

HEIRS OF GABRIEL ZARI AND HEIRS OF HERMENEGILDO CONCEPCION, PLAINTIFFS-APPELLEES, VS. JOSE R. SANTOS, DEFENDANT-APPELLANT.

G.R. Nos. L-21213 & L-21214. March 28, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

These two cases, on direct appeal to this Court on questions of law,[1] turn on the principal issue of whether or not a compromise agreement, executed between party litigants-before the new Civil Code, and which triggered the dismissal of litigation, may be rescinded by the party-plaintiffs thereof, to pave the way for the enforcement of their original demand, upon the provisions of Article 2041 of the new Civil Code, which creates for the first time the right of rescission with respect to compromises. The law reads:

"ART. 2041. If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand."

The factual backdrop starts way back in 1934.

Sometime before August 5, 1934, a certain Juan Fuentes purchased on installments under Contract 436 from Ortigas, Madrigal y Cia, S. en C. for P2,250 a parcel of land of 15,000 square meters, Lot 9552, later known as Lot 50-H-5-C-9-J-65-H of the subdivision plan,[2] of Hacienda de Mandaluyong, situate in Barrio Bagong Ilog, Marikina, Rizal, and registered in the company's name under Torrens Title 30794.

On August 5, 1934, Juan Fuentes entered into two contracts: one with Hermenegildo Concepcion covering the 1/3 northern portion of said land with an area of 5,000 square meters; the other with Gabriel Zari embracing another 1/3, the southeastern portion thereof, with an identical area of 5,000 square meters. The two contracts, couched in the same language, were denominated sub-contracts of lease. However, as found by the court below, they were really contracts of conditional sale by Fuentes to Concepcion and Zari whereunder each of the latter was to pay P1,600 spread out within a 78-month period in equal monthly installments of P20.50, except the first which was P21.70. In fact, paragraph 4 of those contracts stipulates that: "Al pago del inquilino del alquiler correspondiente a los setenta y siete meses restantes dentro de los plazos convenidos, obligarta al arrendatario a transferir el dominio pleno de la parcela cedida en arrendamiento."

Then, sometime before mid-June, 1941, Juan Fuentes assigned all his rights and interests over the whole land to defendant-appellant Jose R. Santos, for P1,070. This was put in writing in a deed styled "Assignment of Real Rights" dated June 15, 1941. In that deed, Jose R. Santos expressly bound himself "to respect and recognize the contract of sale by installment which the party of the first part [Juan Fuentes] had with Gabriel Zari and Hermenegildo Concepcion of the portion of land covered by Contract No. 436", which Fuentes executed with Ortigas. The Fuentes-Santos transaction was with the knowledge and consent of Gabriel Zari and Sofronio Concepcion, in representation of his father, Hermenegildo, who had, in the meantime, died.

On June 7, 1941, even prior to the date of the formal assignment, Jose R. Santos paid the balance of the purchase price of the aforesaid land to Ortigas, Madrigal y Cia, S. en C. On June 14 following, the company executed the corresponding deed of absolute sale directly in favor of Jose R. Santos. New Torrens Title 43295 was then issued in Santos' name.

Thereafter, Jose R. Santos refused to honor the rights of Hermenegildo Concepcion and Gabriel Zari under their respective agreements with Juan Fuentes. Because of this, two complaints were lodged simultaneously on October 30, 1941 by the Concepcion heirs and Zari against Jose R. Santos in the Court of First Instance of Rizal, docketed as Civil Cases 8273 and 8275.[3] Plaintiffs sought to enforce their contractual rights to their respective 1/3 portions. On January 24, 1943, during the pendency of the cases, two separate compromise agreements were executed in written confirmations of the verbal agreements amongst the parties on May 21, 1942. That compromise was induced by the parties, desire "to settle the case amicably in order to avoid litigation and expenses incident thereto."

In substance, the compromise was to this effect: the heirs of Hermenegildo Concepcion and Gabriel Zari would no longer pay the balance of the unpaid installments. The sum of P969.12 thus far paid by Concepcion and his heirs would represent the "purchase price of 1,762 square meters" of the northwestern portion of the land. In the same manner, the sum of P1,025.42 thus far paid by Zari would constitute the "purchase price of 1,854 square meters" of the southeastern portion. The property would be resurveyed by the Concepcion heirs and Gabriel Zari to segregate the portions which would go to them. Upon completion thereof, Jose R. Santos would convey the properties in absolute sale, and secure the Torrens titles for the Concepcions and Zari. The heirs of Hermenegildo Concepcion and Gabriel Zari would procure the dismissal of the suits they started against Jose R. Santos. Plaintiffs, by the compromise, "remised, released and forever discharged" Jose R. Santos "of and from any and all claims and demands whatsoever which" the former ever had or "hereinafter can, shall or may have against" Jose R. Santos "growing out of or arising from the facts, circumstances and things set out in the" complaints against Santos.

The dismissal of Civil Cases 8273 and 8275 followed.

Plaintiffs then sought to implement the compromise agreement. But this was blocked by defendant's refusal to comply with said compromise. Defendant went to the extent of telling plaintiffs' counsel that the entire land of 15,000 square meters was his property and that he could not abide by the compromise agreement he executed on January 24, 1943 - when he was already a full-fledged lawyer -[4] upon the lame excuse that "I am not fully aware of its contents." [5] He also claimed that he sold no land to plaintiffs. In the language of the trial judge, [6] these are the facts -

"For the purpose of implementing the compromise agreement, the plaintiffs notified the defendant in writing (Exhs. 'F-2-Concepcion' and 'F-Zari') of their intention to cause a subdivision survey of the premises in order to segregate the respective portions allocated to them under its provisions. The plaintiffs obtained the necessary permit in writing (Exhs. 'F'-la-Concepcion') from the U.S. Army which has leased and was occupying the premises at an annual rental of P900.00 during the period from April 10, 1945 to June 30, 1948 (Exh. 'K-Concepcion', also Exh. 'J-Zari'). After the completion of the subdivision survey and the plans and the corresponding technical descriptions (Exhs. 'F-7-Concepcion' and 'F-4-Zari') had been duly approved by the Director of Lands, the plaintiffs, through Atty. Anacleto de Guzman, addressed two letters dated July 26, 1948 (Exh. 'G-Concepcion', also Exh. 'G-Zari') and August 14, 1948 (Exh. 'G-2-Concepcion', also Exh. 'G-2-Zari') to the defendant. In the said letters, the plaintiffs notified the defendant that they had already effected the segregation survey of the portion allocated to them under the compromise agreement and requested him to execute the necessary deeds of sale in their favor. In reply thereto, the defendant addressed a letter dated August 25, 1948 (Exh. 'G-3-Zari') to Atty. de Guzman wherein the defendant [tacitly] denied

having sold any land to the plaintiffs and manifested his refusal to comply with the compromise agreement." [7]

Offshoot of defendant's refusal to abide by the terms of the compromise agreements was the commencement by plaintiffs in the Court of First Instance of Rizal of a second set of cases against defendant. The thrust of the fresh suits, docketed as Civil Cases 802 filed on March 23, 1949 [8] and 878 on July 6, 1949, [9] was to enforce plaintiffs' right to their respective 5,000 square-meter portion under the old contracts with Juan Fuentes.

Defendant presented separate motions to dismiss upon the ground that previous litigations between the same parties upon the same subject matter have been compromised and dismissed. Civil Case 878, with respect to the Concepcion heirs, was dismissed by Judge Ambrosio Santos. Defendant's motion to dismiss Civil Case 802, filed by Zari, was denied by Judge Juan R. Liwag.

The Concepcions appealed the dismissal of Civil Case 878 to this Court. On July 9, 1951, this Court, through Mr. Justice Pedro Tuason, held that the Concepcions still had "a recourse to law and it is to enforce the compromise by a new appropriate action", and affirmed the dismissal order "not on the ground of res adjudicata, but because the subject of the complaint has been released and can not be litigated anew." [10]

Civil Case 802, on the other hand, was dismissed because of the failure of plaintiffs' counsel to appear at the hearing thereof. On appeal by Gabriel Zari, the Court of Appeals, on April 24, 1952, remanded the case for trial on the merits.

On June 23, 1952, the heirs of Hermenegildo Concepcion registered a new complaint against Jose R. Santos specifically asking for rescission of the compromise agreement, and reviving their original claim. The case was docketed as Civil Case 1769.

On March 2, 1953, Gabriel Zari moved to amend his complaint in Civil Case 802. This time, he prayed for rescission of the compromise and insisted on his original claim. Jose R. Santos opposed. On March 14, 1953, the amended complaint was admitted.

Defendant then filed his separate answers to both complaints: Civil Case 802, as amended, and Civil Case 1769.

The two cases were jointly heard. The parties entered into a stipulation of facts and went to trial as to those questions of fact not covered thereby.

On May 3, 1962 came the trial court decision. The dispositive portion thereof reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiffs and against the defendant: rescinding the agreement of compromise dated January 24, 1943 and declaring the same to be without force and effect; recognizing the plaintiffs' rights under the contracts of installments which Hermenegildo Concepcion and Gabriel Zari had, simultaneously executed with Juan Fuentes on August 5, 1934; declaring the plaintiffs in Civil Case No. 1769 the rightful owners of the Northern portion of the parcel of land covered by Transfer Certificate of Title No. 43295 of the Registry of Deeds of Rizal, with an area of 5,000 square meters, upon payment to the defendant of the sum of P631.08 representing the balance of their installments remaining unpaid; declaring the plaintiffs in Civil Case No. 802 the rightful owners of the Southeastern portion of the above-described land, with an area of 5,000 square meters, upon payment to the defendant of the sum of P574.78 representing the balance of their monthly installments remaining unpaid; ordering the defendant to execute the necessary deeds of sale in favor of the plaintiffs in both cases (sic) the sum of P966.67 representing the latter's shares in the rentals paid by the U.S. Army to the former with costs of these suits against the defendant." [11]

Defendant Jose R. Santos appealed direct to this Court because, as he specified in his notice of appeal, "he will present a question of law."

By well-entrenched jurisprudence, the door leading to factual questions is shut, and solely questions of law may be inquired into.[12]

The focal point of inquiry is whether or not, under the facts, the plaintiffs have the legal remedy of rescission.

1. To be recalled is that before the onset of the new Civil Code, there was no right to rescind compromise agreements. Where a party violated the terms of a compromise agreement, the only recourse open to the other party was to enforce the terms thereof.

When the new Civil Code came into being, its Article 2041, quoted at the start of this opinion, created for the first time the right of rescission. That provision gives to an aggrieved party the right to "either enforce the compromise or regard it as rescinded and insist upon his original demand." Article 2041 should obviously be deemed to qualify the broad precept enunciated in Article 2037 that "[a] compromise has upon the parties the effect and authority of *res judicata*."

In a nutshell, the factual situation before us may be described as follows: Two plaintiffs, in separate suits against defendant, each claimed 5,000 square meters of land. Those suits were dismissed by virtue of written amicable settlements whereby, upon plaintiffs' resurvey of the land, defendant would execute absolute deeds of sale in favor of plaintiffs for a little less than 2,000 square meters each. When defendant refused to execute the necessary documents of sale to plaintiffs after the latter had caused the resurvey and segregation of the land, plaintiffs again separately sued defendant to enforce their original claims of 5,000 square meters each, not the compromise. One of the suits reached this Court which held that plaintiff's original claims cannot be litigated anymore but that the recourse open was to compel compliance with the obligation under the compromise. All these happened before the effectivity of the present Civil Code. After the latter Code took effect, when defendant continued to refuse to honor the compromise agreements, plaintiffs aimed at rescission thereof and insisted on their original demand for 5,000 square meters each. Can this be done?

Surging to the surface are the pertinent transitory provisions of the present Civil Code.

Article 2252 thereof provides as a general proposition that "[c]hangs made and new provisions and rules laid down by this Code which may prejudice or impair, vested or acquired rights in accordance with the old legislation shall have no retroactive effect." But the next article, Article 2253, states in part that "if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin."

Does plaintiffs' right of rescission of the compromise agreements, a right declared for the first time in this Code, prejudice or impair any vested or acquired right of the defendant's? This is the key question.

2. A vested or acquired right, it has long been accepted, is elusive of definition. So Manresa says.[13] So our own Code Commission comments, viz:

"x x x laws shall have no retroactive effect, unless the contrary is provided. The question of how far the new Civil Code should be made applicable to past acts and events is attended with the utmost difficulty. It is easy enough to understand the abstract principle that laws have no retroactive effect because vested or acquired rights should be respected. But what are vested or acquired rights?

The Commission did not venture to formulate a definition of a vested or acquired right seeing that the problem is extremely complicated.

* * *

What constitutes a vested or acquired right will be determined by the courts as each particular issue is submitted to them, by applying the transitional provisions set forth and in case of doubt, by observing article 10 governing the silence or obscurity of the law. In this manner, the Commission is confident that the judiciary with its enlightenment and high sense of justice will be able to decide in what cases the old Civil Code should apply and in what cases the new one should be binding. This course has been preferred by the Commission, which did not presume to be able to foresee and adequately provide for each and every question that may arise."^[14]

We are thus especially asked to consider the circumstances of the very case before us to determine whether any right has been vested on or acquired by defendant which can constitute a stumbling block to plaintiffs' right of rescission.

In *Benguet Consolidated Mining Co. vs. Pineda*,^[15] this Court explained that a vested right is "some right or interest in the property which has become fixed and established, and is no longer open to doubt or controversy"; it is an "immediate fixed right of present and future enjoyment"; it is to be contradistinguished from a right that is "expectant or contingent."^[16] The *Benguet* case continued on to quote from 16 C.J.S. 214-215, as follows:

"Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. So, inchoate rights which have not been acted on are not vested."

3. To ascertain any right of defendant under the compromise agreement, we need to analyze once more the terms thereof. So analyzing, we observe that the right acquired by defendant therein was to have plaintiffs' original suits dismissed. And, any claim of plaintiffs against defendant in relation thereto would be "remised, released and forever discharged." On the other hand, plaintiffs' right was that of ownership over parcels of land - in considerably reduced areas - amounting to a little less than 2,000 square meters each as specified in the compromise agreement. It must be emphasized that defendant does not really have a vested or acquired right on the remaining difference of more than 3,000 square meters each against plaintiffs. Defendant's claim to those last named portions of land is umbilically dependent on his right to have plaintiffs' claim thereto released.

Is this right vested or acquired? By the very nature of things, such right of release is not absolute. It carries a condition. Defendant perforce must execute the necessary deeds of sale to plaintiffs in obedience to the compromise. Had defendant done this before the advent of the present Civil Code, his right of release would have vested unconditionally. But he has not done so. And, plaintiffs' claims remain - as before.

4. The compromise here effected, it must be stressed, is not a judicial compromise as contemplated by law. It is not incorporated in a judgment that may be executed. The result of the compromise, in fact, was the dismissal of the two litigations filed. There is nothing to execute. This position finds affirmance in Article 2037 of the Civil Code, which, in part, decrees that "there shall be no execution except in compliance with a judicial compromise.

Controlling herein, to our mind, is Article 2257 of the present Civil Code. It reads in part:

"ART. 2257. Provisions of this Code which attach a civil sanction or penalty or a deprivation of rights to acts or omissions which were not penalized by the former laws, are not applicable to those who, when said laws were in force, may have executed the act or incurred in the omission forbidden or condemned by this Code.

* * *

If a continuous or repeated act or omission was commenced before the beginning of the effectivity of this Code, and the same subsists or is maintained or repeated after this body of laws has become operative, the

sanction or penalty prescribed in this Code shall be applied, even though the previous laws may not have provided any sanction or penalty therefor.”[17]

Correlating the foregoing provision to the problem before us, we find that defendant's refusal to adhere to the compromise now results in a "deprivation of" his "rights" over the properties covered by the Fuentes agreements with plaintiffs. For, plaintiffs have the right of rescission under the present Code. Ordinarily, the rule in Article 2257 just quoted is that such deprivation cannot attach to those omissions incurred when the old Civil Code was in force. But, by the same article, "a continuous or repeated act or omission" that subsists after the Civil Code "has become operative" makes the latter Code applicable. This, of course, is but logical.

Here, defendant has continued to refuse to live up to his part of the bargain even after the effectivity of the present Code. Worse still, defendant did have the temerity to negate plaintiffs' rights under the deeds executed by Juan Fuentes (defendant's predecessor) covering plaintiffs' respective portions. These rights defendant himself - in a public document - solemnly undertook to respect.[18] The following from the decision of the trial court is illuminating:

"Upon the other hand, the defendant tried to show by his evidence that the plaintiffs have not acquired any real rights over the land under litigation because according to him, the deed of assignment of real rights is null and void. The defendant contends that Juan Fuentes could not lawfully assign any right over the said parcel of land in favor of another inasmuch as he (defendant) had previously purchased the same direct from the Ortigas, Madrigal y Cia. In effect, the defendant claims that Juan Fuentes had nothing to assign. To support his claim, the defendant relied on the date of execution of the deed of assignment of real rights and the date of his actual acquisition of the land from the Ortigas, Madrigal y Cia. That while the said assignment of real rights appears to have been executed on June 15, 1941, the defendant actually paid the balance of the purchase price of the land to the Ortigas, Madrigal y Cia, on June 7 of the same year (Exh. 'A'), or approximately one week earlier. The company executed the necessary deed of absolute sale in his favor on June 14, 1941, or exactly one day before the execution of said assignment of real rights, and on the same date (June 14, 1941) the defendant obtained Transfer Certificate of Title No. 43295 in his name from the Office of the Register of Deeds of Rizal.

The foregoing circumstances do not, however, justify the defendant's stand on the matter. For one thing, there is no doubt that the parcel of land which the defendant purchased from Ortigas, Madrigal y Cia is the same parcel of land which was assigned to him by Juan Fuentes (paragraph 4, Stipulation of Facts, dated September 25, 1957). Besides, the evidence adduced by the defendant, both oral and documentary, clearly and unmistakably proved this fact. Among the documents presented in evidence by the defendant is a letter dated June 7, 1941 (Exh. '7') and addressed by him to the Ortigas, Madrigal y Cia. In this letter, the defendant Jose R. Santos offered to pay in full the balance of the purchase price of the land in question and signed it: 'JUAN FUENTES, by Jose R. Santos.' x x x.”[19]

Thus it is, that, as found by the lower court, "defendant tacitly denied having sold any land to the plaintiffs and manifested his refusal to abide by the compromise agreement.”[20] Defendant's pattern of conduct is reflected in the lower court's statement that "it is obvious from the very beginning that the defendant herein had been desperately trying to avoid, his obligation to the plaintiff(s).”[21]

Plaintiffs, by law and logic, should be permitted to rescind the compromise and revert back to their original demands.

5. This Court's decision in *Concepcion vs. Santos*, supra, cannot serve as a bar to plaintiffs' present claims. For at least three reasons: First. That case was decided under the old Code. It is merely reflective of the law in force at that time. Second. That decision in fact precisely recognized the right of plaintiffs to enforce the terms of the compromise agreement by a new judicial action. That right they had under the old Code. But upon the effectivity of the present Civil Code, they not only had that right but also obtained, in addition, an alternative right to rescind

the compromise agreement and insist upon their original demands, upon defendant's continued failure to abide by the terms of the compromise, Third. That decision cannot be said to establish the law of the case with respect to the present inquiry. Because, after the effectivity of the present Code, defendant has continued to violate the compromise. This continuing violation could not have been envisioned in, and consequently could not have formed part of, this Court's earlier decision.

6. Another provision of law which gives our view a lift is Article 2254 of the Civil Code. It declares that "(n)o vested or acquired' right can arise from acts or omissions which are against the law or which infringe the rights of others." [22] On this article, the Code Commission says: "It is evident that no one can validly claim any fixed or acquired right if the same is founded upon his having violated the law or invaded the rights of others. This principle is universally accepted." [23] indeed, in *Benguet*, supra, pronouncement was made that "no person has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit." [24]

It is clear then that defendant could not have any fixed or acquired right in the premises. Here involved is defendant's per-sistent non-compliance with the terms of the compromise - which no doubt can be categorized as acts "which infringe upon the rights of others", plaintiffs herein. Defendant, a lawyers should know that he may not profit from, his own wrongdoing.

We, accordingly, rule that the trial court did not err in setting aside the compromise agreements and enforcing plaintiffs', original demands,

For the reasons given, the decision of the trial court in the cases below is hereby affirmed.

Costs against defendant-appellant Jose R. Santos.

SO ORDERED.

Dizon, Makalintal, Zaldivar, Fernando, Capistrano, and Teehankee, JJ., concur.

Concepcion, C.J., and Ruiz Castro, J., reserve their votes.

Reyes, JBL, J., dissents in separate opinion.

Barredo, J., concurs and dissents in a separate opinion.

[1] R.A., p. 259.

[2] R.A., pp. 82, 147.

[3] "Felisa Basa Vda. de Concepcion, et al., Plaintiffs, versus Jose R. Santos, Defendant", and "Gabriel Zari, Plaintiff, versus Jose R. Santos, Defendant", respectively.

[4] R.A., p. 236.

[5] Exh. G-3, Concepcion and Zari.

[6] R.A., pp. 228-229.

[7] Emphasis supplied.

[8] Civil Case 802, "Heirs of Gabriel Zari, plaintiffs, versus Jose R. Santos, defendant", R.A., pp. 1-10.

[9] Civil Case 878, "Heirs of Hermenegildo Concepcion, plaintiffs, versus Jose R. Santos, defendant", Exhibit H.

[10] L-3885, entitled "Felisa Basa Vda. de Concepcion, et al., Plaintiffs-Appellants, vs. Jose R. Santos, Defendant-Appellee", 89 Phil. 429, 433, 434.

[11] R.A., pp. 240-241.

[12] Sotto Pahang vs. Sotto, L-21175, July 15, 1968; Perez vs. Araneta, L-18414, July 15, 1968; Cebu Portland Cement Co. vs. Naga, L-24116-7, August 22, 1968.

[13] Manresa, Código Civil Español, Tomo 12.[o], 4.[a] ed., págs. 840-842.

[14] Report of the Code Commission, pp. 165-166. Article 10 was deleted from the Code as approved. Appropriately to be cited instead is codal Article 9, thus:

"ART. 9. No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws."

[15] 98 Phil. 711, 722, quoting from Pearsall vs. Great Northern R. Co., 161 U.S. 648; emphasis supplied.

[16] Citing Balboa vs. Farrales, 51 Phil. 498, 502.

[17] Emphasis supplied.

[18] Exhibit C.

[19] R.A., pp. 232-233: emphasis supplied.

[20] R.A., p. 237.

[21] R.A., p. 238.

[22] Emphasis supplied.

[23] Report of the Code Commission, p. 167.

[24] At p. 723, citing authorities.

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CONCURRING AND DISSENTING

BARREDO, J.:

I can only say amen to the very comprehensive and analytical study and discussion of the facts and the accurate application thereto of Articles 2252, 2251 and 2041 of the Civil Code made by Mr. Justice Sanchez in the joint decision of these cases, in so far as the Heirs of Gabriel Zari are concerned. I must say that the views of our learned colleague in that respect cannot be improved upon. My doubts are related to the case of the heirs of Hemenegildo Concepcion.

For the sake of brevity, I shall adopt the statement of the facts of these cases in the majority opinion:

"In a nutshell, the factual situation before us may be described as follows: Two plaintiffs, in separate suits against defendant, each claimed 5,000 square meters of land. Those suits were dismissed by virtue of written amicable settlement where-by, upon plaintiffs resurvey of the land, defendant would execute absolute deeds of

sale in favor of plaintiffs for a little less than 2,000 square meters each. When defendant refused to execute the necessary documents of sale to plaintiffs after the latter had caused the resurvey and segregation of the land, plaintiffs again separately sued defendant to enforce their original claims of 5,000 square meters each, not the compromise. One of the suits reached this Court which held that plaintiff's original claims cannot be litigated anymore but that the recourse open was to compel compliance with the obligation under the compromise. All these happened before the effectivity of the present Civil Code. After the latter Code took effect, when defendant continued to refuse to honor the compromise agreements, plaintiffs aimed at rescission thereof and insisted on their original demand for 5,000 square meters each. Can this be done?" (Page 7, Decision)

In effect, the majority holds that this can legally be done in both the cases of the Zaris and the Concepcions for the reasons that (1) article 2041 of the Civil Code created for the first time the right of rescission and gives to an aggrieved party the right to "either enforce the compromise or regard it as rescinded and insist upon his original demand"; (2) such right, declared for the first time under the Code, "is effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation", as provided in Article 2252; and (3) this can be done since defendant-appellant had no vested right which might be impaired. I find it difficult to conform with the view that the third reason given can apply also to the Concepcions.

It is to be remembered that the first case filed by the Concepcions against Santos was dismissed by the Court of First Instance of Rizal following the compromise between the parties. The second action filed by them also against Santos for the same cause was again dismissed by the said court on the ground that the compromise was res judicata to the second action; and on appeal from said dismissal, this Court declared that the lower court was in error - there was no res judicata, although, nonetheless, this Court sustained the said dismissal on the ground that plaintiffs' claim had been released by virtue of the compromise. To borrow the language of this Court in that appeal:[1]

"The dismissal of Case No. 8273 did not constitute res adjudicate in the legal sense of the term. The doctrine of res adjudicata is predicated on a prior valid judgment, and the order of dismissal made no reference to the compromise agreement, much less any adjudication on the basis of it.

"But the agreement did release 'the claim or demand set forth in the plaintiff's pleading,' and that release was good ground for the defendant's motion to dismiss the second suit. (Sec. 1[g] Rule 8). By express terms, it had been seen, the plaintiffs 'remised, released and forever discharged' the defendant 'of and from any and all claims and demands whatsoever growing out of or arising from the facts, circumstances, and things set out in the complaint.' Language could not have been more comprehensive or more expressive of the parties' intention to enter into a new contract to take the place of the old one, than the words placed under quotation.

"The old agreement was merged in the new, with the result that action on the former or any feature of it which had been put in issue by the pleadings was barred. Non-compliance with the compromise restored neither the covenant which it had superseded nor the plaintiffs' cause of action under the original sale contract. But it was only to this extent that the compromise was res adjudicata and article 1817 of the Spanish Civil Code could be properly applied. Were the operation of the dismissal not thus limited, the alternative would be either execution of the order, which would not be feasible, since the court did not and was not asked to render judgment in accordance with the conditions of the stipulation, or complete extinguishment of plaintiffs' remedy, which the defendant would not pretend to assert. The plaintiffs still have a recourse to law and it is to enforce the compromise by a new appropriate action." Underscoring supplied

It will be seen then that this Court had expressly declared that the compromise was not res judicata in the strict legal sense, it was a bar to the second action of the Concepcions to the extent that it superseded plaintiffs' cause of action under the original sale contract; that action based on the former agreement (sale) which was merged in the new (compromise) was by such merger barred; and that the recourse to law left to them "is to enforce the

compromise by a new appropriate action." That decision of this Court has long become final and, to my mind, the law questions therein discussed and applied to the relation of the parties has become the law of the case as between them and should not now be disturbed. Right or wrong, such questions had definitely been settled and are no longer open to question by any court in any subsequent proceeding under the same cause. If as the majority intimates, that decision of this Court was erroneous, considering that at the time it was rendered the present civil code was already in force, assign fact, it was already in force, with more reason must We hold that the present action for rescission is barred, because the majority implies that the issue under discussion could have been raised and decided then. This Court has said so time and time again, and I really do not see my way clear why We should depart therefrom in this particular case when just recently We have invoked the same principle in another case:[2]

"As noted at the outset, We sustain respondent Court. Our August 31, 1964 decision in the main NAWASA suit is decisive of the case at hand. It furnishes the law of the case. As was recently held by this Court, speaking through Justice J.B.L. Reyes, in *People vs. Olarte*, L-22465, February 28, 1967, a ruling constituting the law of the case, 'even if erroneous, ... may no longer be disturbed or modified since it has become final. A subsequent re-interpretation of the law may be applied to new cases but certainly not to an old one finally and conclusively determined. To the same effect is the following from the pen of Justice Makalintal: 'It need not be stated that the Supreme Court, being the court of last resort, is the final arbiter of all legal questions properly brought before it and that its decision in any given case constitutes the law of that particular case. Once its judgment becomes final it is binding on all inferior courts, and hence beyond their power and authority to alter or modify' (*Kabigting vs. Acting Director of Prisons*, L-15548, October 30, 1962). So it has always been from 1919, when We announced that a decision that has become the law of the case is not subject to review or reversal in any court' (*Compagnie Franco-Indochinoise vs. Deutsch-Australische Dampschiffs Gesellschaft*, 39 Phil. 474, 476)."

It is then my considered opinion that, on the basis of the foregoing authorities cited as applied to the circumstances of this case, We cannot now grant to the Conceptions the very same remedy which was precisely denied to them already by this Court in the previous case, there being no showing that: the circumstances have substantially changed.

I believe that the subsequent creation of the right of rescission in favor of an aggrieved party under Article 2041 of the Civil Code cannot alter the law of the case. I am not convinced that rescission can be allowed because it will not impair any vested or acquired right. By force of the decision (earlier quoted) in the appeal taken from the order of dismissal of the second case between the same parties, the right of the Conceptions to make good their demand for the 5,000 square meters of land on the basis of the original sale contract had been foreclosed, except with respect to a small portion of it which, according to the same decision, they may by action compel]. Santos to convey to them under the terms of the compromise. Correlatively, Santos thereby acquired the right to be free from any further vexatious action by the heirs of Hermenegildo Concepcion relative to the 5,000 square meters of land embraced in the original sale contract. As previously stated, that decision has long become final. The rights of the parties thereunder had been finally and definitely fixed by this Court in the decision referred to. Undoubtedly then, such acquired right of Santos would be impaired should We allow the rescission under consideration and thereby permit the Conceptions to revive their original claim for the bigger portion of the land the very right this Court had foreclosed in its decision on the appeal taken from the dismissal of the previous case. By the very definition of the majority, the right of Santos under the decision of this Court was not dependent on any contingency. Indeed, in a sense, it arose when the present Civil Code was already in force.

The majority holds that the "release" of Santos' obligation - to convey the 5,000 square meters unto the Conceptions under the original, sale contract - was conditional, i. e., the claim of the heirs thereto would remain

unless Santos performs his part of the bargain or compromise agreement. But did not this Court declare in the decision above-quoted that non-compliance with the compromise restored neither the covenant which it had superseded nor the plaintiffs' cause of action under the original sale contract, that to this extent the compromise was *res adjudicata*, and that the plaintiffs' recourse to law is to enforce the compromise agreement by a new appropriate action? How then may it be rightly said that the release was conditional when, as earlier pointed out, that decision had become final and, right or wrong, shall be the "law of the case" between them? Thus, it cannot be gain said that the rescission of the compromise agreement sought by the Concepcions in this third action they filed against appellant Jose R. Santos would impair and prejudice the vested or acquired rights of said appellant. The land involved is registered land. It is covered by a torrens title in the name of Santos. A cloud was cast upon the said title by the claims of said heirs, but the same was removed, in respect of the portion not covered by the compromise agreement, upon the final pronouncement of this Court that said heirs had no right thereto, which pronouncement was naturally retroactive as of the date the compromise became final. The correlative rights of the parties were already fixed and established when the Civil Code of the Philippines (granting the new right of rescission to an aggrieved party) took effect, and, surely, such rights should not be affected by said subsequent le-gislation. Art. 2253 of the Civil Code expressly ordains, as the majority adverts that "new rights" (under the New Code) cannot "prejudice or impair any vested or acquired right" originating from the prior legislation. Even without Art. 2253, in *Balboa vs. Farrales*,^[3] this Court declared that Sec. 116 of Act No. 2874, which prohibits the sale of homestead land during the period of five years subsequent to the issuance of patent, cannot be applied because it would impair and diminish the vested rights acquired under Act No. 926, holding, as follows:

"Vested right is 'some right or in-terest in the property which has become fixed and established and is no longer open to doubt or controversy' (*Downa vs. Blount*, 170 Fed. Rep., 15, 20). x x x Thus, in this jurisdiction, vested frights are protected from impairment by express constitutional provision. Therefore, the right vested in Buenaventura Balboa by Act No. 926 cannot be divested, impaired or restricted by section 116 of Act 2874. Said right should be govern-ed entirely and exclusively by the provisions of Act No. 926, under which it was acquired. The right, title and interest of the appellant having become vested under the provisions of Act No. 926, his rights cannot be affected by any law passed subsequent thereto. The pro-visions of Act No. 2874 cannot be in-voked for the purpose of defeating the vested right acquired by the appellant before its adoption."

For the foregoing considerations, my vote is that the decision appealed from be modified in the sense that although it is affirmed in so far as the Zaris are con-cerned, it is reversed in so far as the Concepcions are concerned, and the complaint of the Concepcions in Civil Case No. 1269 of the court a quo is dismissed, with costs against defendant-appellant Santos in the case of the Zaris and against, the Concepcions in the other case.

The case referred to, L-2885, entitled "*Felisa Basa Vda. de Concepcion, et al., plaintiffs-appellants vs. Jose R. Santos, defendant-appellee*", 89 Phil. 429, was decided on July 9, 1951 - after the effectivity of the New Civil Code.

[1] *Concepcion vs. Santos*, 89 Phil. 429.

[2] See *National Waterworks & Sewerage Authority vs. NAWASA Consolidated Union, et al.*, L- 26894-96, February 28, 1969.

[3] 51 Phil. 498.

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DISSENTING OPINION

JOSE B. L. REYES, J.:

I am constrained to dissent from the foregoing opinion.

Under the law and doctrines extant prior to the new Civil Code, a contract of compromise had the effect of novating and extinguishing the erstwhile disputed obligations; so much so that, as pointed out by the Supreme Court in the previous litigation (*Concepcion vs. Santos*, 89 Phil. 429, 432), "non compliance with the compromise restored neither the covenant that it had superseded nor the plaintiff's cause of action under the original sale contract." It is a corollary to this rule that once the compromise was had, Santos acquired the right to be free and immune in the future from any claim, suit or action under the obligations (sale) superseded by the compromise; and this right (although negative in form) became vested in said party as of the date the compromise was entered into under the old Code. To maintain now that because of the new Civil Code, the plaintiffs-appellees can still sue Santos on the original contract of sale, is to divest Santos of the immunity conferred upon and acquired by him because of the extinction of the old obligation under the Code of 1889 as a result of the compromise, and the main opinion itself recognizes that the new Code expressly limits the retroactive operation of its innovative articles when the same would prejudice or impair vested rights (Art. 2252).

The subsequent conduct of Santos is indeed reprehensible and repugnant to any fair-minded person. But the remedy of appellees is to sue for specific performance of the compromise and to collect damages, actual, moral and exemplary, in view of the wanton disregard by Santos of his solemn engagements.

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