

TRINIDAD GONZAGA DE CABAUTAN, LUCIO CABAUTAN, MARIA CABAUTAN, CONSTANCIO EUSEBIO, ANTONIO CABAUTAN, PRIMO CABAUTAN, CARMEN CABAUTAN, EVANGEUNO NUESA AND TRINIDAD CABAUTAN...

G. R. No. L-2207. January 23, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from an order of the Court of First Instance of Manila dismissing the complaint filed by the plaintiffs against the defendants without pronouncement as to costs. The appeal was taken to this Court because it involves only questions of law.

On March 18, 1943, plaintiffs sold to Uy Hoo, married to By Siat, and Siy Hong, a widow, all Chinese citizens, two parcels of residential land situated in the City of Manila, Philippines, which were formerly described in Transfer Certificate of Title No. 63967, in consideration of the sum of P3,000 in Japanese war notes. In view of said transfer, the Register of Deeds of the City of Manila cancelled Transfer Certificate of Title No. 63967 and issued in lieu thereof Transfer Certificate of Title No. 69938 in the name of the purchasers. On November 15, 1947, the case of *Krivenko vs. Register of Deeds*, G. R. No. L-630 was decided by this Court holding that a conveyance of a residential land to aliens infringes Section 5, Article XIII of the Constitution. As a result, on December 15, 1947, plaintiffs demanded from the defendants to restore to them the lands above-referred to on the ground that the sale they made thereof to the defendants was null and void, but the latter refused to do so. Hence the plaintiffs brought this action on January 14, 1948, seeking the annulment of the sale above-mentioned.

On January 27, 1948, the defendants filed a motion to dismiss on the ground that the complaint does not state facts sufficient to constitute a cause of action. On February 10, 1948, the Court issued an order dismissing the case stating, among others, the following:

"To insure effectively the preservsttoh of the agricultural lands described in the Constitution, which may or may not be accomplished if the exercise of the action to recover said lands is to be left to the will of the parties-concerned, and for the purpose of uniformity in the disposition of said lands which may be reverted to the Government, as provided for in Sec. 121 of the Public Land Act as to lands that may be adjudged by courts to foreigners, against the constitutional prohibition, this case should be dismissed until the corresponding legislation has been passed, or a policy on the matter decided by the corresponding branch of the Government." (Rec. on Appeal, p. 23).

On March 10, 1948, plaintiffs filed a motion for reconsideration, and this motion having been denied, they appealed to this Court purely on questions of law.

The question at issue is whether the deed of sale executed by the plaintiffs in favor of the defendants on March 18, 1943, over the two parcels of land in question can be declared null and void in the light of the decision in the *Krivenko* case.

It appears that the two parcels of residential land in question were sold by the plaintiffs to the defendants on March 18, 1943, for the sum of P13,000 in Japanese war notes. The sale therefore took place during the Japanese occupation. At that time the Constitution of the Philippines was not in force, it being political in nature. On this point this Court said:

"No objection can be set up to the legality of its provisions in the light of the precepts of our Commonwealth Constitution, because the latter was not in force during the period of the Japanese military occupation, as we have already stated. Nor may said Constitution be applied upon the revival as the time of the reoccupation, of the Philippines by virtue of the principle of post liminium, because a constitution should operate prospectively only, unless the words employed show a clear intention that it should have a retrospective effect. * * *

""(Peralta vs. Director of Prisons [1945] 42 Off, Gaz., p. 198, 208.)

The Constitution of the Philippines not being in force when the sale in question was effected, it cannot, therefore, be invoked by the plaintiffs as a ground to have said sale set aside or rendered null and void. Consequently, plaintiffs cannot also invoke in their favor the doctrine laid down in the Krivenko case.

But there is another reason why this case can not be maintained. It appears that during the Japanese occupation, the Commander in Chief of the Imperial Japanese Forces issued a proclamation on January 3, 1942, putting in force in the Philippines all the laws that were in force prior to the outbreak of the war, one of them being the Civil Code of Spain. It is a well known principle that the laws in force at the time a contract is executed govern its interpretation and application. (U. S. vs. Diaz Conde and R. Conde, 42 Phil. 766, 769). The contract in question was executed on March 18, 1943. Following the above principle, the Civil Code, therefore, should govern its validity. And one of its articles provides that "when both parties are guilty, neither of them can recover what he may have given by virtue of the contract, or enforce the performance of the undertaking of the other party". (Article 1306, paragraph [1]). We can, therefore, say that even if the plaintiffs can still invoke the Constitution, or the doctrine in the Krivenko case, to set aside the sale in question, they are now prevented from doing so if their purpose is to recover the lands that they have voluntarily parted with, because of their guilty knowledge that what they were doing was in violation of the Constitution. They can not escape this conclusion because they are presumed to know the law. As this Court well said: "A party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out. The law will not aid either party to an illegal agreement; it leaves the parties where it finds them." The rule is expressed in the maxims: "Ex dolo malo non oritur actio" and "In part delicto potior est conditio defendentis." (Bough and Bough vs. Cantiveros and Hanopol, 40 Phil. 210, 216). This and other moral considerations bar the plaintiffs from maintaining this case. Their action, therefore, must fall on its own weight.

Wherefore, the order appealed from is affirmed, with costs against appellants. So ordered.

Moran, C. J., Bengzon, Montemayor, Reyes and Jugo, JJ., concur.

Paras, Feria, and Padilla, JJ., concur in the result.

TUASON, J., concurring in the result:

I concur in this decision, except in so far as it may give the inference that the action could prosper under different situations as to the date of the transaction. In this aspect of the decision, I reiterate my dissenting opinion in the Krivenko case.

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