

AUGUSTO J. D. CORTES, PLAINTIFF AND APPELLANT, VS. O PO POE AND YU KIMTING, DEFENDANTS AND APPELLEES.

G.R. No. L-2943. October 30, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

According to the appellant the facts are these:

"On March 1, 1938, the plaintiff sold a house and lot situated at Gandara street, Binondo, Manila, registered under his name in the Registry of Deeds of Manila (Transfer Certificate of Title No. 49040) to the herein defendant O Po Poe, married to Yu Kimting, both Chinese citizens for the price of P32,000.00; that by virtue of the said sale, a new transfer certificate of title No. 5354 was issued to the herein defendants; that at the time of the sale, neither of the parties was aware that the same was prohibited by the Constitution the parties having entered into the transaction in good faith, and that it was only after the promulgation of the Krivenko decision that they learned for the first time of such Constitutional prohibition; that at the time of the sale in 1938 the property sold consisted of a lot and improvements of strong materials, which improvements were totally destroyed in the battle of liberation and that at the present time there stands on the same lot a house of the 'barong-barong type; that the assessed value of the house and lot in 1938 was P10,000.00 and P14,016.00, respectively; and that the plaintiff is willing and ready to return the purchase price of P32,000.00, even without the improvements, upon reconveyance to him of the property in question"

Alleging that under our Krivenko decision the defendants could not lawfully continue owning the property because they are and were Chinese citizens, the appellant filed this action in the Manila court of first instance for reconveyance of the real estate he had sold in 1938. That court absolved the defendants, and the plaintiff appealed in due time and form.

In view of our decision in *Rellosa v. Gaw Chee Hun*, G. R. L-1411, promulgated September 29, 1953 and *Caoile v. Yu Chiao*, G. R. L-4068, (Sept. 29, 1953), (copies of which will be given the parties) we must hold that although the sale is null and void, the plaintiff may not recover his land. The fact that both parties to the contract did not know the law, does not alter the situation.

The appealed decision will be affirmed without costs.

Paras, C. J., Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

Padilla, J., no part.

Pablo, M., disidente: Disiento por las mismas razones que expuse en mis disidencias en las causas de *Rellosa* contra *Gaw Chee Hun*, G. R. No. L-1411, (Sept. 29, 1953), y *Caoile* contra *Yu Chiao Peng*, G. R. No. L-4068, (Sept. 29, 1953).

Reyes, J., dissenting: The sale in question being forbidden by the Constitution, the vendor is entitled to a rescission. As I stated in my dissent in the case of *Dionisio Rellosa vs. Gaw Chee Hun*, G. R. No. L-1411, the *in pari delicto* rule does not apply to contracts forbidden by the Constitution and therefore against public policy.

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