

**GENEROSO MENDOZA, SUBSTITUTED BY HIS WIFE AND
ADMINISTRATRIX DIEGA DE LEON VDA. DE MENDOZA, PETITIONER,
VS. THE HON. COURT OF APPEALS, DANIEL GOLE CRUZ AND
DOLORES MENDOZA, RESP...**

G.R. No. L-36637. July 14, 1978

Ponente: SANTOS, J.

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SANTOS, J.:

This petition for review by certiorari seeks the reversal of the decision of the Court of Appeals^[**] dated February 27, 1973 in CA-G.R. No. 46581-R entitled "Generoso Mendoza, applicant-appellee vs. Daniel Gole Cruz, et al., movant-applicants", which upheld the registration in the names of herein private respondents, purchasers of the landholdings subject matter of an application for registration, notwithstanding that they were not parties in the original registration proceedings.

Relevant antecedent facts follow. On May 15, 1964, Generoso Mendoza, herein petitioner,^[1] filed with the Court of First Instance of Bulacan an application for the registration of two parcels of land, with a residential house thereon, situated in the Poblacion of Sta. Maria, Bulacan. A notice was issued on December 3, 1964 setting the date of initial hearing on June 18, 1965. Said notice was duly published, posted and served but nobody appeared nor filed an answer or opposition within the period allowed for that purpose. Consequently, the registration court entered on July 6, 1965, an order of general default and allowed the applicant to present his evidence ex-parte.^[2]

From the evidence presented by applicant Generoso Mendoza, herein petitioner, it was proven that he and his wife, Diega de Leon; were the owners of the parcels of land subject of the application but the same were sold by them, during the pendency of the case, to the spouses Daniel Gole Cruz and Dolores Mendoza, herein private respondents, subject to the vendors' usufructuary rights. The instrument embodying such sale was presented as Exhibit I. On the basis of such evidence, the registration court rendered a decision on July 21, 1965, ordering the registration of the two parcels of land in the names of the vendees, Daniel Gole Cruz and Dolores Mendoza, subject to the usufructuary rights of the vendors, Generoso Mendoza and Diega de Leon. On the same day, a copy of said decision was received by Generoso Mendoza.^[3]

On November 5, 1965, after the decision had become final, the applicant-vendor, Generoso Mendoza, filed a motion for the issuance of the decree. On May 16, 1967, Decree No. 114454 was issued confirming the title to the land of vendees Daniel Gole Cruz and Dolores Mendoza, and ordering the registration of the same in their names, subject to the usufructuary rights of the vendors. Consequently, Original Certificate of Title No. 0-3787 was issued to spouses Daniel Gole Cruz and Dolores Mendoza.^[4]

On April 16, 1968, Generoso Mendoza filed an urgent petition for reconsideration praying that the decision dated July 21, 1965 and the decree issued pursuant thereto dated May 16, 1967 be set aside and that Original Certificate of Title No. 0-3787 be cancelled, on the ground that the vendees, the registered owners, had failed to pay the purchase price of the lands.^[5]

The registration court considered said urgent petition for reconsideration as a petition for review of the decree and issued an order dated September 3, 1968 setting aside its decision, its order for the issuance of the decree, and the decree of registration, on the ground that it did not have jurisdiction to order the registration of the lands in the names of the vendees, who were not parties to the application for registration. Moreover, said court ordered the cancellation of O.C.T. No. 0-3787 and directed the registration of the lands in the names of spouses, Generoso Mendoza and Diega de Leon, subject to the rights of vendees, Daniel Gole Cruz and Dolores Mendoza, stated in the deed of sale.[6]

On September 17, 1968, spouses Cruz and Mendoza moved to reconsider the order, but their motion was denied on October 17, 1968. On December 19, 1968, said spouses appealed from the order dated September 3, 1968. On March 11, 1969, Mendoza filed a motion to dismiss the appeal and on April 10, 1969, the registration court dismissed the appeal.[7]

The spouses Cruz and Mendoza then filed with the Court of Appeals a special civil action for certiorari, mandamus and prohibition, which was docketed as CA-G.R. No. 43250-R. The Court of Appeals on January 5, 1970, ordered the registration court to give due course to the appeal. The registration court approved the Record on Appeal and forwarded the same to the Court of Appeals together with all the evidence adduced during the trial.[8]

Acting on said appeal which was docketed as CA-G.R. No. 46581-R, the Court of Appeals rendered on February 27, 1973, the decision, subject matter of the present petition for review. It set aside the order of the land registration court of September 3, 1968 which set aside its decision of July 21, 1965 and the decree issued pursuant thereto. It also denied applicant Mendoza's petition for reconsideration dated April 15 (filed April 16), 1968, which was considered as a petition for review of the decree.

Hence, this Petition for Review which alleges that the respondent Court of Appeals erred --

"1. . . . IN HOLDING THAT THE APPELLEE HIMSELF CAUSED THE REGISTRATION OF THE TITLE TO THE LAND IN QUESTION IN THE NAME OF THE APPELLANTS.

"2. . . . IN HOLDING THAT ALTHOUGH THERE WAS NO FORMAL AMENDMENT OF THE APPLICATION FOR REGISTRATION SUBSTITUTING THE VENDEES FOR THE APPLICANT, THE REGISTRATION COURT COULD LEGALLY ORDER THE TITLE ISSUED IN THE NAME OF VENDEES BECAUSE THE APPLICANT HIMSELF PROVIDED THE BASIS FOR ADJUDICATION; AND THAT THE APPLICATION COULD HAVE BEEN AMENDED TO CONFORM TO THE EVIDENCE ALREADY ADVANCED BY SUBSTITUTING THE VENDEES FOR THE SAID APPLICANT.

"3. . . . IN HOLDING THAT THE MOTION FOR RECONSIDERATION WAS NOT BASED ON FRAUD PERPETRATED ON THE APPELLEE BY THE PRIVATE RESPONDENT."[9]

The foregoing assigned errors question the decision of the respondent Court of Appeals ordering the registration of the landholdings subject matter of the application for registration in the names of herein private respondents who are the purchasers of the landholdings, notwithstanding that they were not parties in the original registration proceedings before the lower court.

In the first assignment of error, the petitioner assails the Court of Appeals' holding that he himself caused the registration of the land in question in the name of the vendees, the herein private respondents. But whether or not the petitioner did in fact cause the registration of the land in favor of private respondents is a question of fact which cannot properly be raised in the present petition for review inasmuch as Section 2, Rule 45 of the Rules of Court expressly provides that in an appeal from the Court of Appeals to this Court, only questions of law may be

raised.[10] Thus, the finding of the Court of Appeals that petitioner caused the registration of the land in favor of the private respondents cannot now be raised in this Appeal much less disturbed by this Court.

However, by petitioner's insistence that he could not be deemed to have caused the registration of the land in the names of private respondents as he never testified in court having sold the same to said private respondents,[11] he, in effect, invokes the exception to the above-stated rule of conclusiveness of the Court of Appeals' findings of fact, namely: that the Court of Appeals' finding is grounded entirely on surmises or conjectures and has no basis in the evidence on record.[12] Consequently, We are tasked with the examination of the records of the case to determine the veracity of petitioner's claim that he never testified in court as having sold the property to the herein private respondents. And it must here be emphasized that should the records confirm such claim of the petitioner, the Court of Appeals' holding that he caused the registration of the land in the names of private respondents would have no basis in the evidence and should, thus, be reversed.

A careful study and consideration of the records of the case, however, belie petitioner's claim that he did not testify relative to the aforementioned deed of sale. The transcript of the stenographic notes of the hearing on the application for registration held on July 6, 1965 all too clearly show that petitioner and his wife testified before the deputed commissioner, Mr. Ricardo Cruz, that they sold the property sought to be registered to the private respondents. Thus, the records show that petitioner testified as follows:

xxx xxx xxx

"Atty. VALENTIN:

Q. You said that you are the owners of these two parcels of land subject matter of this litigation, after you have caused the filing of this application, was there any transaction that took place with respect to the same?

A. Yes sir, we have sold these two parcels of land to Daniel Gole Cruz and his wife Dolores Mendoza.

Q. Showing to you this document which is an original carbon copy of a deed of sale written in Tagalog and executed and ratified on October 15, 1964, would you kindly tell this Honorable Court which is Exhibit I, will you tell this Honorable Court if you know this Exhibit I? (sic)

A. Yes, sir, that is the carbon copy of the deed of sale I have just Mentioned."[13] (Emphasis supplied)

xxx xxx xxx

Similarly, applicant-petitioner's wife, Diega de Leon, testified as follows:

xxx xxx xxx

"ATTY. VALENTIN:

Q. Do you know the two parcels of land subject matter of this registration proceedings?

A. Yes, sir.

xxx xxx xxx

Q. Do you know who are now in possession of these properties?

A. We, I, my husband and Daniel Gole Cruz and his wife, Dolores Mendoza are in actual possession of the same.

Q. Why are Daniel Gole Cruz and Dolores Mendoza co-possessing with you these two parcels of land?

A. Because on October 15, 1964, we sold this property to them with one of the conditions that until my husband and myself or anyone of us die, we wil live with them."[14] (Emphasis supplied)

xxx xxx xxx

Furthermore, applicant-petitioner even presented the private respondent Daniel Gole Cruz to confirm the aforesaid sale of the subject property. Thus, Cruz testified as follows:

xxx xxx xxx

"ATTY. VALENTIN:

xxx xxx xxx

Q. DO you know the property covered by this registration proceedings?

A. Yes sir.

Q. Why do you know the same?

A. Because we have been living in said place since I got married and besides, on October 15, 1964, the said two parcels of land were sold to us by the herein applicant and his wife.

Q. Showing to you this Exhibit I, would you identify and tell this Honorable Court if you know the same?

A. Yes sir, Exhibit I is the carbon original of the deed of sale executed in our favor."[15] (Emphasis supplied).

xxx xxx xxx

Finally, even the registration court itself did not believe applicant-petitioner's claim that he did not previously cause the registration of the subject property in the names of private respondents. For, while it granted applicant-petitioner's petition for review of the decree and ordered the re-registration of the land in his name, the Court, nevertheless, expressly declared in the very same order that:

"Generoso Mendoza was the original applicant in this case. At the hearing, he himself produced evidence that on October 15, 1964 he and his wife sold the land in favor of the spouses Daniel Gole Cruz and Dolores Mendoza for the amount of P6,000.00 payable in installments (Exh. 1). x x x"[16] (Emphasis supplied).

In view of the foregoing, it is crystal clear that the respondent Court of Appeals did not incur any error when it held that applicant-petitioner himself caused the registration of the land in the names of private respondents.

Petitioner, however, insists in his second assignment of error, that the registration court could not legally order the registration of the land in the names of the vendees-respondents, who were neither the applicants nor the oppositors in the registration case below. Petitioner overlooks Section 29 of the Land Registration Act which expressly authorizes the registration of the land subject matter of a registration proceeding in the name of the buyer or of the person to whom the land has been conveyed by an instrument executed during the interval of time between the filing of the application for registration and the issuance of the decree of title, thus -

"SEC. 29. After the filing of the application and before the issuance of the decree of title by the Chief of the General Land Registration Office, the land therein described may be dealt with and instruments relating thereto

shall be recorded in the office of the register of deeds at any time before issuance of the decree of title, in the same manner as if no application had been made. The interested party may, however, present such instruments to the Court of First Instance instead of presenting them to the office of the register of deeds, together with a motion that the same be considered in relation with the application, and the court after notice to the parties, shall order such land registered subject to the encumbrance created by said instruments, or order the decree of registration issued in the name of the buyer or of the person to whom the property has been conveyed by said instruments. x x x" (Emphasis supplied).

It is clear from the above-quoted provision that the law expressly allows the land, subject matter of an application for registration, to be "dealt with", i.e., to be disposed of or encumbered during the interval of time between the filing of the application and the issuance of the decree of title, and to have the instruments embodying such disposition or encumbrance presented to the registration court by the "interested party" for the court to either "order such land registered subject to the encumbrance created by said instruments, or order the decree of registration issued in the name of the buyer or of the person to whom the property has been conveyed by said instruments.[17] The law does not require that the application for registration be amended by substituting the "buyer" or the "person to whom the property has been conveyed" for the applicant. Neither does it require that the "buyer" or the "person to whom the property has been conveyed" be a party to the case. He may thus be a total stranger to the land registration proceedings. The only requirements of the law are: (1) that the instrument be presented to the court by the interested party together with a motion that the same be considered in relation with the application; and (2) that prior notice be given to the parties to the case. And the peculiar facts and circumstances obtaining in this case show that these requirements have been complied with.

As heretofore stated, the instrument embodying the sale of the subject property by the petitioner to the private respondents was duly presented to the registration court for consideration. That the purpose was to have the land registered in the names of private respondents subject to the usufructuary rights of petitioner and his wife is explicit in the following facts and circumstances. Firstly, it was the petitioner himself, the applicant in the registration proceedings, who presented the deed of sale (Exh. I) to the court and testified before the same that he did sell the land to the private respondents. This was done by him despite the fact that he could easily have the land registered in his name--as an order of general default had been issued and the hearing on the application for registration had been conducted EX-PARTE. Secondly, as if to fully convince the court of the fact of sale, petitioner presented his wife, Diega de Leon, and private respondent, Daniel Gole Cruz, to confirm the said sale of the land and the stipulated usufructuary rights. Finally, the petitioner even filed the motion for the issuance of the decree of confirmation of title after having received the decision of the court ordering the registration of the title to the land in the names of vendees-respondents, subject to the stipulated usufructuary rights--thereby signifying his full assent to the same.

It is true that no written motion was filed seeking the consideration of the deed of sale in relation with the application for registration. But the law does not require that the motion accompanying the presentation of the instrument be in writing. And the above-enumerated acts of the applicant-petitioner and the circumstances surrounding the same accept of no interpretation than that the applicant-petitioner did in fact move the court to order the registration of the title to the land in the names of vendees-respondents, subject only to the stipulated usufructuary rights of the petitioner and his wife. There was, therefore, sufficient compliance with the first requirement of the law.

Anent the second requirement of prior notice to the parties, the relevant fact to be considered is that an order of general default had been issued prior to the presentation of the deed of sale by the applicant-petitioner, since nobody filed an opposition to the application for registration. Thus, the only person who should have been entitled to a notice from the court was the applicant-petitioner himself, as the only party with a legal standing in the

proceedings. In view thereof, no legal objection to the court's jurisdiction to order the registration of the lands in the names of vendees-respondents may be interposed on the ground of non-compliance with the requirement of prior notice to the parties.

Since there was sufficient compliance with the aforesaid requirements of the law, respondent Court of Appeals did not, therefore, err in holding that the lower court had jurisdiction to order the registration of the lands in the names of vendees-respondents.

The petitioner, finally, contends--in a desperate effort to justify the validity of the appealed order of September 3, 1968--that respondent Court of Appeals erred in holding that he was not the victim of fraud perpetrated by the vendees, private respondents, herein, who allegedly failed to pay the purchase price of the landholdings.

This is also without merit. Section 38 of the Land Registration Act provides as follows--

"SEC. 38. If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, a decree of confirmation and registration shall be entered. x x x Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decree:

subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest. x x x" (Emphasis supplied.)

It is clear from the foregoing provision that the only ground upon which a decree of registration may be set aside is fraud in obtaining the same. In the instant case, applicant-petitioner cannot complain of fraud in obtaining the decree of registration for as heretofore stated, it was solely upon his testimony and proof that the lots were ordered registered in the names of the vendees-respondents and it was also upon his motion that the decree of registration was issued by the lower court. What the applicant-petitioner actually invokes in this case is not fraud in obtaining the decree of registration but the alleged failure of the vendees-respondents to pay the purchase price of the landholdings. But as correctly held by respondent Court of Appeals:

"(B)reach of contract is not a ground for a petition for a review. And the registration court has no jurisdiction to decide the contentious issue of whether or not the deed of sale, Exh. "1", should be rescinded for the alleged failure of the vendees to pay the purchase price. The issue on the breach of contract has to be litigated in the ordinary court." [18]

In view of all the foregoing, We hold that the Honorable Court of Appeals did not commit any error in setting aside the order of the lower court dated September 3, 1968, and thus allowing the registration of the lots in the names of the vendees, herein private respondents.

WHEREFORE, the decision of the Court of Appeals dated February 27, 1973 is hereby affirmed with costs against petitioner.

Fernando, (Chairman), Antonio, and Guerrero[*], JJ., concur.

Barredo, J., concurs in a separate opinion.

Aquino, J., see dissenting opinion.

[**] Third Division; Fernandez, J., ponente; Concepcion Jr. and Gancayco, JJ., concurring.

- [1] Substituted by his wife and administratrix Diega de Leon Vda. de Mendoza.
- [2] Record on Appeal, pp. 1-9.
- [3] Id., pp. 9-11.
- [4] Id., pp. 11-14.
- [5] Id., pp. 14-31.
- [6] Id., pp. 37-40.
- [7] Decision of the Court of Appeals, p. 4, (Rollo, p. 19).
- [8] Ibid.
- [9] Id., p. 8, (Rollo, p. 23).
- [10] The rule that findings of fact of the Court of Appeals are binding upon the Supreme Court has been followed in a long line of cases, notably: *Goduco v. Court of Appeals*, G.R. No. L-17647, June 16, 1975, 14 SCRA 282; *Ramos v. Pepsi Cola Bottling Co. of the P.I.*, G.R. No. L-22533, February 9, 1967, 19 SCRA 289; *Tan v. Court of Appeals*, G.R. No. L-22793, May 16, 1967, 20 SCRA 54; *Chan v. Court of Appeals*, G.R. No. L-27488, June 30, 1970, 33 SCRA 737.
- [11] See: Petitioner's Reply Brief, pp. 4-5.
- [12] See: *Napolis vs. Court of Appeals*, G.R. No. L-28865, February 28, 1972, 43 SCRA 301.
- [13] *T.S.N., Generoso Mendoza*, hearing of July 6, 1965, pp. 6-7.
- [14] Id., *Diega de Leon*, pp. 11-12.
- [15] Id., *Daniel Gole Cruz*, pp. 16-17.
- [16] Order of September 3, 1968 (Record on Appeal, pp. 37-38).
- [17] See: *Government of the Philippines v. Abad and Molino*, G.R. No. L-8317, May 23, 1958, 103 Phil. 725; *Director of Lands v. Abiera, et. al.*, G.R. No. L-11834, July 26, 1960, 108 Phil. 943.
- [18] Decision of the Court of Appeals, p. 7, (Rollo, p. 22).
- [*] In lieu of Associate Justice Hermogenes Concepcion Jr. who took no part.

CONCURRING OPINION

BARREDO, J.:

I concur in the judgment and the main opinion in this case. After all, as I view the whole controversy here, whether the title of the land in question be in the name of the Mendozas or the Cruz spouses is of secondary importance, since the title issued to the latter would anyway carry the appropriate annotations protective of the rights of the former under the deed of sale and vice-versa. Inasmuch as the factuality of the sale to the Cruz spouses is beyond dispute and it is evidenced by a public instrument, it is unquestionable that the title to the property, which is real property, passed to them upon the execution of the deed of sale and delivery thereof to them. In fact, in recognition of such transfer of title, it is expressly stipulated in the deed that the vendors would retain possession and usufruct of the properties sold, as long as the total price has not been paid. Thus, the only

right that has remained with the Mendozas is to exact compliance with such conditions of the sale.

The alleged failure of the vendees to pay a single centavo of the price does not, to my mind, constitute fraud in securing the registration of the property in their names. Worse, the Cruz spouses were not even parties to the registration proceeding -- they were not represented therein by anybody; it was the court that caused such registration at the instance, according to the evidence, of the petitioner himself. And on this score, I am not ready to assume that Generoso Mendoza did not actually testify, even as I feel that anyway his recorded testimony -- denied by him to have been actually given -- is hardly indispensable, considering it merely confirmed what is alleged in the application, qualified by the deed of sale in favor of the Cruz spouses, the authenticity and due execution of which are, as I have already stated, beyond dispute. The reopening of the decree of registration by Judge de Borja had no legal basis.

As aptly held in the main opinion, the mere presentation to the court of that deed of sale, in one way or another, justified the issuance of the title to the respondents, subject to the annotated rights of the petitioner, in connection with which, if it be true that the stipulated price has not been paid even partially, I might suggest that all that petitioner or his successor or heirs should do is to file a sworn manifestation with the register of deeds to such effect, so that together with the provisions of the deed of sale, the fact of such alleged non-payment may be known to the whole world, so to speak, for his protection. That protection is as good as if the title were in his name.

In short, I believe there is not much real substance in the controversy before Us. It should be disposed of in the simplest manner possible. For my part, I am more inclined to leave things as they are, rather than unnecessarily reverse the decision of the Court of Appeals, since for all practical purposes, it would not make any difference in whose name the title in question is issued. The respective rights of the parties would remain the same either way.

DISSENTING OPINION

AQUINO, J.:

I dissent. It is not lawful and just that the two lots in litigation should be registered in the names of the spouses Daniel Gole Cruz and Dolores Mendoza. The registration in their names is not proper because they did not intervene in the land registration proceeding; they did not defray the expenses thereof, and they have not paid to Generoso Mendoza, or his widow, Diega de Leon, the sum of P6,000 as the price of the two lots. The antecedents of Generoso Mendoza's appeal are as follows:

On May 15, 1964 Generoso Mendoza filed with the Court of First Instance of Bulacan an application for the registration of two residential lots, with a total area of 258 square meters, located in the poblacion of Sta. Maria, Bulacan. He prayed that his title thereto be confirmed and registered.

On October 15, 1964, or during the pendency of the proceeding, Generoso Mendoza and his wife Diega de Leon, both seventy-five years old, conditionally sold to the Cruz spouses, 25 and 26 years old, the said residential lots for P6,000 as follows: P1,000 upon the signing of the deed and P1,000 annually until the balance of P5,000 is paid. Among the conditions of the sale is that as long as the total price had not been paid, the vendors, or the survivor in case one of them died, would retain the possession and usufruct of the two lots and the house thereon. Upon full payment of the price, the vendees, or either one of them, would take care of the vendors, or the survivor, as if the latter were the parents of the vendees.

At the hearing, the deed of sale was presented in evidence. Judge Juan de Borja in a decision dated July 21, 1965,

ordered the registration of the two lots in the names of the spouses Daniel Gole Cruz and Dolores Mendoza "subject to the usufructuary rights of the spouses Generoso Mendoza and Diega de Leon". Lorenzo C. Valentin, who notarized the deed of sale, represented the Mendoza spouses in the land registration proceeding.

On May 16, 1967, a decree of registration was issued. Original Certificate of Title No. 0-3787 was issued to the Cruz spouses. On April 16, 1968, or within one year from the issuance of the decree, Generoso Mendoza, through another lawyer, filed a motion to set aside the decree and title on the ground that the Cruz spouses had not paid a single centavo of the price and, "hence, they have dirty hands". A copy of that motion was personally served upon the Cruz spouses.

Without denying that they had not paid the price, they opposed the motion on the ground that the decision, which had long become final, could no longer be set aside. Generoso Mendoza, in his reply, argued that the review of the decree was sought on the ground of fraud and that the deed of sale had become void for nonpayment of the price.

At the hearing of the said motion on May 15, 1968, the old man, Generos Mendoza, was placed on the witness stand. He declared that during the hearing of his application for registration he was in the courtroom but that he did not testify; that only his lawyer, Atty. Valentin, and the stenographer were present at the hearing, and that he did not give his consent to the issuance of the title in the name of Daniel Gole Cruz.

Judge De Borja, in his order of September 3, 1968, treated the motion as a petition for review under section 38 of Act No. 496. Realizing that he might have perpetrated an injustice in his decision, when he ordered the registration of the two lots in the names of the Cruz spouses, Judge De Borja set aside that decision and the decree of registration and ordered that the two lots be registered in the name of Generoso Mendoza "subject to the rights of the spouses Daniel Gole Cruz and Dolores Mendoza" under the aforementioned deed of sale.

The Cruz spouses filed a motion for reconsideration wherein they alleged that they had already paid P3,000 out of the price of P6,000 (p. 42, Record on Appeal). Judge De Borja denied the motion. The Cruz spouses appealed. Judge De Borja did not give due course to their appeal. He issued a writ of execution requiring the register of deeds to cancel the title issued to the Cruz spouses.

However, the Court of Appeals in the action for certiorari, prohibition and mandamus filed by the Cruz spouses, ordered the lower court to give due course to their appeal (Cruz vs. De Borja, CA-G.R. No. 43250-R, January 5, 1970).

Later, the Court of Appeals in adjudicating the appeal upheld the registration of the lots in the names of the Cruz spouses and reversed Judge De Borja's order for the registration of the lots in the name of Generoso Mendoza (De Leon vs. Gole Cruz, CA-G.R. No. 46581-R, February 27, 1973, per Fernandez, J., Concepcion Jr. and Gancayco, JJ., concurring). Diega de Leon, in substitution for her deceased husband, Generoso Mendoza, appealed to this Court.

The Court of Appeals assumed that at the hearing of Generoso Mendoza's application on July 6, 1965, the Mendoza spouses testified that they sold the two lots to Daniel Gole Cruz. According to the Cruz spouses, Daniel Gole Cruz supposedly testified also at the hearing on July 17, 1965 (pp. 83-84, Record on Appeal).

However, as already noted, Generoso Mendoza at the hearing on May 15, 1968 of his motion to set aside the decree and the title testified that he was never interrogated, meaning that he did not take the witness stand at the hearing of his application for registration, and that only his counsel, Atty. Valentin, and the court stenographer were present at the hearing.

We have, therefore, the conflicting versions of the parties as to what transpired at the hearing before the

commissioner of Generoso Mendoza's application for registration and as to whether there has been any payment of the price for the sale. Generoso Mendoza himself, by testifying that he never took the witness stand at the hearing of his application, destroyed the basis for the confirmation of his alleged title to the land or for its registration in the names of the Cruz spouses.

In my opinion the ends of justice would be served by setting aside all the proceedings in the lower court and holding a rehearing. The Cruz spouses should file a counter-petition in the trial court for the registration of the two lots in their names on the basis of the deed of sale. The trial court should ascertain whether the price of the sale had been paid by this time. (See *Vda. de Catindig vs. Roque*, L-25777, November 26, 1976, 74 SCRA 83).

At this juncture, it may be stressed that in the deed of sale (which was executed after the land registration proceeding had been commenced), it was stipulated that, since the two lots were unregistered, the parties agreed that the deed would be registered in the registry for unregistered land as provided for in Act No. 3344.

Had the parties intended that the vendees, the Cruz spouses, would be substituted as applicants in the land registration proceeding, it could easily have been so stipulated in the deed of sale. But no such stipulation was made. And no move was made by the vendees to have themselves substituted as applicants maybe because the sale was conditional and they had allegedly not paid any part of the price. Neither did the vendor, Generoso Mendoza, the applicant in the land registration proceeding, amend his application after the deed had been signed, by praying that the two lots be registered in the names of the Cruz spouses. He did not do so because, as already noted, the stipulation in the deed of sale was that the deed would be registered in the registry for unregistered land.

Evidently, the registration of the two lots in the names of the Cruz spouses was the idea of the notary Valentin who acted as counsel of Generoso Mendoza in the land registration proceeding. He did not bother to get the written consent of the septuagenarian, Generoso Mendoza, to the registration of the two lots in the names of the Cruz spouses.

The Cruz spouses never contradicted nor refuted the declaration in court of Generoso Mendoza at the hearing of his motion to set aside the decree and the title that he never testified during the hearing of his application and that it was only Atty. Valentin who appeared before the stenographer during that hearing.

Any practising lawyer who has appeared in hearings before a commissioner deputed by the land registration court to hear uncontested applications for registration knows that in some instances the hearings are not conducted in a formal manner; that only the applicant's lawyer and the stenographer are usually present; that the deputy clerk of court, as commissioner, or the hearing officer does not even bother to hear the applicant's testimony, and that the stenographer and the applicant's lawyer may fabricate the testimonies that appear in the transcript, which usually indicates that the applicant and his witnesses testified when in truth they did not testify at all. Such reprehensible practice should be condemned. Trial courts should exercise close supervision over the hearings of uncontested land registration cases so as not to make a farce or a mockery of the hearing.

I vote for the reversal of the decision of the Court of Appeals and the nullification of all the proceedings in the lower court and for the holding of a new hearing on the application for registration of Generoso Mendoza and the counter-petition of the Cruz spouses as above-indicated.

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