3 Phil. 669

[G.R. No. 1318. April 12, 1904]

PRISCA NAVAL ET AL., PLAINTIFFS AND APPELLEES, VS. FRANCISCO ENRIQUEZ ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MAPA, J.:

November 14, 1885, Don Jorge Enriquez, as heir of his deceased parents, Antonio Enriquez and Doña Ciriaca Villanueva, whose estates were at that time still undistributed, by public instrument sold to Don Victoriano Reyes his interest in both estates, equivalent to a tenth part thereof, for the sum of 7,000 pesos. The deed was executed in this city before Don Enrique Barrera, a notary public, who certified in the document that the vendor received the said consideration at the time of the execution of the instrument.

By another instrument executed April 15, 1886, before the same notary, Don Enrique Barrera y Caldes, Don Victoriano Reyes sold to Doña Carmen de la Cavada this interest in the estates of Don Antonio Enriquez and Doña Ciriaca Villanueva, which, by the deed above referred to, he had acquired from Don Jorge Enriquez for the same consideration of 7,000 pesos, which money he received from the purchaser in the presence of the notary, who so certifies in the deed itself.

The purchaser, Doña Carmen, was the wife of Don Francisco Enriquez, who was the executor and administrator of the testamentary estate of Don Antonio Enriquez at the dates of the execution of the two deeds above mentioned.

The plaintiffs demand that these deeds be declared null and void, as well as the contracts evidenced thereby, apparently solely so far as

they refer to the estate of Don Antonio Enriquez, no mention being made of the estate of Doña Ciriaca Villanueva in the complaint. This relief is prayed for upon the following grounds:

(1) Because the said contracts were executed without consideration, it being alleged with respect to this matter that Don Jorge Eririquez did not receive any consideration for the sale made by him in favor of Don Victoriano Reyes, and that the latter did not receive any sum whatever as a consideration for the sale in turn executed by him in favor of Doña Carmen de la Cavada. Upon this ground the plaintiffs contend that the deeds in question were consummated and were executed for the purpose of deceiving and defrauding Don Jorge Enriquez and his family.

(2) Because Don Victoriano Reyes, the purchaser under the first deed, merely acted as an intermediary at the request and instance of Don Francisco Enriquez for the purpose of subsequently facilitating the acquisition by Doña Carmen de la Cavada, his wife, of the hereditary share of Don Jorge Enriquez, the real acquirer being Don Francisco Enriquez, the executor and administrator of the estate of Don Antonio Enriquez. The conclusion of the plaintiffs is that as such executor Don Francisco Enriquez was unable to acquire by his own act or that of any intermediary ±he said hereditary portion of Don Jorge Enriquez under the provisions of paragraph 3 of article 1459 of the Civil Code.

(*a*) The evidence introduced by the plaintiffs is not sufficient to authorize the conclusion that there was no consideration for the sales referred to in the complaint. It is true that Victoriano Reyes testified that he paid nothing to Jorge Enriquez, and received nothing from Carmen de la Cavada as consideration for either of the sales. But against this statement is the testimony of the notary, Don Enrique Barrera y Caldes, before whom both contracts were executed, and that of the defendants Francisco Enriquez and Doña Carmen de la Cavada, who expressly affirm the contrary; and more especially the statement is contrary to the recitals of the deeds themselves, which confirm the statements of the witnesses last referred to. The deeds clearly and expressly recite the fact of the receipt by the respective purchasers

of the stipulated price or consideration of 7,000 pesos at the time and place of the execution of the deeds.

These instruments having been executed with all the formalities prescribed by the law, they are admissible as evidence against the contracting parties and their successors with respect to recitals made therein by the former. (Art. 1218, Civil Code.) Their evidenciary force can not be overcome except by other evidence of greater weight, sufficient to overcome the legal presumption of the regularity of acts and contracts celebrated with all the legal requisites under the safeguard of a notarial certificate. This presumption has not been rebutted in the present case, in which the evidence against it, consisting of the sole testimony of Don Victoriano Reyes, which, moreover, is expressly controverted by that of the other witnesses at the trial, involves the improbable conclusion that the witness, as well as Jorge Enriquez, from whom the plaintiffs derived title, the notary public, and the attesting witnesses to both instruments consented to the commission of the grave crime of falsification of public documents—for this would be the result were the statements of the said Victoriano Reyes true—without having any interest in so doing or expecting to derive any benefit from the commission of the crime, the plaintiffs not having alleged or proven the existence of such an interest on. their part. It appears, on the contrary, from the testimony of Victoriano Reyes himself that he received no compensation for his participation in the matter.

With respect to Jorge Enriquez, the conclusion, still more improbable if possible, would be that he had voluntarily and spontaneously taken part in the commission of a grave crime, which not only was not of the slightest benefit to himself, but the commission of which is supposed to have had for its object the causing of harm to him. The allegation is that the purpose of the crime was to deprive him, without the slightest compensation, of his paternal and maternal inheritance, which according to the complaint was the only possession of himself and his numerous family. This is the most inexplicable and improbable aspect of the facts alleged in the complaint. It is beyond comprehension, and we can not believe that Jorge Enriquez, who

according to the plaintiffs was absolutely without means of support for himself and his family, would convey to another his large interest in the estate without receiving any consideration therefor, and that to do this he would commit the grave crime, of falsification. To justify this conclusion it would be necessary to suppose that Jorge Enriquez was absolutely devoid of intelligence or that he was the victim of error, violence, intimidation, or fraud. But these are circumstances which counsel for the plaintiff have not demonstrated or even sought to demonstrate.

An examination of the evidence leads us to the conclusion that the payment of the consideration of 7,000 pesos expressed in the two deeds in question was actually and really made, and that the allegation of the plaintiffs that the contracts of sale evidenced by these deeds were made without consideration is unfounded.

At all events the action of which the plaintiffs might have availed themselves for the purpose of having those contracts declared void upon that ground, even admitting hypothetically that there was no consideration, is barred by the statute of limitations, inasmuch as from the date of those contracts down to the death of Jorge Enriquez, which occurred July 6,1891, more than five years had passed and more than fifteen before the filing of the complaint on January 9,1902, nothing having been done in the meantime on the part of the plaintiffs or the person under whom they claim to interrupt the running of the statute. The action of nullity only lasts four years, counted from the date of the consummation of the contract, when the action is based, as in this case, upon the absence of consideration. (Art. 1301 of the Civil Code.)

The contract of sale is consummated by the delivery of the purchase money and of the thing sold. ” When the sale is made by public instrument the execution of the instrument is equivalent to the delivery of the thing which is the object of the contract, unless from the instrument itself the contrary intention clearly appears.” (Art. 1462, par. 2, Civil Code.) And article 1464 provides that ” With respect to incorporeal property [to which class the hereditary right

which was the object of the contracts in question pertains], the provisions of paragraph 2 of article 1462 shall govern." In the deeds of sale executed by Victoriano Reyes in favor of Doña Carmen de la Cavada we find the following: " In consequence he (the vendor) by virtue of this title cedes and conveys all rights which he has or may have to the part of the inheritance which is the object of this sale, to the end that the purchaser, in the place and stead of the vendor, may exercise all the acts of ownership corresponding to her right, *to which end by means of the delivery of this instrument and of his other title deeds he makes the transfer necessary to consummate the contract, which upon his part he declares to be perfect and consummated from this date.*"

In view of this clause and of the legal provisions above cited, it is evident that the delivery of the things sold was effected by the mere execution of the deed of sale; and it appearing from the deed itself that the consideration was delivered to the vendor at the time, and the contrary not having been sufficiently proven, the conclusion follows that the sale was consummated then and there, and that from that time the period of four years fixed by law for the prescription of the action of nullity must be counted
in this case.

(*b*) The thing sold in the two contracts of sale mentioned in the complaint was the hereditary right of Don Jorge Enriquez, which evidently was not in charge of the executor, Don Francisco Enriquez. Executors, even in those cases in which they administer the property pertaining to the estate, do not administer the hereditary rights of any heir. This right is vested entirely in the heirs, who retain it or transmit it in whole or in part, as they may deem convenient, to some other person absolutely independent of the executor, whose, authority, whatever powers the testator may have desired to confer upon him, do not and can not under any circumstances in the slightest degree limit the power of the heirs to dispose of the said right at will. That right does not form part of the property delivered to the executor for administration.

This conclusion having been reached, we are of the opinion that article 1459 of the Civil Code, cited by the plaintiffs to show the alleged incapacity of Don Francisco Enriquez as executor of the will of Don Antonio Enriquez, to acquire by purchase the hereditary right of Jorge Enriquez, has no application to the present case. The prohibition which paragraph 3 of that article imposes upon executors refers to the property confided to their care, and does not extend, therefore, to property not falling within this class. Legal provisions of a prohibitive character must be strictly construed, and should not be extended to cases not expressly comprised within their text.

Consequently, even upon the supposition that the executor, Don Francisco Enriquez, was the person who really acquired the hereditary rights of Jorge Enriquez, the sale in question would not for that reason be invalid, the executor, Don Francisco Enriquez, not being legally incapable of acquiring the hereditary right in question as the plaintiffs erroneously suppose.

This being so, the question as to whether the money paid by Doña Carmen de la Cavada for the purchase of the said right was her sole and exclusive property, or whether it was the property of her husband Don Francisco Enriquez, or whether it was the property of the community of goods existing between them, is absolutely unimportant, for, be the fact as it may, the Conclusion must always be that the incapacity to purchase, alleged as one of the legal grounds upon which the complaint rests, does not exist.

Enough has been said to show that the action brought by the plaintiffs is devoid of foundation. It is not, therefore, necessary to decide the other questions raised by the parties at the trial.

The judgment of the court below is reversed and the complaint dismissed, without costs in either instance. So ordered.

Arellano, C.J., Torres, Cooper, McDonough, and *Johnson, JJ.,* concur.

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