

DOLORES D. ALBERTO, PLAINTIFF AND APPELLEE, VS. TAN C. SING AND DEE BUN, DEFENDANTS AND APPELLEES. ALEXANDRA Y. DE PASCUAL AND RAMON PASCUAL, INTERVENORS AND APPELLANTS.

G.R. No. L-6336. November 27, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

In June 1945 the plaintiff Dolores F. Alberto was the owner of a parcel of land with improvements in San Juan, Rizal. On the 21st of that month she sold it for twenty thousand pesos (P20,000.00) to defendant Tan C. Sing, whose wife is the other defendant Dee Bun. On April 7, 1947, Tan C. Sing conveyed the same property to Alexandra Y. de Pascual married to Ramon Pascual, Filipino citizen, for the purchase price of P24,000.

On January 8, 1948 Dolores F. Alberto commenced this litigation against the Sing spouses to annul the sale, upon the ground that they were Chinese citizens, disqualified by the Constitution from acquiring private agricultural lands.

Ramon Pascual with his wife intervened to defend the legality of his acquisition.

After hearing the parties, the court of first instance of Manila annulled both transfers holding that under our Krivenko decision Tan C. Sing had acquired no right to the land and conveyed none to the Pascual spouses.

The latter appealed, maintaining that even if the sale by Alberto to Sing violated the Constitution, the seller could not recover the property thus sold, especially, because the property had been subsequently transferred to Filipino citizens. Their attorneys maintain that when a foreigner acquires land in violation of the Organic Act, he may hold such land against all persons, except the State. And until the State takes action, the alien "may dispose of his interest either by conveyance or devise and his grantees or devisees will thereupon acquire title notwithstanding his alienage." (2 C. J. 1053)

This appeal may be disposed of without enunciating the governing principle where proceedings are instituted by the State. For the present it is enough to apply the ruling we have recently promulgated to the effect that the seller of realty to a Chinese citizen has no right to recover his property and annul the sale invoking the Krivenko decision, both parties being, in the eyes of the law, in *pari delicto* [1]. Consequently it was error for the trial judge to permit Dolores Alberto to recover the property she had sold in 1945. The fact that Tan C. Sing and Dee Bun have not appealed is no obstacle to this pronouncement, they being nominal parties, the real parties affected being the intervenors-appellants.

The appealed decision will therefore be reversed, and the complaint dismissed with costs. So ordered.

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

Padilla and Reyes, JJ., no part.

[1] Cortes v. O Po Poe, L-2943, October 30, 1953; Rellosa v. Gaw Chee Hun, G. R. L-1411, September 29, 1953; Caoile v. Yu Chiao, L-4068, September 29, 1953.

PABLO, M.:

La venta hecha por Dolores F. Alberto a Tan C. Sing es nula (Krivenko contra Registrador de Titulos, 44 Gac. Of., 485). Siendo nula la venta, Tan C. Sing no adquirio legalmente el terreno, tampoco puede venderlo legalmente a Alexandre Y de Pascual.

Opino que la demandante puede recuperar el terreno vendido mediante devolucion de precio (Art. 1303, Cod. Civ. Español) "para restablecer la virtualidad de la prohibicion" constitutional. (Sentencia del Tribunal Supremo de España de 11 de abril de 1894).

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