

**ASUNCION MENESES VDA. DE CATINDIG, PETITIONER-APPELLANT,
VS. THE HEIRS OF CATALINA ROQUE, NAMELY, ESCOLASTICO
CERVANTES, LEONCIA CERVANTES AND EMEREN-CIANA
CERVANTES, REPRESENTE...**

G.R. No. L-25777. November 26, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Asuncion Meneses Vda. de Catindig seeks the review of the decision of the Court of Appeals date December 31, 1965 which affirmed the judgment of the Court of First Instance of Bulacan. The lower court declared void certain documents of sale regarding portions of the fishpond in litigation, ordered Mrs. Catindig to deliver to the respondents (except German Ramirez) the possession of the said fishpond, to pay to them, as the reasonable compensation for the use and enjoyment of the fishpond, the sum of P6,000 per annum from October 1, 1951 until the possession of the fishpond is restored to the respondents, plus P1,000 as attorney' s fees, and allowed the respondents to redeem from Mrs. Catindig the 2/16 portion of the fishpond which German Ramirez had sold to her.

The facts are as follows:

The said fishpond, known as Lot No. 4626 of the Malolos Cadastre, has an area of more than thirteen hectares. As shown in Original Certificate of Title No. 7937, it is registered in the names of the following persons:

1.

Catalina Roque, married to Anastacio Katipunan

6/16

2.

Roberto Roque, married to Gregoria Borlongan

2/16

3.

Ines Roque, married to Lucio Adriano

1/16

4.

Barbara Roque, married to Eusebio Villanueva

1/16

5.

Apolonio Roque, married to Isabel Borlongan

1/16

6.

Concordia Roque, single

1/16

7.

German Ramirez

2/16

8.

Irene Boloran, married to Faustino Panganiban

1/16

9.

Leonila de Guzman, 12 years old, single

1/16

The co-owners of the fishpond leased it to Mrs. Catindig for a term of ten years counted from October 1, 1941 for a total rental of six thousand pesos (Exh. C-1; Amendment to Decision per Resolution of February 22, 1966).

After the termination of the lease on September 30, 1951, Mrs. Catindig remained in possession of the fishpond because she was negotiating with the co-owners for the purchase thereof. She wanted to buy it for P52,000.

On October 18, 1960 German Ramirez, one of the co-owners, executed a deed wherein he sold his 2/16 share to Mrs. Catindig for P6,500 (Exh. E). The sale was annotated on the title on October 19, 1960. Two weeks later, Pedro Villanueva, one of the co-owners, learned of the sale executed by German Ramirez. That sale retroacted to April 13, 1950.

On November 18, 1960 the respondents filed this action against Mrs. Catindig to compel her to allow them to redeem the portion sold by German Ramirez. In April, 1962 the respondents amended their complaint by including, inter alia, a prayer for the recovery of the possession of the fishpond.

The Court of Appeals found that:

1. The consideration of P52,000 was not paid by Mrs. Catindig to the co-owners because she was not able to obtain a loan, the proceeds of which would have been used to pay the co-owners who had executed simulated sales of their shares, as shown in the private documents, Exhibits 6 to 26. (The originals of those documents were allegedly lost. Only photostatic copies thereof were presented in evidence).

2. Because Mrs. Catindig did not pay the price of P52,000, the projected sale, "which was in truth a simulated one so as to enable her just to mortgage the property in order to secure the necessary amount with which to pay the consideration" was void ab initio. There was no notarized deed of sale because Mrs. Catindig did not pay the price to the co-owners except German Ramirez.

3. Ines Roque and the heirs of Roberto Roque did not barter their shares for the two parcels of land owned by Mrs. Catindig. What the said co-owners did was to possess the lands of Mrs. Catindig in exchange for the latter's possession of their shares in the fishpond.

4. Considering the area of the fishpond and the upward trend in values, the amount of P6,000 a year is the reasonable compensation for its use and enjoyment (Resolution amending the decision).

The fourteen assignments of error of Mrs. Catindig in this appeal are overlapping and repetitious. She argues that the Court of Appeals erred in holding (1) that the sale of the fishpond to her is void for nonpayment of the price; (2) that the price was not paid because she did not obtain any loan; (3) that the annual rental value is P6,000; (4) that the transaction between Mrs. Catindig, on one hand, and Ines Roque and the heirs of Roberto Roque, on the other, was an exchange of possession and not "land for land", and (5) that German Ramirez sold his share on October 18, 1960 and not on April 13, 1950.

Those assignments of error involve factual issues which cannot be ventilated in a review of the decision of the Court of Appeals. Only legal questions may be raised (Sec. 29, Judiciary Law; Sec. 2, Rule 45, Rules of Court). As a rule, the factual findings of the Court of Appeals are conclusive on this Court.

The conclusive factual finding of the Appellate Court that the alleged sales on April 13 or 14, 1950 of respondents' shares are simulated and void ab initio (See *Onglengco vs. Ozaeta*, 70 Phil. 43) renders untenable appellant Catindig's contentions that the remedies available to the respondents, such as an action for annulment, rescission or reformation, are barred by prescription or laches.

The alleged sales were absolutely simulated, fictitious or inexistent contracts (Arts. 1346 and 1409[2], Civil Code). "The action or defense for the declaration of the inexistence of a contract does not prescribe" (Art. 1410, *Ibid*; *Eugenio vs. Perdido*, 97 Phil. 41). Mere lapse of time cannot give efficacy to a void contract (*Tipton vs. Velasco*, 6 Phil. 67).

The Appellate Court's finding that the price was not paid or that the statement in the supposed contracts of sale (Exh. 6 to 26) as to the payment of the price was simulated fortifies the view that the alleged sales were void. "If the price is simulated, the sale is void x x x" (Art. 1471, Civil Code).

A contract of sale is void and produces no effect whatsoever where the price, which appears thereon as paid, has in fact never been paid by the purchaser to the vendor (*Ocejo, Perez & Co. vs. Flores and Bas*, 40 Phil. 921; *Mapalo vs. Mapalo*, L-21489, May 19, 1966, 64 O. G. 331, 17 SCRA 114, 122). Such a sale is non-existent (*Borromeo vs. Borromeo*, 98 Phil. 432) or cannot be considered consummated (*Cruzado vs. Bustos and Escaler*, 34 Phil. 17; *Garanciang vs. Garanciang*, L-22351, May 21, 1969, 28 SCRA 229).

The foregoing discussion disposes of whatever legal issues were raised by appellant Catindig which are interwoven with her factual contentions, including the issue as to whether she is entitled to demand the execution of a notarized deed of sale for the 14/16 proindiviso portion of the fishpond. She is not entitled because, as already held, the alleged sales in her favor are void.

And in view of the result arrived at in this case the trial court and the Court of Appeals did not err in awarding to the respondents the sum of one thousand pesos as attorney's fees (See art. 2208, Civil Code).

Mrs. Catindig, in her thirteenth assignment of error, which is partly a reproduction of her ninth assignment of error in the Appellate Court, injected new matters not raised in that Court.

She contends that inasmuch as the fishpond was placed under receivership by virtue of the trial court's order of January 15, 1964 (Annex D of her brief not included in the Record on Appeal), she should not answer for the

reasonable value of the use and compensation of the fishpond from the time it was placed in the receiver's possession.

She also contends that she is entitled to the rental value of the 2/16 portion sold to her by German Ramirez and the 3/16 share of Ines Roque and the heirs of Roberto Roque and that the latter should restore to her the possession of the two parcels of riceland located at Barrio Pitpitan, Bulacan, Bulacan, the possession of which was provisionally exchanged for Mrs. Catindig's possession of their 3/16 share.

She further contends that the land taxes paid by her should be deducted from the annual rental of P6,000 (not P600 as erroneously stated on page 88 of her brief).

The respondents, in their reply brief and rejoinder, did not answer those contentions. That silence or omission may be construed as an admission of their merit.

To do justice in this case, we have to resolve those alternative points raised by the appellant. "It is a cherished rule of procedure that a court should always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation" (Marquez vs. Marquez, 73 Phil. 74, 78).

We hold that, as a matter of fairness and equity or to avoid unjust enrichment, the liability of Mrs. Catindig for the reasonable value of the use and occupation of the fishpond should be limited to the period from October 1, 1951 up to the time in January, 1964 when she turned over the fishpond to the receiver, namely, the deputy clerk of court of the Court of First Instance of Bulacan, Malolos Branch I.

It is the receiver who should deliver to the respondents the possession of the fishpond which apparently has been in custodia legis.

From the compensation of P6,000 per annum, which Mrs. Catindig is obligated to pay to the respondents should be deducted the 2/16 portion of said compensation, corresponding to the share of German Ramirez, from October 1, 1951 to January, 1964. Thereafter, Mrs. Catindig is entitled to demand the 2/16 share in the net fruits or earnings of the fishpond from the receiver until the said share is redeemed by the respondents.

Ines Roque and the heirs of Roberto Roque should deliver to Mrs. Catindig the possession of the two parcels of riceland already mentioned and account for the fruits thereof beginning January, 1964 when Mrs. Catindig ceased to have possession of their 3/16 share. The trial court should hold a hearing to determine the amount of the net fruits which Mrs. Catindig is entitled to receive from the said co-owners. She has the right to retain the 3/16 portion of the annual rental of P6,000 corresponding to the shares of Ines Roque and the heirs of Roberto Roque.

Moreover, the respondents (except German Ramirez), as owners of the fishpond should reimburse Mrs. Catindig for the amount of the land taxes advanced by her (See Exh. 27; Par. II[iii], Lease Contract, Exh. C-1). "Any person who is constrained to pay the taxes of another shall be entitled to reimbursement from the latter" (Art. 2175, Civil Code; See art. 597). One situation envisaged in that provision is when the possessor of land under lease or otherwise has to pay the taxes to prevent a seizure of the property by the government, the owner having become delinquent in the payment of the land tax (p. 72, Report of the Code Commission).

One last point should be resolved. The Court of Appeals and the trial court, in sanctioning the respondents' right to redeem from Mrs. Catindig the 2/16 share sold to her by German Ramirez, relied on article 1088 of the Civil Code which refers to the sale by any of the heirs of his hereditary rights to a stranger. That article has no relevant application to this case.

Inasmuch as the fishpond is under co-ownership, not co-heirship, and what are involved herein are the shares of co-owners, not the hereditary rights of co-heirs, it is article 1620 of the Civil Code that is applicable. Article 1620

provides that "a co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person." The period for exercising the right of legal redemption is that fixed in article 1623 of the Civil Code, not the period fixed in article 1524 of the Spanish Civil Code.

WHEREFORE , the judgment of the trial court and the Court of Appeals is affirmed with the following modifications:

1. The receiver (not Asuncion Meneses Vda. de Catindig) should deliver the possession of the fishpond to the respondents or their duly authorized representative together with 14/16 of the net earnings of the fishpond from January 15, 1964 up to the time the possession is delivered to the respondents.
2. The receiver should deliver to Mrs. Catindig a 2/16 share of the net earnings of the fishpond, corresponding to the share of German Ramirez, from January 15, 1964 up to the time the said share is redeemed from her.
3. From the annual compensation of P6,000 a year due from Mrs. Catindig for the use and enjoyment of the fishpond from October 1, 1951 up to January 15, 1964 (when the fishpond was placed under receivership) should be deducted (a) 2/16 which correspond to the share of German Ramirez, (b) 3/16 which correspond to the shares of Ines Roque and the heirs of Roberto Roque, and (c) 14/16 of the realty taxes on the fishpond paid by Mrs. Catindig (See Exh. 27).
4. Ines Roque and the heirs of Roberto Roque should deliver to Mrs. Catindig the possession of her two parcels of riceland located at Barrio Pitpitan, Bulacan, Bulacan, render an accounting of the fruits thereof from January 15, 1964 up to the time the possession is delivered and pay to her the value of the net fruits thereof. For that purpose, the trial court should hold the appropriate hearing. No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, and Antonio, JJ., concur.

Concepcion, Jr., J., did not take part.

Martin, J., designated to sit in the Second Division.

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