

VICENTE GODINEZ, ET AL., PLAINTIFFS-APPELLANTS, VS. FONG PAK LUEN, ET AL., DEFENDANTS, TRINIDAD S. NAVATA, DEFENDANT-APPELLEE.

G.R. No. L-36731. January 27, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The plaintiffs filed this case to recover a parcel of land sold by their father, now deceased, to Fong Pak Luen, an alien, on the ground that the sale was null and void ab initio since it violates applicable provisions of the Constitution and the Civil Code.

The order of the Court of First Instance of Sulu dismissing the complaint was appealed to the Court of Appeals but the latter court certified the appeal to us since only pure questions of law were raised by the appellants.

The facts of the case were summarized by the Court of Appeals as follows:

"On September 30, 1966, the plaintiffs filed a complaint in the Court of First Instance of Sulu alleging among others that they are the heirs of Jose Godinez who was married to Martina Alvarez Godinez sometime in 1910; that during the marriage of their parents the said parents acquired a parcel of land lot No. 94 of Jolo townsite with an area of 3,665 square meters as evidenced by Original Certificate of Title No. 179 (D - 155) in the name of Jose Godinez; that their mother died sometime in 1938 leaving the plaintiffs as their sole surviving heirs; that on November 27, 1941, without the knowledge of the plaintiffs, the said Jose Godinez, for valuable consideration, sold the aforesaid parcel of land to the defendant Fong Pak Luen, a Chinese citizen, which transaction is contrary to law and in violation of the Civil Code because the latter being an alien who is inhibited by law to purchase real property; that Transfer Certificate Title No. 884 was then issued by the Register of Deeds to the said defendant, which is null and void ab initio since the transaction constituted a non-existent contract; that on January 11, 1963, said defendant Fong Pak Luen executed a power of attorney in favor of his co-defendant Kwan Pun Ming, also an alien, who conveyed and sold the above described parcel of land to co-defendant Trinidad S. Navata, who is aware of and with full knowledge that Fong Pak Luen is a Chinese citizen as well as Kwan Pun Ming, who under the law are prohibited and disqualified to acquire real property in this jurisdiction; that defendant Fong Pak Luen has not acquired any title or interest in said parcel of land as the purported contract of sale executed by Jose Godinez alone was contrary to law and considered non-existent, so much so that the alleged attorney-in-fact, defendant Kwan Pun Ming had not conveyed any title or interest over said property and defendant Navata had not acquired anything from said grantor and as a consequence Transfer Certificate of Title No. 1322, which was issued by the Register of Deeds in favor of the latter is null and void ab initio; that since one-half of the said property is conjugal property inherited by the plaintiffs from their mother, Jose Godinez could not have legally conveyed the entire property; that notwithstanding repeated demands on said defendant to surrender to plaintiffs the said property she refused and still refuses to do so to the great damage and prejudice of the plaintiffs; and that they were constrained to engage the services of counsel in the sum of P2,000.00. The plaintiffs thus pray that they be adjudged as the owners of the parcel of land in question and that Transfer Certificate of Title RT-90 (T-884) issued in the name of defendant Fong Pak Luen be declared null and void ab initio; and that the power of attorney issued in the

name of Kwan Pun Ming, as well as Transfer Certificate of Title No. 1322 issued in the name of defendant Navata be likewise declared null and void, with costs against defendants.

"On August 18, 1966, the defendant Register of Deeds filed an answer claiming that he was not yet the register of deeds then; that it was only the ministerial duty of his office to issue the title in favor of the defendant Navata once he was determined the registerability of the documents presented to his office.

"On October 20, 1966, the defendant Navata filed her answer with the affirmative defenses and counterclaim alleging among others that the complaint does not state a cause of action since it appears from the allegation that the property is registered in the name of Jose Godinez so that as his sole property he may dispose of the same; that the cause of action has been barred by the statute of limitations as the alleged document of sale executed by Jose Godinez on November 27, 1941, conveyed the property to defendant Fong Pak Luen as a result of which a title was issued to said defendant; that under Article 1144 (1) of the Civil Code, an action based upon a written contract must be brought within 10 years from the time the right of action accrues; that the right of action accrued on November 27, 1941 but the complaint was filed only on September 30, 1966, beyond the 10-year period provided for by law; that the torrens title in the name of defendant Navata is indefeasible who acquired the property from defendant Fong Pak Luen who had been in possession of the property since 1941 and thereafter defendant Navata had possessed the same for the last 25 years including the possession of Fong Pak Luen; that the complaint is intended to harass the defendant as a civic leader and respectable member of the community as a result of which she suffered moral damages of P100,000.00, P2,500.00 for attorney's fees and P500.00 expenses of litigation, hence, said defendant prays that the complaint be dismissed and that her counterclaim be granted, with costs against the plaintiffs. On November 24, 1967, the plaintiffs filed an answer to the affirmative defenses and counter-claim. As the defendants Fong Pak Luen and Kwan Pun Ming are residing outside the Philippines, the trial court upon motion issued an order of April 17, 1967, for the service of summons on said defendants by publication. No answer has been filed by said defendants.

"On December 2, 1967, the court issued an order as follows:

"Both parties having agreed to the suggestion of the Court that they submit their supplemental pleadings to support both motion and opposition and after submittal of the same the said motion to dismiss which is an affirmative defense alleged in the complaint is deemed submitted. Failure of both parties or either party to submit their supplemental pleadings or about December 9, the Court will resolve the case.'

"On November 29, 1968, the trial court issued an order dismissing the complaint without pronouncement as to costs. (Record on Appeal, pp. 31-37). A motion for reconsideration of this order was filed by the plaintiffs on December 12, 1968, which was denied by the trial court in an order of July 11, 1969, (Rec. on Appeal, pp. 38, 43, 45, 47). The plaintiffs now interpose this appeal with the following assignments of errors:

I. The trial court erred in dismissing plaintiffs-appellants' complaint on the ground of prescription of action, applying Art. 1144 (1) New Civil Code on the basis of defendant Trinidad S. Navata's affirmative defense of prescription in her answer treated as a motion to dismiss.

II. The trial court erred in denying plaintiffs-appellants' motion for reconsideration of the order of dismissal.

III. The trial court erred in not ordering this case to be tried on the merits."

The appellants contend that the lower court erred in dismissing the complaint on the ground that their cause of action has precribed. While the issue raised appears to be only the applicability of the law governing prescription, the real question before us is whether or not the heirs of a person who sold a parcel of land to an alien in violation of a constitutional prohibition may recover the property if it had, in the meantime, been conveyed to a Filipino citizen qualified to own and possess it.

The question is not a novel one. Judicial precedents indicate fairly clearly how the question should be resolved.

There can be no dispute that the sale in 1941 by Jose Godinez of his residential lot acquired from the Bureau of Lands as part of the Jolo townsite to Fong Pak Luen, a Chinese citizen residing in Hongkong, was violative of Section 5, Article XIII of the 1935 Constitution which provided:

Sec. 5. Save in cases of hereditary succession, no private agricultural land will be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.

The meaning of the above provision was fully discussed in *Krivenko v. Register of Deeds of Manila* (79 Phil. 461) which also detailed the evolution of the provision in the public land laws, Act No. 2874 and Commonwealth Act No. 141. The *Krivenko* ruling that "under the Constitution aliens may not acquire private or agricultural lands, including residential lands" is a declaration of an imperative constitutional policy. Consequently, prescription may never be invoked to defend that which the Constitution prohibits. However, we see no necessity from the facts of this case to pass upon the nature of the contract of sale executed by Jose Godinez and Fong Pak Luen—whether void ab initio, illegal per se, or merely prohibited.[*] It is enough to stress that insofar as the vendee is concerned, prescription is unavailing. But neither can the vendor or his heirs rely on an argument based on imprescriptibility because the land sold in 1941 is now in the hands of a Filipino citizen against whom the constitutional prescription was never intended to apply. The lower court erred in treating the case as one involving simply the application of the statute of limitations.

From the fact that prescription may not be used to defend a contract which the Constitution prohibits, it does not necessarily follow that the appellants may be allowed to recover the property sold to an alien. As earlier mentioned, Fong Pak Luen, the disqualified alien vendee later sold the same property to Trinidad S. Navata, a Filipino citizen qualified to acquire real property.

In *Vasquez v. Li Seng Giap and Li Seng Giap & Sons* (96 Phil. 447), where the alien vendee later sold the property to a Filipino corporation, this Court, in affirming a judgment dismissing the complaint to rescind the sale of real property to the defendant Li Seng Giap on January 22, 1940, on the ground that the vendee was an alien and under the Constitution incapable to own and hold title to lands, held:

"In *Caoile vs. Yu Chiao*, 49 Off. Gaz., 4321; *Talento vs. Makiki*, 49 Off. Gaz., 4331; *Bautista vs. Uy* 49 Off. Gaz., 4336; *Relloso vs. Gaw Chee*, 49 Off. Gaz., 4345 and *Mercado vs. Go Bio*, 49 Off. Gaz., 5360, the majority of this Court has ruled that in sales of real estate to aliens incapable of holding title thereto by virtue of the provisions of the Constitution (Section 5, Article XIII; *Krivenko vs. Register of Deeds*, 44 Off. Gaz., 471) both the vendor and the vendee are deemed to have committed the constitutional violation and being thus in *pari delicto* the courts will not afford protection to either party. (Article 1305, old Civil Code; Article 1411, new Civil Code) From this ruling three Justices dissented. (Mr. Justice Pablo, Mr. Justice Alex. Reyes and the writer.) See *Caoile vs. Yu Chiao*, *Talento vs. Makiki*, *Bautista vs. Uy*, *Relloso vs. Gaw Chee* and *Mercado vs. Go Bio*, *supra*.

"The action is not of rescission because it is not postulated upon any of the grounds provided for in Article 1291 of the old Civil Code and because the action of rescission involves lesion or damage and seeks to repair it. It is an action for annulment under Chapter VI, Title II, Book II, on nullity of contracts, based on a defect in the contract which invalidates it independently of such lesion or damages. (Manresa, *Commentarios al Código Civil Español*, Vol. VIII, p. 698, 4th ed.) It is very likely that the majority of this Court proceeded upon that theory when it applied the *in pari delicto* rule referred to above.

"In the United States the rule is that in a sale of real estate to an alien disqualified to hold title thereto the vendor divests himself of the title to such real estate and has no recourse against the vendee despite the latter's

disability on account of alienage to hold title to such real estate and the vendee may hold it against the whole world except as against the State. It is only the State that is entitled by proceedings in the nature of office found to have a forfeiture or escheat declared against the vendee who is incapable of holding title to the real estate sold and conveyed to him. (Abrams vs. State, 88 Pac. 327; Craig vs. Leslie et al., 4 Law, Ed. 460; 3 Wheat, 563, 589-590; Cross vs. Del Valle, 1 Wall, [U.S.] 513; 17 Law. Ed., 515; Gouverneur vs. Robertson, 11 Wheat, 332, 6 Law. Ed., 488.)

"However, if the State does not commence such proceedings and in the meantime the alien becomes naturalized citizen, the State is deemed to have waived its right to escheat the real property and the title of the alien thereto becomes lawful and valid as of the date of its conveyance or transfer to him. (Osterman vs. Baldwin, 6 Wall, 116, 18 Law. ed. 730; Manuel vs. Wulff, 152 U.S. 505, 38 Law. ed. 532; Pembroke vs. Houston, 79 SW 470; Fieorella vs. Jones, 259 SW 782. The rule in the United States that in a sale of real estate to an alien disqualified to hold title thereto, the vendor divests himself of the title to such real estate and is not permitted to sue for the annulment of his contract, is also the rule under the Civil Code. . . . Article 1302 of the old Civil Code provides: '. . . Persons sui juris cannot, however, avail themselves of the incapacity of those with whom they contracted; . . .'

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". . . (I)f the ban on aliens from acquiring not only agricultural but also urban lands, as construed by this Court in the Krivenko case, is to preserve the nation's land for future generations of Filipinos, that aim or purpose would not be thwarted but achieved by making lawful the acquisition of real estate by aliens who became Filipino citizens by naturalization. The title to the parcel of land of the vendee, a naturalized Filipino citizen, being valid that of the domestic corporation to which the parcel of land has been transferred, must also be valid, 96.67 per cent of its capital stock being owned by Filipinos."

Herrera v. Luy kim Guan (1 SCRA 406) reiterated the above ruling by declaring that where land is sold to a Chinese citizen, who later sold it to a Filipino, the sale to the latter cannot be impugned.

The appellants cannot find solace from Philippine Banking Corporation v. Lui She (21 SCRA 52) which relaxed the *pari delicto* doctrine to allow the heirs or successors-in-interest, in appropriate cases, to recover that which their predecessors sold to aliens.

Only recently, in Sarsosa vda. de Barsobia v. Cuenco (113 SCRA 547) we had occasion to pass upon a factual situation substantially similar to the one in the instant case. We ruled:

"But the factual set-up has changed. The litigated property is now in the hands of a naturalized Filipino. It is no longer owned by a disqualified vendee. Respondent, as a naturalized citizen, was constitutionally qualified to own the subject property. There would be no more public policy to be served in allowing petitioner Epifania to recover the land as it is already in the hands of a qualified person. Applying by analogy the ruling of this Court in Vasquez vs. Giap & Sons: (96 Phil. 447 [1955])

". . . if the ban on aliens from acquiring not only agricultural but also urban lands, as construed by this Court in the Krivenko case, is to preserve the nation's lands for future generations of Filipinos, that aim or purpose would not be thwarted but achieved by making lawful the acquisition of real estate by aliens who became Filipino citizens by naturalization.'

"While, strictly speaking, Ong King Po, private respondent's vendor, had no rights of ownership to transmit, it is likewise inescapable that petitioner Epifania had slept on her rights for 26 years from 1936 to 1962. By her long inaction or inexcusable neglect, she should be held barred from asserting her claim to the litigated property (Sotto vs. Teves, 86 SCRA 157 [1978]).

"Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do

that which by exercising due diligence could or should have been done earlier; it is negligence or mission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. (Tijam, et al. vs. Sibonghanoy, et al., No. L-21450, April 15, 1968, 23 SCRA 29, 35).' (cited in Sotto vs. Teves, 86 SCRA 154 [1978]).

"Respondent, therefore, must be declared to be the rightful owner of the property."

In the light of the above considerations, we find the second and third assignments of errors without merit. Respondent Navata, the titled owner of the property is declared the rightful owner.

WHEREFORE, the instant appeal is hereby denied. The orders dismissing the complaint and denying the motion for reconsideration are affirmed.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

[*] Under the facts in *Sarsosa vda. de Barsobia v. Cuenco* (113 SCRA 547), this Court stated that "(t)here should be no question that the sale of the land in question in 1936 by Epifania Sarsosa to Ong King Po was non-existent and void from the beginning (Art. 1409 [7], Civil Code) because it was a contract executed against the mandatory provision of the 1935 Constitution, which is an expression of public policy to conserve lands for the Filipinos." In *Philippine Banking Corporation v. Lui She* (21 SCRA 52) the Court, however, applied Article 1416 of the Civil Code, which refers to agreements not illegal per se but merely prohibited, to justify the exception to the rule on *pari delicto*.

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