

NICOLAS C. MERCADO AND SINFOROSO MERCADO, PLAINTIFFS AND APPELLANTS VS. BENITO GO BIO, DEFENDANT AND APPELLEE.*G.R. No. L-1183. October 19, 1953*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/2d04dc011152/>**PADILLA, J.:**

This case was certified by the Court of Appeals for the reason that only questions of law are raised in the appeal.

The suit as brought in the Court of First Instance of Manila (civil case No. 55449) to annul a contract of sale and another of lease on two parcels of land and the improvements erected thereon described in the complaint, on the ground that the deed of sale purporting to convey to the defendant the parcels of land and improvements thereon is not a sale with the right to repurchase but a mortgage to secure the payment of a loan. The deed of sale was executed by Nicolas C. Mercado in favor of Benito Go Bio, and the contract of lease was executed by the latter in favor of Sinforoso Mercado.

The answer of the defendant is a general denial and a plea that he is the owner and actually in possession of the parcels of land and improvements thereon, as evidenced by his title thereto—transfer certificate No. 53004.

On 13 February 1940, judgment was rendered upon a stipulation which reads, as follows:

Practicadas ya las pruebas de los demandantes, y en el curso del interrogatorio al propio demandado, las partes, asistidas de sus respectivos abogados, optaron por someter a decision la causa mediante el siguiente—

CONVENIO

- Que el demandado Benito Go Bio otorgara una escritura de venta absoluta a favor del demandante Nicolas C. Mercado de la finca objeto de la presente demanda, al pagarse por este a aquel las siguientes sumas, a saber:

(a) La cantidad de P26,618.54;

(b) La suma de P200 por cada mes, desde el 1.º de Mayo de 1939 hasta el 29 de Febrero de 1940, o sea, un total de P2,000, que se pagara en la fecha en que los demandantes optasen por ejercer su derecho de comprar la finca, segun los presentes terminos de este convenio; (c) El amillaramiento y prima de seguro de la finca en cuestion, desde el año 1939 hasta el tiempo de efectuarse la compra; y (d) Las cantidades que se adjudicasen a favor de la Occidental Hardware Co., Inc., o sea, al demandado Benito Go Bio en la causa civil No. 55010, y civil No. 55011, ambas de este mismo Juzgado.

- Que el demandante Nicolas C. Mercado debiera ejercer esta opcion dentro del periodo de cinco (5) años, contados desde el 21 de Febrero de 1938;

- Que el demandante Nicolas C. Mercado, Dentro de los diez (10) primeros dias de cada mes, pagara la suma de P200, empezando el mes de Marzo de este año; hasta la fecha del otorgamiento de la escritura mencionada en el parrafo primero de este convenio; entendiendose, que la falta de pago de esta mensualidad, tal como se estipula en este parrafo, dara por rescindida y cancelada la opcion concedida al demandante Nicolas C. Mercado de comprar la finca objeto de esta demanda, y a peticion del demandado, podra ordenarsa la entrega

de la referida finca al citado demandado Benito Go Bio, mediante ejecucion de sentencia;

- Que el demandado Go Bio se compromete como parte de este convenio, a pedir inmediatamente el sobreseimiento de la demanda por desahucio en el Juzgado Municipal de Manila, Civil No. 120736, sin costas;

- Que el demandante Nicolas C. Mercado podra ejercer el derecho de comprar la finca en cuestion, tal como se conviene en esta estipulacion, sin esperar la terminacion de los dos asuntos ya mencionados, siempre y cuando dicho demandante Nicolas C. Mercado ponga una garantia satisfactoria en la suma de P5,000 en la causa civil No. 55010 y P2,000 en la causa civil No. 55011, ya sea en finca de Manila cuyo valor amillarado no sea menor de esas cantidades, o mediante una fianza de una compa ia afianzadora, sin costas.

(Fdo.)

BENITO GO BIO

(Fdo.)

NICOLAS C. MERCADO

Demandado Demandante

(Fdo.)

FRANCISCO ASTILLA

(Fdo.)

CIPRIANO DE LOS REYES

Abogado del demandante Abogado del demandado

Manila Manila

SINFROSO MERCADO

Por:

(Fdo.)

NICOLAS C. MERCADO

POR TANTO, no encontrando el juzgado ningun fundamento legal en contra, por la presente, se aprueba el convenio arriba acotado y dicta sentencia de acuerdo con el mismo, ordenando a las partes que cumplan con los terminos convenidos, sin especial pronunciamiento en cuanto a las costas.

ASI SE ORDENA.
Manila, Febrero 13, 1940.

(Fdo.)

JESUS G. BARRERA

Juez

In the same court but in another branch, there were pending two civil cases, wherein the parties are Occidental Hardware Co., Inc., vs. Sinforoso Mercado (No. 55010) and Benito Go Bio vs. Sinforoso Mercado (No. 55011). On 24 June 1940, judgment was rendered in said two cases upon the following stipulation:

In the two above-entitled cases the parties have submitted the following:

STIPULATION

COME now the parties in the above-entitled cases and to this Honorable Court respectfully submit the following stipulation:

- Plaintiff company in said Civil Case No. 55010 and plaintiff Benito Go Bio in said Civil Case No. 55011 agree to the settlement of the present cases, relieving defendant Sinforoso Mercado in both said cases from any and whatever liability upon payment to Benito Go Bio, president and general manager of said Occidental Hardware Co., Inc., by Nicolas C. Mercado of the sum of P30,000 within ninety (90) days from this date. Said payment of P30,000 shall likewise be in full and final settlement of the obligation due Benito Go Bio from Nicolas C. Mercado as specified in the decision in civil case No. 55449 of this court, entitled Nicolas C. Mercado and Sinforoso Mercado, plaintiffs, vs. Benito Go Bio, defendant.

- Should Nicolas C. Mercado fail to pay said sum of P30,000 to Benito Go Bio within the said ninety-day period, said Sinforoso Mercado shall pay Benito Go Bio the sum of P2,500 within a period of five (5) years from this date, without interest.

WHEREFORE, it is respectfully prayed that judgment be rendered in the above-entitled cases in accordance with the foregoing stipulation, without special pronouncement as to costs.

Manila, June 24, 1940.

OCCIDENTAL HARDWARE CO., INC.

CIPRIANO DE LOS REYES

By:

(Sgd.)

BENITO GO BIO

Attorney for plaintiffs in both

Plaintiff

above-entitled cases

In Civil Case No. 55010

(Sgd.) BENITO GO BIO

FRANCISCO ASTILLA

Plaintiff

Attorney for defendant in both

above-entitled cases

In Civil Case No. 55011

(Sgd.) S. MERCADO

Defendant

In both Civil Cases Nos. 55010 and 55011

IN VIEW OF THE FOREGOING, judgment is hereby rendered in accordance with the above-stipulation, without special pronouncement as to costs.

IT IS SO ORDERED.

Manila, Philippines, June 24, 1940.

(Sgd.)

FERNANDO JUGO

Judge

On 15 January 1943, the defendant in this case (No. 55449) moved for the execution of the judgment rendered on 13 February 1940, on the ground that Nicolas C. Mercado had failed to pay monthly the sum of P200 from December 1941 to the date of the motion. In their pleading filed on 23 January 1943, the plaintiffs objected to the motion, claiming that if they had not paid the monthly rental it was due to the fact that the defendant had failed to go to their office at No. 1100 Calle Narra to collect monthly the said sum of P200; that the defendant's office where the plaintiffs attempted to make the payment of the monthly rental was closed; and that the defendant insisted on collecting the full monthly rent of P200 despite the fact that it was reduced to one-half by Executive Order No. 117 of the Executive Commission. The plaintiffs further claimed that the defendant had advised them that they would be allowed to repurchase the property on or before 21 February 1943, but that they replied that the period for the repurchase was extended to 24 June 1940 in civil cases Nos. 55010 and 55011. On 13 February 1943, the plaintiffs filed an urgent motion praying that the defendant be ordered to submit a complete statement of their total liability and that should he fail to do so they be allowed to repurchase the property on 15 February 1943 at 12:00 noon. On the last mentioned date, the defendant objected to the preceding motion upon the ground, among others, that the option to repurchase granted to Nicolas C. Mercado had already lapsed for his failure to pay the monthly rentals. On 19 February 1943, the plaintiffs filed a petition praying that the defendant be ordered to accept the sum of P33,274.66 or such other amount as the latter might show to be the correct total liability of the former for the repurchase of the property. On 22 February, the defendant objected to the preceding petition on the same grounds as those stated in his objection dated 15 February to the urgent motion of the plaintiffs dated 13 February, to wit: that the option to repurchase granted to Nicolas C. Mercado had already expired for his failure to pay the monthly rentals.

The foregoing are in brief the facts set forth in the pleadings filed and decision rendered in this case submitted to reconstitute, upon plaintiffs' petition, the original record of the case which was destroyed.

On 31 January 1946, the court declared the record of the case reconstituted.

On 15 March 1946, the plaintiffs filed a motion praying that the defendant be ordered to submit a statement of the exact liability of Nicolas C. Mercado in accordance with the judgment rendered on 13 February 1940 and that upon payment of such liability Nicolas C. Mercado be allowed to repurchase the property and the defendant be ordered to execute the corresponding deed. In support of the motion, the plaintiffs claimed that on 11 February 1943, in accordance with the terms of the judgment rendered on 13 February 1940, Nicolas C. Mercado offered to pay the total repurchase price of the property to the defendant, but the latter refused to present a statement of account; that on 13 February 1943, Nicolas C. Mercado, accompanied by Moises Lucas, brought to the office of the defendant the sum of P33,274.66 in cash and tendered it to him in full satisfaction of the repurchase price, but the latter refused to accept it; that in view of the defendant's refusal to accept the sum thus tendered, Nicolas C. Mercado informed him that the amount would be brought to Court on 20 February 1943 for the purpose of delivering it to him in open court; that on 19 February 1943 Nicolas C. Mercado filed a petition praying that the defendant be ordered to accept the sum of P33,274.66; that on the following day, at the time set for the hearing of the petition, the defendant failed to appear; that Nicolas C. Mercado waited until late in the morning of that day for the defendant to appear but the latter did not show up; that the defendant insisted on refusing to accept the payment of the repurchase price; and that Nicolas C. Mercado was willing to repurchase the property in accordance with the terms of the judgment rendered on 13 February 1940. On 5 April, the defendant filed an objection to the motion, alleging that the option to repurchase had already expired due to the failure of Nicolas C. Mercado to pay the monthly rental of P200 from December 1941 to September 1944.

On 13 June 1946, acting upon the plaintiffs' motion of 15 March, the Court denied it on the ground that the judgment rendered on 24 June 1940 in civil cases Nos. 55010 and 55011 annulled or reformed the judgment

rendered on 13 February 1940 in this case (No. 55449). On 1 July 1946, claiming that the judgment rendered on 24 June 1940 in civil cases Nos. 55010 and 55011 did not bind Nicolas C. Mercado, because he was not a party thereto nor did he sign the stipulation upon which the judgment in said cases was rendered, plaintiffs moved for reconsideration of the preceding order of 13 June and for the granting of their motion of 15 March. On 2 July, the defendant filed an objection to the preceding motion for reconsideration. On 31 July, the court denied the motion for reconsideration. From these two orders of 13 June and 31 July 1946, this appeal has been taken.

There are other pleadings filed subsequently by which plaintiffs moved to have the phrase "as well as Nicolas C. Mercado" appearing on paragraph 2 of their motion of 15 March 1946 deleted, which the court deemed sufficient to estop Nicolas C. Mercado from alleging that he was not bound by the judgment rendered on 24 June 1940 in civil cases Nos. 55010 and 55011, despite the fact that he was not a party thereto and did not sign the stipulation upon which said judgment was rendered. But the view we have taken of the case renders it unnecessary to pass upon the error allegedly committed by the court below in denying the motion to delete, because whether or not the judgment rendered on 24 June 1940 in civil cases Nos. 55010 and 55011 annulled or reformed the judgment rendered in this case on 13 February 1940, Nicolas C. Mercado has lost his option to repurchase under the judgment of 13 February 1940 which expired on 20 February 1943. Nicolas C. Mercado's claim that he offered or tendered for payment the sum due in the defendant's office at the corner of Azcarraga and Juan Luna streets on 13 February 1943 after the offer or tender of payment had been refused by the latter, cannot be believed, because aside from the fact that it is denied by the defendant, if the claim were true, Nicolas C. Mercado, who had the advice of counsel, would have made consignation of the sum in court. There being no consignation of the repurchase price and his claim that he offered or made a tender of payment to the defendant in the latter's office being unbelievable, his right or option to repurchase the property under the judgment rendered on 13 February 1940 lapsed on 20 February 1943. If the judgment rendered on 24 June 1940 in civil cases Nos. 55010 and 55011 were to bind Nicolas C. Mercado, he also had lost his option or right to repurchase under said judgment, because he was given for that purpose ninety days from 24 June 1940 to pay P30,000 to the defendant, which amount would "be in full and final settlement of the obligation due Benito Go Bio from Nicolas C. Mercado as specified in the decision in Civil Case No. 55449 of this court." The five-year period agreed upon in paragraph 2 of the stipulation upon which the judgment of 24 June 1940 was predicated, did not grant to Nicolas C. Mercado a five-year period from 24 June 1940 to 23 June 1945 within which to repurchase the property, because said period was only available to Sinforoso Mercado, within which he could pay to the defendant the sum of P2,500, should Nicolas C. Mercado fail to pay the sum of P30,000 to the defendant within ninety days from 24 June 1940. So, from whatever angle the case be viewed, the right or option to repurchase reserved to Nicolas C. Mercado has already expired.

We might put an end to this case by affirming the orders of 13 June and 31 July 1946 appealed from, were it not for the constitutional question raised by counsel for the plaintiffs in his memorandum concerning defendant's disqualification on account of alienage from acquiring title to urban lands.[1] Opposing counsel objects to the consideration of the constitutional point raised, on the ground that the plaintiffs would be altering their theory of the case as originally submitted to the trial court and that the consideration of such question would deprive the defendant of his day in court or of his opportunity to be heard. These would be good reasons if the constitutional violation were not patent or if the defendant could set up a defense of avoidance of such violation. But as the constitutional transgression is clear and as there could be no avoidance thereof that might be set up in defense, it is the duty of this Court to pass upon the constitutional question raised, for a hearing by a trial court upon that question would be a waste of time. The rule laid down in the Krivenko case, *supra*, construing the provisions of section 5, article XIII, of the Constitution, until overruled or reversed by this Court, is binding upon it. Under that rule, the defendant being an alien or a Chinese citizen cannot acquire urban lands in this country from and after

the date of the taking effect of the Constitution which was approved on 8 February 1935. The sale of the lots involved in this litigation was made on 21 February 1938 when the Constitution was in full force and effect. Consequently, the sale to the defendant of the parcels of land and improvements erected thereon comes under the constitutional prohibition. Such being the case, the sale is null and void. Nevertheless, the majority is of the opinion that plaintiff Nicolas C. Mercado and the defendant being in *pari delicto* no remedy may be afforded them.[2] Mr. Justice Pablo and the writer believe that both parties having acted in good faith should restore to each other what they had received.[3]

The orders of 13 June and 31 July 1946 appealed from are affirmed, without costs.

Paras, C. J., Pablo, Bengzon, Tauson, Montemayor, Bautista Angelo and Labrador, JJ., concur.

Reyes, J., dissenting: I dissent. The majority opinion holds the sale in question void but denies relief on the ground that the parties were in *pari delicto*. As I stated in my dissent in the case of *Dionisio Relloso vs. Gaw Chee Hun*, Vol. 93 Phil., 827, the *in pari delicto* rule does not apply to contracts forbidden by the Constitution and therefore against public policy. In my opinion, therefore, the vendor in the present case is entitled to a rescission.

[1]*Krivenko vs. Register of Deeds*, 44 Off. Gaz. 471, 79 Phil. 461. [2]*Relloso vs. Gaw Chee*, supra, p. 827; *Bautista vs. Uy*, supra, p. 843; *Talento vs. Makiki*, supra, p. 855; and *Caoile vs. Yu Chiao*, supra, p. 861.

[3]Mr. Justice Pablo dissenting in *Relloso vs. Gaw Chee*, *Bautista vs. Uy*, and *Caoile vs. Yu Chiao*, supra; Mr. Justice Padilla dissenting in *Caoile vs. Yu Chiao*, supra.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.