

TUMIPUS MANGAYAO, ET AL., PLAINTIFFS AND APPELLEES, VS. QUINTANA LASUD, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-19252. May 29, 1964*

Ponente: REYES, J. B. L., J.

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Direct appeal to this Supreme Court, on points of law, from a decision of the Court of First Instance of Zamboanga del Sur, in its Civil Case No. 575.

The case began in the court below by a complaint lodged on December 8, 1959 by the spouses Tumipus Mangayao and Guimanda Bubungan, who are admittedly illiterate non-christian Subanos, seeking to recover from the spouses Guintana and Santay Lasud a parcel of 14.1710 has. of agricultural land in Lapayan, Margosatubig, Zamboanga del Sur, covered by Original Certificate No. 2179 of the Register of Deeds of the Province in the name of plaintiffs. The original complaint averred that possession of the land had been transferred to defendants as security for a loan of P5,000.00, but that defendants refused to allow redemption thereof. The complaint was amended on March 1, 1960, averring that plaintiffs were deceived into signing a contract (Annex A) of absolute sale of the realty in question, upon defendants' fraudulent representation that the deed was one of mortgage; and that the deed was null and void for lack of approval by the Provincial Governor, as required by law. The court, overruling defendants' objections, admitted the amended complaint; whereupon, defendants filed their answer with denials and affirmative defenses, claiming that the plaintiffs' action was unenforceable under the Statute of Frauds, that the sale was approved by the Secretary of Agriculture and Natural Resources, that the sale was valid, and by virtue thereof Transfer Certificate of Title No. T-22 had been issued to defendants and had become indefeasible, and that the land had been mortgaged first to the Philippine National Bank in 1954 and later to the Development Bank.

The case was submitted upon stipulation of facts(Rec. Appeal, pp. 53-54) as follows:

- "1, Plaintiffs and defendants admit that the parcel of land, subject matter of this action, is covered by Transfer Certificate of Title No. T-22 issued by the Register of Deed of Zamboanga del Sur in the name of Quintana Lasud.
2. Plaintiffs and defendants admit that the Deed of Sale, Annex "A", of the complaint is duly approved by the Secretary of Agriculture and Natural Resources.
3. Plaintiffs and defendant admit that all the parties in the above entitled case rare NON-CHRISTIAN SUBANOS OR NON CHRISTIAN TRIBE of the Philippines, but that the defendants, Santay Lasud and Quintana Lasud, are literate and could read and write, while the plaintiffs, Tumipus Mangayao and Guimanda Bubungan, are illiterate and could not read and write.
4. Plaintiffs and defendants admit that the parcel of land, subject matter of the action, was formerly covered by Original Certificate of Title No. 2179 in the name of plaintiffs, Tumipus Mangayao, and issued under the Homestead Patent under Act No. 141.
5. Plaintiffs and defendants admit that the parcel of land is mortgage to the Philippine Development Bank of the Philippines.

6. Plaintiffs and defendants admit that the Deed of Sale, Annex "A" of the complaint was not approved by the Governor of Zamboanga del Sur or his duly authorized agent or representative."

Thereafter, on November 28, 1960, the court below rendered a decision declaring the deed of sale (Annex "A") null and void ab initio for lack of executive approval, as required by Sections 145 and 146 of the Administrative Code of Mindanao and Sulu, as well as Section 118 of Commonwealth Act No. 141 (Public Lands Law); declaring plaintiffs the owners of the disputed land; ordering defendants to restore possession, and plaintiffs to make reimbursement, of the original price of P5,000.00; ordering defendants to pay off the mortgage to the Development Bank; and that Transfer Certificate T-22 be thereafter cancelled and Original Certificate No. 2179 reinstated by the Register of Deeds of Zamboanga del Sur.

Reconsideration having been denied, defendants appealed to this Court.

It is first urged that the trial court erred in admitting the amended complaint over defendants-appellants' objection, because the amendment involved a change of theory, since the nullity of the deed of sale was not originally pleaded. This objection is groundless, as the original complaint in its paragraph 8 explicitly averred that the vendors (appellees herein) were "illiterate non-christian subanos", and annexed to the complaint was a copy of the deed of sale showing no approval thereof by the provincial governor or his representative. These averments sufficed to put in issue the validity of the deed under the Administrative Code of Mindanao and Sulu; hence, the allegations of invalidity in the amended complaint in reality constituted no change of theory, even if they did present the issue in more explicit and formal manner.

But the main question formulated by the appellant concerns the binding force of the conveyance, Annex A: whether, granting that it was executed by non-christian subanos and was not approved by competent authority, as required by the Administrative Code of Mindanao and Sulu and the Public Lands Act, the contract should be held null and void ab initio, as ruled by the court below, or merely voidable, as contended by herein appellants.

Section 145 (b) of the Administrative Code of Mindanao and Sulu provides that no conveyance or encumbrance of real property shall be made in that department by any non-christian inhabitant of the same, unless, among other requirements, the deed shall bear indorsed upon it the approval of the provincial governor or his representative, duly authorized in writing for the purpose. Section 146 of the same Code declares that "every contract or agreement made in violation of next preceding section (145) shall be null and void". Reinforcing these provisions, section 120 of the Public Lands law, Commonwealth Act 141 (which is also applicable as the land in question was originally acquired by way of homestead), explicitly declares that "conveyances and encumbrances made by illiterate non-christians shall not be valid unless duly approved by the Commissioner of Mindanao and Sulu".

The plain text of both laws clearly imports that non-approved conveyances and encumbrances of realty by illiterate non-christians (which appellees are admitted to be) are not valid, i.e., not binding or obligatory; they are ab initio void, as correctly held by the appealed decision. The approval of the executive authority is not in the nature of a ratification of a defective conveyance; such approval is an essential requisite for its validity, and without it the proposed contract is absolutely void or inexistent. To hold the contract as merely voidable, i.e., as operative and binding if not disapproved, would not only do violence to the text of the statutes that requires executive approval, and not disapproval, but would nullify the obvious intent of the statutes to guard the patrimony of illiterate non-christians from those who are inclined to prey upon their ignorance or ductility (*Porkan vs. Yatco*, 70 Phil. 161; *Porkan vs. Navarro*, 73 Phil. 698; *Madale vs. Sa Raya*, 49 Off. Gaz., 536), since it is not to be expected that the illiterate non-christian, who signs away his real property for lack of instruction and discrimination, would thereafter be sharp enough to ask the executive authority to refuse approval of his contract; nor would the literate buyer be at all likely to do so. The net result of appellants' "voidable conveyance" theory, therefore, would be that the illiterate non-christian could be stripped of his immovables just as if the protective

statutes heretofore quoted had not been enacted at all.

Appellants erroneously equate the position of the provincial governor, or of the Commissioner of Mindanao and Sulu, with that of a guardian of an incompetent under the Civil Code. The differences are obvious. In the first place, a guardian can contract for and in the stead of the incompetent; the provincial governor or Commissioner can only complete or supplement, but not replace, the consent of the non-christian illiterate. Next, under the Civil Code, contracts of ordinary incompetents are merely voidable (i.e., valid until annulled), and they become wholly valid and unassailable upon ratification by the incompetent (if he has recovered competency) or by his guardian (Arts. 1390, 1394), while under the special laws above-quoted the conveyances of realty by illiterate non-christians are "null and void", not valid unless duly approved, as a matter of public policy. A conveyance of realty by an illiterate non-christian, under the special laws, becomes a contract with three parties, instead of the usual two: and the approval of the executive authority is in the nature of a prerequisite to the validity and existence of such conveyances.

Nor can it be cogently argued, as appellants imply that the Civil Code has now superseded the Administrative Code of Mindanao and Sulu, or the Public Land Law, since these statutes are, in this regard, special acts, and implied repeals are not favored (*Lichauco vs. Apostol*, 44 Phil. 138). And for the same reason, the approval of the Secretary of Agriculture, as required by section 118 of the Public Land Law (C.A. 141), being a general requirement for conveyances of homestead lands, regardless of the ethnic character and culture of the transferor, can not take the place of the approval by the Commissioner of Mindanao and Sulu, under section 120, the latter being an exceptional condition for conveyances by illiterate non-christians.

It is no impediment to this ruling that the Department of the Interior, wherein the Commissioner of Mindanao and Sulu had the rank of an undersecretary, has been abolished since 1950 by Executive Order No. 383 (Ser. of 1950). The same executive order transferred the powers, functions, and duties of the Department of the Interior to the Office of the President; upon the latter, therefore, devolves the function of approving conveyances of realty by illiterate non-Christians, as required by the Public Lands Act.

Appellants also point out in their brief that in 1961, two years after this case was filed, the contract of appellees was approved by the Provincial Governor of Zamboanga. The fact is irrelevant. In the first place, this approval should have been duly established at the trial, and the appellees given opportunity to produce rebutting evidence. In the second place, since the governor's approval merely supplements or completes the consent of the appellees, but does not replace it, the approval should have been given before the "appellees withdrew their consent to the invalid conveyance and filed action in court to set the same aside.

Appellants likewise stress that both parties being at fault, there should be no action by one against the other (Art. 1412, New Civil Code). This rule, however, has been interpreted as applicable only where the fault on both sides is, more or less, equivalent. It does not apply where one party is literate or intelligent and the other one is not (cf. *Bough vs. Cantiveros*, 40, Phil. 209). The applicable rule is Article 1416 of the Civil Code of the Philippines:

"ART. 1416. When the agreement is not illegal per se but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered."

Appellants' last assignment of error assails that part of the appealed judgment requiring them to discharge their mortgage of the controverted lot in favor of the Development Bank and directing the Register of Deeds of Zamboanga del Sur, upon such discharge, to cancel the applicants' certificate of title T-22 and reinstate appellees' original certificate of title. Appellants complain that the order disregards the rights of the bank as intervening innocent purchaser. We see no merit in this contention, since the previous payment ordered already safeguards the

bank's interest. Moreover, appellants are not the proper parties to undertake the role of defenders of the Development Bank, particularly because they made the mortgage in bad faith, after the present action to set aside the conveyance in their favor had been initiated in the court below.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed. Costs against appellants in both instances.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Paredes, Regala, and Makalintal, JJ., concur.

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