court a quo, therefore, acted correctly in denying the motion for new trial and, in accordance with the evidence obtaining in the case, in sustaining the validity of the sale.

Appellants, likewise, urge the annulment of the deed of sale, at least insofar as $\frac{1}{2}$ of the rice thresher is concerned, on the allegation that it being a conjugal property and appellant Anastacia Feria not having consented to the sale, said contract is null and void as far as her interest is affected. Suffice it to note that other than appellants' declarations, the records disclose no evidence to support this contention. Contrarily, the intervenor's Exhibit 1, which was duly admitted by appellants, shows that the aforementioned rice thresher was purchased by Severo Arce, married to Anastacia Feria, and Roque de Jesus, married to Mercedes Arce, from Marcial Feria for the sum of P10,000.00 on December 15, 1948, which document even belies their contention that Roque has no interest or right therein. Under these circumstances, the ruling of the lower court must perforce be upheld.

In view of the conclusions thus arrived at, there is no need to pass upon the other questions raised by appellants.

Wherefore, the decisions appealed from are hereby affirmed, with costs against appellants in both cases. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angela, Endencia, and Gutierrez David, JJ., concur.

[1]Emperatriz Arce previously obtained a loan of P7,000.00 from another individual also upon the strength of this deed of sale, and secured by a chattel mortgage of the same thrasher and tractor, but which prior loan was paid from the P10,000.00 obtained from Ballesteros (Exhs. 5 & 6)

[2] Recto Arce, however, was never made a party nor did he intervene in any of these two cases.

[3] U.S. vs. Cinco, 8 Phil, 388; U.S. vs. Base, et al., 9 Phil., 48,

[4] U.S. vs. Vizquera, et al., 4 Phil., 380.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.