

RAFAEL A. DINGLASAN, ET AL., PETITIONERS, VS. LEE BUN TING, ANG CHIA, IN HER CAPACITY AS WIDOW OF THE DECEASED LEE LIONG, AS WELL AS JUDICIAL ADMINISTRATRIX OF THE PROPERTIES OF...

G.R. No. L-5996. June 27, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal by certiorari against a judgment of the Court of Appeals, affirming that of the Court of First Instance of Capiz. The facts found in the Court of Appeals, which are pertinent to this appeal are as follows:

In the month of March, 1936 petitioners-appellants sold to Lee Liong, a Chinese citizen, predecessor in interest of respondents-appellees, a parcel of land situated on the corner of Roxas Avenue and Pavia Street, Capiz (now Roxas City), Capiz, designated as lot 398 and covered by original Certificate of Title No. 3389. The cost was P6,000 and soon after the sale Lee Liong constructed thereon a concrete building which he used as a place for his lumber business and in part as residence for himself and family. Petitioners had contended that the sale was a conditional sale, or one with the right of repurchase during the three last years of a ten year period, but both the trial court and the Court of Appeals found that the sale was an absolute one. Another contention of the petitioners-appellants is that the sale is null and void as it was made in violation of the provision contained in the Constitution (Article XIII, section 5), but the Court of Appeals found that the purchaser was not aware of the constitutional prohibition while petitioners-appellants were because the negotiations for the sale were conducted with the knowledge and direct intervention of Judge Rafael Dinglasan, one of the plaintiffs, who was at that time an assistant attorney in the Department of Justice. And it held that even if Lee Liong had known of the prohibition, the suit would not lie because of the principle of *pari delicto*, that courts will not aid either party to an illegal contract if both are equally guilty but will leave them where they find them, citing *Rellosa vs. Gaw Chee Hun*, 93 Phil., 827, promulgated March 18, 1947, and articles 1302, 1305 and 1306 of the Civil Code. The Court of Appeals said:

"By the same token, we hold that appellants cannot now retrieve the lot in question. 'Money paid under an agreement which is executed, whether as the consideration or in performance of the promise, cannot be recovered back where the parties are in part delicto. And goods delivered or lands conveyed under an illegal agreement are subject to the same rule (17 C. J S. 656, 658-659, 660). By this holding we are riot sanctioning or legalizing the transaction in question. We merely refuse to aid either party to an illegal agreement. As stated in *Corpus Juris Secundum* (Vol. 17, p. 659), the '*pari delicto* rule' is made for the protection of the public and not for the benefit of the parties; its object in refusing relief to either party where the contract is executed is not to give validity to the transaction but to deprive the parties of all right to have either enforcement of, or relief from, the illegal agreement. In such cases the defense of illegality prevails, not as a protection to defendant, but as a disability in plaintiff. The court does not give effect to the contract, but merely refuses its aid to undo what the parties have already done. While' it may not always seem an honorable thing to do, yet a party to an illegal agreement is permitted to set up the illegality as a defense, even though it may be alleging his own turpitude.

"Upon the other hand there is a preponderating weight of judicial authorities holding that an alien can take by deed and can hold land until office found or until the land is taken by the State, and he had full capacity to hold against all the rest of the world (2 C. J. 1051-1054; 2 Am. Jur. 476; *Abrams vs. State*, 45 Wash. 327, *Goon Gan vs. Richardson*, 44 P. 762, 16 Wash. 373, *Oregon Mortg. Co. Garstens*, 47 P. 421, 16 Wash. 165, 35 L. R. A. 841); that before an adjudication of escheat the title of an alien grantee is unaffected; he has complete dominion over the property acquired by purchase; and he can hold land even against the State itself (19 Am. Jur. 391; 2 Am. Jur. 476-477; 23 A. L. R. 1244-1245); and that the one deeding the land to an alien retains no right, title or interest therein, although the Constitution provides that conveyance to an alien shall be void (*Abrams vs. State of Washington*, 45 Wash. 327, 9 L. R. A. MS 186; 2 Am. Jur. 490-491; 3 C. J. S. 550)." (pp. 31 to 32, Court of Appeals decision, contained in pp. 67-68, Record on Appeal.)

On this appeal it is contended that as the sale to Lee Liong is prohibited by the Constitution, title to the land did not pass to said alien because the sale did not produce any juridical effect in his favor and that the constitutional prohibition should be deemed self-executing in character, in order to give effect to the Constitutional mandate. In answer we state that granting the sale to be null and void and can not give title to the vendee, it does not necessarily follow therefrom that the title remained in the vendor, who had also violated the constitutional prohibition, or that he (vendor) has the right to recover the title of which he had divested himself by his act in ignoring the prohibition. In such contingency another principle of law sets in to bar the equally guilty vendor from, recovering the title which he had voluntarily conveyed for a consideration, that of *pari delicto*. We have applied this principle as a bar to the present action in a series of cases, thus:

"The next question to be determined is whether plaintiff-appellant can maintain the present action of annulment and recover the property considering the effect of the law governing rescission of contracts; or, stated in another way, whether he can. recover the property notwithstanding the share he had in the execution of the sale which is known to be tainted with invalidity. Our answer must of necessity be in the negative following the doctrine laid down in the case of *Trinidad Gonzaga de Cabauatan et al. vs. Uy Boo, et al.*, G. R. No. L-2207, wherein we made the following pronouncement:

"We can,' therefore, say that even if the plaintiffs can still invoke the Consitution, or the doctrine in the *Krivenko* case, to set aside the sale in question, they are now prevented from doing so if their purpose is to recover the lands that they have voluntariilly parted with, because of their guilty knowledge that what they were doing was in violation of the Constitution. They cannot escape the law. As this Court well said: A party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out. The law will not aid either party to an illegal agreement; it leaves the parties where it finds them.' The rule is expressed in the maxims *Ex dolo malo non oritur aetio*', and '*In pari delieto potior est conditio defendentis*.' (*Bough and Bough vs. Cantiveros and Hanopol*, 40 Phil., 210, 216.)" (*Caile vs. Yu Chiaco Peng*, 49 Off. Gaz. (10) 4345; 93 Phil., 861; See also *Rellosa vs. Yaw Chee Hun*, 49 Off. Gaz. (10), 4321; *Ricamara vs. Ngo Ki*, 92 Phil., 1084, April 29, 1953; *Arambulo vs. Chua So, et al.*, 95 Phil., 749., August 31, 1954; *Talento, et al. vs. Makiki, et al.*, 93 Phil., 855/ September 29, 1953 and *Cortes vs. O Po Poe*, 93 Phil., 1117, October 30, 1953.)

It is not necessary for us to re-examine the doctrine laid down by us in the above cases. We must add in justification of the adoption of the doctrine that the scope of our power and authority is to interpret the law merely, leaving to the proper co-ordinate body the function of laying down the policy that should be followed in relation to conveyances in violation of the constitutional prohibition and in implementing said policy. The situation of these prohibited conveyances is not different from that of homestead sold within five years from and after the issuance of the patent, (Section 118, C. A. 141, otherwise known as the Public Land Law), for which situation the legislature has adopted the policy, not of returning the homestead sold to the original homesteader, but of forfeiting the homestead and returning it to the public domain again subject to disposition in accordance

with law. (Section 124, Id.)

The doctrine of in pari delicto bars petitioners-appellants from recovering the title to the property in question and renders unnecessary the consideration of the other arguments presented in appellants' brief.

There is one other cause why petitioners remedy can not be entertained, that is the prescription of the action. As the sale occurred in March, 1936, more than ten years had already elapsed from the time the cause of action accrued when the action was filed (1948).

We take this occasion to call the attention of the legislature to the absence of a law or policy on sales in violation of the Constitution; this Court would have filled the void were we not aware of the fact that the matter falls beyond the scope of our authority and properly belongs to a coordinate power.

The petition for certiorari is hereby denied with costs.

Bengzon, Montemayor, Bautista Angelo, and Endencia, JJ., concur.

Paras, C. J., and Concepcion, J.J., concur in the result.

DISSENTING:

PADILLA, J.,

If the majority opinion is made to rest? on illicit consideration of the contract of sale, not constituting a crime or misdemeanor, as provided for in article 1306 of the Civil Code or 1412 of the new Civil Code, the only way to make it fall under the theory or principle of in pari delicto, then I disagree with the majority for the same reason given in my dissent in the case of Caoile vs. Yu Chiao Peng, 49 Off. Gaz. 4321, 4328. The consideration of the contract is not illicit, so it does not fall under the provisions of article 1306 of the Civil Code. The consideration may be deemed illegal because it is in violation of the Constitution as construed in the Krivenko case,¹ but as it does not constitute a crime or misdemeanor common to both contracting parties the provisions of article 1305 of the Civil Code cannot be invoked and applied. A shield in the Krivenko case, supra, an alien is disqualified from acquiring urban lands. Under that interpretation the nearest provisions on "Nullity of Contracts," Chapter VI, Title II, Book IV, of the Civil Code applicable to the case would be article 1304.

There is article 1303 which provides that—

When an obligation has been adjudged void, the contracting , parties shall restore to each other the things which have been the subject-matter of the contract, together with their fruits,, and the price paid therefor, together with interest without prejudice to the provisions of the following articles*.*[2]

The only obstacle to the application of the last quoted article would be the preceding article which provides that " * * * Persons sui juris cannot, however, avail themselves of the incapacity of those with whom they contracted; * * * ." However, the incapacity referred to in article 1304 of the Civil Code is not that provided for in the Constitution, as interpreted by this Court in the off-cited Krivenko case, supra. The one referred to in the Civil Code is personal incapacity, whereas that which is provided for in the Constitution, as construed in the Krivenko case, is disqualification. A person otherwise perfectly capable of entering into contract may be disqualified, such as those referred to in article 1459 of the Civil Code. Because of personal incapacity, such as minority, insanity and the like, persons suffering from such incapacity cannot give their consent necessary to or for the validity of a contract. So the only solution to the problem that confronts us in the case at bar is to adjudge the contract void ab initio because it contravenes the Constitution, as construed by this Court in the Krivenko case, and apply the

provisions of Article 1303 of the Civil Code or 1398 of the new Civil Code.

[1] 44 Off. Gaz. 471.

[2] Oliveros vs. Porcioncola, 40 Off. Gaz., 6th Supp., 7.

DISSENTING:

REYES, A. J.,

In my dissent in the case of Dionisio Rellosa vs. Gaw Chee Hun, 93 Phil., , 827, I said: "The majority opinion holds the sale in question void but denies relief on the ground that the parties were in *pari delicto*. The doctrine invoked by the majority has no application where, as in the present case, the contract sought to be annulled is against public policy the same being forbidden by the Constitution. (Vol. 3, Pomeroy's Equity Jurisprudence, 5th ed., section 941.)" That statement holds good in the present case and is my ground for not subscribing to the majority opinion.

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