

ROSARIO CARBONELL, PETITIONER, VS. HONORABLE COURT OF APPEALS, JOSE PONCIO, EMMA INFANTE AND RAMON INFANTE, RESPONDENTS.

G.R. No. L-29972. January 26, 1976

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioner seeks a review of the resolution of the Court of Appeals (Special Division of Five) dated October 30, 1968, reversing its decision of November 2, 1967 (Fifth Division), and its resolution of December 6, 1968 denying petitioner's motion for reconsideration.

The dispositive part of the challenged resolution reads:

"Wherefore, the motion for reconsideration filed on behalf of appellee Emma Infante, is hereby granted and the decision of November 2, 1967, is hereby annulled and set aside. Another judgment shall be entered affirming in toto that of the court a quo dated January 20, 1965, which dismisses the plaintiff's complaint and defendants' counterclaim.

"Without costs.

"SO ORDERED." (p. 11, rec.).

The facts of the case are as follows:

Prior to January 27, 1955, respondent Jose Poncio, a native of the Batanes Islands, was the owner of the parcel of land herein involved with improvements situated at 179 V. Agan St., San Juan, Rizal, having an area of some one hundred ninety-five (195) square meters, more or less, covered by TCT No. 5040 and subject to a mortgage in favor of the Republic Savings Bank for the sum of P1,500.00. Petitioner Rosario Carbonell, a cousin and adjacent neighbor of respondent Poncio, and also from the Batanes Islands, lived in the adjoining lot at 177 V. Agan Street.

Both petitioners Rosario Carbonell and respondent Emma Infante offered to buy the said lot from Poncio (Poncio's Answer, p. 38, rec. on appeal).

Respondent Poncio, unable to keep up with the installments due on the mortgage, approached petitioner one day and offered to sell to the latter the said lot, excluding the house wherein respondent lived. Petitioner accepted the offer and proposed the price of P9.50 per square meter. Respondent Poncio, after having secured the consent of his wife and parents, accepted the price proposed by petitioner, on the condition that from the purchase price would come the money to be paid to the bank.

Petitioner and respondent Jose Poncio then went to the Republic Savings Bank and secured the consent of the President thereof for her to pay the arrears on the mortgage and to continue the payment of the installments as they fall due. The amount in arrears reached a total sum of P247.26. But because respondent Poncio had previously told her that the money needed was only P200.00, only the latter amount was brought by petitioner

constraining respondent Jose Poncio to withdraw the sum of P47.00 from his bank deposit with Republic Savings Bank. But the next day, petitioner refunded to Poncio the sum of P47.00.

On January 27, 1955, petitioner and respondent Poncio, in the presence of a witness, made and executed a document in the Batanes dialect, which, translated into English, reads:

"CONTRACT FOR ONE HALF LOT WHICH I BOUGHT FROM JOSE PONCIO

"Beginning today, January 27, 1955, Jose Poncio can start living on the lot sold by him to me, Rosario Carbonell, until after one year during which time he will not pay anything. Then if after said one year, he could not find any place where to move his house, he could still continue occupying the site but he should pay a rent that may be agreed.

(Sgd.) "JOSE PONCIO

(Sgd.) "ROSARIO CARBONELL

(Sgd.) "CONSTANCIO MEONADA

Witness"

(Pp. 6-7, rec. on appeal).

Thereafter, petitioner asked Atty. Salvador Reyes, also from the Batanes Islands, to prepare the formal deed of sale, which she brought to respondent Poncio together with the amount of some P400.00, the balance she still had to pay in addition to her assuming the mortgage obligation to Republic Savings Bank.

Upon arriving at respondent Jose Poncio's house, however, the latter told petitioner that he could not proceed any more with the sale, because he had already given the lot to respondent Emma Infante; and that he could not withdraw from his deal with respondent Mrs. Infante, even if he were to go to jail. Petitioner then sought to contact respondent Mrs. Infante, but the latter refused to see her.

On February 5, 1955, petitioner saw Emma Infante erecting a wall around the lot with a gate.

Petitioner then consulted Atty. Jose Garcia, who advised her to present an adverse claim over the land in question with the Office of the Register of Deeds of Rizal. Atty. Garcia actually sent a letter of inquiry to the Register of Deeds and demand letters to private respondents Jose Poncio and Emma Infante.

In his answer to the complaint, Poncio admitted "that on January 30, 1955, Mrs. Infante improved her offer and he agreed to sell the land and its improvements to her for P3,535.00" (pp. 38-40, ROA).

In a private memorandum agreement dated January 31, 1955, respondent Poncio indeed bound himself to sell to his co-respondent Emma Infante, the property for the sum of P2,357.52, with respondent Emma Infante still assuming the existing mortgage debt in favor of Republic Savings Bank in the amount of P1,177.48. Emma

Infante lives just behind the houses of Poncio and Rosario Carbonell.

On February 2, 1955, respondent Jose Poncio executed the formal deed of sale in favor of respondent Mrs. Infante in the total sum of P3,554.00 and on the same date, the latter paid Republic Savings Bank the mortgage indebtedness of P1,500.00. The mortgage on the lot was eventually discharged.

Informed that the sale in favor of respondent Emma Infante had not yet been registered, Atty. Garcia prepared an adverse claim for petitioner, who signed and swore to and registered the same on February 8, 1955.

The deed of sale in favor of respondent Mrs. Infante was registered only on February 12, 1955. As a consequence, thereof, a Transfer Certificate of Title was issued to her but with the annotation of the adverse claim of petitioner Rosario Carbonell.

Respondent Emma Infante took immediate possession of the lot involved, covered the same with 500 cubic meters of garden soil and built therein a wall and gate, spending the sum of P1,500.00. She further contracted the services of an architect to build a house; but the construction of the same started only in 1959 — years after the litigation actually began and during its pendency. Respondent Mrs. Infante spent for the house the total amount of P11,929.00.

On June 1, 1955, petitioner Rosario Carbonell, thru counsel, filed a second amended complaint against private respondents, praying that she be declared the lawful owner of the questioned parcel of land; that the subsequent sale to respondents Ramon R. Infante and Emma L. Infante be declared null and void, and that respondent Jose Poncio be ordered to execute the corresponding deed of conveyance of said land in her favor and for damages and attorney's fees (pp. 1-7, rec. on appeal in the C.A.).

Respondents first moved to dismiss the complaint on the ground, among others, that petitioner's claim is unenforceable under the Statute of Frauds, the alleged sale in her favor not being evidenced by a written document (pp. 7-13, rec. on appeal in the C.A.); and when said motion was denied without prejudice to passing on the question raised therein when the case would be tried on the merits (p. 17, ROA in the C.A.), respondents filed separate answers, reiterating the grounds of their motion to dismiss (pp. 18-23, ROA in the C.A.).

During the trial, when petitioner started presenting evidence of the sale of the land in question to her by respondent Poncio, part of which evidence was the agreement written in the Batanes dialect aforementioned, respondent Infantes objected to the presentation by petitioner of parol evidence to prove the alleged sale between her and respondent Poncio. In its order of April 26, 1966, the trial court sustained the objection and dismissed the complaint on the ground that the memorandum presented by petitioner to prove said sale does not satisfy the requirements of the law (pp. 31-35, ROA in the C.A.).

From the above order of dismissal, petitioner appealed to the Supreme Court (G.R. No. L-11231) which ruled in a decision dated May 12, 1958, that the Statute of Frauds, being applicable only to executory contracts, does not apply to the alleged sale between petitioner and respondent Poncio, which petitioner claimed to have been partially performed, so that petitioner is entitled to establish by parol evidence "the truth of this allegation, as well as the contract itself." The order appealed from was thus reversed, and the case remanded to the court a quo for further proceedings (pp. 26-49, ROA in the C.A.).

After trial in the court a quo, a decision was rendered on December 5, 1962, declaring the second sale by respondent Jose Poncio to his co-respondents Ramon Infante and Emma Infante of the land in question null and void and ordering respondent Poncio to execute the proper deed of conveyance of said land in favor of petitioner after compliance by the latter of her covenants under her agreement with respondent Poncio (pp. 50-56, ROA in the C.A.).

On January 23, 1963, respondent Infantes, through another counsel, filed a motion for re-trial to adduce evidence for the proper implementation of the court's decision in case it would be affirmed on appeal (pp. 56-60, ROA in the C.A.), which motion was opposed by petitioner for being premature (pp. 61-64, ROA in the C.A.). Before their motion for re-trial could be resolved, respondent Infantes, this time through their former counsel, filed another motion for new trial, claiming that the decision of the trial court is contrary to the evidence and the law (pp. 64-78, ROA in the C.A.), which motion was also opposed by petitioner (pp. 78-89, ROA in the C.A.).

The trial court granted a new trial (pp. 89-90, ROA in the C.A.), at which re-hearing only the respondents introduced additional evidence consisting principally of the cost of improvements they introduced on the land in question (p. 9, ROA in the C.A.).

After the re-hearing, the trial court rendered a decision, reversing its decision of December 5, 1962 on the ground that the claim of the respondents was superior to the claim of petitioner, and dismissing the complaint (pp. 91-95, ROA in the C.A.). From this decision, petitioner Rosario Carbonell appealed to the respondent Court of Appeals (p. 96, ROA in the C.A.).

On November 2, 1967, the Court of Appeals (Fifth Division composed of Justices Magno Gatmaitan, Salvador V. Esguerra and Angel H. Mojica, speaking through Justice Magno Gatmaitan), rendered judgment reversing the decision of the trial court, declaring petitioner herein, to have a superior right to the land in question, and condemning defendant Infantes to reconvey to petitioner, after her reimbursement to them of the sum of P3,000.00 plus legal interest, the land in question and all its improvements (Appendix "A" of Petition).

Respondents Infantes sought reconsideration of said decision and acting on the motion for reconsideration, the Appellate Court, three Justices (Villamor, Esguerra and Nolasco), of Special Division of Five, granted said motion, annulled and set aside its decision of November 2, 1967, and entered another judgment affirming in toto the decision of the court a quo, with Justices Gatmaitan and Rodriguez dissenting (Appendix "B" of Petition).

Petitioner Rosario Carbonell moved to reconsider the Resolution of the Special Division of Five, which motion was denied by Minute Resolution of December 6, 1968 (but with Justices Rodriguez and Gatmaitan voting for reconsideration) [Appendix "C" of Petition].

Hence, this appeal by certiorari.

I

Article 1544, New Civil Code, which is decisive of this case, recites:

"If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

"Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

"Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith" (*italics supplied*).

It is essential that the buyer of realty must act in good faith in registering his deed of sale to merit the protection of the second paragraph of said Article 1544.

Unlike the first and third paragraphs of said Article 1544, which accord preference to the one who first takes possession in good faith of personal or real property, the second paragraph directs that ownership of immovable

property should be recognized in favor of one "who in good faith first recorded" his right. Under the first and third paragraphs, good faith must characterize the prior possession. Under the second paragraph, good faith must characterize the act of anterior registration (DBP vs. Mangawang, et al., 11 SCRA 405; Soriano, et al. vs. Magale, et al., 8 SCRA 489).

If there is no inscription, what is decisive is prior possession in good faith. If there is inscription, as in the case at bar, prior registration in good faith is a pre-condition to superior title.

When Carbonell bought the lot from Poncio on January 27, 1955, she was the only buyer thereof and the title of Poncio was still in his name solely encumbered by bank mortgage duly annotated thereon. Carbonell was not aware — and she could not have been aware — of any sale to Infante as there was no such sale to Infante then. Hence, Carbonell's prior purchase of the land was made in good faith. Her good faith subsisted and continued to exist when she recorded her adverse claim four (4) days prior to the registration of Infante's deed of sale. Carbonell's good faith did not cease after Poncio told her on January 31, 1955 of his second sale of the same lot to Infante. Because of that information, Carbonell wanted an audience with Infante, which desire underscores Carbonell's good faith. With an aristocratic disdain unworthy of the good breeding of a good Christian and good neighbor, Infante snubbed Carbonell like a leper and refused to see her. So Carbonell did the next best thing to protect her right — she registered her adverse claim on February 8, 1955. Under the circumstances, this recording of her adverse claim should be deemed to have been done in good faith and should emphasize Infante's bad faith when she registered her deed of sale four (4) days later on February 12, 1955.

Bad faith arising from previous knowledge by Infante of the prior sale to Carbonell is shown by the following facts, the vital significance and evidenciary effect of which the respondent Court of Appeals either overlooked or failed to appreciate:

(1) Mrs. Infante refused to see Carbonell, who wanted to see Infante after she was informed by Poncio that he sold the lot to Infante but several days before Infante registered her deed of sale. This indicates that Infante knew — from Poncio and from the bank — of the prior sale of the lot by Poncio to Carbonell. Ordinarily, one will not refuse to see a neighbor. Infante lives just behind the house of Carbonell. Her refusal to talk to Carbonell could only mean that she did not want to listen to Carbonell's story that she (Carbonell) had previously bought the lot from Poncio.

(2) Carbonell was already in possession of the mortgage passbook [not Poncio's savings deposit passbook — Exhibit "1"-Infantes] and Poncio's copy of the mortgage contract, when Poncio sold the lot to Infante. This also shows that the lot was already sold to Carbonell who, after paying the arrearages of Poncio, assumed the balance of his mortgage indebtedness to the bank, which in the normal course of business must have necessarily informed Infante about the said assumption by Carbonell of the mortgage indebtedness of Poncio. Before or upon paying in full the mortgage indebtedness of Poncio to the bank, Infante naturally must have demanded from Poncio the delivery to her of his mortgage passbook as well as Poncio's mortgage contract so that the fact of full payment of his bank mortgage will be entered therein; and Poncio, as well as the bank, must have inevitably informed her that said mortgage passbook could not be given to her because it was already delivered to Carbonell.

If Poncio was still in possession of the mortgage passbook and his copy of the mortgage contract at the time he executed a deed of sale in favor of the Infantes and when the Infantes redeemed his mortgage indebtedness from the bank, Poncio would have surrendered his mortgage passbook and his copy of the mortgage contract to the Infantes, who could have presented the same as exhibits during the trial, in much the same way that the Infantes were able to present as evidence Exhibit "1"-Infantes, Poncio's savings deposit passbook, of which Poncio necessarily remained in possession as the said deposit passbook was never involved in the contract of sale with assumption of mortgage. Said savings deposit passbook merely proves that Poncio had to withdraw P47.26, which

amount was added to the sum of P200.00 paid by Carbonell for Poncio's amortization arrearages in favor of the bank on January 27, 1955; because Carbonell on that day brought with her only P200.00, as Poncio told her that that was the amount of his arrearages to the bank. But the next day Carbonell refunded to Poncio the sum of P47.26.

(3) The fact that Poncio was no longer in possession of his mortgage passbook and that the said mortgage passbook was already in possession of Carbonell, should have compelled Infante to inquire from Poncio why he was no longer in possession of the mortgage passbook and from Carbonell why she was in possession of the same (Paglago, et al., vs. Jarabe, et al., 22 SCRA 1247, 1252-1253). The only plausible and logical reason why Infante did not bother anymore to make such inquiry, was because in the ordinary course of business the bank must have told her that Poncio already sold the lot to Carbonell who thereby assumed the mortgage indebtedness of Poncio and to whom Poncio delivered his mortgage passbook. Hoping to give a semblance of truth to her pretended good faith, Infante snubbed Carbonell's request to talk to her about the prior sale to her by Poncio of the lot. As aforesaid, this is not the attitude expected of a good neighbor imbued with Christian charity and good will as well as a clear conscience.

(4) Carbonell registered on February 8, 1955 her adverse claim, which was accordingly annotated on Poncio's title four [4] days before Infante registered on February 12, 1955 her deed of sale executed on February 2, 1955. Here she was again on notice of the prior sale to Carbonell. Such registration of adverse claim is valid and effective (Jovellanos vs. Dimalanta, L-11736-37, January 30, 1959, 105 Phil. 1250-51).

(5) In his answer to the complaint filed by Poncio, as defendant in the Court of First Instance, he alleged that both Mrs. Infante and Mrs. Carbonell offered to buy the lot at P15.00 per square meter, which offers he rejected as he believed that his lot is worth at least P20.00 per square meter. It is therefore logical to presume that Infante was told by Poncio and consequently knew of the offer of Carbonell which fact likewise should have put her on her guard and should have compelled her to inquire from Poncio whether or not he had already sold the property to Carbonell.

As recounted by Chief Justice Roberto Concepcion, then Associate Justice, in the preceding case of Rosario Carbonell vs. Jose Poncio, Ramon Infante and Emma Infante (L-11231, May 12, 1958), Poncio alleged in his answer:

"* * * that he had consistently turned down several offers, made by plaintiff, to buy the land in question, at P15 a square meter, for he believes that it is worth not less than P20 a square meter; that Mrs. Infante, likewise, tried to buy the land at P15 a square meter; that on or about January 27, 1955, Poncio was advised by plaintiff that should she decide to buy the property at P20 a square meter, she would allow him to remain in the property for one year; that plaintiff then induced Poncio to sign a document, copy of which is probably the one appended to the second amended complaint; that Poncio signed it 'relying upon the statement of the plaintiff that the document was a permit for him to remain in the premises in the event defendant decided to sell the property to the plaintiff at P20.00 a square meter'; that on January 30, 1955, Mrs. Infante improved her offer and he agreed to sell the land and its improvements to her for P3,535.00; that Poncio has not lost 'his mind,' to sell his property, worth at least P4,000, for the paltry sum of P1,177.48, the amount of his obligation to the Republic Savings Bank; and that plaintiff's action is barred by the Statute of Frauds. * * *" (pp. 38-40, ROA, italics supplied).

II

EXISTENCE OF THE PRIOR SALE TO CARBONELL DULY ESTABLISHED

(1) In his order dated April 26, 1956 dismissing the complaint on the ground that the private document Exhibit "A" executed by Poncio and Carbonell and witnessed by Constancio Meonada captioned "Contract for One-half Lot which I Bought from Jose Poncio," was not such a memorandum in writing within the purview of

the Statute of Frauds, the trial judge himself recognized the fact of the prior sale to Carbonell when he stated that "the memorandum in question merely states that Poncio is allowed to stay in the property which he had sold to the plaintiff. There is no mention of the consideration, a description of the property and such other essential elements of the contract of sale. There is nothing in the memorandum which would tend to show even in the slightest manner that it was intended to be an evidence of contract of sale. On the contrary, from the terms of the memorandum, it tends to show that the sale of the property in favor of the plaintiff is already an accomplished act. By the very contents of the memorandum itself, it cannot therefore, be considered to be the memorandum which would show that a sale has been made by Poncio in favor of the plaintiff" (p. 33, ROA, italics supplied). As found by the trial court, to repeat, the said memorandum states "that Poncio is allowed to stay in the property which he had sold to the plaintiff * * *, it tends to show that the sale of the property in favor of the plaintiff is already an accomplished act. * * * * "

(2) When the said order was appealed to the Supreme Court by Carbonell in the previous case of Rosario Carbonell vs. Jose Poncio, Ramon Infante and Emma Infante (L-11231, supra), Chief Justice Roberto Concepcion, then Associate Justice, speaking for a unanimous Court, reversed the aforesaid order of the trial court dismissing the complaint, holding that because the complaint alleges and the plaintiff claims that the contract of sale was partly performed, the same is removed from the application of the Statute of Frauds and Carbonell should be allowed to establish by parol evidence the truth of her allegation of partial performance of the contract of sale, and further stated:

"Apart from the foregoing, there are in the case at bar several circumstances indicating that plaintiff's claim might not be entirely devoid of factual basis. Thus, for instance, Poncio admitted in his answer that plaintiff had offered several times to purchase his land.

"Again, there is Exhibit A, a document signed by the defendant. It is in the Batanes dialect, which, according to plaintiff's uncontradicted evidence, is the one spoken by Poncio, he being a native of said region. Exhibit A states that Poncio would stay in the land sold by him to plaintiff for one year, from January 27, 1955, free of charge, and that, if he cannot find a place where to transfer his house thereon, he may remain in said lot under such terms as may be agreed upon. Incidentally, the allegation in Poncio's answer to the effect that he signed Exhibit A under the belief that it 'was a permit for him to remain in the premises in the event' that 'he decided to sell the property' to the plaintiff at P20 a sq. m.' is, on its face, somewhat difficult to believe. Indeed, if he had not decided as yet to sell the land to plaintiff, who had never increased her offer of P15 a square meter, there was no reason for Poncio to get said permit from her. Upon the other hand, if plaintiff intended to mislead Poncio, she would have caused Exhibit A to be drafted, probably, in English, instead of taking the trouble of seeing to it that it was written precisely in his native dialect, the Batanes. Moreover, Poncio's signature on Exhibit A suggests that he is neither illiterate nor so ignorant as to sign a document without reading its contents, apart from the fact that Meonada had read Exhibit A to him and given him a copy thereof, before he signed thereon, according to Meonada's uncontradicted testimony.

"Then, also, defendants say in their brief:

"The only allegation in plaintiff's complaint that bears any relation to her claim that there has been partial performance of the supposed contract of sale, is the notation of the sum of P247.26 in the bank book of defendant Jose Poncio. The noting or jotting down of the sum of P247.26 in the bank book of Jose Poncio does not prove the fact that said amount was the purchase price of the property in question. For all we knew, the sum of P247.26 which plaintiff claims to have paid to the Republic Savings Bank for the account of the defendant, assuming that the money paid to the Republic Savings Bank came from the plaintiff, was the result of some usurious loan or accommodation, rather than earnest money or part payment of the land. Neither is it competent or satisfactory evidence to prove the conveyance of the land in question the fact that the bank book account of Jose Poncio happens to be in the possession of the plaintiff.' (Defendants-Appellees' brief, pp. 25-26).

"How shall We know why Poncio's bank deposit book is in plaintiff's possession, or whether there is any relation between the P247.26 entry therein and the partial payment of P247.26 allegedly made by plaintiff to Poncio on account of the price of his land, if we do not allow the plaintiff to explain it on the witness stand? Without expressing any opinion on the merits of plaintiff's claim, it is clear, therefore, that she is entitled, legally as well as from the viewpoint of equity, to an opportunity to introduce parole evidence in support of the allegations of her second amended complaint" (pp. 46-49, ROA, italics supplied).

(3) In his first decision of December 5, 1962 declaring null and void the sale in favor of the Infantes and ordering Poncio to execute a deed of conveyance in favor of Carbonell, the trial judge found:

"* * * A careful consideration of the contents of Exh. 'A' show to the satisfaction of the court that the sale of the parcel of land in question by the defendant Poncio in favor of the plaintiff was covered therein and that the said Exh. 'A' was also executed to allow the defendant Poncio to continue staying in the premises for the stated period. It will be noted that Exh. 'A' refers to a lot 'sold by him to me' and having been written originally in a dialect well understood by the defendant Poncio, he signed the said Exh. 'A' with a full knowledge and consciousness of the terms and consequences thereof. This therefore, corroborates the testimony of the plaintiff Carbonell that the sale of the land was made by Poncio. It is further pointed out that there was a partial performance of the verbal sale executed by Poncio in favor of the plaintiff, when the latter paid P247.26 to the Republic Savings Bank on account of Poncio's mortgage indebtedness. Finally, the possession by the plaintiff of the defendant Poncio's passbook of the Republic Savings Bank also adds credibility to her testimony. The defendant contends on the other hand that the testimony of the plaintiff, as well as her witnesses, regarding the sale of the land made by Poncio in favor of the plaintiff is inadmissible under the provision of the Statute of Fraud based on the argument that the note Exh. 'A' is not the note or memorandum referred to in the Statute of Fraud. The defendants argue that Exh. 'A' fails to comply with the requirements of the Statute of Fraud to qualify it as the note or memorandum referred to therein and open the way for the presentation of parole evidence to prove the fact contained in the note or memorandum. The defendant argues that there is even no description of the lot referred to in the note, especially when the note refers to only one half lot. With respect to the latter argument of the defendant, plaintiff points out that one half lot was mentioned in Exhibit 'A' because the original description carried in the title states that it was formerly part of a bigger lot and only segregated later. The explanation is tenable, in considering the time value of the contents of Exh. 'A', the court has arrived at the conclusion that there is a sufficient description of the lot referred to in Exh. 'A' as none other than the parcel of land occupied by the defendant Poncio and where he has his improvements erected. The identity of the parcel of land involved herein is sufficiently established by the contents of the note Exh. 'A'. For a while, this court had that similar impression but after a more and thorough consideration of the context in Exh. 'A' and for the reasons stated above, the Court has arrived at the conclusion stated earlier" (pp. 52-54, ROA, italics supplied).

(4) After re-trial on motion of the Infantes, the trial Judge rendered on January 20, 1965 another decision dismissing the complaint, although he found:

"1. That on January 27, 1955, the plaintiff purchased from the defendant Poncio a parcel of land with an area of 195 square meters, more or less, covered by TCT No. 5040 of the Province of Rizal, located at San Juan del Monte, Rizal, for the price of P9.50 per square meter;

"2. That the purchase made by the plaintiff was not reduced to writing except for a short note or memorandum Exh. A, which also recited that the defendant Poncio would be allowed to continue his stay in the premises, among other things; * * *" (pp. 91-92, ROA, italics supplied).

From such factual findings, the trial judge confirms the due execution of Exhibit "A", only that his legal conclusion is that it is not sufficient to transfer ownership (pp. 93-94, ROA).

(5) In the first decision of November 2, 1967 of the Fifth Division of the Court of Appeals composed of Justices

Esguerra (now Associate Justice of the Supreme Court), Gatmaitan and Mojica, penned by Justice Gatmaitan, the Court of Appeals found that:

"* * * the testimony of Rosario Carbonell not having at all been attempted to be disproved by defendants, particularly Jose Poncio, and corroborated as it is by the private document in the Batanes dialect, Exhibit A, the testimony being to the effect that between herself and Jose there had been celebrated a sale of the property excluding the house for the price of P9.50 per square meter, so much so that on faith of that, Rosario had advanced the sum of P247.26 and binding herself to pay unto Jose the balance of the purchase price after deducting the indebtedness to the Bank and since the wording of Exhibit A, the private document goes so far as to describe their transaction as one of sale, already consummated between them, note the past tense used in the phrase,

'the lot sold by him to me'

and going so far even as to state that from that day onwards, vendor would continue to live therein, for one year, 'during which time he will not pay anything' this can only mean that between Rosario and Jose, there had been a trite contract of sale, consummated by delivery *constitutum possessorium*, Art. 1500, New Civil Code; vendor's possession having become converted from then on, as a mere tenant of vendee, with the special privilege of not paying rental for one year, — it is true that the sale by Jose Poncio to Rosario Carbonell corroborated documentarily only by Exhibit A could not have been registered at all, but it was a valid contract nonetheless, since under our law, a contract sale is consensual, perfected by mere consent, *Couto vs. Cortes*, 8 Phil. 459, so much so that under the New Civil Code, while a sale of an immovable is ordered to be reduced to a public document, Art. 1358, that mandate does not render an oral sale of realty invalid, but merely incapable of proof, where still executory and action is brought and resisted for its performance, 1403, par. 2, 3; but where already wholly or partly executed or where even if not yet, it is evidenced by a memorandum, in any case where evidence to further demonstrate is presented and admitted as the case was here, then the oral sale becomes perfectly good, and becomes a good cause of action not only to reduce it to the form of a public document, but even to enforce the contract in its entirety, Art. 1357; and thus it is that what we now have is a case wherein on the one hand Rosario Carbonell has proved that she had an anterior sale, celebrated in her favor on 27 January, 1955, Exhibit A, annotated as an adverse claim on 8 February, 1955, and on other, a sale in due form in favor of Emma L. Infante on 2 February, 1955, Exhibit 3-Infante, and registered in due form with title unto her issued on 12 February, 1955; the vital question must now come on which of these two sales should prevail; * * *" (pp. 74-76, rec., italics supplied).

(6) In the resolution dated October 30, 1968 penned by then Court of Appeals Justice Esguerra (now a member of this Court), concurred in by Justices Villamor and Nolasco, constituting the majority of a Special Division of Five, the Court of Appeals, upon motion of the Infantes, while reversing the decision of November 2, 1967 and affirming the decision of the trial court of January 20, 1965 dismissing plaintiff's complaint, admitted the existence and genuineness of Exhibit "A" the private memorandum dated January 27, 1955, although it did not consider the same as satisfying "the essential elements of a contract of sale," because it "neither specifically describes the property and its boundaries, nor mention its certificate of title number, nor states the price certain to be paid, or contrary to the express mandate of Articles 1458 and 1475 of the Civil Code.

(7) In his dissent concurred in by Justice Rodriquez, Justice Gatmaitan maintains his decision of November 2, 1967 as well as his findings of facts therein, and reiterated that the private memorandum Exhibit "A", is a perfected sale, as a sale is consensual and consummated by mere consent, and is binding on and effective between the parties. This statement of the principle is correct [pp. 89-92, rec.].

III

ADEQUATE CONSIDERATION OR PRICE FOR THE SALE IN FAVOR OF CARBONELL

It should be emphasized that the mortgage on the lot was about to be foreclosed by the bank for failure on the part of Poncio to pay the amortizations thereon. To forestall the foreclosure and at the same time to realize some money from his mortgaged lot, Poncio agreed to sell the same to Carbonell at P9.50 per square meter, on condition that Carbonell [1] should pay (a) the amount of P400.00 to Poncio and (b) the arrears in the amount of P247.26 to the bank; and [2] should assume his mortgage indebtedness. The bank president agreed to the said sale with assumption of mortgage in favor of Carbonell and Carbonell accordingly paid the arrears of P247.26. On January 27, 1955, she paid the amount of P200.00 to the bank because that was the amount that Poncio told her as his arrearages and Poncio advanced the sum of P47.26, which amount was refunded to him by Carbonell the following day. This conveyance was confirmed that same day, January 27, 1955, by the private document, Exhibit "A", which was prepared in the Batanes dialect by the witness Constancio Meonada, who is also from Batanes like Poncio and Carbonell.

The sale did not include Poncio's house on the lot. And Poncio was given the right to continue staying on the land without paying any rental for one year, after which he should pay rent if he could not still find a place to transfer his house. All these terms are part of the consideration of the sale to Carbonell.

It is evident therefore that there was ample consideration, and not merely the sum of P200.00, for the sale of Poncio to Carbonell of the lot in question.

But Poncio, induced by the higher price offered to him by Infante, reneged on his commitment to Carbonell and told Carbonell, who confronted him about it, that he would not withdraw from his deal with Infante even if he is sent to jail. The victim, therefore, "of injustice and outrage" is the widow Carbonell and not the Infantes, who without moral compunction exploited the greed and treacherous nature of Poncio, who, for love of money and without remorse of conscience, dishonored his own plighted word to Carbonell, his own cousin.

Inevitably evident therefore from the foregoing discussion, is the bad faith of Emma Infante from the time she enticed Poncio to dishonor his contract with Carbonell, and instead to sell the lot to her (Infante) by offering Poncio a much higher price than the price for which he sold the same to Carbonell. Being guilty of bad faith, both in taking physical possession of the lot and in recording, their deed of sale, the Infantes cannot recover the value of the improvements they introduced in the lot. And after the filing by Carbonell of the complaint in June, 1955, the Infantes had less justification to erect a building thereon since their title to said lot is seriously disputed by Carbonell on the basis of a prior sale to her.

With respect to the claim of Poncio that he signed the document Exhibit "A" under the belief that it was a permit for him to remain in the premises in case he decides to sell the property to Carbonell at P20.00 per square meter, the observation of the Supreme Court through Mr. Chief Justice Concepcion in G.R. No. L-11231, *supra*, bears repeating:

"* * * Incidentally, the allegation in Poncio's answer to the effect that he signed Exhibit A under the belief that it 'was a permit for him to remain in the premises in the event' that 'he decided to sell the property' to the plaintiff at P20.00 a sq. m.' is, on its face, somewhat difficult to believe. Indeed, if he had not decided as yet to sell the land to plaintiff, who had never increased her offer of P15 a square meter, there was no reason for Poncio to get said permit from her. Upon the other hand, if plaintiff intended to mislead Poncio, she would have caused Exhibit A to be drafted, probably, in English, instead of taking the trouble of seeing to it that it was written precisely in his native dialect, the Batanes. Moreover, Poncio's signature on Exhibit A suggests that he is neither illiterate nor so ignorant as to sign a document without reading its contents, apart from the

fact that Meonada had read Exhibit A to him and given him a copy thereof, before he signed thereon, according to Meonada's uncontradicted testimony" (pp. 46-47, ROA).

As stressed by Justice Gatmaitan in his first decision of November 2, 1965, which he reiterated in his dissent from the resolution of the majority of the Special Division of Five on October 30, 1968, Exhibit A, the private document in the Batanes dialect, is a valid contract of sale between the parties, since sale is a consensual contract and is perfected by mere consent (*Couto vs. Cortes*, 8 Phil. 459). Even an oral contract of realty is valid between the parties and accords to the vendee the right to compel the vendor to execute the proper public document. As a matter of fact, Exhibit A, while merely a private document, can be fully or partially performed, to remove it from the operation of the statute of frauds. Being a valid consensual contract, Exhibit A effectively transferred the possession of the lot to the vendee Carbonell by *constitutum possessorium* (Article 1500, New Civil Code); because thereunder the vendor Poncio continued to retain physical possession of the lot as tenant of the vendee and no longer as owner thereof. More than just the signing of Exhibit A by Poncio and Carbonell with Constancio Meonada as witness to perfect the contract of sale, the transaction was further confirmed when Poncio agreed to the actual payment by Carbonell of his mortgage arrearages to the bank on January 27, 1955 and by his consequent delivery of his own mortgage passbook to Carbonell. If he remained owner and mortgagor, Poncio would not have surrendered his mortgage passbook to Carbonell.

IV

IDENTIFICATION AND DESCRIPTION OF THE DISPUTED LOT IN THE MEMORANDUM EXHIBIT "A"

The claim that the memorandum Exhibit "A" does not sufficiently describe the disputed lot as the subject matter of the sale, was correctly disposed of in the first decision of the trial court of December 5, 1962, thus: "The defendant argues that there is even no description of the lot referred to in the note (or memorandum), especially when the note refers to only one-half lot. With respect to the latter argument of the defendant, plaintiff points out that one-half lot was mentioned in Exhibit 'A' because the original description carried in the title states that it was formerly part of a bigger lot and only segregated later. The explanation is tenable, in (sic) considering the time value of the contents of Exh. 'A', the court has arrived at the conclusion that there is sufficient description of the lot referred to in Exh. 'A' as none other than the parcel of lot occupied by the defendant Poncio and where he has his improvements erected. The identity of the parcel of land involved herein is sufficiently established by the contents of the notice Exh. 'A'. For a while, this court had that similar impression but after a more and thorough consideration of the context in Exh. 'A' and for the reasons stated above, the court has arrived to (sic) the conclusion stated earlier" (pp. 53-54, ROA).

Moreover, it is not shown that Poncio owns another parcel with the same area, adjacent to the lot of his cousin Carbonell and likewise mortgaged by him to the Republic Savings Bank. The transaction therefore between Poncio and Carbonell can only refer and does refer to the lot involved herein. If Poncio had another lot to remove his house, Exhibit A would not have stipulated to allow him to stay in the sold lot without paying any rent for one year and thereafter to pay rental in case he cannot find another place to transfer his house.

While petitioner Carbonell has the superior title to the lot, she must however refund to respondents Infantes the amount of P1,500.00, which the Infantes paid to the Republic Savings Bank to redeem the mortgage.

It appearing that the Infantes are possessors in bad faith, their rights to the improvements they introduced on the disputed lot are governed by Articles 546 and 547 of the New Civil Code. Their expenses consisting of P1,500.00 for draining the property, filling it with 500 cubic meters of garden soil, building a wall around it and installing a gate and P11,929.00 for erecting a bungalow thereon, are useful expenditures, for they add to the value of the

property (Aringo vs. Arenas, 14 Phil. 263; Alburo vs. Villanueva, 7 Phil. 277; Valencia vs. Ayala de Roxas, 13 Phil. 45).

Under the second paragraph of Article 546, the possessor in good faith can retain the useful improvements unless the person who defeated him in his possession refunds him the amount of such useful expenses or pay him the increased value the land may have acquired by reason thereof. Under Article 547, the possessor in good faith has also the right to remove the useful improvements if such removal can be done without damage to the land, unless the person with the superior right elects to pay for the useful improvements or reimburse the expenses therefor under paragraph 2 of Article 546. These provisions seem to imply that the possessor in bad faith has neither the right of retention of useful improvements nor the right to a refund for useful expenses.

But, if the lawful possessor can retain the improvements introduced by the possessor in bad faith for pure luxury or mere pleasure only by paying the value thereof at the time he enters into possession (Article 549 NCC), as a matter of equity, the Infantes, although possessors in bad faith, should be allowed to remove the aforesaid improvements, unless petitioner Carbonell chooses to pay for their value at the time the Infantes introduced said useful improvements in 1955 and 1959. The Infantes cannot claim reimbursement for the current value of the said useful improvements; because they have been enjoying such improvements for about two decades without paying any rent on the land and during which period herein petitioner Carbonell was deprived of its possession and use.

Wherefore, the decision of the Special Division of Five of the Court of Appeals of October 30, 1968 is hereby reversed; petitioner Rosario Carbonell is hereby declared to have the superior right to the land in question and is hereby directed to reimburse to private respondents Infantes the sum of one thousand five hundred pesos (P1,500.00) within three (3) months from the finality of this decision; and the Register of Deeds of Rizal is hereby directed to cancel Transfer Certificate of Title No. 37842 issued in favor of private respondents Infantes covering the disputed lot, which cancelled Transfer Certificate of Title No. 5040 in the name of Jose Poncio, and to issue a new Transfer Certificate of Title in favor of petitioner Rosario Carbonell upon presentation of proof of payment by her to the Infantes of the aforesaid amount of one thousand five hundred pesos (P1,500.00).

Private respondents Infantes may remove their aforementioned useful improvements from the lot within three (3) months from the finality of this decision, unless the petitioner Rosario Carbonell elects to acquire the same and pays the Infantes the amount of thirteen thousand four hundred twenty-nine pesos (P13,429.00) within three (3) months from the finality of this decision. Should petitioner Carbonell fail to pay the said amount within the aforesaid period of three (3) months from the finality of this decision, the period of three (3) months within which the respondents Infantes may remove their aforementioned useful improvements shall commence from the expiration of the three (3) months given petitioner Carbonell to pay for the said useful improvements. With costs against private respondents.

Castro, C.J., Aquino, and Martin, JJ., concur.

Teehankee, J., concurs in a separate opinion.

Muñoz Palma, J., dissents in a separate opinion.

DISSENTING OPINION

MUÑOZ PALMA, J.:

Strongly convinced as I am that the decision of the Court of Appeals under review should be affirmed, this dissenting opinion is being written.

We are here confronted with a double sale made by Jose Poncio of his 195-square meter lot located at V. Agan St., San Juan, Rizal, covered by Transfer Certificate of Title No. 5040, the solution to which is found in Art. 1544 of the Civil Code, more particularly the second paragraph thereof which provides that should the thing sold be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

1. The two purchasers, namely, petitioner Rosario Carbonell and respondent Emma Infante, are both purchasers in good faith.

That Rosario Carbonell is a buyer in good faith cannot be disputed for at the time negotiations for the purchase of the lot were being made between her and the vendor, Jose Poncio, as of January 27, 1955, there was no indication at all from the latter that another sale was being contemplated.

That Emma Infante is likewise a buyer in good faith is supported by: (a) an express finding of the trial court in its decision of January 20, 1965, to the effect that when the vendor and purchaser Infante consummated the sale on or about January 29, 1955, an examination of the original T.C.T. 5040 on file with the Register of Deeds of Rizal as well as the owner's duplicate revealed no annotation of any encumbrance or lien other than the mortgage in favor of the Republic Savings Bank (p. 92, Record on Appeal); (b) the findings of fact of the Court of Appeals given in the decision penned by then Justice Salvador V. Esguerra as well as in the first decision written by Justice Magno Gatmaitan which subsequently became the basis of the dissenting opinion to the majority, and from which I quote:

"2. CONSIDERING: That as basis for discussion of this issue, it must have to be remembered that the first vendee, Rosario Carbonell, certainly was an innocent purchaser * * * but also must it be remembered that Emma L. Infante, when she bought the property on 2 February, 1955, under Exhibit 3-Infante, neither had she before then been previously informed of the first sale to Rosario * * *; indeed as Emma has testified on this detail, it is easy to accept her declaration:

'Q. When Mr. Jose Poncio offered you this land in question, did he tell you that the land was sold or otherwise promised to Mrs. Carbonell?

'A. Of course not, otherwise I will never buy.' " (tsn. 11-27)

in other words, at the respective dates of their purchase, both vendees, Rosario and Emma, were innocent and had acted in the best of good faith * * *" (pp. 9-10 of Justice Gatmaitan's decision found on pp. 76-77, rollo; see also p. 7 of his dissenting opinion found on p. 95, rollo).

Departing from a well-entrenched rule set down in a long array of decisions of this Court that factual findings of the trial court and of the Court of Appeals are generally binding and conclusive,[1] and that on appeal by certiorari, questions of fact are not to be determined nor reviewed by Us,[2] the Majority Opinion of my colleagues however undertakes a fact-finding process of its own, and draws the conclusion that Emma Infante was a buyer in bad faith because, among other things: (a) Emma allegedly refused to talk to Rosario Carbonell when the latter went to see her about the sale of the lot, which "is not the attitude expected of a good neighbor imbued with christian charity and goodwill as well as a clean conscience" (p. 10, Majority Opinion); (b) "(B)efore or upon paying in full the mortgage indebtedness of Poncio to the bank, Infante naturally must have demanded from Poncio the delivery to her of his mortgage passbook as well as Poncio's mortgage contract * * * and Poncio as well as the bank, must have inevitably informed her that said mortgage passbook could not be given to her

because it was already delivered to Carbonell" (p. 9, *ibid*); and (c) " * * (T)he victim, therefore, 'of injustice and outrage' is the widow Carbonell and not the Infantes, who without moral compunction exploited the greed and treacherous nature of Poncio, who, for love of money and without remorse of conscience, dishonored his own plighted word to Carbonell, his own cousin. * * * Inevitably evident therefore from the foregoing discussion, is the bad faith of Emma Infante from the time she enticed Poncio to dishonor his contract with Carbonell, and instead to sell the lot to her (Infante) by offering Poncio a much higher price than the price for which he sold the same to Carbonell * * *" (p. 20, Majority Opinion; all italicized portions supplied) — all of which are unsupported by the evidence and diametrically contrary to the findings of the court a quo and the appellate court sustaining the good faith of Emma Infante.

2. Inasmuch as the two purchasers are undoubtedly in good faith, the next question to be resolved is who of the two first registered her purchase or title in good faith.

In applying Art. 1544 of the Civil Code, it is not enough that the buyer bought the property in good faith, but that the registration of her title must also be accomplished in good faith. This requirement of good faith is not only applicable to the second or subsequent purchaser but to the first as well.[3]

Construing and applying the second paragraph of Art. 1473 of the Spanish Civil Code which has been adopted verbatim in Art. 1544 of the Civil Code of the Philippines, this Court in *Leung Lee vs. F. L. Strong Machinery Co., et al.*, 37 Phil. 644, declared:

"It has been suggested that since the provisions of article 1473 of the Civil Code require 'good faith,' in express terms, in relation to 'possession' and 'title,' but contain no express requirement as to 'good faith' in relation to the 'inscription' of the property in the registry, it must be presumed that good faith is not an essential requisite of registration in order that it may have the effect contemplated in this article. We cannot agree with this contention. It could not have been the intention of the legislator to base the preferential right secured under this article of the code upon an inscription of title in bad faith. Such an interpretation placed upon the language of this section would open wide the door to fraud and collusion. The public records cannot be converted into instruments of fraud and oppression by one who secures an inscription therein in bad faith. The force and effect given by law to an inscription in a public record presupposes the good faith of him who enters such inscription; and rights created by statute, which are predicated upon an inscription in a public registry, do not and cannot accrue under an inscription 'in bad faith,' to the benefit of the person who thus makes the inscription." (pp. 648-649, *supra*)

Good faith means "freedom from knowledge and circumstances which ought to put a person on inquiry";[3a] it consists of an honest intention to abstain from taking any unconscientious advantage of another.[4]

On this point it is my view that Rosario Carbonell cannot be held to have a title superior to that of Emma Infante for even if We were to concede that the notation of her adverse claim on February 8, 1955, was in the nature of registration of a title as required in Art. 1544 of the Civil Code,[5] the same was not accomplished in good faith. This is obvious from occurrences narrated in the Majority Opinion, thus: that on January 27, 1955, Carbonell and Jose Poncio made and executed the memorandum of sale, Exhibit A; that thereafter Carbonell asked Atty. Salvador Reyes to prepare the formal deed of sale which she brought to Poncio together with the amount of some P400.00, the balance she had to pay in addition to her assuming the mortgage obligation to Republic Savings Bank; that upon arriving at Poncio's house the latter told Carbonell that he could not proceed anymore with the sale because he had already given the lot to Emma Infante; that on February 5, 1955, Carbonell saw Emma Infante erecting a wall around the lot with a gate; that Carbonell consulted Atty. Jose Garcia who advised her to present an adverse claim with the Office of the Register of Deeds, and that being informed, that the sale in favor of Emma Infante had not yet been registered, Atty. Garcia prepared the notice of adverse claim which was signed

and sworn to by Rosario Carbonell and registered on February 8, 1955. (see pp. 3-4, Decision)

At the time petitioner herein caused the annotation of her adverse claim she was, therefore, cognizant of facts which impaired her title to the property in question, and taking advantage of the situation that the second purchaser had not as yet registered her deed of sale, she went ahead of the second buyer and annotated what was only in the nature of an adverse claim inasmuch as she had no registrable document of sale at the time. That annotation of Carbonell's adverse claim did not produce any legal effects as to place her in a preferential situation to that of Infante, the second purchaser, for the simple reason that a registration made in bad faith is equivalent to no registration at all. It is a settled rule that the inscription in the registry, to be effective, must be made in good faith. (Pena, *supra*, p. 164)

3. One last point to be considered is the theory advanced by the dissenting opinion of Justice Gatmaitan that while Carbonell's registration of her adverse claim may indeed be considered in bad faith, nonetheless that of Infante was likewise in bad faith because at the time of the registration of the latter's deed of sale there was already inscribed on the original of the title on file with the Register of Deeds the adverse claim of Rosario Carbonell.

With due respect to the foregoing conclusion of a highly respected Colleague, I hold the view that the act of the registration of Infante's deed of sale on February 12, 1955, was but a formality in the sense that it simply formalized what had already been accomplished earlier, that is, the registration of Infante's purchase as against Carbonell when the latter acquired knowledge of the second sale on or about January 27, 1955, when she brought the memorandum of sale, Exh. A, to Jose Poncio and was informed by the latter that he could not go through with the sale because he had already sold it to Emma Infante, which information was bolstered by the fact that Carbonell saw Infante erecting a wall around the lot on February 5.

We have long accepted the rule that knowledge is equivalent to registration. What would be the purpose of registration other than to give notice to interested parties and to the whole world of the existence of rights or liens against the property under question?

What has been clearly and succinctly postulated in *T. de Winkleman and Winkleman vs. Veluz*, 1922, 43 Phil. 604, 609, is applicable to the case before Us, and We quote therefrom:

"* * * The purpose of registering an instrument relating to land, annuities, mortgages, liens, or any other class of real rights is to give notice to persons interested of the existence of these various liens against the property. If the parties interested have actual notice of the existence of such liens, then the necessity for registration does not exist. Neither can one who has actual notice of existing liens acquire any rights in such property free from such liens by the mere fact that such liens have not been recorded. * * *" (citing *Obras Pias vs. Devera Ignacio*, 17 Phil. 45, 47).

We cannot overlook the fact that while it may be true that the vendor Poncio had signed the memorandum, Exh. A, from which it may be implied that he sold a lot to Carbonell, there were other things to be accomplished for purposes of binding third parties, the lot in question being registered land, such as the execution of a formal deed of sale. Such a document of sale was never signed by Poncio for according to petitioner Carbonell, when she presented to Poncio the corresponding document together with the sum of P400.00 which according to her was the balance of the purchase price after she had assumed the mortgage with the Republic Bank, she was informed by the vendor that the property had been sold to another. That sale was confirmed when Carbonell saw Infante erecting a wall around the lot on February 5, 1955. As of that moment when Carbonell had notice or actual knowledge of the second sale in favor of Emma Infante a valid registration of the latter's deed of sale was constituted as against Carbonell. Accordingly, Infante has a preferential right to the property, the registration of her sale having been effected in the foregoing manner, prior to the annotation of Carbonell's adverse claim on

February 8, 1955.

The circumstances of the present case are strikingly similar to the hypothetical problem posed in Commentator Edgardo Paras' Book on the Civil Code of the Philippines and I wholeheartedly concur with his solution of the problem which is based on law. From him I quote:[6]

"A sold a parcel of land with a torrens title to B on January 5. A week later, A sold the same land to C. Neither sale was registered. As soon as B learned of the sale in favor of C, he (B) registered an adverse claim stating that he was making the claim because the second sale was in fraud of his rights as first buyer. Later, C registered the deed of sale that had been made in his favor. Who is now the owner — B or C?

"Ans. C is clearly the owner, although he was the second buyer. This is so, not because of the registration of the sale itself but because of the AUTOMATIC registration in his favor caused by B's knowledge of the first sale (actual knowledge being equivalent to registration). The purpose of registration is to notify. This notification was done because of B's knowledge. It is wrong to assert that B was trying to protect his right — for there was no more right to be protected. He should have registered the sale BEFORE knowledge came to him. It is now too late. It is clear from this that with respect to the principle "actual knowledge is equivalent to registration of the sale about which knowledge has been obtained" — the knowledge may be that of either the FIRST or the SECOND buyer." (pp. 142-143, Vol. V., 1972 Ed.)

Aside from the fact that the sale to Infante was considered registered prior to the registration of Carbonell's notice of adverse claim, Infante also took immediate physical possession of the property by erecting a fence with a gate around the lot on February 5, at least three days prior to Carbonell's registration on February 8, 1955.

On top of all these, equity is on the side of Emma Infante. Under the Majority Opinion, Emma Infante stands to lose the lot she bought in good faith which was fully paid for plus the building she erected thereon for which she spent the total sum of a little less than P14,000.00, or equivalent to about P40,000.00 at the time the case was decided by the Appellate Court, considering that Rosario Carbonell is being given the option either to order the removal of the house or to acquire it at P13,429.00. On this point I agree with the following statement of Justice Esguerra who penned the decision of the Appellate Court, thus:

"It is indeed inequitable and revolting to one's sense of justice and fairness that Rosario Carbonell who paid out of her own money the sum of only P200.00 to the Republic Savings Bank for the account of Jose Poncio, which was the motivation for the execution of the private instrument, Exhibit A, should have a superior right to the land involved. The property has been improved at a great expense and a building of strong materials has been constructed thereon by Emma Infante who spent for the lot and building the total sum of P13,429.00 made up of P11,929.00 for cost of land and improvements and the building and P1,500.00 to discharge the mortgage in favor of the Republic Savings Bank. With the present purchasing power of the peso, this sum, after more than 13 years, would be now equivalent to about P40,000.00, Courts should not lend a hand to the perpetration of such kind of injustice and outrage." (see page 88, rollo)

I close paraphrasing the Supreme Court of Oklahoma in *Phelps vs. Theime, et al.*, 217 P376, 377, that "equity is a right wisdom that considereth all of the particular circumstances of the case and is also tempered with the sweetness of mercy." (quoting from *St. Germain*) In this case now before Us there is no need to invoke mercy, for all that is required is a wise consideration of the particular circumstances narrated above which warrant a judgment in favor of respondents Infante.

With all the foregoing, I vote for the affirmance of the decision under review.

[1] *Perez vs. Evite*, 1 SCRA 949; *Paredes vs. Borja*, 3 SCRA 495; *De la Cruz vs. Dollete*, 5 SCRA 257; *De Gala-Sison vs. Manalo*, 8 SCRA 595; *Goduco vs. Court of Appeals*, 14 SCRA 282; *Ramos vs. Pepsi Cola*

Bottling Co., 19 SCRA 289; Mackay Radio & Tel. Co. vs. Rich, 28 SCRA 699; Ramirez Tel. Corp. vs. Bank of America, 29 SCRA 191; Migue1 vs. Court of Appeals, 29 SCRA 760; People vs. Pareja, 30 SCRA, 693; Chan vs. Court of Appeals, 33 SCRA 737; People vs. Demetrio Sales, 44 SCRA 489; Evangelista & Co., et al. vs. Estrella Abad Santos, 51 SCRA 417; Tiongco vs. De La Merced, 58 SCRA 89; Ramos vs. Court of Appeals, 63 SCRA 331; Perido vs. Perido, 63 SCRA 97; Alaras, et al. vs. Court of Appeals, et al., 64 SCRA 671

[2] Tamayo vs. Callejo, 46 SCRA 27; Tagumpay Minerals & Mining Ass. vs. Masangkay, 46 SCRA 608; Fortus vs. Novero, 23 SCRA 1336

[3] See Paras on the Civil Code of the Philippines, 1972 Vol. 5, pp. 142-143; Palanca vs. Director of Lands, 43 Phil. 149, 154; Peña, Registration of Land, Titles and Deeds, 1970 Ed., p. 164; Soriano, et al. vs. Heirs of D. Magali, et al., 8 SCRA 489; Granados vs. Monton, 86 Phil. 42

[3a] Leung Lee vs. F. L. Strong Machinery, supra

[4] Fule vs. De Legare, et al., L-17951, Feb. 28, 1963, 7 SCRA 351, 356

[5] Jovellanos vs. Dimalanta, L-11736-37, Jan. 30, 1959, 105 Phil. 1250

[6] Prof. Edgardo Paras is now a Judge of the Court of First Instance of the province of Bulacan

CONCURRING OPINION

TEEHANKEE, J.:

I concur. My concurrence proceeds from the same premise as the dissenting opinion of Justice Muñoz Palma that both the conflicting buyers of the real property in question, namely, petitioner Rosario Carbonell as the first buyer and respondent Emma Infante as the second buyer may be deemed purchasers in good faith at the respective dates of their purchase.

The answer to the question of who between the two buyers in good faith should prevail is provided in the second paragraph of Article 1544 of the Civil Code[1] (formerly Article 1473 of the old Civil Code) which ordains that "the ownership of the immovable property shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property."

In the case at bar, the seller executed on January 27, 1955 the private memorandum of sale of the property in favor of the first buyer Carbonell. However, six days later on February 2, 1955, the seller sold the property for a second time for an improved price, this time executing a formal registrable deed of sale in favor of the second buyer Infante.

So it was that when the first buyer Carbonell saw the seller a few days afterwards bringing the formal deed of sale for the seller's signature and the balance of the agreed cash payment, the seller told her that he could not proceed anymore with formalizing the first sale because he had already formalized the second sale in favor of the second buyer Infante.

Since Carbonell (the first buyer) did not have a formal registrable deed of sale, she did the next best thing to protect her legal rights and registered on February 8, 1955 with the Rizal Register of Deeds her adverse claim as first buyer entitled to the property. The second buyer Infante registered the deed of sale in her favor with the Rizal Register of Deeds only on February 12, 1955 (notwithstanding its having been executed ten days earlier on February 2, 1955), and therefore the transfer certificate of title issued in her favor carried the duly annotated

adverse claim of Carbonell as the first buyer.

Both these registrations were in good faith and hence, as provided by the cited codal article, the first buyer Carbonell as also the first registrant is legally entitled to the property.

The fact that Carbonell registered only an adverse claim as she had no registrable deed of sale is of no moment. The facts of record amply show that she had a written memorandum of sale, which was partially executed with the advance payment made by her for the seller's mortgage account with the bank, and which was perfected and binding in law by their accord on the subject matter and price. Carbonell could in law enforce in court her rights as first buyer under the memorandum agreement and compel the seller to execute in her favor a formal registrable deed of sale which would relate back to the date of the original memorandum agreement.

And under the cited codal provision, Carbonell had to duly register such adverse claim as first buyer, as otherwise the subsequent registration of the second buyer's deed of sale would have obliterated her legal rights and enabled the seller to achieve his fraudulent act of selling the property a second time for a better price in derogation of her prior right thereto.

The fact that the seller refused to execute the formal deed of sale in Carbonell's favor and (as was only to be expected) informed her that he could not proceed anymore with the sale because he had sold it for a second time for a better price did not convert her prior registration of her adverse claim into one of bad faith.

The fraudulent seller's act of informing the first buyer that he has wrongfully sold his property for a second time cannot work out to his own advantage and to the detriment of the innocent first buyer (by being considered as an "automatic registration" of the second sale) and defeat the first buyer's right of priority, in time, in right and in registration.

The governing principle here is *prius tempore, potior jure*[2] (first in time, stronger in right). Knowledge gained by the first buyer of the second sale cannot defeat the first buyer's rights except only as provided by the Civil Code and that is where the second buyer first registers in good faith the second sale ahead of the first. Such knowledge of the first buyer does not bar her from availing of her rights under the law, among them, to register first her purchase as against the second buyer. But in *converso* knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register the second sale, since such knowledge taints his prior registration with bad faith.

This is the price exacted by Article 1544 of the Civil Code for the second buyer being able to displace the first buyer: that before the second buyer can obtain priority over the first, he must show that he acted in good faith throughout (i.e. in ignorance of the first sale and of the first buyer's rights) – from the time of acquisition until the title is transferred to him by registration or failing registration, by delivery of possession. The second buyer must show continuing good faith and innocence or lack of knowledge of the first sale until his contract ripens into full ownership through prior registration as provided by law.

The above principles were aptly restated in a 1948 Court of Appeals decision in the case of *Gallardo vs. Gallardo* penned by Justice J.B.L. Reyes, then a member of the appellate court.[3] The facts of that case and the case at bar are virtually identical, except that the earlier case was decided under the old Civil Code (Article 1473 thereof now reproduced as Article 1544 of the present Civil Code), and the *ratio decidendi* thereof, *mutatis mutandis*, is fully applicable, as follows:

"Analysis of article 1473 of the Civil Code shows that before a second vendee can obtain priority over the first, it is indispensable that he should have acted in good faith, (that is to say, in ignorance of the rights of the first vendee's rights) until the title is transferred to him by actual or constructive delivery of the thing sold. This is

the price exacted by law for his being able to displace the first vendee; and the mere fact that the second contract of sale was perfected in good faith is not sufficient if, before the title passes, the second vendee acquires knowledge of the first transaction. That the second buyer innocently agreed to purchase the land may protect him against responsibility of conspiring with his vendor to defraud the established rights of the first purchaser; but to defeat the latter's priority in time (based on the old principle 'prius tempore, potior jure,' first in time, better in right) the good faith or innocence of the posterior vendee must needs continue until his contract ripens into ownership by tradition or recording (*Palanca vs. Director of Lands*, 43 Phil. 141, 154).

"That the formal deed of conveyance to Gabino Gallardo was executed after that of Caoagas is of no moment, the contract of sale being perfected and binding by mere accord on the subject matter and the price, even if neither is delivered (Article 1450, Civil Code), the deed of conveyance will relate back to the date of the original agreement." [4]

Finally, in the present case, the first buyer's registration (February 8, 1955) concededly preceded the second buyer's registration (February 12, 1955) by four days, and therefore, as provided by the Civil Code, the first buyer thereby duly preserved her right of priority and is entitled to the property.

[1] Full text is reproduced in the main opinion, at page 7.

[2] Also expressed as "Prior tempore, prior jure" (First in time, prior in right)

[3] 45 O.G. No. 11, p. 5568, Reyes, J.B.L., J., ponente and Gutierrez David and Borromeo, JJ., concurring.

[4] Emphasis supplied.

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