

**BENJAMIN DIHIANSAN, LOURDES LARGOZA AND RAMON KING,
PETITIONERS, VS. HON. COURT OF APPEALS AND JOSE SERRANO,
RESPONDENTS.**

G.R. No. L-49539. September 14, 1987

Ponente: TEEHANKEE, C.J.

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TEEHANKEE, C.J.:

The Court dismisses the petition and affirms the questioned decision of respondent Court of Appeals which found no reversible error in the judgment of the trial court.[1] Well-settled is the rule that findings of facts of the Court of Appeals are conclusive on the parties and the Supreme Court, subject to certain recognized exceptions which have no application here.[2] In reviews on certiorari the Court addresses only the questions of law, since it is not its function to analyze or weigh the evidence all over again (which has already been done by the trial court as the trier of facts and the appellate court as the reviewer of facts) and its jurisdiction is confined to reviewing errors of law that may have been committed in the judgment under review.

The facts of the case as found by the Court of Appeals are stated as follows:

"Plaintiff [herein respondent Jose Serrano] is the registered owner of a parcel of land along Ateneo Avenue, Naga City. Sometime in 1966, the Archbishop of Caceres, a corporation sole, signified the intention of donating to the city of Naga, portions of land which it owned on both sides of the Ateneo Avenue in order to widen the road. As the donation did not materialize, the Archbishop offered to sell the land to adjoining owners of properties fronting both sides of Ateneo Avenue. Among the said adjacent owners was the plaintiff. The property abutting his land was priced at P2,500.

"Upon knowing of plaintiff's preferential right to purchase said property, defendant Benjamin Dihiansan, then an employee of the Riconada Electric Company where plaintiff was the Treasurer, requested the latter to allow him to purchase the disputed property subject to certain conditions. Plaintiff agreed.

"On February 3, 1967, defendant Dihiansan executed a contract in plaintiff's favor obligating himself to re-sell the disputed property at the same price of P2,500 (Exhibit 'A'). In the same contract, defendant Dihiansan bound himself not to sub-lease the property to any other person or entity while plaintiff had not yet re-purchased it. (Exhibit 'A-2')

"On the same date of February 3, 1967, in another document signed in the presence of the Archbishop of Caceres, defendant further obligated himself to pay to plaintiff a monthly 'honorarium' of P20.00 starting March 31, 1967 until plaintiff 'purchased the lot at the Ateneo Avenue.' (Exhibit 'B')

"On May 2, 1970, after several verbal demands had failed, plaintiff exacted in writing that Dihiansan re-sell the property to him. Dihiansan refused.

"On August 26, 1971, plaintiff took the matter to court. It was upon reading the Answer that plaintiff came to know that Dihiansan had sold the disputed property to Ramon King for P4,500.00. Plaintiff then filed an

Amended Complaint, impleading said Ramon King as a party defendant.

"In his Answer, defendant Dihiansan contended that he had acquired the litigated property on October 20, 1966, or prior to the execution of Exhibit 'A' without any conditions; that said Exhibit 'A' was executed without the knowledge and consent of his wife, defendant Lourdes Largoza; that Exhibit 'B' wherein he obligated himself to pay a monthly honorarium to plaintiff, is void ab initio for being devoid of any consideration; that the land described in Exhibit 'A', with an area of 100 square meters, is different from that described in the complaint with an area of 150 square meters; that he is no longer the owner of the land in dispute, having sold the same on June 20, 1969 to Ramon King. In his counterclaim, Dihiansan averred that he had offered the property for sale to plaintiff but the latter refused to purchase it for P3,750, which was the price he (defendant) had paid for it, for which reason, he sold it to Ramon King for P4,500.00.

"For his part, defendant Ramon King contended that he is the absolute owner of the disputed land, having purchased it in good faith and for value in 1969, and counterclaimed for moral, actual, and exemplary damages.

"After plaintiff had rested his case, both defendants waived the presentation of testimonial evidence. Defendant King presented the Absolute Deed of Sale in his favor (Exhibit '1'-King), and upon request of his counsel, was given time within which to file a Motion to Dismiss, but as the same was not forthcoming, the trial court deemed the case submitted for decision.

"In the dispositive part of its judgment, the Court a quo decreed:

'WHEREFORE, the preponderance of evidence having been shown to favor the plaintiff, the Court finds and so holds that the defendant Benjamin Dihiansan has not complied with the obligation imposed upon him by the contract Exhibit A which is valid and binding upon him. He has sold the property to his co-defendant in bad faith and has thus conferred no title to the purchaser of the land, his co-defendant Ramon King. Consequently, the deed of conveyance, Exhibit 1-King, is hereby declared null, void and of no effect.

'Defendant Benjamin Dihiansan is likewise directed to pay unto plaintiff P20.00 a month representing defaulted payments from May, 1960 [should be 1969] until the same is fully paid plus the sum of P1,000.00 in damages as well as attorney's fees in the sum of P800.00, and the costs.'[3]

The foregoing judgment of the trial court was affirmed in toto by the Court of Appeals which declared that "finding no reversible error in the judgment appealed from, we hereby affirm the same with costs against defendants-appellants." Hence, this petition.

We affirm on the strength of controlling and established jurisprudence "that this Court decides appeals which only involve questions of law and that it is not the function of the Supreme Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed by the lower court."[4]

Petitioners' allegation that Exhibit "A" is null and void for lack of cause or consideration is untenable. The consideration as found by the lower court and affirmed by the Court of Appeals is private respondent's preferential right to buy the property in question from the owner. The contract Exhibit "A" clearly stipulates that petitioner Dihiansan shall re-sell the disputed property to private respondent. The contract is the law between the parties. When the words of a contract are plain and readily understandable, there is no room for construction. As the parties' agreement are reduced in writing (Exhibit "A"), the rule applies that their agreement is to be "considered as containing all such terms and there can be between the parties and their successors-in-interest no evidence of the terms of the agreement other than the contents of the writing."[5]

Petitioners' contention that the amended complaint below contains no allegation of fraud or bad faith whatsoever

relative to the sale of the disputed property and that there is no testimony on record that the sale was effected in bad faith is likewise untenable. Fraud has been established. As the trial court stated: "The defendant King did not choose to offer evidence. He merely affirmed the plaintiff's contention that his co-defendant Benjamin Dihiansan sold to him in bad faith the land in question (Exhibit 1-King) for P4,500.00. The sale is yet incomplete and full title did not, as yet, pass to him. It does not appear that the deed of sale (Exhibit 1-King) is registered. It is very elementary in land registration and in dealing with registered lands that the final culminating act to complete the alienation or sale is the registration of the document of sale. Exhibit 1 does not show such fact. At most, it merely shows that Benjamin Dihiansan received from his co-defendant Ramon King the sum of P4,500.00. It did not bind the land." [6] The finding of fraud in this case was a finding of fact and there are no factors which can justify a reversal thereof. We apply the "fundamental and settled rule that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case." [7] None of the recognized exceptions to the rule has been shown to apply in this case.

The identity of the disputed property has been clearly established by both parties' pleadings in the lower court. We take particular attention in petitioner Dihiansan's admission in his answer to the allegation in paragraph 6 of private respondent's complaint which shows that petitioner Dihiansan admits the identity of the disputed land. The mistake in designating the lot in the document "does not vitiate the consent of the parties, or affect the validity and binding effect of the contract. The reason is that when one sells or buys real property -- a piece of land, for example -- one sells or buys the property as he sees it, in its actual setting and by its physical metes and bounds, and not by the mere lot number assigned to it in the certificate of title." [8] The Court of Appeals thus correctly held regarding this assigned error:

"The second assigned error must also fail. It is apparent from Dihiansan's answer that he has assumed inconsistent positions. While in paragraph 3 thereof he expressly alleges that the land described in the contract, Exhibit 'A', and that in the complaint are different, in paragraph 1 thereof he asserts that the land described in the complaint was purchased by them without any conditions attached to its acquisition; and in paragraph 4, that the land had already been sold to defendant King. In his counterclaim, Dihiansan also avers that the 'lot mentioned in paragraph 6 of plaintiff's complaint' was first offered for sale to plaintiff but was finally sold to defendant King upon failure of plaintiff to purchase the same. In other words, Dihiansan unwittingly admits the identity of the disputed property despite his protestation to the contrary. Besides, instead of proving that they had purchased a parcel of land different from that described in the complaint, or that appearing in Exhibit 'A', Dihiansan chose to remain silent and allowed plaintiff to present his evidence without controverting the same by adequate and satisfactory proof." [9]

As to the allegation of petitioners that the land subject of Exhibit "A" does not fall under the purview of Article 1622 of the Civil Code (on the right of preemption or redemption by adjoining owner(s) of small urban land which cannot be used for any practical purpose), we hold that this is a question of fact which should have been raised in the lower court. Petitioners waived their right to present testimonial evidence in the lower court. They chose to remain silent. Consequently, they are now barred from raising said issue for the first time in this Court. "It is a well-settled rule that, except questions on jurisdiction no question will be entertained on appeal unless it has been raised in the court below and it is within the issues made by the parties in their pleadings." [10]

ACCORDINGLY, the decision of the Court of Appeals sought to be reviewed is hereby **AFFIRMED** in toto. With costs against petitioners.

Narvasa, Cruz, Paras, and Gancayco, JJ., concur.

* Eighth Division then composed of Melencio-Herrera, ponente, Relova and Gopengco, JJ.

[1] Civil Case No. 7174 of the CFI of Camarines Sur at Naga City, then presided by Judge Rafael de la Cruz.

[2] See Republic vs. Court of Appeals, 132 SCRA 514, 518.

[3] Pp 22-24, rollo.

[4] Conde vs. Intermediate Appellate Court, 144 SCRA 144 at page 149, citing Baniqued vs. Court of Appeals, 127 SCRA 596, 601.

[5] Siasat vs. Intermediate Appellate Court, 139 SCRA 238 at page 246.

[6] Record on Appeal, p. 44.

[7] Chase vs. Buencamino, 136 SCRA 365 at page 381.

[8] Atilano vs. Atilano, 28 SCRA 231, pp. 234-235.

[9] Page 26, rollo.

[10] Cordero vs. Cabral, 123 SCRA 532, at page 543.

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