

**LUCIO LUCENTA, PETITIONER, VS. COURT OF FIRST INSTANCE OF
BUKIDNON, BRANCH VI, AS PRESIDED BY HONORABLE EDUARDO DE
G. MONTENEGRO, AND RESTITUTO LUCENTA, RESPONDENTS.**

G.R. No. L-39789. June 20, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition originated from an action for recovery of possession instituted by the petitioner in the Court of First Instance of Bukidnon against the private respondent. At the pretrial, the issue was reduced to whether or not the property given by the petitioner in exchange for the private respondent's house consisted of only around 600 square meters or the whole of the petitioner's lot. Both parties admitted that they entered into an oral contract of barter. Both also belong to a cultural minority group. Initially, the petitioner insisted that only 600 square meters of his lot was offered in the barter agreement. After trial, the petitioner filed a memorandum adopting a different theory of his case. He attacked the legality of the barter itself on the ground that the same was not made in accordance with Sections 145 and 146 of the Administrative Code of Mindanao and Sulu. The trial court did not pass upon the issue of the legality of the barter as the same was not raised in the pleadings, at the pre-trial and during the trial. Instead, it upheld the oral contract of barter and ruled that based on the preponderance of evidence presented in court, what was bartered by the petitioner was his whole lot. Hence, this petition.

After the trial it conducted, the respondent court rendered its decision stating:

"This is a complaint for recovery of possession. Plaintiff (Petitioner) and defendant (Private respondent) are brothers, and both members of the cultural minority.

"The property sought to be recovered is a parcel of land situated at Sawaga-Poblacion, Malaybalay, this province, containing an area of 2.2635 hectares, more or less, bounded on the North by the property of Juan Ruiz, on the Southeast and East by the Calawaig River and on the West by the Sawaga River.

"The complaint alleges that sometime in 1963 plaintiff and defendant entered into a verbal agreement of exchange of property, whereby in exchange for plaintiff's (should be defendant) house, which plaintiff (should be defendant) gave to defendant (should be plaintiff), defendant (should be plaintiff) gave plaintiff (should be defendant) a portion of six hundred (600) square meters of the property sought to be recovered; that by virtue of the said agreement, the defendant entered into the property in the year 1963, but instead of occupying only a portion of six hundred (600) square meters thereof, he occupied and took possession of the whole land; that plaintiff and defendant being brothers, plaintiff has exerted earnest efforts for an amicable settlement but defendant has refused, and still refuses, to accept any settlement. In his answer, defendant alleges that what was given to him in exchange for his house was the entirety of the property sought to be recovered and not merely a portion thereof.

"From the pleadings, it appears that the existence of an oral or verbal exchange of property between plaintiff and defendant is not in dispute, and that the controversy is solely whether it was the entire land sought to be recovered or only a portion of six hundred (600) square meters thereof that was given to defendant in

exchange.

"Considering the uncorroborated testimony of the plaintiff as against the testimonies of defendant and his witnesses, this Court finds it proven by a clear preponderance of evidence that the entire land of plaintiff was given in exchange to the defendant and not merely a portion thereof of six hundred (600) square meters.

"Not that defendant had presented more witnesses than the plaintiff, but the following facts are significant.

"1. If plaintiff were to be believed, all that he gave in exchange to defendant was an area with a dimension of 30 x 20 meters. Yet it is alleged in the complaint, and consequently deemed admitted as a fact, that when defendant entered the land, "he occupied and took possession of the whole area of the land described in paragraph 2 hereof, and by mere tolerance of the plaintiff, defendant has been possessing the land under consideration up to the present...(Complaint, par. 4.);

"2. Defendant entered and took possession of the entire land in 1963 according to the complaint, but plaintiff filed this case only on April 13, 1971. or eight (8) years after;

"3. At the time of the exchange the land was a garbage dump. In the words of defendant, the first time he heard rumors that plaintiff would want to recover back the land was after the survey or the proposed highway passing thru the land. At the time this case was filed there was already the cemented national highway passing thru the land;

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"5. While claiming that only an area of 30 x 20 meters was given in exchange, plaintiff gave to defendant on the occasion of the exchange the affidavit of transfer of real property (Exh. 1), the tax declaration for the entire land (Exh. 3), the letter of the Office of the Provincial Assessor assessing the land for taxation purpose for the first time (Exh. 4) and the real estate tax receipts from 1954 (the first time the land was declared per (Exh. 4) up to 1962 (Exhs. 5, 5-A to 5-H). In short, plaintiff relinquished, on the occasion of the exchange, all of his papers pertinent to the entire land. Note that Plaintiff's Exhibit A is but a certified true copy of defendant's Exh. 3. Plaintiffs Exhibits "B" and "C" are tax receipts for the years 1968 to 1972. On rebuttal when asked whether he knew how it happened that the tax declaration and tax receipts are in the possession of defendant all that plaintiff could say was "No";

"6. The documents, Exhibits, 1, 3, 4, and 5, 5-A to 5-H were, according to defendant, delivered to him by the wife of Plaintiff who was ordered by plaintiff to get the documents. In other words, the evidence shows that plaintiff's wife was present when plaintiff and defendant finally agreed on the exchange. Sometime in December of 1969, defendant caused to be prepared the document now marked Exhibit 6, confirming the verbal agreement of exchange. While plaintiff refused, and did not in fact, sign Exhibit 6 confirming and ratifying the exchange, his wife Antonia D. Lucenta and son Wilson Lucenta signed as witnesses. The question is would plaintiff's wife have signed even as a witness to the document, if it were true that plaintiff did not give the entire land, but only a portion with a dimension of 30 x 20 meters?

"But in a sudden shift of theory, plaintiff in his memorandum now presents the issues as follows:

"1.

Was there really a barter of the house of the defendant with the entire land of the plaintiff?

"2.

If there was such a barter is it valid and binding between the parties.

""3.

If there was really such a barter but the same is not legal, what would be the respective remedies or relief between the parties in this case?' and concludes citing Article 1380 of the Civil Code that there was 'no contract of barter between plaintiff and defendant' or that assuming that there was a 'barter' the same should be considered non-existent and void relying on Articles 1378 and 1409 of the Civil Code and Sections 145 and 146 of the Administrative Code of Mindanao and Sulu.

"This of course can not be done. Not only is it plain from the allegations of the complaint and the answer that the existence of a verbal agreement of exchange is not in dispute and that the only issue is whether it was the entire land sought to be recovered that was given by plaintiff in exchange or only a portion of six hundred (600) square meters thereof, but at the pre-trial held on March 3, 1972, the former Presiding Judge of this Court, after a conference with the parties and their counsel, summarized the issue as follows:

""COURT:

In No. 2 of the complaint. Do the parties admit that an agreement between the plaintiff and defendant was entered into the year 1961 to the effect that there is going to be an exchange between the house of the defendant and a piece of land of the plaintiff or that the house of the defendant was to be exchanged with the land of the plaintiff but that the exchange of the house of the defendant was to be exchanged with a piece of land of the plaintiff covering only an area of six hundred (600) square meters; that it is the position of the defendant that the exchange was made for the entire piece of land?

"ATTY.DAMASCO:

Yes, your Honor.

"COURT:

The issue to be threshed out, therefore, is whether the agreement between the plaintiff and defendant is pertaining to the exchange of the house of the defendant with the entire land of the plaintiff or the exchange of the house of the defendant with the six hundred (600) square meters only which is a portion of the land now in dispute. Do the parties admit that the agreement between the plaintiff and defendant was not made in writing?

"ATTY.DAMASCO:

Yes, your Honor.'

"Under the circumstances, and it appearing by a clear preponderance of evidence that plaintiff gave the entire land sought to be recovered in exchange, and not merely a portion thereof, plaintiff's complaint must be dismissed." (Rollo, pp. 30-36)

The petitioner filed a motion for reconsideration but the same was denied. Hence, he filed this petition for certiorari asking us to set aside the decision of the trial court. He contends that the latter court should have decided and passed upon the validity and legality of the verbal agreement on the following grounds: (a) the fact that the petitioner and private respondent are members of the cultural minority and that the exchange made between them involving a parcel of land was not in writing, are both specifically alleged in the pleadings and therefore, the trial court should have taken cognizance of the same; and (b) although petitioner did not specifically pray for the annulment of the verbal agreement of exchange, there was a general prayer in his complaint upon which the respondent court may grant or decide such issue.

The petitioner's contentions cannot be sustained.

In the first place, when the petitioner filed his complaint, it was for the recovery of possession of the remaining

area of his lot outside of the 600 square meters which he claimed was the only subject-matter of the barter. Although he alleged that he and the private respondent are both members of*the cultural minority (in fact, they are brothers), he filed suit not for the purpose of impugning the validity or legality of the verbal contract, but rather, to give strength to the same as it is more common for members of cultural minorities to practice barter as a means of trade and commerce than for those who are not. Furthermore, during the pre-trial, the parties agreed that the only issue to be litigated upon is whether the verbal agreement pertains to the exchange of the house of the private respondent for the entire land of the petitioner or for only six hundred (600) square meters thereof. The petitioner is bound by what was agreed upon in the pre-trial. As we have ruled in *Munasque v. Court of Appeals*, (139 SCRA533, 541):

"The petitioner, therefore, should be bound by the delimitation of the issues during the pre-trial because he himself agreed to the same. In *Permanent Concrete Products, Inc. v. Teodoro*, (26 SCRA 336), we ruled:

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"x x x The appellant is bound by the delimitation of the issues contained in the trial court's order issued on the very day the pretrial conference was held. Such an order controls the subsequent course of the action, unless modified before the trial to prevent manifest injustice. In the case at bar, modification of the pre-trial order was never sought at the instance of any party."

This Court is not unmindful of the fact that, as a matter of public policy, there are laws specifically enacted to govern members of cultural minorities like the parties in this case. However, the circumstances of the present litigation dictate that it would be more in keeping with justice and equity if the equitable principle of estoppel is applied.

It is quite obvious that the petitioner's purpose is to profit from the land which was a mere garbage dump before the barter but which is now traversed by part of the national highway. The petitioner can realize this profit only if he could get back the land by taking inconsistent positions from initially attempting to prove that he bartered only 600 square meters of the said land to suddenly attacking the legality of the very barter which he himself, entered into. Aside from being in *pari delicto* with the private respondent, the petitioner is now estopped from assailing the validity and legality of the barter agreement which he entered into eight (8) years prior to his filing of an action and which action was initially anchored on the validity of said barter agreement. In the case of *Depositario v. Hervias*, (121 SCRA 756, 758) we ruled:

"Appellant's duplicity deserves the outright rejection of his claim. A party will not be allowed to make a mockery of justice by taking inconsistent positions which, if allowed, would result in brazen deception. The doctrine of estoppel bars a party from trifling with the courts and flaunting the elementary rules of right dealing and good faith. (*Crisostomo, et al. vs. Court of Appeals, et al*, 32 SCRA 54; *People v. Acierto*, 92 Phil. 534)."

In a similar case, *Heirs of Batiog Lacamen v. Heirs of Laruan*, (65 SCRA 605), where the original contracting parties were both members of a non-Christian tribe, this Court applied the equitable principle of laches and ruled that the heirs of the vendor of the land can no longer question the validity of the sale on the ground that the said sale did not bear the official approval of the Director of the Bureau of Non-Christian Tribes. We said:

"The 1917 Administrative Code of Mindanao and Sulu declares in its Section 145 that no contract or agreement relating to real property shall be made by any person with any non-Christian inhabitant of the Department of Mindanao and Sulu, unless such contract shall bear the approval of the provincial governor of the province wherein the contract was executed, or his representative duly authorized for such purpose in writing endorsed upon it. Any contract or agreement in violation of this section is 'null and void' under the succeeding Section 146.

"On 24 February 1919, Act No. 2798 was approved by the Philippine Legislature extending to the Mountain

Province and the Province of Nueva Vizcaya the laws and other legal provisions pertaining to the provinces and minor political subdivisions of the Department of Mindanao and Sulu, with the specific proviso that the approval of the land transaction shall be by the Director of the Bureau of Non-Christian Tribes.

"Then on 29 November 1919, came Act No. 2874 otherwise known as 'The Public Land Act.' It provided in Section 118 thereof that 'Conveyances and encumbrances made by persons belonging to the so-called 'non-Christian tribes,' when proper shall not be valid unless duly approved by the Director of the Bureau of 'non-Christian Tribes.' Any violation of this injunction would result in the nullity and avoidance of the transaction under the following Section 122.

During the regime of the Commonwealth, C.A. 141 otherwise known as The Public Land Act" was passed - November 7, 1936-amending Act No. 8274. However, it contained a similar provision in its Section 120 that 'Conveyances and encumbrances made by illiterate non-Christians shall not be valid unless duly approved by the Commissioner of Mindanao and Sulu.'

"The contracting parties, Lacamen and Laruan, are bound by the foregoing laws, since both of them are illiterate Igorots, belonging to the 'non-Christian Tribes' of the Mountain Province and the controverted land was derived from a Free Patent or acquired from the public domain.

"The trial court did show cordiality to judicial pronouncements when it avoided the realty sale between Lacamen and Laruan for want of approval of the Director of the Bureau of Non-Christian Tribes. For jurisprudence decrees that non-approved conveyances and encumbrances of realty by illiterate non-Christians are not valid, i.e., not binding or obligatory.

"Nevertheless, the thrust of the facts in the case before Us weakens the gathered strength of the cited rule. The facts summon the equity of laches.

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"Laruan's sale of the subject lot to Lacamen could have been valid were it not for the sole fact that it lacked the approval of the Director of the Bureau of Non-Christian Tribes, There was impressed upon its face full faith and credit after it was notarized by the notary public. The non-approval was the only 'drawback' of which the trial court has found the respondents-appellants to 'have taken advantage as their level to deprive (petitioners-appellants) of this land end that their motive is out and out greed. As between Laruan and Lacamen, the sale was regular, not infected with any flaw, x x x

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"For notwithstanding the invalidity of the sale, the vendor Laruan suffered the vendee Lacamen to enter, possess and occupy the property in concepto de dueno without demurrer and molestation, from 1928 until the former's death in 1938; and when respondents-appellants succeeded to the estate of their father, they too kept in silence, never claiming that the lot is their own until in 1957 or after almost 30 years they took 'advantage of the (non-approval) of this land' with a motive that was 'out and out greed.' Even granting, therefore, that no prescription has against their father's recorded title, their quiescence and inaction for almost 30 years now commands the imposition of laches against their adverse claim. (Miguel, footnote 27)"

The principle in Heirs of Batiog Lacamen is even more applicable to the present petition. There is no imposition, fraud, or taking of an unfair advantage of any sort in this case. The two brothers were fully aware of what they were doing. As stated earlier, given the circumstances of this case, the Court is constrained to apply the doctrine of estoppel against the petitioner insofar as the requirement of government approval is concerned.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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