

[ G.R. No. L-4436. January 28, 1955 ]

**SOLEDAD OSORIO DE FERNANDEZ AND VICENTE T. FERNANDEZ, PLAINTIFFS AND APPELLEES, VS. HON. J. HOWARD MCGRATH AS SUCCESSOR OF THE U.S. PHILIPPINE ALIEN PROPERTY ADMINISTRATOR, DEFENDANT AND APPELLANT; REPUBLIC OF THE PHILIPPINES, INTERVENOR AND APPELLANT.**

**D E C I S I O N**

**REYES, J.B.L., J.:**

Plaintiffs Soledad Osorio de Fernandez and Vicente Fernandez filed this action in the Court of First Instance of Rizal (Civil Case No. 4), for the annulment of a deed of sale of a parcel of land located in Navotas, Rizal, together with the improvements thereon, executed by plaintiff Soledad Osorio de Fernandez in favor of the Osaka Boeki Kaisha, Inc., Japanese corporation, on December 29, 1942, on the ground of duress and intimidation.

After her claim to the property had been filed with and disallowed by the Alien Property Custodian, as required by the Trading with the Enemy Act, the case was heard in the Court of First Instance, where the Republic of the Philippines was allowed to intervene. After due trial the Court rendered judgment setting aside the conveyance as prayed for, and the defendant Alien Property Administrator and the intervenor, Republic of the Philippines, duly appealed to this Court. Subsequently, the Attorney General of the United States was substituted for the Alien Property Administrator, as successor to the latter in his authority and powers.

It is unquestioned that the plaintiff-appellee Soledad Osorio de Fernandez was the registered owner of the parcels of land known as lots 1, 2 and 3, plan P-su-12189, in Navotas, Rizal, covered by Original Certificate of title No. 2541 of Rizal. Lot No. 2 was contiguous to the Varadero de Yangco in Navotas, which the Japanese Navy took over and used, during the occupation, for repairing and

reconditioning their vessels. On December 29, 1942, said appellee executed two documents concerning said lands: one (Exhibit A) conveying lot No. 2, P-su-12189, and its improvements, in favor of the Osaka Boeki Kaisha, Inc., a Japanese corporation, for a stated price of P70,555; and the other was an affidavit (Exhibit 2) requesting cancellation of an annotated lease with option to buy covering lot No. 1, P-su-12189, in favor of Da. Filomena De la Rúa Vda. de Villaescusa, on the ground that both lease and option had already expired. Both documents appear acknowledged by plaintiff on the same day before notary public, Leandro Sevilla, and bear consecutive numbers (40 and 41) in his Notarial Register for 1942; and according to the official records, both documents appear presented on the same day, January 5, 1943, by plaintiff's son, Jose O. Fernandez, to the Register of Deeds of Rizal. It also appears of record that in view thereof, Original Certificate of Title No. 2541 was cancelled and in its stead, the Register of Deeds issued three Transfer Certificates: No. 44631 (covering Lot 2) in the name of Osaka Boeki Kaisha, Inc. and Nos. 44632 (for Lot 1) and 44633 (for Lot 3) in the name of plaintiff Soledad Osorio de Fernandez, whose son Jose signed the receipt for all three certificates.

Plaintiff-appellee's husband, Vicente Fernandez and her son Jose O. Fernandez, testified in Court that one Mori, manager of the Osaka Boeki Kaisha, Inc. had called at their house, and expressed desire to purchase the aforementioned Lot No. 2, P-su-12189, because the Japanese navy needed it, but was told it was not for sale; that said Mori returned one week later, on December 29, 1942, accompanied by a Japanese officer, and reiterated the offer to buy, and by threats that the Navy could appropriate the land and that refusal to cooperate would mean punishment or death, succeeded in coercing plaintiff into signing the deed of sale and making her husband sign as a witness. It is claimed that on this occasion the notary public was not present, nor was any acknowledgment clause written below the signatures; and that the Japanese only delivered P3,000 by way of advance payment, which plaintiff accepted lest their refusal be interpreted as lack of confidence in the military notes.

The witnesses for the plaintiffs further testified that about a week later, on January 5, 1943, Mori ordered the plaintiff's son, Jose, to go with him to Pasig to register the deed of sale; that the Register asked for the owner's duplicate of the Certificate of Title but Mori ordered him to make the record and the Register complied; that Mori got all the documents, placed them in his

portfolio, and ordered Jose O. Fernandez to sign the receipt. Thereafter, both returned to Manila and about January 22 Mori paid the balance of the price with a check for P67,555, that the plaintiffs deposited in the Bank and from which they made withdrawals of P500 a month during the rest of the occupation period.

We are of the opinion that the Court below erred in giving preponderant weight to this elaborate story. In the first place, the notary public Leandro Sevilla, (who ratified the document) squarely contradicted it, and testified that both the deed of sale of Lot No. 2 in favor of Osaka Boeki Kaisha, Inc., (Exhibit A) and the affidavit for the cancellation of the lease and option to buy Lot No. 1 of Psu-12189, (Exhibit 2) were prepared by him at the instance of the son of plaintiff, Jose O. Fernandez, who furnished the notary all the requisite data; that both documents were signed by plaintiff while sitting in a "dokar" (dog-cart) parked on the Escolta, and without Mori or her husband being present; that after execution and signature, the deed of sale was brought to the Osaka Boeki Kaisha offices in Echague Street where Mori signed on behalf of the vendee Company, while plaintiff's husband, Vicente Fernandez, and a Japanese called Fuji signed as witnesses, and the downpayment of P3,000 was made. The notary further affirmed that he started drafting a petition under Act 496, section 44, to segregate the lot sold, but desisted upon advice of Antonio Noblejas, clerk of the Judicial Land Title Division of the General Land Registration Office (and now Commissioner heading the same) that the petition was unnecessary; instead, the notary, accompanied by Jose O. Fernandez and Mr. Noblejas, went to the office of the Register of Deeds of Rizal and secured the registration of the Osaka deed and the affidavit Lot No. 1 of Certificate of Title No. 2541 as well as the issuance of Three Transfer Certificates in lieu of the original, delivered to and receipted for by Jose O. Fernandez, the son of plaintiff-appellee.

The trial Court has overlooked that the testimony of the Notary Public, whose neutrality has not been successfully assailed, was strikingly supported by the execution of the affidavit of cancellation of the option and lease of Lot No. 1, (Exhibit 2) which had nothing to do with the alleged forced sale of Lot No. 2 to Osaka Boeki Kaisha, Inc. and yet was executed, ratified and recorded coetaneously with the questioned sale. Only Soledad Osorio Fernandez could have an interest in this affidavit, and its simultaneous execution conclusively

rebutts her claim that she executed the sale (Exhibit A) under duress. A party that is able to carry out an act redounding to its exclusive benefit simultaneously with the assailed contract, can not successfully claim in the latter case to have acted mechanically under the influence of violence or intimidation destroying its free agency (Reyes vs. Zaballero, 89 Phil., 39; Martinez vs. Hongkong & Shanghai Bank, 15 Phil., 252; Vales vs. Villa, 35 Phil., 769).

Moreover, the testimony for the plaintiff that, when she signed the deed, the acknowledgment clause was missing from it, finds no support from the appearance of the deed itself, since it is improbable that the acknowledgment clause could have been inserted without some horizontal or vertical displacement becoming apparent, and Exhibits A and I show none. Also, the receipt Exhibit G, issued by Mori for the Transfer Certificate covering Lot. No. 2, Psu-12189, belies the testimony of Jose O. Fernandez that in Pasig Mori took with him all the transfer certificates issued by the Register of Deeds. Said receipt reads:

“Received from the Register of Deeds for the Province of Rizal (through Dona Soledad Osorio de Fernandez) one Owner’s Duplicate Certificate of Transfer Certificate of Title No. 44631 (forty-four thousand six hundred thirty-one) in the name of the *Osaka Boeki Kaisha Inc.*, and issued by the Office of the Register of Deeds for the Province of Rizal.

*Manila, January 22, 1955*

Osaka Boeki Kaisha Inc.

By:

(Sgd.) *M. Mori*  
(Exhibit G)

Even if we concede that the sale was executed through threat and intimidation by Mori, the action for annulment was waived and the contract ratified by the plaintiff’s action in depositing the check for the purchase price and withdrawing part of the money up to a total of P11,500 from time to time (Uy Soo

Lim vs. Tan Unchuan, 38 Phil., 552), specially since according to plaintiff's husband they had ample income of their own throughout the occupation. The excuse offered, to wit, the fear that if the plaintiff or her family did not make the withdrawals, the Japanese might think they did not like the Japanese military scrip, might be acceptable to justify one or two withdrawals, but does not explain why withdrawals were continued all the way from January, 1943, to November, 1944.

As a final argument in annulling the deed of sale in question, the lower Court held that the transaction being between the military occupant and an inhabitant of the occupied territory, over a property that was a war necessity, duress may be presumed and no evidence of a particular coercive act is necessary. In numerous cases decided before this, particularly Philippine Trust Co. vs. Luis Araneta, 83 Phil., 132, 46 Off. Gaz., 4254; People vs. Bagalawis, 78 Phil., 174, 44 Off. Gaz., 2655; and People vs. Quilloy, 88 Phil., 53, this Court has already rejected the theory of "collective" or "general" duress allegedly exercised by the Japanese military occupant over the inhabitants of this country as a ground to invalidate acts that would otherwise be valid and voluntary if done in times of peace.

The decision of the Court below having overlooked significant proof supporting the case of appellants, its reversal is warranted. Our conclusion is that plaintiffs-appellees Fernandez have failed to rebut the validity and regularity of the deed of sale Exhibit A.

Wherefore, the decision appealed from is reversed, and the complaint is dismissed, with costs against appellees.

*Paras, C.J., Pablo, Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Concepcion JJ., concur.*

*Judgment reversed.*

