

APOLINAR TALENTO AND MARCIANA LIMUCO TALENTO, PETITIONERS, VS. EIGERO MAKIKI, BENITA ESCARTIN AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-3529. September 29, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for review of a decision of the Court of Appeals holding that the sale which gave rise to this action is valid and binding between the parties and that, even if it were invalid, the action cannot be maintained under the principle of *pari delicto*.

This action was instituted by spouses Apolinar Talento and Marciana Limuco to annul a deed of sale executed by them on March 30, 1943 in favor of Benita Escartin and Eigero Makiki of a homestead situated in Abucay, Bataan. Basis of the action is the claim that Eigero Makiki, a Japanese civilian, accompanied by his wife and one Antonio Navoa, went to see the plaintiffs and, through intimidation, made them execute said deed of sale, which they in fact did out of fear of possible consequences to them if they should refuse his bidding. The price of the property was P3,000, paid partly in Japanese notes and partly in Philippine National Bank notes.

Defendant Eigero Makiki did not appear, his whereabouts being unknown, and so he was declared in default. Benita Escartin, his wife and co-defendant, appeared and answered the complaint setting up as a defense that the facts alleged therein were not true and that the action was presented in bad faith, the purpose being merely to harass them, for which reason she asked that plaintiffs be ordered to pay them damages in the amount of P2,500.

After trial, the court found that the sale was not executed through intimidation as claimed in the complaint, and that, even if it were so executed, it was purged of its defects by certain acts performed by the plaintiffs which amount to its confirmation. The court dismissed the action with costs against the plaintiffs. This decision was affirmed in toto by the Court of Appeals, and plaintiffs interposed the present petition for review.

In their first assignment of error, petitioners claim that "The Court of Appeals erred in not holding that the deed of sale, Exhibit 1, was executed as a result of intimidation committed by a Japanese, respondent Eigero Makiki, considering the circumstances attendant to its execution and the unequal conditions of the parties, the effect and significance of which were overlooked", to which counsel for respondents counter with the argument that the question thus posed merely raises questions of fact which, following well known precedents, cannot now be acted upon by this court in the exercise of its appellate jurisdiction. To this we agree. Matters affecting threat or intimidation are questions which largely depend upon the credibility of witnesses whose consistency has to be determined in the light of surrounding circumstances, and this the Court of Appeals has done. We find that the latter court has made a careful and conscientious study of the evidence and has not overlooked any fact or circumstance of substance or merit that may warrant a reversal of its finding. That court found "that plaintiffs have failed to establish a cause of action, which, according to law, should be an 'irresistible force' or 'a reasonable and well-grounded fear of suffering an imminent and serious injury' to himself and his family", and this finding is

binding upon this court.

The other assignments of error refer to questions of law. Thus, it is intimated that the deed of sale should be declared null and void for the reason that it was entered into between petitioners who were Filipinos and respondents who were Japanese, and as such it was a contract executed between enemies in time of war; that, even if the sale be considered valid, it is, however, subject to adjustment and settlement after the termination of the war according to the Constitution adopted here by the Japanese-sponsored Philippine Republic during the occupation and petitioners had offered to make such settlement but it was not entertained by the Court of Appeals; and, that the sale is null and void because it is in violation of the letter and spirit of our present Constitution as interpreted by the Supreme Court in the Krivenko case.

Before we pass on to consider these different assignments of error, we wish to make a preliminary comment which we believe important from the procedural point of view. Note that the present action was exclusively predicated on the claim that the sale which is now disputed is invalid because the consent thereto of petitioners has been obtained by one Eigero Makiki through intimidation. This is the only ground on which the action is predicated. No other question of fact or of law has ever been raised in the court of origin in an effort to dispute the validity of the transaction. As a matter of fact, that was the only question considered by the lower court. But when the case came up on appeal petitioners raised new questions which were never raised before, and for this reason the Court of Appeals made the following remark: "Pursuant to a well established rule in this jurisdiction, such questions cannot be raised for the first time on this appeal", citing among other authorities section 19, Rule 48, of the Rules of Court. Petitioners now assign this as error upon the plea that being merely questions of law, they need no be pleaded in the complaint.

The correctness of this finding of the Court of Appeals can hardly be disputed. The ruling invoked in support of its conclusion is well settled. Thus, "It is a well-settled rule that no action will be considered by the appellate court which has not been raised in the court below, except questions on jurisdiction over the subject-matter which may be raised at any stage of the proceedings. When, however, the jurisdiction depends upon a question of fact, the question must be first raised and determined in the court whose jurisdiction is in question. Questions on constitutionality of law must, as a general rule, be raised in the court below before they may be raised on appeal. The constitutionality of Republic Act No. 342 cannot be made an issue on appeal, where moratorium has not been invoked as a defense or as a ground for a motion to dismiss." (Moran, Comments on the Rules of Court, Vol. 1, 1952 ed., p. 970.)

But we will skirt this procedural objection and will answer briefly the points raised by petitioners. In the first place, the Constitution adopted by the Japanese-sponsored Philippine Republic cannot be invoked to bolster up the pretense that petitioners should be given the benefit of adjustment and settlement provided for in said Constitution for the simple reason that the sale in question took place on March 30, 1943, while the aforesaid Constitution was adopted and put in operation only on September 4, 1943. This transaction cannot therefore be governed by the provisions of said Constitution which was not yet in force at the time of its execution.

In the second place, petitioners cannot invoke the provisions of our present Constitution to bolster up their view that the sale is unconstitutional for the simple reason that said Constitution, as already stated by this court in a number of cases, was not in force during the enemy occupation. (Trinidad Gonzaga de Cabauatan, et al., vs. Uy Hoo, et al., 88 Phil. 103.)

And, in the third place, even assuming for the sake of argument that the sale is null and void, either because it was entered into between enemies in time of war, or is in violation of the letter and spirit of our Constitution, we are of the opinion that petitioners are now prevented from pressing its nullification because of their presumptive

knowledge that the transaction was tainted with invalidity. In other words, petitioners are now prevented from maintaining the present action in view of the doctrine of *pari delicto* entertained by this court in the case of *Trinidad Gonzaga de Cabauatan, et al., vs. Uy Hoo et al.*, G. R. No. L-2207, wherein the court 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 deem it unnecessary to discuss the other points raised by petitioners in their brief.

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

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

Reyes, J., concurring and dissenting: I concur, except as to that part of the decision which holds that "petitioners are now prevented from maintaining the present action in view of the doctrine of *pari delicto*," to which I cannot agree for the reasons stated in my dissenting opinion in the case of *Dionisio Rellosa vs. Gaw Chee Hun*, *supra*, p. 827.

Pablo, M., disidente: Disiento por las razones expuestas en mi disidencia en las causas Nos. L-4068, *Bernabe B. Caoili contra Yu Chiao Peng*, *infra* p. 861, y L-1411, *Dionisio Rellosa contra Gaw Chee Hun*.

Padilla, J., dissenting: I cannot agree to the majority opinion for the reasons stated in my dissent in *Caoili vs. Yu Chiao Peng*, G. R. No. L-4068, *infra*, p. 861.

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