

**LAURA ADIARTE, ASSISTED BY HER HUSBAND, RAFAEL MADRAZO,
PETITIONERS, VS. THE COURT OF APPEALS (SPECIAL DIVISION), J.
M. TUAZON & CO., INC., REPRESENTED BY GREGORIO
ARANETA, INC....**

G. R. No. L-3517. March 04, 1953

Ponente: FERIA, J.

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FERIA, J.:

According to the findings of fact of the Court of Appeals, "On February 3, 1939, J. M. Tuazon & Co. Inc., through its agent Gregorio Araneta Inc., sold to Cenon Rimando, married to Leona Mendoza, a parcel of land described in the complaint and covered by transfer certificate of title No, 35073, under the terms and conditions contained in the contract to sell No. 367 (Exhibit A). In May 1940, defendant Rimando sold to plaintiff AdiarTE one-half of said lot, to be more exact 264 square meters thereof, in consideration of the sum of P1,590 under the terms and conditions stipulated by the parties in the document Exhibit B, which among other things says:

* * * * *

"That the Party of the Second Part shall pay the sum of TWO HUNDRED PESOS (P200), Philippine Currency, to the Party of the First Part upon execution of this document, receipt of which is hereby acknowledged by the latter;

That the balance of P1,390 shall be paid by the Party of the Second Part in monthly installments of P18.10 direct to Gregorio Araneta, Inc., on or before the 5th of every month beginning the month of June, 1940, which payment will cover the installment for the month of May, 1940 until the said balance shall have been fully paid;

* * * * *

"That in case any of the parties herein shall fail to meet the necessary monthly installment with Gregorio Araneta Inc., for their respective portions of the said lot, the other party may continue the payments of the monthly installments and the entire lot mentioned above shall be owned by the party effecting the payments and whatever amounts paid by the defaulting party with Gregorio Araneta, Inc., shall be forfeited and shall be considered as rental for the parcel of land herein mentioned; * * *"

"On May 6, 1940, plaintiff AdiarTE and defendant Rimando signed agreement C [a] whereby they ratified all the terms and stipulations agreed upon in the deed of assignment Exhibit B. From that time, plaintiff AdiarTE and defendant Rimando made separate payments, to J. M. Tuazon & Co., Inc., for thier respective portions of the lot in dispute. Thus, plaintiff AdiarTE made payments amounting to P924.47 from June 4, 1940, up to November 4, 1943, as shown by Exhibits E to E-19; and defendant Rimando's payments amounting to P1,377.73 up to April, 1944, as shown by Exhibits 22 to 22-J and 23 to 23-Z.

In view of the above findings of fact by the Court of Appeals and the approval of J. M. Tuazon & Co. Inc. in

Exhibit C of the transfer by Rimando of his right and interest in one-half of the lot in question to Adiarte, Adiarte became the purchaser of Rimando's right or interest in said half directly from Tuazon & Co. Inc., and bound to pay the installment price to the latter, separately and independently from the purchase of the remaining one-half of said lot and payment by Rimando of its purchase price to J. M. Tuazon & Co. Inc. That the transfer or assignment of Rimando to Adiarte of his right and interest in said one-half of the lot was absolute is corroborated or further shown: (1) by the fact that, according to the above-quoted findings of fact by the Court of Appeals, "From that time, [the signing of said Exhibit C] plaintiff Adiarte and defendant Rimando made separate payments to J. M. Tuazon & Co., Inc., for their respective portions of the lot in dispute. Thus Adiarte made payments amounting to P924.47 from June 4, 1940 up to November 1943, and Rimando's payments amounting to P1,377.73 up to April 1944"; (2) by Exhibit 2 by which Cenon Rimando sold to Ricardo Sanchez his house and one-half of the lot in question on which the house was built, clearly and expressly excludes from the sale the other half of the lot sold or transferred by him to Adiarte with the approval of J. M. Tuazon & Co., Inc.; and (3) by the fact that, according to the Court of Appeals' finding of fact, the official receipt issued to Sanchez by Gregorio Araneta Inc., "for the full payment of the unpaid purchase price of the land in question, was issued in the name of Cenon Rimando and Laura Adiarte."

After the above exposition of the facts found by the Court of Appeals in this case, we shall now show that the dissenting opinion is not correct, and the judgment of the Court of Appeals should be reversed.

The dissenting opinion asserts that the validity of the Rimando-Adiarte contract Exhibit B is assailed by the petitioners as being of the nature of pactum commissorium, and holds that is not so quoting the syllabus in the case of Alcantara vs. Alinea (8 Phil., 111), as well as that in the case of Caridad Estate Inc., vs. Pablo Santero (71 Phil., 114), in both of which it was held that the pactum commissorium is prohibited only in contracts of mortgage and antichresis under articles 1859 and 1884 of the Civil Code. This is not correct. The petitioner-appellants do not assail as invalid the pactum commissorium or stipulation in the Rimando-Adiarte contract regarding the resolution of the sale upon failure of Adiarte to pay the balance of the purchase price to Araneta Inc., either in their assignment of error quoted in the dissenting opinion, or in their brief. What the appellants contend is that articles 1100 and 1504 of the Civil Code are applicable, and Sanchez paid Adiarte's debt to Gregorio Araneta Inc. and waived his right to recover from Laura Adiarte what he has paid Araneta for her.

Appellants' contention is correct: (1) Adiarte had not failed to pay the monthly installment to Gregorio Araneta Inc., because no demand had been made, judicially or extrajudicially, by Rimando upon Adiarte to make such payments, as required by article 1100 of the old Civil Code, since there is no stipulation in the Rimando-Adiarte contract to the effect that failure of any of the parties to pay the monthly installments to Gregorio Araneta Inc., at the time agreed upon would give rise to the forfeiture stipulated and cancellation of said contract without the necessity of any demand. (2) Assuming that there is such stipulation in said contract, article 1504 of the old Civil Code is applicable because the contract is of absolute sale of real property or right as above stated, and therefore Rimando has not reacquired the right or interest in the half of the lot he sold to Adiarte, and Adiarte may still pay what she owed to Araneta if it had not yet been paid, because no demand for such resolution has never been made judicially or by notarial act by Rimando. And (3) Sanchez, and not Adiarte, paid Adiarte's debt to Gregorio Araneta Inc.

(1) The contract of sale Exhibit B between Rimando and Adiarte does not provide that the failure of Adiarte to pay any installment price to Araneta of the portion sold her by Rimando would give rise to forfeiture or cancellation of said contract Exhibit B without the necessity of any demand. Said Exhibit B only provides that "in case any of the parties fail to meet the necessary monthly installment with Gregorio Araneta for their respective portion of the said land, the other party may continue the payments of the monthly installment, and the entire lot

shall be owned by the party effecting the payment." Article 1100 of the old Civil Code provides that "persons obliged to deliver or do something are not in default until the moment the creditor demands of them judicially or extrajudicially the fulfillment of their obligation, * * * unless the obligation or the law expressly so provides." As there is no express provision in the contract Exhibit B that the failure of one of the parties to pay in time the monthly installments to Gregorio Araneta Inc., would give rise to the forfeiture of all he has paid and cancellation of the contract without the necessity to demand from the other party, and the latter will become the owner of the whole lot by paying said installments, Adiarte was not in default in meeting the necessary monthly installment with Gregorio Araneta Inc., because Rimando did not make any judicial or extrajudicial demand upon Adiarte to fulfill her obligation to Gregorio Araneta, Inc. Hence, assuming that Rimando paid to Gregorio Araneta Inc. all the installments due from Adiarte, the forfeiture to Rimando of Adiarte's portion of the lot in question and of all payments made by her to Gregorio Araneta Inc., is ineffective and could not be declared by the Court of Appeals.

In the case of *Bayla vs. Silang* (73 Phil., 557), this court held the following applicable to this question:

"3. OBLIGATIONS AND CONTRACTS; NECESSITY OF DEMAND UPON DEFAULT AS REQUISITE TO FORFEITURE.—The contract here involved provides that if the purchaser fails to pay any of the installments when due, the shares of stock which are the object of the sale are to revert to the seller and the payments already made are to be forfeited in favor of said seller. The seller, through its board of directors, annulled a previous resolution rescinding the sale and declared the forfeiture of the payments already made and the reversion of the shares of stock to the corporation. Held: That such forfeiture was ineffective. The contract did not expressly provide that the failure of the purchaser to pay any installment would give rise to forfeiture and cancellation without the necessity of any demand from the seller; and under article 1100 of the Civil Code persons obliged to deliver or do something are not in default until the moment the creditor demands of them judicially or extra-judicially the fulfillment of their obligation, unless (1) the obligation or the law expressly provides that demand shall not be necessary in order that default may arise, or (2) by reason of the nature and circumstances of the obligation it shall appear that the designation of the time at which the thing was to be delivered or the service rendered was the principal inducement to the creation of the obligation."

(2) Besides, even assuming that there is an express stipulation in the Rimando-Adiarte contract Exhibit B to the effect that, in default of payment by Adiarte to Gregorio Araneta Inc. of the necessary monthly installments for her respective portion of the said lot, the resolution of the Rimando-Adiarte contract Exhibit B shall take place ipso jure and Rimando will become the owner of Adiarte's portion of said lot if Rimando continues paying the balance of monthly installment with Gregorio Araneta Inc., and whatever amounts paid to the latter by Adiarte shall be forfeited and considered paid by Rimando, Adiarte may still pay to Rimando the balance of monthly installments he may have paid to Gregorio Araneta Inc. for Adiarte, because no demand for the resolution of Rimando-Adiarte contract has been made by Rimando upon Adiarte by suit or by notarial act, in accordance with article 1504 which reads as follows:

"Art. 1504. In the sale of real property, even though it may have been stipulated that in default of the payment of the price within the time agreed upon, the resolution of the contract shall take place ipso jure, the purchaser may pay even after the expiration of the period, at any time before demand has been made upon him either by suit or by notarial act. After such demand has been made the judge cannot grant him further time."

In the case of *Cenon Albea, petitioner, vs. Carlos Inquimboy*,[*] respondent, G. R. No. L-1601, promulgated on May 29, 1950, the plaintiff Inquimboy executed on October 13, 1941, a deed of absolute sale of a parcel of land for the sum of P4,000. On the same date the defendant Albea executed a document Exhibit B in favor of Inquimboy on which he recognized that he was indebted to Inquimboy in the sum of P3,000 and bound himself to pay said sum in the following installments P2,500 on November 15, 1941, and P500 in May, 1942, on the condition that if he should fail to pay the first installment on November 16, 1941, the deed of sale (Exhibit A) of

the same date would ipso jure be deemed cancelled and rescinded, and he would execute and deliver to the plaintiff the corresponding deed of cancellation and rescission. The defendant Albea failed to pay the first installment of P2,500 on November 15, 1941, in spite of demands made upon him, and the plaintiff filed a complaint to resolve the contract. The Court of Appeals applied the case of Caridad Estate vs. Santero and resolved the contract. Albea appealed to this Supreme Court by certiorari, relying upon the ruling of this Court in Villaruel vs. Tan King (43 Phil., 251). We held that the case of Caridad Estate is not applicable, but that of Villaruel vs. Tan King is applicable; and, therefore, as the vendor Inquimboy had not made upon the vendee Albea demand for the resolution of the contract either by suit or by notarial act, this Supreme Court modified the decision of the Court of Appeals and granted the vendee Albea time to pay the purchase price to the vendor before the resolution of the contract of sale.

(3) Furthermore, under the Rimando-Adiarte contract in order that Rimando may reacquire Adiarte's equities, two requisites must be present: (a) failure of Adiarte to pay or meet the monthly installment for her portion to Gregorio Araneta Incorporated, and (b) payment by Rimando of the balance of said installment to Gregorio Araneta and not to other persons, according to the express terms of said contract Exhibit B. Rimando did not comply with the second requirement or condition, and therefore he has not reacquired Adiarte's equities to the portion of the lot sold to her by Rimando. The Court of Appeals holds that "it is beyond dispute that the payment in full of the purchase price of said land was made by the intervenor Sanchez, and the latter did so because of negotiation of sale had between him and the defendant Rimando of the latter's house and portion of the lot (Exhibit 2), that said sale was not carried out and consequently defendant Rimando had to reimburse as he in fact did, almost the whole amount he had received from Sanchez on account of that negotiated sale." And the attorney for respondent-defendant Rimando admits in his brief filed with this Supreme Court that "Los hechos establecidos por la decision recurrida de que Sanchez ha pagado a la Compañia todas las deudas de Adiarte y Rimando por todo el terreno en cuestion, y como Rimando fue el unico que devolvio a Sanchez y este recibio todo [The Court of Appeals says almost all] lo abonado por el [Sanchez], * * * Rimando es el que debe ser declarado dueño de todo el terreno."

From the fact that, upon the rescission of the contract of sale by Rimando of his house and portion of lot, Rimando had to reimburse almost the whole he had received from Sanchez, it does not follow that Sanchez' payments to Araneta of Adiarte's indebtedness to the latter was imputable to and inured to the benefit of Rimando. There was no privity or fiduciary relation between Sanchez and Rimando, and no duty was ever imposed upon Sanchez by Rimando to pay Adiarte's obligation and, in any event, to take Adiarte's land and turn it over to Rimando. There is no legal or factual basis for a conclusion that Sanchez' payment to Araneta was imputable to and inured to the benefit of Rimando, as erroneously held by the minority in the following portion of its decision, because it is contrary to the findings of fact of the Court of Appeals quoted in the beginning of this opinion.

"* * * When Rimando sold to Sanchez his rights and equities, the latter also assumed the obligations of Rimando with regard to the whole lot because, while Rimando and Adiarte had divided the lot between themselves, nevertheless their obligations to Araneta were indivisible in so far as Araneta was concerned, and part of said obligations was necessarily assumed by Adiarte in her contract with Rimando. This division of rights and obligations between Rimando and Adiarte did not in the least affect the indivisibility of their obligations or rather the obligations of Rimando to Araneta. When Sanchez bought the rights of Rimando, Sanchez necessarily assumed both the rights and the obligations of Rimando as to the whole lot, including the portion assigned to Adiarte. * * *"

"When Sanchez was unable to comply with the other terms of his contract with Rimando, it was resolved or rescinded, and all the rights and obligations of Sanchez reverted to Rimando. * * * As Adiarte had lost her rights for non-payment to Araneta even at the time of the Rimando-Sanchez contract and said rights had passed

to Sanchez, when the latter rescinded the Rimando-Sanchez contract, these rights necessarily reverted to Rimando."

The Court of Appeals says that "the mere fact that Laura Adiarte was mentioned therein[1] as one of the payors will not grant any lawful right over the lot in question, when in fact she has not paid said installments." In response to it, suffice it to say that Sanchez paid them not in behalf of Rimando but for Adiarte, according to the lower court's findings in its decision, which became final and therefore cannot be ignored by the Court of Appeals as it does in the decision appealed from, because appellant Rimando did not assign or attack it as erroneous in his brief filed with the Court of Appeals. Said finding reads as follows:

"* * * While it is true that the intetvenor Ricardo Sanchez paid to Gregorio Araneta, Inc., the balance of the installment payment corresponding to the plaintiff Adiarte, the said intervenor, however, in a letter marked Exhibit F waived his right to collect the amount thus paid. The said one-half portion is, therefore, now the property of the plaintiff Adiarte." (Decision by Judge Peña, Record on Appeal, p. 10.)

It is to be observed that, according to the Court of Appeals, "when Rimando cancelled his contract of sale Exhibit 2 with Sanchez, Rimando returned to intervenor Sanchez only P2,010 in postal money orders, Exhibit 4 to 17, out of the entire sum of P3,250 he received from the latter for the reasons stated in his letter of August 28, 1944 (Exhibit 18) to said Sanchez. In said letter which is made a part of the decision appealed from and may therefore, be examined and taken into consideration by this court in this appeal, Rimando states the following in answer undoubtedly to Sanchez' demands in connection with the letter Exhibit F on which the above-quoted final ruling of the lower court is based, written on August 18, 1944, by Sanchez to Adiarte before the cancellation of the contract of Rimando with Sanchez.

"Anent the warning you gave me that I shall not interfere nor continue administering the property which I agree to sell to Laura Adiarte on installments, please be advised that unless the account of said Laura Adiarte representing the cost of the property in question is paid to me in full and unless otherwise legally dispossessed thereof, I will continue exercising my rights over said land, your 'warning' notwithstanding."

The amount of P640 not returned by Rimando to Sanchez is more than what Sanchez paid to Gregorio Araneta Inc. for Laura's debt according to the Court of Appeals' finding; but Rimando wanted to discount that amount from the money he received from Sanchez on account of his alleged expenses in connection with the cancelled sale of his house and lot to Sanchez. The mere fact that Rimando contends that he has not returned to Sanchez the sum of P640 because of said expenses, contrary to Sanchez' contention to the contrary, evidently did not make Rimando the payor of Adiarte's indebtedness to Gregorio Araneta Inc. for her portion of the lot in question. Sanchez, by paying Adiarte's debt to Gregorio Araneta Inc., did not acquire the right to become the owner of her portion of the lot, because there was no privacy or contract between them by which Sanchez could acquire such right. As Sanchez did not acquire said right he could not transfer it to Rimando even if he wanted to do so. Sanchez was entitled to recover from Adiarte what he has paid Gregorio Araneta for her, but he waived his right to do so in his letter to Adiarte Exhibit F according to a final finding or conclusion of the Court of First Instance. If Rimando has any claim against Sanchez in connection with the cancellation of their contract of purchase and sale of Rimando's house and lot, he may recover it from Sanchez but not from Adiarte.

In view of the foregoing, we are of the opinion that the judgment of the Court of First Instance of Manila appealed to the Court of Appeals is correct and that the decision of the Court of Appeals on appeal is erroneous and it is therefore hereby reversed. So ordered.

Pablo and Padilla, JJ., concur

CONCURRING

TUASON, J.,

The decision of the Court of Appeals contains this statement which is the pivotal point of the case:

"Under this clear and positive stipulation, it appearing that it was defendant Rimando who continued the payment of the monthly installments corresponding to the portion belonging to plaintiff Adiarte, said Rimando is entitled to be declared owner of the entire lot in question."

As a matter of fact it was Sanchez who paid the installments on Adiarte's half of the lot, with his own money. If the Court of Appeals means that those payments should be regarded as made by Rimando, the assumption will not bear close examination of the juridical relations or lack of relations between the parties.

The right to pay Adiarte's installments and the concomitant right to possess her portion of the lot if the owner of the other portion paid the amounts due from her were not real rights adhering to the property. They were personal rights more of the nature of a privilege created by a personal contract—the contract between Rimando and Adiarte—separate and distinct from the real rights transmitted by Rimando to Sanchez.

That privilege was extinguished as far as Rimando was concerned when Adiarte's installments were paid off; and being no longer extant when the contract of sale between Rimando and Sanchez was rescinded, the said privilege was not reacquired as a result of the rescission. The right to be subrogated to Adiarte's equities was conditioned upon the payment of her installments, and was susceptible of reacquisition by Rimando only so long as the condition remained, not that the privilege was part of the land Rimando had conveyed, but because as the owner of the land he had reacquired it was his prerogative to settle Adiarte's debts to protect his own interest.

Sanchez could, of course, have claimed Adiarte's half of the land by reason of his payment. Contrary to the lower court's conclusion, this right was not transferred to Rimando by the mere fact of rescission of the sale. The holding of the Court of Appeals that Sanchez' payment to Araneta was imputable to Rimando and inured to Rimando's benefit has no factual or legal basis. That payment was a personal matter entirely between Sanchez and Adiarte. The money was Sanchez' and there was no privity or fiduciary relation of any kind between Sanchez and Rimando. There was no duty imposed upon Sanchez by Rimando to pay Adiarte's obligation and, in that event, to take Adiarte's land and turn it over to Rimando. To repeat: what Rimando did with his money was his personal affair. The following hypothetical situation and queries should suffice to drive home the point that Rimando was completely alien to the dealings between Sanchez and Adiarte:

There is no question that Sanchez could have furnished Adiarte with money as a loan or a gift so that she herself might satisfy her obligation to Araneta & Co. Let us suppose that Sanchez had done that—given or loaned Adiarte the money—could Rimando assert title to Adiarte's portion of the land? No one would say that he could, and if he could not, upon what legal principle could he be considered the owner of Adiarte's land now? What is the difference between Sanchez' paying Araneta directly and his giving Adiarte the wherewithal to personally make the payment? The money in either case was Sanchez'. The difference was wholly in the method of payment.

As a matter of fact, had Sanchez actually taken Adiarte's half of the land for having satisfied the installment on it, that half would have belonged to him and not to Rimando. And if, instead of possessing the land, Sanchez had chosen to get back the money which he had advanced for Adiarte, the money would have been his and not Rimando's.

It seems then plain that Rimando did not derive any right or benefit from Sanchez' use of his own money in the exercise of a right or privilege that was personal and did not affect Rimando in any way. That privilege was

Sanchez' and Sanchez alone could enforce or renounce it as his fancy and sense of justice dictated. Sanchez alone could have claimed the land or his money back from Adiarte. If Sanchez waived the right—as he did probably because the money he had disbursed was very cheap and with Rimando's portion of the lot he got enough for all the case he had paid, including the money he had paid or agreed to pay Rimando—the waiver was absolutely effective against the whole world. If he did not, he and not Rimando has cause of action against Adiarte. Rimando did not step into the shoes of Sanchez because Sanchez had already disposed of them while they were at his free disposal. By the rescission of the sale Sanchez did not forfeit his money.

To summarize, Rimando had sold to Sanchez his half of the lot, expressly excluding Adiarte's half from the sale. No longer did he sustain any relation to Adiarte, or that relation was wholly dependent upon the ownership of the land he had alienated. His sole remaining interest was that he be paid the purchase price. If Adiarte or Sanchez would neglect to pay the amount still due on Adiarte's lot, that was Adiarte's and Sanchez' own lookout. Rimando did not stand to lose or profit anything. His juridical relation with Adiarte having been severed, what Adiarte and Sanchez did in the settlement of Adiarte's debt could neither benefit nor prejudice him.

The rescission of the contract of sale between Rimando and Sanchez did not restore Rimando's original relation with Adiarte. It did not render the sale void ab initio. Under Article 1295 of the Civil Code then in force, the effects of the rescission were simply that the seller had a choice of getting back what he had conveyed and its fruits, if any, which Rimando did, or recover damages, while he was obligated to return the price he had received and its interest. Beyond these, the resolution or rescission of the contract did not confer on the parties any right. If after the rescission Rimando paid Sanchez what the latter had paid Araneta and Co., the reimbursement did not operate to impair Adiarte's title to her portion of the land. The title had already been vested and her obligation expressly extinguished or condoned by the party who had made the payment and who had the right to do so for her benefit. Sanchez himself could not have repudiated the condonation if his contract of sale with Rimando had continued in force.

There is another important consideration that need be kept in mind. There was no compelling necessity for making the payment of Adiarte's back installments to protect the other half against forfeiture. Araneta and Co. were not pressing collection of those installments. It is also a fact that Araneta & Co. had recognized the division of the lot and arrangement between Rimando and Adiarte, and agreed to receive the monthly payments from each of them separately in the amounts they had stipulated. With this understanding, there was nothing to worry that the real estate firm would cancel the sale of the entire parcel if Adiarte violated the terms of her commitment. Without such peril, Rimando or whoever he thinks was acting in his stead should at least have given Adiarte sufficient and timely warning that if she did not pay he would and her portion would be forfeited with all the capital she had invested in it. It is not in conformity with law and good conscience that Rimando or Adiarte, taking advantage of the other's forgetfulness or temporary inability to pay should hasten to make the payment and call the other half of the lot his or her own. Reduced to this ultimate results, that is Rimando's argument and this appellate Court's ruling.

With all due respects to the opinion of the Court of Appeals, it looks as if the law has been strained to the breaking point in an endeavor to make out a case for Rimando. If straining of the law were needed to reach a decision, the efforts should be marshalled in the opposite direction. For leaving aside all legal considerations, justice is entirely on Adiarte's side; there is none to back Rimando up. The latter has got all the law entitled him to, and more. He should be satisfied and thankful that Sanchez settled Adiarte's account and thereby cleared the way for the issuance to him (Rimando) of a clean title by Araneta and Co., title which he could not demand if Adiarte were in default.

Again, while on the one hand Adiarte has paid Rimando P200.00 and Araneta and Co. P924.47, and possibly has

made improvements on the land, Rimando on the other hand did not part with any amount which he could rightfully call his own for Adiarte's benefit. His (Rimando's) entire claim to the ownership of Adiarte's lot and, with it, the right to confiscate the hard-earned cash which Adiarte has invested in the property, is based wholly on a dubious technicality (to say the least) bereft of any moral or material backing.

For the reasons stated, I am of the opinion that the judgment of the Court of First Instance is correct and that the decision of the Court of Appeals should be reversed.

Paras, C. J., concurs.

CONCURRING

LABRADOR, J.,

I concur in the opinions of Justices Feria and Tuason. The payment by Sanchez of the instalments due from Adiarte was made on May 4, 1944, while the sale by Rimando in favor of Sanchez took place on May 15, 1944. The contract of sale specifically excludes Adiarte's portion of the lot. Therefore, it can not be said that Sanchez paid in the name and for the benefit of Rimando. There was no such understanding. He must have paid it in the expectation that he would be able to consummate the purchase of Rimando's portion. The fact that Rimando acknowledged having received the amount paid for Adiarte, as part of the advance price, is no satisfactory proof that the payment should inure to his benefit, as Adiarte's lot was excluded from the sale.

But assuming, for the sake of argument, that it was for his account, it did not ipso jure operate to bring about a resolution of the sale of the portion of 264 square meters by Rimando to Adiarte, in view of the peremptory provisions of articles 1100 and 1504 of the Spanish Civil Code. In order that Adiarte may be divested of her rights under that contract of sale with Rimando, it was only fair and just that Rimando first demand of her (Adiarte) compliance with her share of their joint undertaking to Gregorio Arancta, Inc., or that she be advised that if she fails to pay her share of the joint obligations, he (Rimando) would avail of the express terms of the contract, paying Adiarte's share in the instalments, and thereby becoming the exclusive owner of the whole property. The injustice caused by a ruling that no previous notice or demand is needed for Adiarte to lose her rights to the land in favor of Rimando, becomes evident when we take into account the fact that Adiarte had no knowledge of the payment, and such payment was made surreptitiously. There being no fact, provision, or circumstance from which inference may be made that Rimando and Adiarte had intended, by their contract, to dispense with the notice or demand required by law (articles 1100 and 1504), waiver thereof may not be decreed.

DISSENTING

JUGO, J.,

This is an appeal by certiorari from the decision of the Court of Appeals. Inasmuch as we have to accept the findings of fact made by said Court and review alleged errors of law only, we reproduce below, as done by the petitioners, the decision in full:

"This is an appeal from a decision rendered by the Court of First Instance of Manila directing J. M. Tuazon & Co., Inc., represented by Gregorio Araneta, Inc., to execute a deed of sale in the name of the plaintiffs for one-half of the lot described in the complaint, and another deed of sale in favor of the defendant Cenon Rimando for the other half of said lot.

"The record discloses that on February 8, 1939, J. M. Tuazon & Co., Inc., through its agent Gregorio Araneta, Inc., sold to Cenon Rimando, married to Leona Mendoza, the parcel of land in question described in the complaint and covered by Transfer Certificate of Title No. 35073, under the terms and conditions contained in the Contract To Sell No. 367 (Exhibit A). On May 4, 1940, defendant Rimando sold to plaintiff Adiarte one-half of said lot, to be more exact, 264 square meters thereof, in consideration of the sum of P1,590 under the terms and conditions stipulated by the parties in the document Exhibit B, which among other things says:

* * * * *

"That the party of the Second Part shall pay the sum of two hundred pesos (P200), Philippine Currency, to the Party of the First Part upon execution of this document, receipt of which is hereby acknowledged by the latter.

"That the balance of P1,390 shall be paid by the Party of the Second Part in monthly installments of P18.10 direct to Gregorio Araneta Inc., on or before the 5th of every month beginning the month of June, 1940, which payment will cover the installment for the month of May, 1940 until the said balance shall have been fully paid,

* * * * *

"That in case any of the parties herein shall fail to meet the necessary monthly installments with Gregorio Araneta Inc., for their respective portions of the said lot, the other party may continue the payments of the monthly installments and the entire lot mentioned above shall be owned by the party effecting the payments and whatever amounts paid by the defaulting party with Gregorio Araneta Inc. shall be forfeited and shall be considered as rental for the parcel of land herein mentioned,

* * * * *

"On May 6, 1940, plaintiff Adiarte and defendant Rimando signed agreement Exhibit C whereby they ratified all the terms and stipulations agreed upon in the deed of assignment, Exhibit B. From that time, plaintiff Adiarte and defendant Rimando made separate payments to J. M. Tuazon & Co., Inc., for their respective portions of the lot in dispute. Thus, plaintiff Adiarte made, payments amounting to P924.47 from June 4, 1940, up to November 4, 1943, as shown by Exhibits E to E-19; and defendant Rimando, payments amounting to P1,377.73 up to April, 1944, as shown by Exhibits 22 to 22-J and 23 to 23-Z. Due to the outbreak of the Pacific War, both Adiarte and Rimando were not able to pay on time their installments such that on May 4, 1944, there was still an outstanding account of P2,195.72 for the whole lot in question (Exhibit 1-Rimando). In order to pay off this account, defendant Rimando entered into a contract of sale of the lot in question with intervenor Ricardo Sanchez and executed therefor the following document (Exhibit 2):

'MANILA, May 15, 1944

'Received this date from Mr. Ricardo Sanchez, the sum of THREE THOUSAND AND TWO HUNDRED FIFTY PESOS (P3,250), as advance payment of the value of my house and land at 5 Alcon, Manila, the lot being known as lot No. 3, block No. 22, of the subdivision plan Psd-14959, of the Sta. Mesa Heights Subdivision, with an area of 595.6 square meters, which I sold to him for P40,000. It is understood that the said 595.6 sq. m., an area of 264 sq. m., is not included in this sale. Said 264 sq. m., shall be taken from the right side of the land facing the house, computed at 12 m. x 22 m. It is understood that the said advance money of P3,250, the sum of P2,195.72 was paid directly to Gregorio Araneta Inc., by said Mr. R. Sanchez, as per Official Receipt No. H-5696.

'It is further understood that this sale of my property to Mr. R. Sanchez is irrevocable.

(Sgd.) 'CENON RIMANDO'

Pursuant to this agreement, Sanchez paid the sum of P2,195.72 to Gregorio Araneta Inc., who issued Exhibit 1

whereby it acknowledg full payment of the purchase price of the whole lot in question. Nevertheless, the contract of sale between defendant and intervenor Sanchez was not carried out because intervenor Sanchez failed to pay in due time the whole amount of P40,000 agreed upon in Exhibit 2 and on August 28, 1944, defendant Rimando cancelled that sale and returned to intervenor Sanchez only P2,610 in postal money orders, Exhibits 4 to 17, out of the entire sum of P3,250 he received from the latter, for the reasons he stated in his letter of August 28, 1944 (Exhibit 18) to said Sanchez. The latter received the letter and the money orders enclosed therein and ever since made no complaints, thus indicating that he was satisfied with the amount sent to him and the deductions made by Rimando from the total amount of P3,250 for the reasons stated in said letter.

"After the full payment of the price of the whole lot in question was made, plaintiff Adiarte did nothing, but on August 8, 1946, she instituted the present action to compel the defendant company Gregorio Araneta, Inc., to execute a deed of definite sale of the parcel of land in question both in her name and of Cenon Rimando, as co-owner of said lot with an undivided one-half portion thereof. Upon being summoned, defendant Rimando answered the complaint denying plaintiffs claim of ownership over the lot in question and asserting that he is the exclusive owner thereof. Thereafter, intervenor Sanchez filed his complaint in intervention alleging that the lot in question was sold to him by the defendant Rimando; that he made an advance payment of P3,250 as purchase price of said land; that out of said P3,250 he paid directly to the Gregorio Araneta, Inc., the sum of P2,195.72; that the balance of P36,750 was consigned and deposited with the Court of First Instance of Manila after defendant Cenon Rimando refused to accept it; and prayed that by virtue of these facts he be declared owner of the lot in question. Hence the main question we have to determine is who under the facts of the case could be considered the lawful owner of said lot.

"It is beyond dispute that the payment in full of the purchase price of said land was made by the intervenor Sanchez and that the latter did so because of the negotiation of sale had between him and the defendant Rimando of the latter's house and portion of the lot (Exhibit 2) that said sale was not carried out and consequently defendant Rimando had to reimburse, as he in fact did, almost the whole amount he had received from Sanchez on account of that negotiated sale. Likewise it is beyond question that since November, 1943, plaintiffs failed to pay the installments corresponding to her portion; that under one of the conditions stipulated in Exhibit B, defendant Rimando had the right to continue the payment of said monthly installments and thereby to claim for the ownership of the entire lot, for in said Exhibit B it was stipulated:

'That in case any of the parties herein shall fail to meet the necessary monthly installment with Gregorio Araneta Inc., for their respective portions of the said lot, the other party may continue the payments of the monthly installments and the entire lot mentioned above shall be owned by the party effecting the payments and whatever amounts paid by the defaulting party with Gregorio Araneta. Inc., shall be forfeited and shall be considered as rental for the parcel of land herein mentioned,'

"Under this clear and positive stipulation, it appearing that it was defendant Rimando who continued the payment of the monthly installments corresponding to the portion belonging to plaintiff Adiarte, said Rimando is entitled to be declared owner of the entire lot in question."

"It may be contended however that the payment was made by Sanchez and not by Rimando and that Exhibit 1, the official receipt issued by the Gregorio Araneta, Inc., for the full payment of the unpaid purchase price of the land in question, was issued in the name of Cenon Rimando and Laura Adiarte. But even admitting this to be true, as it so appears in said Exhibit, the mere fact that Laura Adiarte was mentioned therein as one of the payors, will not grant her any lawful right over the lot in question, when in fact she had not paid said installments, which Sanchez paid to Gregorio Araneta Inc., in behalf of the defendant Rimando, who finally reimbursed Sanchez of the amount he had paid in this account. Consequently, defendant Rimando should be considered as the one who actually paid said installments, and under the aforecited agreement (Exhibit B) to the effect that the party who shall continue the payments of the monthly installments corresponding to the other party would be entitled to own the entire lot, Rimando has the right to claim for himself the exclusive

ownership of the lot in question.

"Wherefore, the decision appealed from is hereby reversed in so far as it orders Gregorio Araneta, Inc., to execute a deed of sale for the portion claimed by the plaintiffs and instead another judgment is hereby entered dismissing the complaint and ordering said Gregorio Araneta, Inc., to execute a definite deed of sale in favor of the defendant Cenon Rimando. Without any pronouncement with regard to costs."

The petitioners make the following assignment of errors:

"I

"The Court of Appeals erred in considering that the payment made by intervenor Sanchez to the Gregorio Araneta & Co., Inc. (Exhibit 1-Rimando) was, in effects payment made by respondent Rimando of the unpaid installments on the ½ share of petitioner Adiarte on the lot in question;

"II

"The Court of Appeals erred in considering as rescinded the contract of sale (Exhibit B) and consequently holding that respondent Rimando 'is entitled to be declared owner of the whole lot in question' "; and

"III

"The Court of Appeals erred in not considering and/or disregarding the equities of the case in favor of petitioner Adiarte."

We shall consider these alleged errors together.

The receipt (Exhibit 2), quoted in the above decision, signed by Rimando in favor of Sanchez, although worded as referring to a sale of Rimando's portion to Sanchez, yet legally what Rimando sold was his rights and equities to said portion, for the reason that Rimando had not yet paid in full its price to Gregorio Araneta & Co., and consequently, had not yet become the owner of said portion and Madrazo vs. Court of Appeals, et al. under the terms of his contract with said entity. It was also natural to exclude the portion of 264 square meters, the right to which had been assigned by Rimando to Laura Adiarte, who likewise had not yet become the owner thereof under the terms of her contract with Rimando and of the latter's contract with Araneta, the terms of both contracts being inseparable, as the performance of the Rimando-Adiarte contract was dependent upon compliance with the Araneta-Rimando contract which Adiarte assumed in so far as her share was concerned. When Rimando sold to Sanchez his rights and equities, the latter also assumed the obligations of Rimando with regard to the whole lot because, while Rimando and Adiarte had divided the lot between themselves, nevertheless their obligations to Araneta were indivisible in so far as Araneta was concerned, and part of said obligations was necessarily assumed by Adiarte in her contract with Rimando. This division of rights and obligations between Rimando and Adiarte did not in the least affect the indivisibility of their obligations or rather the obligations of Rimando to Araneta. When Sanchez bought the rights of Rimando, Sanchez necessarily assumed both the rights and the obligations of Rimando as to the whole lot, including the portion assigned to Adiarte. It would have been unjust for Sanchez to assume the obligations of Rimando with regard to the whole lot without also receiving the corresponding rights with regard to the same. Rights and obligations are correlative. This is shown by the statement in said receipt that 'it is understood that the said advance money of P3,250, the sum of P2,195.72 was paid directly to Gregorio Araneta Inc., by said Mr. R. Sanchez, as per Official Receipt No. H-5696.' The payment of the sum of P2,195.72 by Sanchez to Araneta was part of the consideration of the contract between Rimando and Sanchez. The payment inured to the benefit of both of them.

When Sanchez was unable to comply with the other terms of his contract with Rimando, it was resolved or

rescinded, and all the rights and obligations of Sanchez reverted to Rimando. It should be noted in this connection that Rimando returned to Sanchez the sum of P2,610 upon the rescission of their contract, the balance of P640 being charged to expenses and other damages. Sanchez acquiesced in this. As Adiarte had lost her rights for non-payment to Araneta even at the time of the Rimando-Sanchez contract and said rights had passed to Sanchez, when the latter rescinded the Rimando-Sanchez contract, those rights necessarily reverted to Rimando.

The Rimando-Adiarte contract is assailed by the petitioners as being of the nature of a pactum commissorium. This is not so. In the case of *Alcantara vs. Alinea, et al.* (8 Phil., 111) it was held:

"1. Contract; Loan.—The fact of having entered into a contract covering a loan, and at the same time agreeing to sell a piece of property, the value of which is fixed as the amount of money loaned, if, within a fixed time, such amount loaned be not paid, does not produce any change in the nature and legal terms of either of the contracts, nor any essential defect which would tend to nullify the same, inasmuch as the property is not thereby mortgaged, nor has it been delivered by virtue of a contract of antichresis, or of pledge, which is, as is known, made with respect to and covers movable or personal property only.

"2. 'Pactum Commissorium', Loan.—Neither does the said loan coincide with the pactum commissorium referred to in Law 41, title 5, and Law 12, title 12, of the fifth Partida, and perhaps included in the prohibition and declaration of nullity expressed in articles 1859 and 1884 of the Civil Code, inasmuch as said pactum presumes the existence of the contracts of mortgage or pledge or that of antichresis, none of which have concurred in the loan of which mention is made herein.

"3. Obligations of Parties to Contract.—It is an established doctrine of law and sustained by the settled practice of the courts, that a man obligates himself to do that to which he promises to be bound, because that which is agreed to in a contract is the law between each contracting parties."

This doctrine was reiterated in the *Caridad Estates, Inc., vs. Pablo Santero* (40 Off. Gaz., 61, No. 14, October 4, 1941) in which this Court said:

"1. Contracts; 'Pactum Commissorium'; Penal Clause.—Taking up the argument that the stipulations outlined in paragraphs 3 and 4 of the contract have resulted in a pactum commissorium, we are of the opinion that the objection is without legal basis. Historically and in point of strict law, pactum commissorium, referred to in Law 41, title 5, and Law 12, title 12 of the Fifth Partida, and included in articles 1859 and 1884 of the Civil Code, presupposes the existence of mortgage or pledge or that of antichresis. (*Alcantara vs. Alinea*, 8 Phil., 111.) Upon this account, it becomes hardly conceivable, although the argument has been employed here rather extravagantly, that the idea of pactum commissorium should occur in the present contract of sale, considering that, it is admitted, the person to whom the property is forfeited is the real and equitable owner of the same because title would not pass until the payment of the last installment. At most, the provisions in point, as the parties themselves have indicated in the contract, is a penal clause which carries the express waiver of the vendee to any and all sums he had paid when the vendor, upon his inability to comply with his duty, seeks to recover possession of the property, a conclusive recognition of the right of the vendor to said sums, and avoids unnecessary litigation designed to enforce fulfillment of the terms and conditions agreed upon. Said provisions are not unjust or inequitable and does not, as appellant contends, make the vendor unduly rich at his cost and expense,"

The same principle has been established relative to persona property in article 1454-A of the old Civil Code, known as the Recto Law, which says in part "in a contract for the sale of personal property payable in installment, failure to pay two or more installments, shall confer upon the vendor the right to cancel the sale * * * without reimbursement to the purchaser of the installments already paid, if there be an agreement to this effect." The same principle is contained in article 1484 of the present Civil Code.

In view of the foregoing, the decision of the Court of Appeals is affirmed, without costs. It is so ordered.

Bengzon, Montemayor and Bautista Angelo, JJ., concur.

[*] Agreement Exhibit C, interpreted erroneously by the Court of Appeals as a mere ratification of the terms and, stipulation agreed upon in Exhibit B, is an instrument signed by Gregorio Araneta, Inc. approving the transfer by Rimando of one half of his rights and interest in the lot in question of 596 square meters to Laura Adiarte, who recognizes and accepts the transfer in the contract No. 367 Exhibit A entered into between Rimando and Araneta Inc. on February 3, 1939, and binds herself to pay the balance of the purchase price of said half in accordance with the terms agreed upon. This approval was required by * * * of said Exhibit A for the validity of the transfer by Rimando to Adiarte of said one half of the lot. The erroneous interpretation of said Exhibit C is a conclusion of law which may be corrected by this Court on appeal.

[*] 86 Phil., 477.

[1] The Court of Appeals refers to Exhibit I previously mentioned which is the receipt issued by Gregorio Araneta to Sanchez.

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