

AUGUSTO J. D. CORTES, DEMANDANTE Y APELANTE, CONTRA DEE CHIAN HONG & SONS, INC., DEMANDADA Y APELADA.*G.R. No. L-3107. November 27, 1953*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7bcb48d4ae67/>**PABLO, M.:**

En 10 de Septiembre de 1936 el demandante vendio a Dee Chian Hong & Sons, Inc., cuyos socios son todos ciudadanos chinos, el lote situado en la esquina de las calles Rosario y Ongpin, ciudad de Manila, con el edificio de cemento armado de cuatro pisos, por la suma de P143,000, expidiendose a favor de la compradora el certificado de transferencia de titulo No. 49918.

El demandante gestiono extrajudicialmente la rescisi n del contrato, pero la demandada se nego; por eso el demandante presento la demanda en la presente accion. Vista la causa, el Juzgado sobreseyo la demanda. En apelacion, el demandante contiene que el juzgado inferior erro al declarar que solamente la Republica de Filipinas, y no el demandante, es la que tiene derecho de suscitar la rescision de la venta hecha en contravencion de la prohibicion constitucional.

Es indiscutible que la venta hecha a la demandada es nula y de ningun valor. (Krivenko contra Registrador de Titulos, 44 Gac. Of., 485). Ya esta decidido que el demandante no puede pedir la rescision del contrato y la devolucion de las cosas que las partes habian recibido. (Caoile contra Yu Chiao Peng, G. R. No. L-4068, Sept. 29, 1953; Rellosa contra Gaw Chee Hun, G. R. No. L-1411, Sept. 29, 1953; y Cortes contra O Po Poe y otro, G. R. No. L-2943, Oct. 30, 1953). En dichas tres causa citadas y en otras sostuve, en opinion disidente, que el vendedor puede recuperar la cosa vendida (Art. 1303, Cod. Civ. Español) "para restablecer la virtualidad de la prohibicion," (Sentencia del Tribunal Supremo de España de 11 de abril de 1894) y para no fomentar la celebracion de contratos contrarios a la constitucion. Pero la voluntad de la mayoria debe prevalecer.

Se confirma la decision apelada.

Paras, C. J., Bengzon, Tuason, Montemayor, Jugo, Bautista Angelo y Labrador, MM., conformes.

Padilla, J., no part.

Reyes, J., dissenting: The sale in question being forbidden by the Constitution and for that reason void, the vendor is entitled to have it rescinded. As I stated in my dissent in the cases cited by the majority, the *in pari delicto* rule does not apply to contracts that are against public policy.

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