

BERNABE B. CAOILE, PLAINTIFF AND APPELLANT, VS. YU CHIAO PENG, DEFENDANT AND APPELLEE.*G.R. No. L-4068. September 29, 1953*

Ponente: BAUTISTA ANGELO, J.

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This is an appeal from a decision of the Court of First Instance of Manila holding that the sale in question is null and void, having been entered into in violation of the Constitution, but that, said nullity notwithstanding, plaintiff is prevented from maintaining the present action either under the principle of *pari delicto* or under the doctrine of estoppel which creates an illegal impediment to recover property sold to an alien.

On February 23, 1943, Bernabe B. Caoile sold a parcel of land, with the building erected thereon, situated in Caloocan, Rizal, and covered by transfer certificate of title No. 36882, to Yu Chiao Peng for the sum of P6,300. The deed of sale was registered in the office of the Register of Deeds of Manila and a transfer certificate of title was issued in the name of the vendee. Claiming that the sale made to the vendee, who is a Chinese citizen, was null and void because it has been executed in violation of the Constitution, the vendor instituted the present action in the Court of First Instance of Manila seeking the annulment of the sale and the reconveyance of the property in his favor upon reimbursing to the vendee the purchase price he received therefor.

Defendant set up as special defense that even assuming that the sale is null and void for the reason that it violates the Constitution, plaintiff cannot maintain the present action because he cannot avail himself of the incapacity of the defendant with whom he has contracted nor recover what he may have given under the contract in whose illegal execution he had participated, while on the other hand he is estopped to recover the property sold for the reason that he stood idle for more than five years and allowed defendant to make improvements thereon which greatly increased its value.

After trial, at which both parties presented their evidence, the court decided the case as set forth in the early part of this decision. From this judgment, plaintiff has appealed.

The only question involved in this appeal hinges on the validity of the sale under consideration as well as the right of the plaintiff to recover the land should it be maintained that the sale is null and void on the ground that it violates the Constitution.

We notice that both parties have taken the view that the law governing the validity of the sale is our present Constitution, which has been the subject of a ruling in the case of *Krivenko vs. Register of Deeds*,[*] G. R. No. L-630, while in our opinion the law that should govern the transaction is Commonwealth Act No. 141, otherwise known as the Public Land Act, (sections 122, 123, 124) which expressly prohibits the transfer of agricultural lands to aliens in the same way as they are prohibited from doing so under our Constitution, it appearing that the sale was executed on February 23, 1943. But we regard this consideration as of no moment in this appeal considering that the outcome of the case would be the same whether it be considered in the light of our Public Land Act or under our Constitution. In this respect, there can be no doubt that the sale is null and void.

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 Cabuatan, et al. vs. Uy Hoo et al.*, 88 Phil., 103, wherein we made the following pronouncement:

"We can, therefore, say that even if the plaintiffs can still invoke the Constitution, 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 voluntarily parted with, because of their guilty knowledge that what they were doing was in violation of the Constitution. They can not escape this conclusion because they are presumed to know 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 actio', and 'In pari delicto potior est conditio defendentis.' (*Bough and Bough vs. Cantiveros and Hanopol*, 40 Phil., 210, 216.)"

With the foregoing conclusion, we do not believe it necessary to discuss the other issues raised by appellant in his brief.

Wherefore, the decision appealed from is hereby affirmed, with costs against appellant.

Paras, C.J., Bengzon, Tuason, Montemayor, Jugo and Labrador, JJ., concur.

Reyes, J., concurring: I concur in the result, it appearing that the sale in question took place when the Constitution was not in force.

[*] 79 Phil., 461.

DISIDENTE

PABLO, M.:

La venta hecha por Bernabe B. Caoile al ciudadano chino Yu Chiao Peng de una parcela de terreno por P6,300, es contraria a la disposicion constitucional que prohíbe el traspaso a extranjeros de bienes inmuebles, y dicha venta es nula y de ningun valor (*Krivenko contra Registrador de Titulos*, 44 Off. Gaz., 471). El demandante pide que se declare nula la venta y que las partes devuelvan las cosas que habian recibido; esto es, que el vendedor devuelva el precio y el comprador el terreno. El demandado interpone la defensa fundada en el articulo 1306, regla 1.^a, del *Codigo Civil español*, y la mayoria de este Tribunal acepta como buena la defensa.

No estoy conforme con tal criterio. El articulo citado dice que "cuando la culpa este de parte de ambos contratantes, ninguno de ellos podra repetir lo que hubiera dado a virtud del contrato."

"Culpa es falta mas o menos grave, cometida a sabiendas y voluntariamente." (*Diccionario de la Real Academia Española*).

No existe ley que castiga la venta de un inmueble a un extranjero, ¿Han cometido culpa el comprador, el vendedor, o ambos a la vez? Creemos que no, porque la venta de un terreno es la cosa mas ordinaria del mundo. No hubo causa torpe en el contrato. No se probó que alguno de ellos o ambos, sabiendo que estaba prohibida la

venta, la realizaron. No habian comotido falta alguna. Ambas partes realizaron el convenio de venta con la mejor buena fe. Bueno es hacer constar que no se ha probado que alguna de las partes o ambas haya obrado de mala fe, ni existe pruebas de que, sabiendo las partes que estaba prohibida la venta, la efecturaon sin embargo. La mala fe no se presume: debe probarse. A falta de prueba, la presuncion es que las partes obraron de buena fe. No es aplicable al caso presente el articulo 1306 delCodigo Civil.

En el asunto de Bough contra Cantiveros (40 Jur. Fil., 228), estos son los hechos probados: Matilde Cantiveros era la mas rica residente de Carigara, Leyte; ella y su esposo Jose Vasquez firmaron un contrato de separacion conyugal. Basila Hanopol, prima y protegida de Matilde, y su esposo Gustavus Bough marearon a Matilde con la cantinela de "que Jose Vasquez estaba en el pueblo y podria impugnar el contrato de separacion de bienes condiese simuladamente por P10,000 sus bienes inmuebles que valian mas de P30,000; ella firmo ante notario la escritura de venta ficticia (Exhibit A). Para convencer a Matilde de que no tenian el proposito de enganarla y privarla de sus bienes, los esposos Bough suscribieron otro documento (Exhibit 1), en virtud del cual donaban a ella todos los bienes que aparecian en el Exhibit A, "donacion que tendria efecto en el caso de que tanto ellos como sus hijos fallecieran antes que Matilde Cantiveros." Matilde, a pesar de la escritura de venta ficticia, continuo poseyendo sus bienes. Despues de algun tiempo, los esposos Bough presentaron demanda contra Matilde, pidiendo que se les restituyera en la posesion de dichos bienes, fundandose la accion en la venta simulada. Porque el Exhibit A es un documento ficticio y ha sido obtenido por medios fraudulentos, este Tribunal confirmo el sobreseimiento de la demanda.

En el asunto de Perez contra Herranz y otros (7 Jur. Fil., 715) el demandante pedia la posesion del vapor "Alfred", fundada la accion en un documento en que la propiedad del buque se hizo constar "a nombre tan solo del demandante, por razon de que el, como natural de Filipinas, podia, segun nuestras leyes, aparecer como dueño de las 10/58 partes del buque y el demandado, de las 48/58 partes del mismo.

En los dos asuntos citados, los demandantes pedian el cumplimiento de unos contratos con causa torpe, unos contratos falsos, simulados, que no existen ante los ojos de la ley. Por eso este Tribunal aplico en ambos el principio bien establecido de "Ex dolo malo non oritur actio," e "In pari delicto potior est conditio defendentis." "La ley no amparara a ninguna de las partes en un contrato ilicio; les deja en la situacion en que se han colocado." Bough y otro contra Cantiveros y otro, 40 Jur. Fil., 228), o en otras palabras, "los tribunales no ayudaran ni a una ni a otra parte para hacer cumplir un contrato ilegal, sino que dejan a ambas alli donde las encuentran." (Perez contra Herranz y otros, 7 Jur. Fil., 715.)

Pero en el caso presente, el demandante no pide el cumplimiento de la venta anticonstitucional; todo lo contrario, pide que sea declarada nula y que se ordene la devolucion de la cosa que cada parte habia recibido en virtud del contrato. En la venta no medio engaño, causa torpe, delito o falta.

Los tratadistas clasifican los contratos en nulos y anulables: los primeros son nulos per se, nulos ab initio, no tienen existencia legal; los segundos son anulables por haber sido obtenidos mediante violencia, engaño, dolo, delito o falta, etc.

Un contrato simulado, un contrato en que no concurren los requisitos que expresa el articulo 1261, son considerados no existentes ante el Derecho. Los contratos celebrados en contravencion de una prohibicion legal se consideran tambien contratos inexistentes.

Castan, hablando del origen de la distincion entre actos nulos y anulables, dice que "La distincion entre dos grandes categorias de invalidez: la del acto nulo de pleno derecho o inexistente, de una parte, y la del acto anulable o rescindible, de otra, procede ya del Derecho romano. El acto inexistente no engendraba ningun efecto juridico; era nulo de pleno derecho ab initio. * * *. Asi sucedia cuando del acto no reunia las condiciones

necesarias para su formacion (por ejemplo, venta sin objeto) o cuando estaba prohibido por la ley (como la donacion entre esposos)." (2 Castan, 640.)

El derecho frances, segun el mismo autor, distingue dos categorias de actos nulos con nulidad absoluta: (a) el acto inexistente (al que falta uno de los elementos esenciales para su formacion) y (b) el acto nulo de pleno derecho (que viola una prescripcion legal). (2 Castan 641.)

Sanchez Roman dice que "La causa que no es licita es como si no existiera para el Derecho y degenera, por tanto en inexistente y no verdadera o falsa para el mismo, produciendo el consiguiente resultado de viciar el consentimiento y anular el contrato." (4 Sanchez Roman, 207.)

"El contrato supuesto o falso—dice Manresa—en cuanto lo es y se demuestra destruyendo la apariencia del mismo, es el caso mas claro de inexistencia, a tal extremo, que en el se identifican el sentido usual y el juridico de esa palabra." (8 Manresa, 699.)

En sentencia de 26 de junio de 1903, el Tribunal Supremo de España declaro:

"Que el articulo 1306 delCodigo Civil es inaplicable cuando no se trata de un contrato real y efectivo, aunque celebrado con causa torpe, sino simulado:

"Que dada tal simulacion, es perfectamente indiferente que el temor que indujo a los otorgantes a figurar el contrato fuese mas o menos fundado y mas o menos licito, puesto que su nulidad e ineficacia no depende de vicio en el consentimiento, sino de su real y efectiva inexistencia." (95 Jurisprudencia Civil, 1028.)

Y en 30 de noviembre de 1909 el mismo Tribunal dijo:

"Que no es dable confundir un contrato simulado con un contrato nulo o rescindible, toda vez que la simulacion significa indubablemente, por su propia naturaleza, la inexistencia del contrato, al contrario de lo que acontece respecto de los segundos, en los que, supuesta su realidad y certeza, es obligado examinar las condiciones de su celebracion para resolver acerca de la procedencia de la nulidad o rescision, examen absolutamente improcedente por contradictorio cuando el contrato no ha existido, ya que de la inexistencia no se pueden deducir mas consecuencias juridicas que las que necesariamente se derivan de esta misma inexistencia, o sean las procedentes cual si no se hubiese intentado siquiera la celebracion de tales supuestos contratos." (116 Jurisprudencia Civil, 501.)

"Los contratos con causa u objeto ilicitos, dice Manresa, se deben reputar ante el derecho inexistentes. Para afirmarlo asi nos fundamos en que si otros defectos de menor gravedad juridica tal vez son irremediables, no ha de tener mayor eficacia lo ilicito que puede suponer la oposicion mas abierta al derecho, del que no pueda exigir amparo lo ilicito. Adem as el interes publico que determina la nulidad, principalmente en estos casos, no ha de quedar a la voluntad, abandono o confirmacion de las partes que lo olvidaron infringiendo la ley." (8 Manresa, 4.^a ed., 715.)

Y en tratando de contratos celebrados en contravencion de la ley, el Tribunal Supremo de España dijo en su sentencia de 11 de abril de 1894:

"Que todo contrato otorgado contra precepto expreso de una ley prohibitiva, engendra la accion necesaria para restablecer la virtualidad de la prohibicion, infringida accion que, teniendo este origen y alcance, no puede menos de ser eficaz desde el momento mismo de la celebracion del referido contrato." (75 Jurisprudencia Civil, 503.)

El articulo 1334 delCodigo Civil español declara nulas las donaciones entre conyuges durante el matrimonio. Geronima Uy Coque dono a su esposo Juan Navas L. Sioca todos us bienes, consistentes en la mitad de los bienes gananciales. Fallecida ella, sus hijos reclamaron la anulacion de la donacion, y este Tribunal, confirmando la

decision del juzgado inferior, declaro nulas las escrituras de donacion A a F. (Uy Coque contra Navas, L. Sioca, 45 Jur. Fil., 452.) En dicha donacion no medio fraude, engaño o causa torpe, violencia, delito o falta. Marido y mujer por simple ignorancia de la ley efectuaron la donacion con la mejor buena fe (del modo como obraron el demandante y el demandado en la presente causa), creyendo que no estaba prohibida la donacion entre ellos. Se declaro nula la donacion porque esta prohibida por la ley, porque es contrato considerado inexistente ante el Derecho. Los herederos de la finada consiguieron la declaracion judicial de invalidez de la donacion y recobraron los bienes donados por su madre.

¿Que diremos de la venta de un inmueble a un extranjero, cosa que esta expresamente prohibida por la Constitucion? Es sencillamente un contrato inexistente bajo la ley y la Constitucion. No debe depender de la voluntad de las partes contratantes o de su abandono o ignorancia o buena fe la existencia de ese contrato anticonstitucional. El interes publico debe prevalecer sobre el acuerdo de las partes.

Es absurda la teoria de que el vendedor no puede pedir la rescision del contrato hecho en contravencion de la Constitucion para "restablecer la virtualidad de la prohibicion" constitucional o procurar que las cosas vuelvan a su estado normal anterior. Si los herederos de Uy Coque consiguieron la anulacion de las donaciones hechas por su madre—porque la donacion entre conyuges es nula—¿por que el vendedor (demandante en la presente causa) no puede pedir la rescision de la venta realizada contra la prohibicion constitucional? ¿Por que es rescindible una donacion hecha en contravencion delCodigo Civil y no es rescindible la venta hecha contra la expresa prohibicion de la Constitucion?

La nulidad absoluta, segun Castan, "puede ser reclamada mediante accion o excepcion, por toda persona que tenga interes en ella, porque no afecta la nulidad de los contratos al interes publico, la accion no es en nuestro Derecho publica o cuasi-publica, como lo es en otras legislaciones." (El articulo 1047 delCodigo Civil argentino dispone que la nulidad absoluta puede y debe ser declarada por el Juez, aun sin peticion de parte, cuando aparece manifiesta en el acto, y puede pedirse su declaracion por el Ministerio publico, en el interes de la moral o de la ley.) La inexistencia del contrato, segun Castan, "es perpetua e insubsanable, no pudiendo ser objeto de confirmacion ni prescripcion, excluyendo sin embargo los contratos que reunen los requisitos expresados en el articulo 1261." (2 Castan, 644.)

"Evidente es—dice Valverde—que nuestro codigo admite tal distincion de nulidad absoluta o inexistencia y nulidad relativa o anulabilidad; mas para el legislador español, la nulidad solo interesa a los contratantes, pues aun cuando existen contratos que afectan al orden publico y social y en los cuales la nulidad deberia pedirse de oficio, para el codigo tal accion tiene que ser ejercitada a instancia de parte." (3 Valverde, 299.)

Declarar que el vendedor no puede recobrar, a cambio de lo que habia pagado, devolviendolo previamente, es frustrar el espiritu que informa la Constitucion; es consentir que los extranjeros continuen acaparando bienes inmuebles en daño y perjuicio del pueblo, en vez de juzgar de acuerdo con elCodigo Civil, inspirandose en el elevado proposito de la Asamblea Constituyente de "conservar y acrecentar el patrimonio de la nacion" y evitar que, por un error judicial, los filipinos—al cabo de una generacion—sean simples peones en su propia tierra. Desatender la demanda del vendedor y dejar que el comprador continúe gozando de la propiedad comprada a pesar de la prohibicion, no es cumplir con la Constitucion: es violar su espiritu y minar su principio fundamental de propia conservacion.

El comprador no puede acogerse a las disposiciones del articulo 1306 delCodigo Civil español que es inaplicable, segun el Tribunal Supremo de España, a contratos inexistentes. Con mayor razon dicho articulo no puede oponerse con exito como defensa en una demanda en que se pide la declaracion de nulidad de la venta de un inmueble por ser contraria a la Constitucion y la devolucion de las cosas que las partes habian recibido.

En mi opinion, la decision debe ser revocada, la venta debe ser declarada nula y las cosas recibidas por las partes

sean restituidas. (Articulo 1303, Codigo Civil.)

DISSENTING

PADILLA, J.:

The interpretation of the provision found in section 5, article XIII, of the Constitution made in the case of *Krivenko vs. Register of Deeds*, 44 Off. Gaz., 471, not having been revoked or reversed, despite partial change in the membership of the Court, is now binding. Not only the members who made it but also those who dissented from it are bound to apply it.

The majority holds that the sale of an urban parcel of land and the building erected thereon to an alien disqualified to own or hold title thereto because of the prohibition expressed in section 5, article XIII, of the Constitution, is null and void. With this pronouncement I am in accord. I cannot, however, concur in the theory applied in this case that both, the plaintiff as vendor and the defendant as vendee, were guilty of a constitutional violation and, therefore, to none of them the courts should afford protection or remedy, applying the legal maxims that "*Ex dolo malo non oritur actio*" and "*In pari delicto potior est conditio defendentis*." [1] Before the decision in the case of *Krivenko vs. Register of Deeds*, supra, was promulgated, the prevailing belief had been that urban lots or property did not come within the constitutional prohibition referred to. It was thought that the sale of such real estate to an alien disqualified to own or hold title to private agricultural lands was perfectly lawful and legitimate. When on 23 February 1943 the plaintiff sold to the defendant his parcel of land and the building erected thereon, he could not be deemed to have taken part in the performance of an illegal act. To hold that he did would be against a fact, actuality, reality, and truth. It would be fiction that neither justice and equity nor logic could sustain and uphold. Despite that fact, actuality, reality and truth the majority brushes it aside by resorting to a fiction that both parties to such sale were in *pari delicto* or guilty of the constitutional prohibition, thereby refusing to apply the same to it, as construed by the majority of this court in the *Krivenko* case, and to carry it to its logical conclusion and ultimate consequences. How could the parties to that sale be deemed guilty of a violation of the constitutional prohibition when the prevalent opinion and belief was that the sale of urban land to an alien disqualified to acquire private agricultural land was not included therein? Even in the case of *Krivenko vs. Register of Deeds*, supra, where the phrase "private agricultural land" is construed as embracing urban lands, there are four members of the court who dissent from the majority opinion. If among the members of this Court, there is a substantial minority who dissents from the interpretation made by the court, how could the majority expect from a layman, an ordinary citizen, to make an interpretation such as that made by the majority of this Court in the *Krivenko* case? It is not, therefore, illogical and unreasonable to hold that before the promulgation of the opinion in the *Krivenko* case persons alienating urban lands to aliens disqualified to acquire and hold title thereto must be deemed to have acted in good faith. To hold otherwise is to indulge, I repeat, in fiction which runs counter to a fact, actuality, reality and truth. Perhaps, the *in pari delicto* theory applied by the majority in this case would find justification in alienations of urban lands to disqualified aliens after the promulgation of the decision in the *Krivenko* case. But, certainly, it cannot equitably, justly and logically be invoked and applied to alienations made before the promulgation of the decision in said case. If parties to an alienation of an urban parcel of land did not knowingly commit any violation of the Constitution because the prevailing belief at the time of the alienation was that urban lands were not included within the constitutional prohibition, the logical conclusion is that both parties to the contract acted in good faith. If they did, then there is no need to look elsewhere for remedy to be applied to them. Reversion applies to lands that were originally part of the public domain. Escheat has been brought to this country

in a limited sense only by the enactment of Act No. 190 by the Philippine Commission and embodied in Rule 92 of the Rules of Court but not to its full extent as that proceeding is available in England and in the United States. Escheat proceedings resorted to in some states of the union against persons disqualified to hold title to real estate are based on common law. The latter has never been extended to the Philippines.[2] Escheat of urban lands transferred or conveyed to aliens disqualified to own or hold title to such lands pursuant to the provision found in section 5, article XIII, of the Constitution, as construed by the Court in the Krivenko case, who in good faith were of the belief that the acquisition of such lands did not come under the constitutional prohibition, would be too harsh, unfair and unjust. If escheat proceedings are to be resorted to by express authority of law the harshness of the step to be taken by the Government should be mollified by making provision for compensation to those aliens who would be deprived of properties acquired by them in good faith. If the legislative department has not enacted thus far a law which would afford a remedy to a vendor who sold an urban parcel of land to an alien disqualified to own and hold it, it is because the Civil Code expressly, clearly and amply provides for such cases and affords and points to a remedy to parties who are placed in that situation. Article 1303 of the old Civil Code provides:—

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.[3]

These provisions have been reenacted in article 1398 of the new Civil Code. Article 1304 of the old Civil Code or 1399 of the new Civil Code provides for nullity arising not from disqualification but from incapacity of one of the contracting parties. The next article treats of nullity arising from illegality of the consideration. The *in pari delicto* theory is covered by article 1306 of the old Civil Code or 1412 of the new Civil Code. The appellant, the vendor, is entitled to recover his property which the appellee, the vendee, cannot lawfully own and hold and the right to restitution of the property to be made to the vendor is laden, of course, with the reciprocal obligation to return what was paid to him by the vendee, together with the fruits or lawful interests, which may be compensated or set off with what would be a reasonable compensation for the use and occupation of the property by the vendee or with what he received in the form of rentals during the time he held and enjoyed possession of the property.

Another phase of the question that seems to have been considered as a serious hindrance to the rescission or resolution of the contract, or reciprocal return of the property by the vendee and of the price by the vendor, is that the price or consideration to be returned may be less or lower in value than the price or consideration paid at the time of the sale. To my mind that does not offer any serious obstacle. In the exercise of equity jurisdiction courts may increase or reduce the price to be returned as the circumstances may demand. If the purchasing power of the money at the time of the rescission had gone up or down a decrease or increase of the price to be returned to the vendee would be perfectly lawful and legitimate. Also, the vendee might have improved the property during the time he was in possession thereof. For such improvement, of course, he must be reimbursed by the vendor.

For all these reasons I am of the opinion that the judgment appealed from should be affirmed in so far as it declares null and void the sale of the urban property involved in this case because it is in violation of the Constitution, and reversed in so far as it does not rescind the sale and does not allow the vendor to recover the property and to return to the vendee the price or consideration paid for it.

[1] Bough et al. vs. Contiveros et al., 40 Phil., 210, 216.

[2] U. S. vs. Cuna, 12 Phil. 241; Arnedo vs. Llorente, 18 Phil. 257; U. S. vs. Abiog, 37 Phil. 137; In re Shoop, 41 Phil. 213 and People vs. Toledo, 51 Phil. 825.

[3] See also Oliveros vs. Porcioncola, 40 Off. Gaz., 6th Supp., 7, 69 Phil., 305.

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