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SECOND DIVISION

[G.R. No. L-27841. October 20, 1978]

MARIA ENCARNACION CASTILLO, ELISEA GALVAN, and PATROCINIO GALVAN, *plaintiffs-appellants, vs.* **JOSEFA GALVAN, EMILIO SAMSON, and NATIVIDAD GALVAN,** *defendants-appellees.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; AMENDMENT; IF MADE AFTER THE CASE IS SET FOR HEARING BUT BEFORE TRIAL, LEAVE OF COURT IS REQUIRED.** — After a case is set for hearing, substantial amendments may be made in a pleading only upon leave of court. But such leave may be refused if it appears that the motion was made with intent to delay the action or that the cause of action or defense is substantially altered.

2. **ID.; ID.; ID.; ANSWER; INCLUSION OF DEFENSE OF PRESCRIPTION NOT A SUBSTANTIAL ALTERATION.** — The inclusion of the defense of prescription in an amended answer does not constitute a substantial alteration within the meaning of the rule, if there are no allegations in the amended answer which are wholly different from those stated in the original answer apart from such inclusion, and the inclusion could not have placed the plaintiffs at a disadvantage.

3. **ID.; ID.; ID.; ID.; DEFENDANT MAY SET FORTH AS MANY DEFENSES.** — Section 2, Rule 8, Rules of Court, provides that a party may set forth in his pleading two or more statements or a claim or defense alternatively or hypothetically either in one cause of action or defense or in separate causes of action or defenses. And a defendant may set forth by his answer as many defenses and counterclaim as he may whatever be their nature regardless of consistency, provided, that each is consisted with itself.

4. **CIVIL LAW; PRESCRIPTION OF ACTION; DECLARATION OF NULLITY OF A CONTRACT; IMPRESCRIPTIBLE.** — Where an action seeks to declare void and inexistent a deed of sale upon the grounds that there was fraud in securing the signatures

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of the vendors in the deed of sale, and that there was no consideration given at the time of the transaction, the action is imprescriptible.

AQUINO, *J., concurring*:

1. CIVIL LAW; PRESCRIPTION OF ACTIONS; PRESCRIPTION. — An action to declare void or inexistent a fictitious deed of sale on the ground that its consideration did not exist at the time of transaction is imprescriptible. (Arts. 1409 [3], and 1410, Civil Code)

2. ID.; CONTRACTS; VOID CONTRACTS; ACTION TO DECLARE NULLITY IS IMPRESCRIPTIBLE. — A contract of sale is void and produces no effect whatsoever where the price which appears thereon as paid, has in fact never been paid by the purchaser to the vendor, or where the signature of the vendor has been secured fraudulently. Such a sale is nonexistent and cannot be considered consummated. In such a case the compulsory heirs of the alleged vendor, upon the latter's death, have the imprescriptible right to sue to declare the sale void because they have been deprived of their legitimate in the estate of the deceased.

D E C I S I O N

CONCEPCION JR., *J.*:

Appeal from the order of the Court of First Instance of Pangasinan dismissing the complaint filed in Civil Case No. D-1227 and the order denying the motion for the reconsideration of said order.

The complaint, filed on August 1, 1961, is for the annulment of a document, denominated "DEED OF ABSOLUTE SALE," executed on August 3, 1955, by and between Paulino Galvan, professedly the predecessor-in-interest of herein plaintiffs, and defendants Josefa Galvan and Natividad S. Galvan, and for damages and attorney's fees. The plaintiffs therein alleged that Paulino Galvan, during his lifetime, was the registered owner of an undivided one-half (½) interest over two parcels of land,

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known as Lot Nos. 4541 and 4542 of the Dagupan Cadastre and covered by OCT Nos. 38131 and 39317, respectively, of the Register of Deeds of Dagupan City. The other undivided half is owned by his two daughters by a first marriage, herein defendants Josefa Galvan and Natividad Galvan. On these lots, which are contiguous, is built the family home. On February 10, 1961, Paulino Galvan died and the plaintiffs, out of "*delicadeza*" waited for the defendants to initiate the move for the settlement of his estate. But, after waiting for some time and finding that none was forthcoming, the plaintiffs became apprehensive, so that they began to go over the papers concerning the properties of the decedent. In the office of the Register of Deeds of Dagupan City, they were surprised to find a deed of sale, signed by the late Paulino Galvan and the plaintiff, Maria Encarnacion Castillo, whereby they had purportedly sold for ₱500.00 the one-half undivided portion of Paulino Galvan over said lots in favor of defendants. When apprised of the existence of a deed of sale, plaintiff Maria Encarnacion Castillo remembered that way back in 1953, she and her husband Paulino Galvan were made to sign a certain document by Josefa Galvan "upon the fraudulent misrepresentation that the said document was only for the purpose of enabling them, the co-owners of the parcels of land in question, to have their separate tax declarations for the respective portions owned by them so that they can pay their respective real estate taxes separately, the said spouses not knowing that the said document is a deed of sale for which no consideration was even paid." The plaintiffs further alleged that Paulino Galvan could not have intended to sell his share and participation over the lots in question during his lifetime as he had no other residential lot to live in and there is no necessity for him to sell the same as he and his wife had sufficient income to sustain them. Besides, the undivided half share of Paulino Galvan was worth around ₱22,500.00 so that he could not have sold it for only ₱500.00. Wherefore, they prayed that the deed of sale be declared null and void; that the plaintiffs be declared the owners of four-sixths (4/6) of the undivided half share pertaining to Paulino Galvan; that the defendants be ordered

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to pay the amount of ₱1,500.00, as attorney's fees; and to pay the costs of suit.[1]

The defendants filed their answer with counterclaim on August 23, 1961 wherein they interposed negative and affirmative defenses. As their affirmative defense, the defendants claim that "they are the absolute and exclusive owners of whose parcels of land described in the complaint for having acquired the portions belonging to their late father Paulino Galvan through legal and valid conveyance and this fact is known to the plaintiffs long before the filing of the complaint."[2]

Three years thereafter, or on August 24, 1964, but before the case was tried, the defendants filed an amended answer with the corresponding motion to admit it, which amended answer contained an allegation that "the action of plaintiffs is barred by the statute of limitations."[3]

The plaintiffs filed objections to the defendants' motion to amend their answer. Plaintiffs' principal objection was their contention that the defendants had waived the right to plead the statute of limitations and were estopped from pleading it by reason of the fact that they had tried to do so after the filing of their answer to the complaint. The plaintiffs further contend that the inclusion of the defense of prescription substantially altered the defense.[4]

Over plaintiffs' objections, the trial court permitted the defendants to amend their answer by adding the defense of statute of limitations.[5]

Then two more years later or on August 27, 1966, the defendants filed a motion to dismiss the complaint upon the ground that the action is barred by the statute of limitations for

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[1] p. 2, Record on appeal.

[2] p. 9, *ibid.*

[3] p. 16, *ibid.*

[4] p. 22, *ibid.*

[5] p. 28, *ibid.*

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the reason that the present action for the annulment of the instrument of sale is based upon fraud which should be brought within four (4) years from the time of the discovery of the same in accordance with Article 1391 of the Civil Code; and fraud, as a ground for annulment, shall be deemed to be discovered from the date of the registration of the alleged fraudulent documents; and considering that the deed of sale in question was registered on August 4, 1955, while the action for its annulment was commenced only on August 1, 1961, or after the lapse of more than four (4) years from its registration with the Register of Deeds, the action for annulment had prescribed.[6]

The trial court sustained the defendants' contention, and, consequently, dismissed the complaint without costs, on September 22, 1966.[7] A motion for the reconsideration of this order having been denied on November 2, 1966,[8] the plaintiffs interposed the present appeal.

The appeal raises two issues for determination, the first of which is whether or not the trial court erred in admitting the amended answer which incorporated a defense of prescription not heretofore pleaded in the original answer.

The plaintiffs insist that the defendants, by their omission to plead the statute of limitations in their original answer, waived and relinquished that plea for all time, and that it was therefore, error for the trial court to permit the plea. On this contention, plaintiffs direct our attention to Sec. 2, Rule 9, of the Rules of Court which reads as follows:

"Section 2. *Defenses and objections not pleaded deemed waived.*— Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the failure to state a cause of action which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits: but in the last instance, the motion shall be

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[6] p. 29. *ibid.*

[7] p. 32. *ibid.*

[8] p. 41. *ibid.*

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disposed of as provided in Section 5 of Rule 10 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject matter, it shall dismiss the action."

The plaintiffs have apparently ignored the rule that a party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within ten (10) days after it is served. After the case is set for hearing, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay the action or that the cause of action or defense is substantially altered.[9]

Here, leave to file an amended answer was sought after the case had been set for trial but before the trial thereof,[10] so that it is well within the ambit of the rule aforementioned. Indeed, if the plaintiffs believed that the trial court gravely abused its discretion in allowing the amendments to the answer, they should have filed the proper corrective action earlier.

The inclusion of the defense of statute of limitations is also claimed to have substantially altered the defense, in that in the original answer, the defendants invoked only "specific denial" as their defense, which means that they deny the truth of the allegations of fact constituting the fraud as alleged in the complaint, whereas the defense of statute of limitations impliedly admits the truth of facts alleged in the complaint as constituting the fraud, and, therefore, inadmissible.

The alteration pointed to by the plaintiffs is but nominal, and can not be considered a substantial alteration in the defense within the meaning of the rule. Comparing the original answer with amendments made thereto, there are no allegations in the

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[9] Secs. 2 and 3. Rule 10. Rules of Court.

[10] See p. 17. 33. Original Record.

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amended answer wholly different from those which were stated in the original answer, except for the addition of the allegation that "the action of the plaintiffs is barred by the statute of limitations." As in their original answer, the defendants have maintained that "they are absolute and exclusive owners of whole parcels of land described in the complaint for having acquired the portions belonging to their late father Paulino Galvan through legal and valid conveyance and this fact is known to plaintiffs long before the filing of the complaint." Even the prayer is the same. It is a sound estimate that the defense of prescription was interposed to strengthen their previous defense of estoppel or laches. The plaintiffs could not have been placed at a disadvantage for as a matter of fact, the plaintiffs had anticipated the defense of prescription in their complaint by pleading that they came to know of the existence of the deed of sale only after they went over the papers concerning the land in the office of the register of Deeds of Dagupan City in 1961, after the death of Paulino Galvan.[11]

At any rate, under Section 2, Rule 8 of the Rules of Court, a party is allowed to set forth in his pleading two or more statements or a claim or defense alternatively or hypothetically either in one cause of action or defense or in separate causes of action or defenses. And a defendant may set forth by his answer as many defenses and counterclaim as he may whatever be their nature regardless of consistency, provided, that each is consisted with itself.[12]

The other issue raised is whether or not the trial court improperly dismissed the complaint on the ground of prescription. In its order dated September 22, 1966, dismissing the complaint, the trial court said:

"The complaint, among others, prays for the annulment of document, which is a deed of sale dated August 3, 1955, purporting conveyance of the two parcels described in the complaint in favor of defendants Josefa Galvan and Natividad Galvan and Emilio Samson.

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[11] See pars. 5, 6, 8, Complaint.

[12] *Castle Bros., Wolf & Sons vs. Go-Juno*, 7 Phil. 144.

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Said document (Exh. 1 for defendants) was registered on August 4, 1955 (Exhs. 1-A and 1-B). It is the contention of the defendants that plaintiffs' action has prescribed as the same was not presented within four years from the registration of the document.

"The court sustains defendants' contention. The basis of the annulment is alleged fraud, and the action for the annulment of the document should be brought within 4 years from the discovery of fraud (*Mauricio vs. Villanueva*, L-11072, September 24, 1959), and that such discovery of fraud is deemed to have taken place when the instrument was filed and registered with the Register of Deeds and new transfer certificate of title is issued in the name of the vendee for the registration of the deed constitutes constructive notice to the whole world (*Diaz vs. Gorricho*, L-11229, March 29, 1958; *Ignacio Gerona, et al. vs. Carmen de Guzman, et al.*, L-19060, May 29, 1964).

"In view of the foregoing, the court resolves to dismiss, as it hereby dismisses, the complaint without costs."[13]

The allegations of the complaint show, however, that the plaintiffs' action is to declare void and inexistent the deed of sale executed by Paulino Galvan and Encarnacion Castillo on August 3, 1955 in favor of Josefa and Natividad Galvan, upon the grounds that (a) there is Fraud in securing the signatures of the vendors in said deed of sale; and (b) there was no consideration given at the time of the transaction. In other words, the plaintiffs are seeking a judicial declaration that the deed of sale in question is void *ab initio*, which action is imprescriptible.[14] The trial court erred, therefore, in dismissing the complaint for the reasons stated.

WHEREFORE, the judgment appealed from is reversed and the order of September 22, 1966, dismissing the complaint, is hereby set aside. Let this case be remanded to the court of origin for further proceedings. Without costs.

SO ORDERED.

Fernando (Chairman), Antonio, and *Santos, JJ.,* concur.

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[13] Record on Appeal, p. 33.

[14] Art. 1410 in relation to Art. 1409(3) of the Civil Code.

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Barredo, J., concurs. Because I am in favor of liberalizing the rule on waiver of defenses in order to promote substantial justice: The main opinion as well as that of Justice Concepcion Jr., have that tendency. See attached concurring opinion.

Aquino, J., see concurring opinion.

AQUINO, *J., concurring*:

I concur. The trial court committed a grievous error in dismissing the complaint on the ground of prescription. It erroneously assumed that plaintiffs' cause of action is for the annulment of a deed of sale on the ground of fraud.

In reality, plaintiffs' action is to declare void or inexistent the fictitious deed of sale of August 3, 1955 on the ground that its consideration did not exist at the time of the transaction. That action is *imprescriptible* [Arts. 1409[3] and 1410, Civil Code).

Fraud was alleged in the complaint merely to show why the alleged vendor (the septuagenarian father of the vendees) signed the deed of sale.

The plaintiffs categorically alleged in paragraph 9 of the complaint that no consideration was paid for the sale. They prayed that the sale "be declared null and void" (pp. 4-6, Record on Appeal). The thrust of the action is to secure a judicial declaration that the sale is void *ab initio.*

A contract of sale is void and produces no effect whatsoever where the price, which appears thereon as paid, has in fact never been paid by the purchaser to the vendor (Arts. 1352 and 1353, Civil Code; *Ocejo, Perez and Co. vs. Flores and Bas,* 40 Phil. 921; *Mapalo vs. Mapalo*, L-21489, May 19, 1966, 17 SCRA 114, 122).

Such a sale is nonexistent and cannot be considered consummated (*Borromeo vs. Borromeo*, 98 Phil. 432; *Cruzado vs. Bustos and Escaler*, 34 Phil. 17; *Garanciang vs. Garanciang*, L-22361, May 21, 1969, 28 SCRA 229).

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Plaintiffs' cause of action is supported by the following ultimate facts alleged in their complaint:

Paulino Galvan married twice. By his first marriage, he begot two daughters, defendants Josefa Galvan and Natividad Galvan. His second wife was Encarnacion Castillo with whom he begot three children named Elisea, Patrocinio and Florangel.

Paulino Galvan was the owner of a one half *pro indiviso* share in two parcels of land located at Burgos Street, Dagupan City with a total area of 1,116 square meters. The other one-half share is owned by Natividad Galvan and Josefa Galvan, his two daughters of the first marriage.

Existing on those two lots in the conjugal house of the spouses Paulino Galvan and Encarnacion Castillo. The house is made of wood with galvanized iron roofing.

On August 3, 1955, when Paulino Galvan, who did not have much education, was already seventy-eight years old, his daughter, Josefa, asked him and his wife, Encarnacion, also old and not highly educated, to sign a document which, according to Josefa, was necessary in order to have separate tax declarations for their respective one-half portions of the two lots.

The Galvan spouses signed the document. Paulino Galvan died on February 10, 1961 at the age of eighty-four years. He was survived by his second wife and his five above-named children.

It was only after the death of Paulino Galvan that his widow and their three children discovered that the document, which Josefa had asked her father to sign, was a deed of sale, which is in English, a language not known to the Galvan spouses.

Paulino Galvan could not have sold his one-half share in the two lots for a measly sum of ₱500, the price stated in the deed of sale, because in 1961 the two lots were worth ₱45,000, at forty pesos a square meter. Paulino Galvan's one-half share was worth at least ₱22,500.

The action to declare the sale void was filed on August 1, 1961 against Natividad Galvan and Josefa Galvan. They pleaded

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as a defense that the sale was valid. Later, they amended their answer by pleading prescription. The trial court dismissed the complaint on that ground.

The trial court overlooked the fact that the fraudulent manner by which the signatures of the Galvan spouses in the deed were obtained strengthens plaintiffs' theory that the sale is void or inexistent because it would appear that the said spouses did not consent at all to the sale.

In the *Mapalo* case, *supra*, the spouses, Miguel Mapalo and Candida Quiba, illiterate farmers, decided to donate to Maximo Mapalo the brother of Miguel, the eastern half of their 1,635-square meter residential land located in Manaoag, Pangasinan.

However, they were deceived into signing on October 15, 1936 a deed of absolute sale for the entire land in favor of Miguel Mapalo. Their signatures were procured by fraud. They were made to believe by Maximo and the notary public that the document was a deed of donation covering the eastern half of their land.

Although the deed of sale stated a consideration of ₱500 (as in the instant case), the said spouses did not receive anything of value for the land. The spouses remained in possession of the western half of the land.

On March 15, 1938 Maximo Mapalo registered the sale and obtained a Torres title for the entire land. On October 20, 1951 Maximo sold the entire land to Evaristo, Petronila, Pacifico and Miguel, all surnamed Narciso. A transfer certificate of title was issued to the Narcisos for the whole land. They took possession of the eastern half of the land.

On February 7, 1952 the Narcisos sued the Mapalo spouses. They prayed that they be declared the owners of the entire land. They sought to recover possession of its western portion. The Mapalo spouses filed a counterclaim, wherein they prayed that the western half of the land be conveyed to them. They alleged that their signatures to the deed of sale were obtained through fraud. They sued the Narcisos in 1957. They asked

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that the 1936 and 1951 deeds of sale be declared void as to the western portion.

The Court of Appeals held that the sale was merely voidable on the ground of fraud; that the action for annulment should have been brought within four years from the registration of the sale, and that, as that period had already expired, the action had also prescribed.

This Court, reversing the decision of the Court of Appeals, held that the 1936 sale was not merely voidable but was void or inexistent and that the "inexistence of a contract is permanent and incurable and cannot be *the subject of prescription.*" The holding of the trial court that the Mapalo spouses should be issued a Torrens title for the western half of the land was affirmed.

The ruling in the *Mapalo* case is squarely applicable to this case.

In the instant case, the plaintiffs, the widow and a child of the first marriage, as compulsory heirs of Paulino Galvan, the victim of the alleged fraud, have the right to sue to declare the sale void because they were deprived of their legitimate in the estate of Paulino Galvan (Art. 221[4], Civil Code; *Reyes vs. Court of Appeals,* 95 Phil. 952; *Armentia vs. Patriarca*, L-18210, December 29, 1966, 18 SCRA 1253, 1258-1260).