

**CRISPIN RICAMARA, ET AL., PLAINTIFFS AND APPELLANTS, VS. NGO KI ALIAS GO SIN SIM, DEFENDANT AND APPELLEE.***G.R. No. L-5836. April 29, 1953*

Ponente: MONTEMAYOR, J.

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In the year 1943 CRISPIN RICAMARA and ROMAN RICAMARA were the owners pro indiviso of lot No. 1400 in the cadastral survey of Santa Cruz, Marinduque, with an area of 138 sq. m. In October and November, 1943, Crispin and Roman respectively sold their undivided one-half shares of the lot to Ngo Ki alias Go Sin Sim, a Chinese citizen. The two deeds of sale are marked Exhibits "A" and "B", respectively. On March 3, 1949, Ngo Ki sold the whole lot to Placido Gonzales Yao, a Filipino citizen as shown by a deed of sale (Exhibit "C"). On March 17, 1949 Crispin Ricamara in his own behalf and as attorney in fact of the heirs of Roman Ricamara initiated this case in the Court of First Instance of Marinduque against Ngo Ki and the latter's vendee Placido Gonzales Yao to annul the three sales, invoking the prohibition contained in the Constitution (Art. XIII, Sec. 5) as interpreted by this Court in the case of *Krivenko v. Register of Deeds*, 44 O.G. 471. The trial court, holding that the Commonwealth Constitution was suspended during the Japanese occupation during which time the sales were made to Ngo Ki, said that since there was then no prohibition against the sale of lands to foreigners, said sales, including the last one to Placido Gonzales Yao were not null and void, and so dismissed the complaint. The case was appealed to the Court of Appeals which appeal was later taken to this Tribunal.

The legal point invoked here has already been passed upon by this Court. In the case of *Peralta v. Director of Prisons* (1945), 42 O.G. p. 198, we held that the Commonwealth Constitution was not in force during the period of Japanese military occupation; and in the more recent case of *Trinidad Gonzaga de Cabauatan, et al. v. Uy Hoo, et al.*, G. R. No. L-2207, promulgated on January 23, 1951, wherein the validity of the sale of two lots to a foreigner during the Japanese military occupation was involved, we reiterated the same doctrine that:

"The Constitution of the Philippines not being in force when the sale in question was effected, it cannot, therefore, be invoked. Consequently, plaintiffs cannot invoke in their favor the doctrine laid down in the *Krivenko* case."

In view of the foregoing, the decision appealed from is hereby affirmed, with costs.

Bengzon, Jugo, Bautista Angelo and Labrador, JJ., concur.

Paras, C. J., Feria, Pablo, and Padilla, JJ., no part.

## CONCURRING OPINION

### TUASON, J.:

I am of the opinion that, regardless of the fact that the operation of the Constitution was suspended during the enemy occupation, and assuming, as far as the writer is concerned, that Ngo Ki, being an alien, was forbidden to acquire residential lots, the void sale to this Chinese did not give the sellers the right to annul the sale and recover the property sold. The effect of the sale, in my judgment, was simply the conversion or escheat of the land to the State through appropriate proceedings, but since no such proceedings were ever instituted, and the land had passed into the hands of a Philippine citizen without collusion, the constitutional grounds for forfeiture have disappeared and the last owner's ownership and possession should be respected. As far as the Constitution is concerned, it does not make a bit of difference whether the land is held by Gonzales, the last purchaser, or by the original vendors. If anything, the former is to be preferred over the latter who, at the very least, made the violation of the Constitution possible.

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