

BARBARA LOMBOS RODRIGUEZ, PETITIONER, VS. HON. COURT OF APPEALS (SEC-OND DIVISION, COMPOSED OF JUSTI-CES JUAN P. ENRIQUEZ, HERMO-GENES CONCEPCION, JR. AND EDILBERTO SORIANO), AT...

G.R. No. L-29264. August 29, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

For a clear understanding of the issues posed by the present petition for mandamus and certiorari with preliminary injunction, we hereunder quote the statement of the case and the findings of fact made by the Court of Appeals in its decision dated October 4, 1967 in CA -G. R. 35084-R, as well as the dispositive portion of the said decision:

"On December 31, 1958, in Parañaque, Rizal, by virtue of a document denominated 'Kasunduan', written in the vernacular and ratified before Notary Public Lazaro C. Ison of that locality, Nieves Cruz, now deceased, authorized the spouses Atanacio Valenzuela, and Maximina Victorio and Liberata Santos to sell a certain parcel of land of about 44,634 square meters belonging to her and situated in Sitio Matatdo, barrio San Dionisio, Parañaque, Rizal, the identity of which is not now in dispute. Amongst the salient conditions of this authority were that the price payable to Nieves Cruz for the land would be P1.60 per square meter and any overprice would pertain to the agents; that Nieves Cruz would receive from said agents, by way of advance payment on account of the purchase price to be paid by whomsoever may buy the land, the sum of P10,000.00 upon the execution of the agreement aforesaid, and another P10,000.00 on January 5, 1959; that the balance on the total purchase price would be payable to Nieves Cruz upon the issuance of the Torrens title over the property, the obtention of which was undertaken by the agents who also were bound to advance the expenses therefor in the sum of P4,000.00 which would be deductible from the last amount due on the purchase price; and that should the agent find no buyer by the time that Torrens title is issued, Nieves Cruz reserved the right to look for a buyer herself although all sums already received from the agents would be returned to them without interest.

"As confirmed by Nieves Cruz in a 'recibo', Exhibit 2, bearing the date '----- ng Enero ng 1959', the stipulated 'advance payment (paunang bayad)' of P20,000.00 was duly made to her. Contrary to the agreement that the balance on the purchase price would be paid upon the issuance of the Torrens title over the land (September 9, 1960), Nieves Cruz and her children, however, collected from the agents, either thru Maximina Victorio or thru Salud G. de Leon, daughter of Liberata Santos, various sums of money during the period from July 3, 1959 up to September 3, 1961, all of which were duly receipted for by Nieves Cruz and/or her children and in which receipts it is expressly stated that said amounts were 'bilang karagdagan sa ipinagbili na-ming lupa sa kanila (additional payments for the land we sold to them)', Exhibits 12, 12-a to 12-z-1. These totalled P27,198.60 which with the P20, 000.00 previously paid amounted to P47,198. 60.

"Meanwhile, proceedings to place the land under the operation of the Torrens system were initiated. In due season, the registration court - finding a registrable title in the name of the applicants, Emilio Cruz and Nieves Cruz, but that -

"x x x the applicant Nieves Cruz has likewise sold her one-half (1/2) undi-vided share to the spouses Atanacio Valenzuela and Maxima (Maximina) Victorio and to Liberata Santos from whom she had re-ceived partial payments thereof in the sum of P 22,000.00; ' (Exhibit 4-a),

decreed, on July 15, 1960, the registration of the land in the names of the applicants aforesaid -

"Subject x x x to the rights of the spouses Atanacio Valenzuela and Maximina Victorio and to Liberata Santos over the one-half share of Nieves Cruz of the parcel of land for which the latter was paid P22,000.00 as partial payment thereof.' (Exhibit 4).

The judgment aforesaid having become final, the corresponding Original Certificate of Title No. 2488 of the Registry of Deeds of Rizal was, on Sep-tember 9, 1960, duly entered and issued to the ap-plicants aforesaid, subject, amongst others, to the limitation heretofore stated.

"Eventually, pursuant to a partition between Nieves Cruz and her brother, Emilio Cruz, by vir-tue of which the entire land was subdivided into two lots of 48,260 square meters each, Original Trans-fer of Title No. 2488 was cancelled and superseded by two new transfer certificates respectively cover-ing the two sub-divided lots, that which pertained to Nieves Cruz, Lot A (LRC) Psd-13106, being co-vered by Transfer Certificate of Title No. 80110 is-sued on October 3, 1960. Said title carried over the annotation heretofore mentioned respecting the rights of Atanacio Valenzuela and Maximina Victo-rio and Liberata Santos over the portion covered thereby. (Exhibits 6 and 6-a).

"Then, on September 15, 1961, Nieves Cruz sold the property in question to Barbara Lombos Rodriguez, her balae' because the latter's son was married to her daughter, for the sum of P 77,216.00 (Exhibit J). In consequence, Transfer Certificate of Title No. 80110 in the name of Nieves Cruz was can-celled and, in lieu thereof, Transfer Certificate of Title No. 91135 was issued in the name of Barbara Lombos Rodriguez (Exhibit I) which likewise car-ried over the annotation respecting the rights of A tanacio Valenzuela, Maximina Victorio and Libe-rata Santos over the property covered thereby.

"Forthwith, on September 16, 1961, Nieves Cruz, through counsel, gave notice to Atanacio Valenzuela, Maximina Victorio and Liberata Santos of her decision to rescind the original agreement here-tofore adverted to, enclosing with said notice a Bank of America check for P 48, 338. 60, represent-ing sums advanced by the latter which were tender-ed to be returned. Atanacio Valenzuela, Maximina Victorio and Liberata Santos, through counsel, balk-ed at the attempt at rescission, denying non-com-pliance with their undertaking inasmuch as, per agreement, the balance on the purchase price for the land was not due until after the 1962 harvest. They, accordingly, returned Nieves Cruz' check.

"Thus rebuffed, plaintiff Nieves Cruz hail-ed defendants Atanacio Valenzuela, Maximina Vic-torio and Liberrta Santos before the Rizal Court in the instant action for rescission of the 'Kasunduan' heretofore adverted to, the cancellation of the an-notation on the title to the land respecting defendants' rights thereto, and for damages and attor-ney's fees. In their return to the complaint, defen-dants traversed the material averments thereof, contending principally that the agreement sought to be rescinded had since been novated by a subsequent agreement whereunder they were to buy the proper-ty directly. They also impleaded Barbara Lombos Rodriguez on account of the sale by the plaintiff to her of the subject property and interposed a coun-terclaim against both plaintiff and Rodriguez for the annulment of the sale of the land to the latter, as well as the transfer certificate of title issued in her favor consequent thereto, and the reconveyance of the land in their favor, and also for damages and attorney's fees.

"Pending the proceedings below, plaintiff Nieves Cruz died and was, accordingly, substitu-ted as such by her surviving children, to wit: Arsenio, Nelo, Jaime, Andres and Amanda, all surnamed Nery, and Carmen and Arsenia, both sur-named Mendoza.

"In due season, the trial court - finding for plaintiff Nieves Cruz and her buyer, Barbara Lom-bos Rodriguez,

and against defendants - rendered judgment thus -

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered (1) Ordering the cancellation at the back of Transfer Certificate of Title No. 91135 of the Register of Deeds of Rizal, stating that the land covered thereby was sold to the defendants; (2) Ordering the defendants to pay to the plaintiff, jointly and severally the sum of P67,564.00 as actual damages and P5,000.00 by way of attorney's fees; (3) Dismissing the defendant's counterclaim; and (4) Ordering the defendants to pay the costs of this suit jointly and severally.'

* * *

"We find no obstacle to appellants' purchase of the land in the prohibition against an agent buying the property of his principal entrusted to him for sale. With the agreement of Nieves Cruz to sell the land directly to said appellants, her agents originally, it cannot seriously be contended that the purchase of the land by appellants was without the express consent of the principal Nieves Cruz. Accordingly, that purchase is beyond the coverage of the prohibition.

"By and large, we are satisfied from a meticulous assay of the evidence at bar that the contract of sale over the land subsequently made by Nieves Cruz in favor of appellants was duly and satisfactorily proved. No showing having been made by appellees to warrant the rescission of that contract, the attempt at such rescission is legally untenable and necessarily futile. The, specific performance of that contract is, under the circumstances, legally compellable.

"Considering that the rights of appellants, as such purchasers of the portion corresponding to Nieves Cruz, is a matter of official record in the latter's certificate of title over the land - the annotation of which was authorized by the decision of the registration court and which annotation was duly carried over in the subsequent titles issued therefor, including that issued in the name of appellee Rodriguez - said appellee must be conclusively presumed to have been aware, as indeed she was, of the prior rights acquired by appellants over the said portion. Said appellee's acquisition of the land from Nieves Cruz remains subject, and must yield, to the superior rights of appellants. Appellee Rodriguez cannot seek refuge behind the protection afforded by the Land Registration Act to purchasers in good faith and for value. Aware as she was of the existence of the annotated prior rights of appellants, she cannot now be heard to claim a right better than that of her grantor, Nieves Cruz. Her obligation to reconvey the land to the appellants is thus indubitable.

* * *

"WHEREFORE, the judgment appealed from is hereby REVERSED in toto, and, in lieu thereof, another is hereby rendered:

"(1) Setting aside and annulling the deed of sale, Exhibit J, executed by plaintiff in favor of Barbara Lombos Rodriguez;

"(2) Declaring defendant-appellee Barbara Lombos Rodriguez divested of title over the property covered by TCT No. 91135 of the Register of Deeds of Rizal and title thereto vested in defendants-appellants upon payment of the latter to appellee Rodriguez of the sum of P28,877.40, representing the balance of the agreed purchase price due on the property minus P13,000.00 awarded under paragraph (4) within 90 days after this decision shall have become final, and ordering the Register of Deeds of Rizal to cancel T.C. T. No. 91135 and issue in lieu thereof a new certificate of title in favor of appellants, upon payment of corresponding fees;

"(3) Ordering plaintiffs and defendant Barbara Lombos Rodriguez to deliver to the defendants appellants possession of the property aforementioned; and

"(4) Ordering appellees jointly and severally to pay to defendants-appellants the sum of P5,000.00 as temperate damages, P3,000.00 as moral damages and P5,000.00 as attorney's fees plus costs. These amounts shall be deducted from the P28,877.40 appellants are required to pay to Rodriguez under paragraph (2) hereof. '

This case is before us for the second time. In G.R. No. L-28462, the heirs of Nieves Cruz and the present petitioner (Barbara Lombos Rodriguez) filed a joint petition for certiorari - as an original action under Rule 65 and, simultaneously, as an appeal under Rule 45. As the former, it sought redress against the refusal of the respondent Court of Appeals to consider a motion for reconsideration filed beyond the reglementary period. As the latter, it sought a re-view of the respondent Court's findings of fact and conclusions of law. On January 3, 1968 we denied the joint petition; the joint petition was thereafter amended, and this amended petition we likewise denied on January 26, 1968; on February 20, 1968 we denied the motion for reconsideration filed solely by Rodriguez.

On July 20, 1968, Rodriguez alone filed the present petition for mandamus and certiorari. She prays for the issuance of a writ of preliminary injunction to restrain the respondents from enforcing the decision of the Court of Appeals in CA -G. R. 35084-R and from entering into any negotiation or transaction or otherwise exercising acts of ownership over the parcel of land covered by transfer certificate of title 91135 issued by the Register of Deeds of Rizal. She also prays that preliminary injunction issue to restrain the Register of Deeds of Rizal from registering any documents affecting the subject parcel of land. No injunction, however, was issued by us.

The petition in the present case, G.R. No. L-29264, while again assailing the findings of fact and conclusions of law made by the respondent Court, adds two new grounds. The first is the allegation that the Land involved in CA -G. R. 35084-R has a value in excess of P200,000. The petitioner complains that the Court of Appeals should have certified the appeal to us, pursuant to section 3 of Rule 50 in relation to section 17(5) of the Judiciary Act of 1948,[1] as she had asked the said Court to do in her supplemental motion of June 14, 1968. The second ground is the claim that the Court of Appeals gravely abused its discretion in denying her May 14, 1968 motion for new trial, based on alleged newly discovered evidence.

In their answer, Atanacio Valenzuela, Maximina Victorio and Liberata Santos allege that the findings of fact made by the Court of Appeals in its decision of October 4, 1967 are substantiated by the record and the conclusions of law are supported by applicable laws and jurisprudence, and, moreover, that these findings are no longer open to review inasmuch as the said decision has become final and executory, the period of appeal provided in Rule 45 having expired. Atanacio Valenzuela et al. also maintain that the land in litigation had a value of less than P200, 000, according to the records of the case, when their appeal from the decision of the Court of First Instance of Rizal in civil case 6901 was perfected; that the petitioner's motion for new trial in the Court of Appeals was filed out of time; and that the petitioner is estopped from questioning the jurisdiction of the Court of Appeals in the matter of the value of the land in controversy. Two grounds for the defense of estoppel are offered by Atanacio Valenzuela et al. One is that the petitioner speculated in obtaining a favorable judgment in the Court of Appeals by submitting herself to the jurisdiction of the said Court and she cannot now therefore be allowed to attack its jurisdiction when the judgment turned out to be unfavorable. The other is that the petitioner's laches made possible the sale in good faith by Atanacio Valenzuela et al. of the land in litigation to Emilio and Isidro Ramos, in whose names the land is at present registered under transfer certificate of title 229135 issued on September 25, 1968 by the Register of Deeds of Rizal.

The heirs of Nieves Cruz filed an answer unqualifiedly admitting the basic allegations of the petition, except as to the value of the land, as to which they are non-committal.

It is our considered view that the petitioner's claim of grave abuse by the respondent Court in denying her motion for new trial is devoid of merit. It is not disputed that, on the assumption that the respondent Court had jurisdiction over the appeal, the petitioner had already lost her right to appeal from the decision of October 4, 1967 when the petition in G.R. No. L-28462 was filed in January 1968. It logically follows that the case had passed the stage for new trial on newly discovered evidence when the petitioner filed her motion for new trial on

May 14, 1968.

Two issues remain, to wit; (1) the value of the land in controversy and (2) estoppel.

At the time appeal was taken to the Court of Appeals, section 17(5) of the Judiciary Act of 1948, as amended, provided:

"The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, certiorari or writ of error, as the law or rules of court may provide, final judgments and decrees of inferior courts as here-in provided, in -

* * *

"(5) All civil cases in which the value in controversy exceeds two hundred thousand pesos, exclusive of interests and costs or in which the title or possession of real estate exceeding in value the sum of two hundred thousand pesos to be ascertained by the oath of a party to the cause or by other competent evidence, is involved or brought in question. The Supreme Court shall likewise have exclusive jurisdiction over all appeals in civil cases, even though the value in controversy, exclusive of interests and costs, is two hundred thousand pesos or less, when the evidence involved in said cases is the same as the evidence submitted in an appealed civil case within the exclusive jurisdiction of the Supreme Court as provided here-in."

The petitioner would have us believe that, other than a realtor's sworn statement dated June 14, 1968, which was filed with the respondent Court together with her supplemental motion, there is nothing in the records that would indicate the value of the litigated parcel. We disagree. The "Kasunduan" (annex A to the petition) dated December 31, 1958 executed by and between Nieves Cruz and Atanacio Valenzuela et al. fixed the value of the land (of an area of 44, 634 square meters) at P1. 60 per square meter. The decision (annex B) of the Court of First Instance of Rizal dated August 12, 1964 assessed the value of the land at P3.00 per square meter. The decision (annex D) dated October 4, 1967 of the respondent Court of Appeals pointed out that the consideration stated in the deed of sale of the land executed by Nieves Cruz in favor of Rodriguez, the petitioner herein, is P77,216. Moreover, until June 14, 1968, no party to the cause questioned the valuation of P3.00 per square meter made by the trial court. The records, therefore, overwhelmingly refute the petitioner's allegation. They also prove that the value of the entire parcel of land had been impliedly admitted by the parties as being below P200,000.

Granting arguendo, however, that the value of the land in controversy is in excess of P200,000, to set aside at this stage all proceedings had before the Court of Appeals in CA -G. R. 35084-R, and before this Court in G.R. No. L-28462, would violate all norms of justice and equity and contravene public policy. The appeal from the decision of the Court of First Instance of Rizal was pending before the respondent Court during the period from 1964 until October 4, 1967, when on the latter date it was decided in favor of the appellants and against the petitioner herein and the heirs of Nieves Cruz. Yet, the appellees therein did not raise the issue of jurisdiction. The joint petition in G.R. No. L-28462 afforded the petitioner herein the opportunity to question the jurisdiction of the respondent Court. Again, the value of the land in controversy was not questioned by the petitioners, not even in their amended joint petition. It was not until June 14, 1968 that the petitioner herein filed with the respondent Court a supplemental motion wherein she raised for the first time the issue of value and questioned the validity of the final decision of the respondent Court on the jurisdictional ground that the real estate involved has a value in excess of P200,000. That the petitioner's present counsel became her counsel only in May, 1968 provides no excuse for the petitioner's failure to exercise due diligence for over three years to discover that the land has a value that would oust the respondent Court of jurisdiction. The fact remains that the petitioner had allowed an unreasonable period of time to lapse before she raised the question of value and jurisdiction, and only after and because the respondent Court had decided the case against her. The doctrine of estoppel by laches bars her from now questioning the jurisdiction of the Court of Appeals.

The learned disquisition of Mr. Justice Arsenio P. Dizon, speaking for this Court in *Serafin Tijam, et al. vs. Magdaleno Sibonghanoy, et al.* (G.R. No. L-21450, April 15, 1968), explained, in un-equivocal terms, the reasons why, in a case like the present, a losing party cannot be permitted to belatedly raise the issue of jurisdiction.

"A party may be estopped or barred from raising a question in different ways and for different reasons. Thus we speak of estoppel in pais, of estoppel by deed or by record, and of estoppel by laches.

"Laches, in a general sense, is 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 omission 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.

"The doctrine of laches or of 'stale demands' is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.

"It has been held that a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (*Dean vs. Dean*, 136 Or. 694, 86 A. L. R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated - obviously for reasons of public policy.

"Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court (*Pease vs. Rathbun-Jones etc.*, 243 U. S. 273, 61 L. Ed. 715, 37 S.Ct. 283; *St. Louis etc. vs. McBride*, 141 U. S. 127, 35 L. Ed. 659). And in *Litleton vs. Burgess*, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and involved the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

"Upon this same principle is what We said in the three cases mentioned in the resolution of the Court of Appeals of May 20, 1963 (*supra*) - to the effect that we frown upon the 'undesirable practice' of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse - as well as in *Pindañgan etc. vs. Dans et al.*, G. R. L-14591, September 26, 1962; *Montelibano et al., vs. Eacolod-Murcia Milling Co., Inc.*, G.R. L-15092; *Young Men Labor Union etc. vs. The Court of Industrial Relations et al.*, G.R. L-20307, Feb. 26, 1965; and *Mejia vs. Lucas*, 100 Phil. p. 277."

We do not here rule that where the pleadings or other documents in the records of a case state a value of a real estate in controversy, a party to the cause may not show that the true value thereof is more or is less than that stated in the records. Section 17(5) of the Judiciary Act of 1948 precisely allows a party to submit a sworn statement of such higher or lower value. This is not to say, of course, that the court is bound by a party's sworn statement, for where more than one party submit materially differing statements of value, or where a party's sworn statement conflicts with other competent evidence, the true value is to be determined by the trial court as an issue of fact before it.

The time when the issue of the value of a real estate in controversy is to be resolved is prior to, or simultaneously with, the approval of the record on appeal and appeal bond, for it is upon the perfection of the appeal that the appellate court acquires jurisdiction over the case (Rule 41, section 9). It is at this time that a party to the cause, be he the intended appellant or the intended appellee, must raise the issue of value before the trial court, for said court to allow appeal involving a question of fact either to this Court or to the Court of Appeals, depending on its

finding on the value of the realty. Failure to raise this issue before the trial court amounts to a submission of the issue solely on the basis of the pleadings and evidence a quo and is equivalent to a waiver of the right to present the statement under oath or to adduce the other competent evidence referred to in section 17(b) of the Judiciary Act of 1948.

A contrary rule would be disastrous. For one thing, to allow a party to present proof of value before an appellate court would be to convert the said court to a trial court. For another thing, the value of real estate may change between the perfection of an appeal and the receipt of the records or the payment of the appellate court docket fee; hence, it is best, for stability, to have the value determined at the precise instant when the trial court must decide to which appellate court the appeal should be made and not at some uncertain time thereafter. Worse yet, to permit a party to prove before the Court of Appeals or before us, after a decision on the merits has been rendered, that a real estate in controversy exceeds, or does not exceed, P200, 000 in value, would be to encourage speculation by litigants; for, a losing party can be expected to raise the issue of value of the realty to show that it is in excess of P200, 000 if the unfavorable judgment is rendered by the Court of Appeals, or to show that it does not exceed P200, 000 if the unfavorable judgment is rendered by this Court, in an attempt to litigate the merits of the case all over again. [2]

In the case at bar, the records - as of the perfection of the appeal on August 12, 1964 - show that the litigated real estate had a value not in excess of P200, 000, Conformably with the Judiciary Act of 1948, therefore, the appeal from the decision of the Court of First Instance of Rizal in civil case 6901 was within the jurisdiction of the Court of Appeals.

Other issues, both of fact and of law, are raised in the pleadings. Considering our conclusion that the respondent Court had jurisdiction over the appeal, it is not necessary to discuss, much less resolve, any of those other issues. However, because the petitioner and the heirs of Nieves Cruz have hammered on the twin issues of the existence of an oral contract of sale and of the efficacy of an oral novatory contract of sale, a brief discussion of these issues would not be amiss.

The agency agreement of December 31, 1958 is not impugned by any of the parties. Nieves Cruz, however, asserted that the agency remained in force until she rescinded it on September 16, 1961 by notice to that effect to Atanacio Valenzuela et al., tendering with the said notice the return, in check, of the sum of P48, 338.60 which she had received from Atanacio Valenzuela et al. The defendants, upon the other hand, contend that the agency agreement was novated by a contract of sale in their favor and that the balance of the purchase price was not due until after the 1962 harvest. Rodriguez, when impleaded by Atanacio Valenzuela et al., denied that she was a buyer in bad faith from Nieves Cruz.

The parties and the lower courts are agreed that Nieves Cruz had received P20, 000 from Atanacio Valenzuela et al. by January 5, 1959 and that the payment of this total sum was in accordance with the agency agreement. The parties and the lower courts, however, are at variance on the basis or reason for the subsequent payments. The petitioner herein, the heirs of Nieves Cruz and the Court of First Instance of Rizal take the position that the payments after January 5, 1959 were received by Nieves Cruz as partial or instalment payments of the purchase price on the representations of Atanacio Valenzuela et al, that they had a buyer for the property from whom these payments came, all pursuant to the agency agreement. The respondents Atanacio Valenzuela et al., on the other hand, assert that those amounts were paid by them, as disclosed buyers, to Nieves Cruz and her children, pursuant to a novatory verbal contract of sale entered into with Nieves Cruz subsequent to the agency agreement and prior to the issuance of the decree of registration of July 15, 1960.

It is thus clear that the decisive issues are (a) whether or not Nieves Cruz did agree to sell to Atanacio Valenzuela

et al. the litigated parcel of land sometime after January 5, 1959, and (b) whether or not the said agreement is enforceable or can be proved under the law. The fact that Atanacio Valenzuela et al. were agents of Nieves Cruz under the agency agreement of December 31, 1958 is not material, for if it is true that Nieves Cruz did agree to sell to her agents the real estate subject of the agency, her consent took the transaction out of the prohibition contained in article 1491(2) of the Civil Code. Neither are articles 1874 and 1878(5) and (12) of the Civil Code relevant, for they refer to sales made by an agent for a principal and not to sales made by the owner personally to another, whether that other be acting personally or through a representative.

Was there a novatory oral contract to sell entered into by Nieves Cruz in favor of Atanacio Valenzuela et al.? In resolving this question, the respondent Court pointed to significant facts and circumstances sustaining an affirmative answer.

Cited by the Court of Appeals is the testimony of Andres Nery, a successor-in-interest of Nieves Cruz and a substitute plaintiff upon Nieves Cruz' death, to the effect that after they had gone to the defendants several times, they were told that the buyer was Salud de Leon. This witness also said, according to the transcript cited by the respondent Court, that they were paid little by little and had been paid a grand total of P48, 000. The respondent Court likewise adverted to the receipts (exhibits L-I2 to L-22, exhibit L-24, exhibit L-26, and exhibits 12, 12-a to 12-z-1) signed by Nieves Cruz and/or her children and concluded that on the faces of these receipts it is clear that the amounts therein stated were in payment by Atanacio Valenzuela et al. of the land which the recipients had sold to them ("ipinagbale naming lupa sa kanila"). Of incalculable significance is the notation in the original certificate of title and in the transfer certificate of title in the name of Nieves Cruz which, in unambiguous language, recorded Nieves Cruz' sale of her interest in the land to Atanacio Valenzuela et al. If that notation were inaccurate or false, Nieves Cruz would not have remained unprotesting for over a year after the entry of the decree of registration in July, 1960, nor would she and her children have received 13 installment payments totaling P19, 963 during the period from September 9, 1960 to September 3, 1961.

Salud de Leon, it should be borne in mind, is the husband of Rogaciano F. de Leon and the daughter of the defendant Liberta Santos. It should likewise be remembered that, as remarked by the trial court, Salud de Leon testified that it was she who had the oral agreement with Nieves Cruz for the purchase by Atanacio Valenzuela et al. of the litigated property and, as found by the respondent Court, Salud de Leon was the representative of Atanacio Valenzuela et al., not of Nieves Cruz.

We conclude, therefore, that there is substantial evidence in the record sustaining the finding of the respondent Court that the parties to the agency agreement subsequently entered into a new and different contract by which the landowner, Nieves Cruz, verbally agreed to sell her interest in the litigated real estate to Atanacio Valenzuela et al.

A legion of receipts there are of payments of the purchase price signed by Nieves Cruz. True, these receipts do not state all the basic elements of a contract of sale, for they do not expressly identify the object nor fix a price or the manner of fixing the price. The parties, however, are agreed - at least the plaintiff has not questioned the defendants' claim to this effect - that the object of the sale referred to in the receipts is Nieves Cruz' share in the land she co-owned with her brother Emilio and that the price therefor is P1.60 per square meter. At all events, by failing to object to the presentation of oral evidence to prove the sale and by accepting from the defendants a total of P27,198.60 after January 5, 1959, the plaintiff thereby ratified the oral contract, conformably with article 1405 of the Civil Code, and removed the partly executed agreement from the operation of the Statute of Frauds. And, finally, the sale was established and recognized in the land registration proceedings wherein the land court, in its decision, categorically stated:

"[T]he applicant Nieves Cruz has likewise sold her one-half (1/2) undivided share to the spouses Atanacio

Valenzuela and Maximina Victorio and Libe-rata Santos from whom she had received partial payment thereof in the sum of P 22, 000.00."

The pertinent certificates of title bear the annotation of the afore-said right of Atanacio Valenzuela et al. The final decision of the land court - to the effect that Nieves Cruz had sold her undivided share to Atanacio Valenzuela et al. and had received a partial payment of P22, 000 - is now beyond judicial review, and, because a land registration case is a proceeding in rem, binds even Rod-riguez.

Rodriguez nevertheless insists that despite the rescission by the Court of Appeals of her purchase from Nieves Cruz, the said respondent Court did not order Nieves Cruz to return the P77, 216 which she had received from her. While mutual restitu-tion follows rescission of a contract (article 1385, Civil Code), the respondent Court should not be blamed for omitting to order Nieves Cruz to restore what she had received from the petitioner on account of the rescinded contract of sale. In the first place, in the pleadings filed before the trial court, Rodriguez made no claim for restitution against Nieves Cruz or her heirs. In the se-cond place, Nieves Cruz died in the course of the proceedings below and was substituted by her heirs who, necessarily, can be held individually liable for restitution only to the extent that they inherited from her.

Nevertheless, inasmuch as rescission of the contract bet-ween Nieves Cruz and the petitioner herein was decreed by the respondent Court, the latter should be entitled to restitution as a matter of law. It is of no moment that herein petitioner did not file any cross-claim for restitution against the plaintiff, for her answer was directed to the defendants' claim which was in the nature of a third-party complaint. She was neither a co-defendant nor a co-third-party defendant with Nieves Cruz; nor were Nieves Cruz and the herein petitioner opposing parties a quo, for they joined in maintaining the validity of their contract. Section 4 of Rule 9, therefore, has no application to the petitioner's right to restitution.

We declare, consequently, that the estate of Nieves Cruz is liable to Barbara Lombos Rodriguez for the return to the latter of the sum of P77,216, less the amount which Atanacio Valenzuela et al. had deposited with the trial court in accordance with the de-cision of respondent Court. We cannot order the heirs of Nieves Cruz to make the refund. As we observed above, these heirs are liable for restitution only to the extent of their individual inher-it-ance from Nieves Cruz. Other actions or proceedings have to be commenced to determine the liability accruing to each of the heirs of Nieves Cruz.

ACCORDINGLY, the present petition for mandamus and certiorari is denied, at petitioner's cost.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Capistrano, Teehankee and Barredo, JJ., concur
Fernando, J., did not take part.

Reyes, J., is on official leave.

[1] The entire discussion on the issue of value in this decision has as its frame of reference section 17(5) of the Judiciary Act of 1948, *infra*, before its total elimination by Republic Act 5440 which went into effect on September 9, 1968. As the law stands today, all appeals from decisions in civil cases involving property or money claims, regardless of the value or amount in controversy, must now be taken to the Court of Appeals, provided that such appeals do not pose only errors or questions of law. Whatever pronounce-ments are made in this decision in reference to the said section 17(5) of the Judiciary Act of 1948 must be taken as applicable only to appeals (similar to the case at bar) which were perfected prior to the date of effectivity of Republic Act 5440

[2] It may be asked: what happens if, contrary to the express or im-plied finding of a trial court, the Court of Appeals or this Court finds that the value of real estate in controversy in an appeal from a trial court on matters of

fact and law or fact alone, exceeds the value of P200, 000 or does not exceed such value, as the case may be? The answer is not difficult. If the appeal is made to the Court of Appeals, but on the basis of the records a quo, including any sworn statement by a party to the cause or other evidence submitted before perfection of the appeal, the realty should appear to have a value in excess of P200, 000, the Court of Appeals shall certify the appeal to the Supreme Court pursuant to section 3 of Rule 50 - and we may or may not accede to the certification depending on our finding on the value. However, a party litigant may raise the issue of value in a preliminary motion or in his brief on the basis solely of the records a quo, again including whatever sworn statement or other competent evidence of value may have been submitted before the perfection of the appeal; and if he does that but the Court of Appeals rules that it has jurisdiction over the controversy because of its finding that the realty has a value not in excess of P200, 000, the finding of value is reviewable by us on an original action for mandamus or certiorari, for this factual matter is indisputably involved in the issue of jurisdiction. If, on the other hand, the appeal is made to us but, on the same basis as above, the realty should appear to have a value not in excess of P200, 000, we will remand the appeal to the Court of Appeals, and our finding on value, though one of fact, will be binding upon the Court of Appeals.

In resume, the value of real estate the title or possession of which is involved or brought in question should, for purposes of determining which appellate court has jurisdiction over the appeal, be based solely on the pleadings, sworn statement or other competent evidence already in the records of the case at the time the appeal is perfected.

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