

## DIONISIO RELLOSA, PETITIONER, VS. GAW CHEE HUN, RESPONDENT.

*G.R. No. L-1411. 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 in question is valid and, even if it were invalid, plaintiff cannot maintain the action under the principle of *pari delicto*.

On February 2, 1944, Dionisio Rellosa sold to Gaw Chee Hun a parcel of land, together with the house erected thereon, situated in the City of Manila, Philippines, for the sum of P25,000. The vendor remained in possession of the property under a contract of lease entered into on the same date between the same parties. Alleging that the sale was executed subject to the condition that the vendee, being a Chinese citizen, would obtain the approval of the Japanese Military Administration in accordance with (seirei) No. 6 issued on April 2, 1943, by the Japanese authorities, and said approval has not been obtained, and that, even if said requirement were met, the sale would at all events be void under article XIII, Section 5, of our Constitution, the vendor instituted the present action in the Court of First Instance of Manila seeking the annulment of the sale as well as the lease covering the land and the house above mentioned, and praying that, once the sale and the lease are declared null and void, the vendee be ordered to return to vendor the duplicate of the title covering the property, and be restrained from in any way dispossessing the latter of said property.

Defendant answered the complaint setting up as special defense that the sale referred to in the complaint was absolute and unconditional and was in every respect valid and binding between the parties, it being not contrary to law, morals and public order, and that plaintiff is guilty of estoppel in that, by having executed a deed of lease over the property, he thereby recognized the title of defendant to that property.

Issues having been joined, and the requisite evidence presented by both parties, the court declared both the sale and the lease valid and binding and dismissed the complaint. The court likewise ordered plaintiff to turn over the property to defendant and to pay a rental of P50 a month from August 1, 1945 until the property has been actually delivered. As this decision was affirmed in toto by the Court of Appeals, plaintiff sued out the present petition for review.

One of the issues raised by petitioner refers to the validity of Seirei No. 6 issued on April 2, 1943 by the Japanese authorities which prohibits an alien from acquiring any private land not agricultural in nature during the occupation unless the necessary approval is obtained from the Director General of the Japanese Military Administration. Petitioner contends that the sale in question cannot have any validity under the above military directive in view of the failure of respondent to obtain the requisite approval and it was error for the Court of Appeals to declare said directive without any binding effect because the occupation government could not have issued it under article 43 of the Hague Regulations which command that laws that are municipal in character of an occupied territory should be respected and cannot be ignored unless prevented by military necessity.

We do not believe it necessary to consider now the question relative to the validity of Seirei No. 6 of the Japanese Military Administration for the simple reason that in our opinion the law that should govern the particular transaction is not the above directive but the Constitution adopted by the then Republic of the Philippines, on September 4, 1943, it appearing that the aforesaid transaction was executed on February 2, 1944. Said Constitution, in its article VIII, section 5, provides that "no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines", which provisions are similar to those contained in our present Constitution. As to whether the phrase "private agricultural land" employed in said Constitution includes residential lands, as the one involved herein, there can be no doubt because said phrase has already been interpreted in the affirmative sense by this court in the recent case of *Krivenko vs. Register of Deeds*, 79 Phil., 41, wherein this court held that "under the Constitution aliens may not acquire private or public agricultural lands, including residential lands." This ruling fully disposes of the question touching on the validity of the sale of the property herein involved.

The sale in question having been entered into in violation of the Constitution, the next question to be determined is, can petitioner have the sale declared null and void and recover the property considering the effect of the law governing rescission of contracts? Our answer must of necessity be in the negative following the doctrine laid down in the case of *Trinidad Gonzaga de Cabauatan, 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 cannot 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.)"

The doctrine above adverted to is the one known as *In Pari Delicto*. This is well known not only in this jurisdiction but also in the United States where common law prevails. In the latter jurisdiction, the doctrine is stated thus: "The proposition is universal that no action arises, in equity or at law, from an illegal contract; no suit can be maintained for its specific performance, or to recover the property agreed to be sold or delivered, or the money agreed to be paid, or damages for its violation. The rule has sometime been laid down as though it were equally universal, that where the parties are in *in pari delicto*, no affirmative relief of any kind will be given to one against the other." (*Pomeroy's Equity Jurisprudence*, Vol. 3, 5th ed., p. 728.)

It is true that this doctrine is subject to one important limitation, namely, "whenever public policy is considered as advanced by allowing either party to sue for relief against the transaction" (*idem*, p. 733). But not all contracts which are illegal because opposed to public policy come under this limitation. The cases in which this limitation may apply only "include the class of contracts which are intrinsically contrary to public policy,—contracts in which the illegality itself consists in their opposition to public policy, and any other species of illegal contracts in which, from their particular circumstances, incidental and collateral motives of public policy require relief." Examples of this class of contracts are usurious contracts, marriage-brokerage contracts and gambling contracts. (*Idem*. pp. 735-737.)

In our opinion, the contract in question does not come under this exception because it is not intrinsically contrary to public policy, nor one where the illegality itself consists in its opposition to public policy. It is illegal not because it is against public policy but because it is against the Constitution. Nor may it be contended that to apply the doctrine of *in pari delicto* would be tantamount to contravening the fundamental policy embodied in the

constitutional prohibition in that it would allow an alien to remain in the illegal possession of the land, because in this case the remedy is lodged elsewhere. To adopt the contrary view would be merely to benefit petitioner and not to enhance public interest.

The danger foreseen by counsel in the application of the doctrine above adverted to is more apparent than real. If we go deeper in the analysis of our situation we would not fail to see that the best policy would be for Congress to approve a law laying down the policy and the procedure to be followed in connection with transactions affected by our doctrine in the Krivenko case. We hope that this should be done without much delay. And even if this legislation be not forthcoming in the near future, we do not believe that public interest would suffer thereby if only our executive department would follow a more militant policy in the conservation of our natural resources as ordained by our Constitution. And we say so because there are at present two ways by which this situation may be remedied, to wit, (1) action for reversion, and (2) escheat to the state. An action for reversion is slightly different from escheat proceeding, but in its effects they are the same. They only differ in procedure. Escheat proceedings may be instituted as a consequence of a violation of article XIII, section 5 of our Constitution, which prohibits transfers of private agricultural lands to aliens, whereas an action for reversion is expressly authorized by the Public Land Act (sections 122, 123 and 124 of Commonwealth Act No. 141).

In the United States, as almost everywhere else, the doctrine which imputes to the sovereign or to the government the ownership of all lands and makes such sovereign or government the original source of private titles, is well recognized (42 Am. Jur., 785). This doctrine, which was expressly affirmed in *Lawrence vs. Garduño*, G. R. No. 16542, and which underlies all titles in the Philippines, (See *Ventura, Land Registration and Mortgages*, 2nd ed., pp.2-3) has been enshrined in our Constitution (article XIII). The doctrine regarding the course of all titles being the same here as in the United States, it would seem that if escheat lies against aliens holding lands in those states of the Union where common law prevails or where similar constitutional or statutory prohibitions exist, no cogent reason is perceived why similar proceedings may not be instituted in this jurisdiction.

"Escheat is an incident or attribute of sovereignty, and rests on the principle of the ultimate ownership by the state of all property within its jurisdiction." (30 C.J.S., 1164)

"\* \* \* In America escheats belong universally to the state or some corporation thereof as the ultimate proprietor of land within its Jurisdiction," (19 Am. Jur., 382.)

"An escheat is nothing more or less than the reversion of property to the stae, which takes place when the title fails." (*Delany vs. State*, 42 N. D., 630, 174 N. W., 290, quoted in footnote 6, 19 Am. Jr., 381.)

"As applied to the right of the state to lands purchased by an alien, it would more properly be termed a 'forfeiture' at common law." (19 Am. Jur., 381.)

"In modern law escheat denotes a falling of the estate into the general property of the state because the tenant is an alien or because he has died intestate without lawful heirs to take his estate by succession, or because of some other disability to take or hold property imposed by law." (19 Am. Jur., 381.)

With regard to an action for reversion, the following sections of Commonwealth Act No. 141 are pertinent:

"SEC. 122. No land originally acquired in any manner under the provisions of this Act, nor any permanent improvement on such land, shall be encumbered, alienated, or transferred, except to persons, corporations, associations, or partnerships who may acquire lands of the public domain under this Act or to corporations organized in the Philippines authorized therefor by their charters."

"SEC. 123. No land originally acquired in any manner under the provisions of any previous Act, ordinance, royal decree, royal order, or any other provision of law formerly in force in the Philippines with regard to public lands, terrenos baldios y realengos, or lands of any other denomination that were actually or

presumptively of the public domain or by royal grant or in any other form, nor any permanent improvement on such land, shall be encumbered, alienated, or conveyed, except to persons, corporations or associations who may acquire land of the public domain under this Act or to corporate bodies organized in the Philippines whose charters authorize them to do so: Provided, however, That this prohibition shall not be applicable to the conveyance or acquisition by reason of hereditary succession duly acknowledged and legalized by competent courts; Provide, further, That in the event of the ownership of the lands and improvements mentioned in this section and in the last preceding section being transferred by judicial decree to persons, corporations or associations not legally capacitated to acquire the same under the provisions of this Act, such persons, corporations, or associations shall be obliged to alienate said lands or improvements to others so capacitated within the precise period of five years; otherwise, such property shall revert to the Government."

"SEC. 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State."

Note that the last quoted provision declared any prohibited conveyance not only unlawful but null and void ab initio. More important yet, it expressly provides that such conveyances will produce "the effect of annulling and cancelling the grant, title, patent, or permit, originally issued, recognized or confirmed, actually or presumptively", and of causing "the reversion of the property and its improvements to the State." The reversion would seem to be but a consequence of the annulment and cancellation of the original grant or title, and this is so for in the event of such annulment or cancellation no one else could legitimately claim the property except its original owner or grantor—the state.

We repeat. There are two ways now open to our government whereby it could implement the doctrine of this Court in the Krivenko case thereby putting in force and carrying to its logical conclusion the mandate of our Constitution. By following either of these remedies, or by approving an implementary law as above suggested, we can enforce the fundamental policy of our Constitution regarding our natural resources without doing violence to the principle of *pari delicto*. With these remedies open to us, we see no justifiable reason for pursuing the extreme unusual remedy now vehemently urged by the *amici curiae*.

In view of the foregoing, we hold that the sale in question is null and void, but plaintiff is barred from taking the present action under the principle of *pari delicto*.

The decision appealed from is hereby affirmed without pronouncement as to costs.

Labrador, J., concurs.

Paras, C. J., Tuason and Montemayor, JJ., concur in the result.

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## CONCURRING

### BENGZON, J.:

I wish to say that I regard the precedents of *Bough vs. Cantiveros* and *Perez vs. Herranz* inapplicable because the parties therein were not equally at fault.

However I do not believe that the two ways suggested to solve the problem of alien-acquired lands are exclusive.

Perhaps the innocent spouse of the seller and his creditors are not barred from raising the issue of invalidity.

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## DISIDENTE

### PABLO, M.:

No estoy conforme con la teoria de la mayoria de que el demandante no puede pedir la declaracion de nulidad de la venta de un terreno a un extranjero.

El articulo 1306, regal 1.<sup>a</sup>, delCodigo Civil Español, en que se funda la defensa del demandado, dice asi: "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 cometido 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 hayan obrado de mala fe, ni existe pruebas de que, sabiendo las partes que estaba prohibida la venta, la efectuaron 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., 221), 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. Basilia Hanopol, prima y protegida de Matilde, y su esposo Gustavos Bough marearon a Matilde con la cantinela de "que Jose Vasquez estaba en el pueblo y podria impugnar el contrato de separacion de bienes conyugales." Los esposos Bough la indujeron a que les vendiese 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 engañarla 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 dependentis."

"La ley no amparara a ninguna de las partes en un contrato ilicito; les deja en la situacion en que se han colocado." (Bough y otro contra Cantiveros y otro, 40 Jur. Fil., 221), 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 el 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 Casta, 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 tenor 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 indudablemente, por su propia naturaleza, la inexistencia del contrato, al contrato 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 precedencia 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 precedentes 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 puede exigir amparo lo ilicito. Ademas 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.<sup>a</sup> 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 sus 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 al presente causa), creyendo que no estaba prohibida la donacion entre ellos. Se declaro nula la donacion porque esa prohibida por la ley, porque es contrato considerato 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 cuasipublica, 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 código admite tal distinción de nulidad absoluta e 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 público y social y en los cuales la nulidad debería pedirse de oficio, para el código tal acción tiene que ser ejercitada a instancia de parte." (3 Valverde, 299).

Declarar que el vendedor no puede recobrar, a cambio de lo que había pagado, devolviéndolo previamente, es frustrar el espíritu que informa la Constitución; es consentir que los extranjeros continúen acaparando bienes inmuebles en daño y perjuicio del pueblo, en vez de juzgar de acuerdo con el Código Civil, inspirándose en el elevado propósito de la Asamblea Constituyente de "conservar y acrecentar el patrimonio de la nación" y evitar que, por un error judicial, los Filipinos—al cabo de una generación—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 prohibición, no es cumplir con la Constitución: es violar su espíritu y minar su principio fundamental de propia conservación.

El comprador no puede acogerse a las disposiciones del artículo 1306 del Código Civil español que es inaplicable, según el Tribunal Supremo de España, a contratos inexistentes. Con mayor razón dicho artículo no puede oponerse con éxito como defensa en una demanda en que se pide la declaración de nulidad de la venta de un inmueble por ser contraria a la Constitución y la devolución de las cosas que las partes habían recibido.

En mi opinión, la decisión debe ser revocada, la venta debe ser declarada nula y las cosas recibidas por las partes sean restituidas. (Artículo 1303, Código Civil.)

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## DISSENTING

### REYES, J.:

I dissent. The majority opinion holds the sale in question void but denies relief on the ground that the parties were in pari delicto. The doctrine invoked by the majority has no application where, as in the present case, the contract sought to be annulled is against public policy, the same being forbidden by the Constitution. (Vol. 3, Pomeroy's Equity Jurisprudence, 5th ed., sec. 941.) The present case is to be distinguished from that of *Trinidad Gonzaga de Cabautan et al. vs. Uy Hoo et al.*, 88 Phil. 103, where the sale took place when the Constitution was no in force.

In my opinion, the sale here in question should be annulled.

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