

PHILIPPINE BANKING CORPORATION, REPRESENTING THE ESTATE OF JUSTINA SANTOS Y CANON FAUSTINO, DECEASED, PLAINTIFF AND APPELLANT, VS. LUI SHE, IN HER OWN BEHALF AND AS ADMINISTRATR...

G. R. No. L-17587. September 12, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

Justina Santos y Canon Faustino and her sister Lorenza were the owners in common of a piece of land in Manila. This parcel, with an area of 2,582.30 square meters, is located on Rizal Avenue and opens into Florentino Torres street at the back and Katubusan street on one side. In it are two residential houses with entrance on Florentino Torres street and the Hen Wah Restaurant with entrance on Rizal Avenue. The sisters lived in one of the houses, while Wong Heng, a Chinese, lived with his family in the restaurant. Wong had been a long-time lessee of a portion of the property, having a monthly rental of P2,620.

On September 22, 1957 Justina Santos became the owner of the entire property as her sister died with no other heir. Then already well, advanced in years, being at the time 90 years old, blind, crippled and an invalid, she was left with no other relative to live with. Her only companions in the house were her 17 dogs and 8 maids. Her otherwise dreary existence was brightened now and then by the visits of Wong's four children who had become the joy of her life. Wong himself was the trusted man to whom she delivered various amounts for safekeeping, including rentals from her property at the corner of Ongpin and Salazar streets and the rentals which Wong himself paid as lessee of a part of the Rizal Avenue property. Wong also took care of the payment, in her behalf, of taxes, lawyers' fees, funeral expenses, masses, salaries of maids and security guard, and her household expenses.

"In grateful acknowledgement of the personal services of the Lessee to her," Justina Santos executed on November 15, 1957, a contract of lease (Plff Exh. 3) in favor of Wong, covering the portion then already leased to him and another portion fronting Florentino Torres street. The lease was for 50 years, although the lessee was given the right to withdraw at any time from the agreement; the monthly rental was P3,120. The contract covered an area of 1,124 square meters. Ten days later (November 25), the contract was amended (Plff Exh. 4) so as to make it cover the entire property, including the portion on which the house of Justina Santos stood, at an additional monthly rental of P360. For his part Wong undertook to pay, out of the rental due from him, an amount not exceeding P1,000 a month for the food of her dogs and the salaries of her maids.

On December 21 she executed contract (Plff Exh. 7) giving Wong the option to buy the leased premises for P120,000, payable within ten years at a monthly installment of P1,000. The option, written in Tagalog, imposed on him the obligation to pay for the food of the dogs and the salaries of the maids in her household, the charge not to exceed P1,800 a month. The option was conditioned on his obtaining Philippine citizenship, a petition for which was then pending in the Court of First Instance of Rizal. It appears, however, that this application for naturalization was withdrawn when it was discovered that he was not a resident of Rizal. On October 28, 1958 she

filed a petition to adopt him and his children on the erroneous belief that adoption would confer on them Philippine citizenship. The error was discovered and the proceedings were abandoned.

On November 18, 1958 she executed two other contracts, one (Plff Exh. 5) extending the term of the lease to 99 years, and another (Plff Exh. 6) fixing the term of the option at 50 years. Both contracts are written in Tagalog.

In two wills executed on August 24 and 29, 1959 (Def. Exhs. 285 & 279), she bade her legatees to respect the contracts she had entered into with Wong, but in a codicil (Plff Exh. 17) of a later date (November 4, 1959) she appears to have a change of heart. Claiming that the various contracts were made by her because of machinations and inducements practised by him, she now directed her executor to secure the annulment of the contracts.

On November 18 the present action was filed in the Court of First Instance of Manila. The complaint alleged that the contracts were obtained by Wong "through fraud, misrepresentation, inequitable conduct, undue influence and abuse of confidence and trust of and (by) taking advantage of the helplessness of the plaintiff and were made to circumvent the constitutional prohibition prohibiting aliens from acquiring lands in the Philippines and also of the Philippine Naturalization Laws." The court was asked to direct the Register of Deeds of Manila to cancel the registration of the contracts and to order Wong to pay Justina Santos the additional rent of "P3,120 a month from November 15, 1957 on the allegation that the reasonable rental of the leased premises was P6,240 a month.

In his answer, Wong admitted that he enjoyed her trust and confidence as proof of which he volunteered the information that, in addition to the sum of P3,000 which he said she had delivered to him for safekeeping, another sum of P22,000 had been deposited in a joint account which he had with one of her maids. But he denied having taken advantage of her trust in order to secure the execution of the contracts in question. As counterclaim he sought the recovery of P9,210.49 which he said she owed him for advances.

Wong's admission of the receipt of P22,000 and P3,000 was the cue for the filing of an amended complaint. Thus on June 9, 1960, aside from the nullity of the contracts, the collection of various amounts allegedly delivered on different occasions was sought. These amounts and the dates of their delivery are P33,724.27 (Nov. 4, 1957); P7,344.42 (Dec. 1, 1957); P10,000 (Dec. 6, 1957); P22,000 and P3,000 (as admitted in his answer). An accounting of the rentals from the Ongpin and Rizal Avenue properties was also demanded.

In the meantime as a result of a petition for guardianship filed in the Juvenile and Domestic Relations Court, the Security Bank & Trust Co. was appointed guardian of the properties of Justina Santos, while Ephraim G. Gochangco was appointed guardian of her person.

In his answer, Wong insisted that the various contracts were freely and voluntarily entered into by the parties. He likewise disclaimed knowledge of the sum of P33,724.27, admitted receipt of P7,344.42 and P1 0,000, but contended that these amounts had been spent in accordance with the instructions of Justina Santos; he expressed readiness to comply with any order that the court might make with respect to the sum of P22,000 in the bank and P3,000 in his possession,

The case was heard, after which the lower court rendered judgment as follows:

" [A] ll the documents mentioned in the first cause of action, with the exception of the first which is the lease contract of 15 November 1957, are declared null and void; Wong Heng is condemned to pay unto plaintiff thru guardian of her property the sum of P55,554.25 with legal interest from the date of the filing of the amended complaint; he is also ordered to pay the sum of "P3,120.00 for every month of his occupation as lessee under the document of lease herein sustained, from 15 November 1959, and the moneys he had consigned since then shall be imputed to that; costs against Wong Heng."

From this judgment both parties appealed directly to this Court. After the case was submitted for decision, both

parties died, Wong Heng on October 21, 1962 and Justina Santos on December 28, 1964. Wong was substituted by his wife, Lui She, the other defendant in this case, While Justina Santos was substituted by the Philippine Banking Corporation.

Justina Santos maintained — now reiterated by the Philippine Banking Corporation that the lease contract (Plff Exh. 3) should have been annulled along with the four other contracts (Plff Exhs. 4-7) because it lacks mutuality; because it included a portion which, at the time, was in custodia legis; because the contract was obtained in violation of the fiduciary relations of the parties; because her consent was obtained through undue influence, fraud and misrepresentation; and because the lease contract, like the rest of the contracts, is absolutely simulated.

Paragraph 5 of the lease contract states that "The lessee may at any time withdraw from this agreement." It is claimed that this stipulation offends article 1308 of the Civil Code which provides that "the contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."

We have had occasion to delineate the scope and application of article 1308 in the early case of *Taylor vs. Uy Tiong Piao*.^[1] We said in the case:

Article 1256 [now art. 1308] of the Civil Code in our opinion creates no impediment to the insertion in a contract for personal service of a resolutory condition permitting the cancellation of the contract by one of the parties. Such a stipulation, as can be readily seen, does not make either the validity or the fulfillment of the contract dependent upon the will of the party to whom is conceded the privilege of cancellation; for where the contracting parties have agreed that such option shall exist, the exercise of the option is as much in the fulfillment of the contract as any other act which may have been the subject of agreement. Indeed, the cancellation of a contract in accordance with conditions agreed upon beforehand is fulfillment."^[2]

And so it was held in *Melencio vs. Dy Tiao Lay*^[3] that a "provision in a lease contract that the lessee at any time before he erected any building on the land, might rescind the lease, can hardly be regarded as a violation of article 1256 [now art. 1308] of the Civil Code."

The case of *Singson Encarnacion vs. Baldomar*^[4] cannot be cited in support of the claim of want of mutuality, because of a difference in factual setting. In that case, the lessees argued that they could occupy the premises as long as they paid the rent. This is of course untenable, for as this Court said "If this defense were to be allowed, so long as defendants elected to continue the lease by continuing the payment of the rentals, the owner would never be able to discontinue it; conversely, although the owner should desire the lease to continue the lessees could effectively thwart his purpose if they should prefer to terminate the contract by the simple expedient of stopping payment of the rentals." Here, in contrast, the right of the lessee to continue the lease or to terminate it is so circumscribed by the term of the contract that it cannot be said that the continuance of the lease depends upon his will. At any rate, even if no term had been fixed in the agreement, this case would at most justify the fixing of a period^[5] but not the annulment of the contract.

Now is there merit, in the claim that as the portion of the property formerly owned by the sister of Justina Santos was still in the process of settlement in the probate court at the time it was leased, the lease is invalid as to such portion. Justina Santos became the owner of the entire property upon the death of her sister Lorenza on September 22, 1957 by force of article 777 of the Civil Code. Hence, when she leased the property on November 15, she did so already as owner thereof. As this Court explained in upholding the sale made by an heir of a property under judicial administration:

"That the land could not ordinarily be levied upon while in custodia legis does not mean that one of the heirs may not sell the right, interest or participation which he has or might have in the lands under administration, The ordinary execution of property in custodia legis is prohibited in order to avoid interference with the

possession by the court, But the sale made by an heir of his share in an inheritance, subject to the result of the pending administration, in no wise stands in the way of such administration." [6]

It is next contended that the lease contract was obtained by Wong in violation of his fiduciary relationship with Justina Santos, contrary to article 1646, in relation to article 1941 of the Civil Code, which disqualifies "agents (from leasing) the property whose administration or sale may have been entrusted to them." But Wong was never an agent of Justina Santos. The relationship of the parties, although admittedly close and confidential, did not amount to an agency so as to bring the case within the prohibition of the law.

Just the same, it is argued that Wong so completely dominated her life and affairs that the contracts express not her will but only his. Counsel for Justina Santos cites the testimony of Atty. Tomas S. Yumol who said that he prepared the lease contract on the basis of the data given to him by Wong and that she told him that "what ever Mr. Wong wants must be followed." [7]

The testimony of Atty. Yumol cannot be read out of context in order to warrant a finding that Wong practically dictated the terms of the contract. What his witness said was:

"Q. Did you explain carefully to your client, Dona Justina the contents of this document before she signed it?

"I explained to her each and every one of these conditions and I also told her these conditions were quite onerous for her, I don't really know if I have expressed my opinion, but I told her that we would rather not execute any contract anymore, but to hold it as it was before, on a verbal month to month contract of lease.

"But, she did not follow your advice, and she went with the contract just the same?

"A. She agreed first . . .

"Q. Agreed what?

"A, Agreed with my objections that it is really onerous and I was really right, but after that, I was called again by her and she told me to follow the wishes of Mr, Wong Heng,

"Q, So, as far as consent is concerned, you were satisfied that this document was perfectly proper?

". . .

"A. Your Honor, if I have to express my personal opinion, I would say she is not, because, as I said before, she told me — "Whatever Mrs Wong wants must be followed.' " [8]

Wong might indeed have supplied the data which Yumol embodied in the lease contract, but to say this is not to detract from the binding force of the contract. For the contract was fully explained to Justina Santos by her own lawyer. One incident, related by the same witness, makes clear that she voluntarily consented to the lease contract. This witness said that the original term fixed for the lease was 99 years but that as he doubted the validity of a lease to an alien for that length of time, he tried to persuade her to enter instead into a lease on a month-to-month basis. She was, however, firm and unyielding. Instead of heeding the advice of the lawyer, she ordered him, "Just follow Mr. Wong Heng." [9] Recounting the incident Atty. Yumol declared on cross examination;

"Considering her age, ninety (90) years old at the time and her condition, she is a wealthy woman, it is just natural when she said 'This is what I want and this will be done.' In Particular reference to this contract of lease, when I said 'This is not proper,' she said — You just go ahead, you prepare that, I am the owner, and if there is any illegality, I am the only one that can question the illegality." [10]

Atty. Yumol testified that she signed the lease contract in the presence of her close friend. Hermenegilda Lao, and her maid, Natividad Luna, who was constantly by her side, [11] Any of them could have testified on the undue

influence that Wong supposedly wielded over Justina Santos, but neither of them was presented as a witness. The truth is that even after giving his client time to think the matter over, the lawyer could not make her change her mind. This persuaded the lower court to uphold the validity of the lease contract against the claim that it was procured through undue influence.

Indeed, the charge of undue influence in this case rests on a mere inference^[12] drawn from the fact that Justina Santos could not read (as she was blind) and did not understand the English language in which the contract is written, but that inference has been overcome by her own evidence.

Nor is there merit in the claim that her consent to the lease contract, as well as to the rest of the contracts in question, was given out of a mistaken sense of gratitude to Wong who, she was made to believe, had saved her and her sister from a fire that destroyed their house during the liberation of Manila. For while a witness claimed that the sisters were saved by other persons (the brothers Edilberto and Mariano Sta. Ana)^[13] It was Justina Santos who, according to her own witness, Benjamin C. Alonzo, said "very emphatically" that she and her sister would have perished in the fire had it been for Wong.^[14] Hence the recital in the deed of conditional option (Plff Exh. 7) that "[I]tong si Wong Heng ang siyang nagligtas sa aming dalawang magkapatid sa halos ay tiyak na kamatayan," and the equally emphatic avowal of gratitude in the lease contract (Plff Exh. 3).

As it was with the lease contract (Plff Exh. 3), so it was with the rest of the contracts (Plff Exhs. 4-7) — the consent of Justina Santos was given freely and voluntarily. As Atty. Alonzo, testifying for her, said:

"[I]n nearly, all documents, it was either Mr. Wong Heng or Judge Torres and/or both. When we had conferences they used to tell me what the documents should contain. But, as I said, I would always ask the old woman about them and invariably the old woman used to tell me: 'That's okay. It's all right.'"^[15]

But the lower court set aside all the contracts, with the exception of the lease contract of November 15, 1957, on the ground that they are contrary to the expressed wish of Justina Santos and that their considerations are fictitious. Wong stated in his deposition that he did not pay P360 a month for the additional premises leased to him because she did not want him to, but the trial court did not believe him. Neither did it believe his statement that he paid P1,000 as consideration for each of the contracts (namely, the option to buy the leased premises, the extension of the lease to 99 years, and the fixing of the term of the option at 50 years), but that the amount was returned to him by her for safekeeping. Instead, the court relied on the testimony of Atty. Alonzo in reaching the conclusion that the contracts are void for want of consideration.

Atty. Alonzo declared that he saw no money paid at the execution of the documents, but his negative testimony does not rule out the possibility that the consideration were paid at some other time as the contracts in fact recite. What is more, the consideration need not pass from one party to the other at the time a contract is executed because the promise of one is the consideration for the other^[16]

With respect to the lower court's finding that in all probability Justina Santos could not have intended to part with her property while she was alive nor even to lease it in its entirety as her house was built on it, suffice it to quote the testimony of her own witness and lawyer who prepared the contracts (Plff Exhs. 4-7) in question, Atty. Alonzo

"The ambition of the old woman before her death, according to her revelation to me, was to see to it that these properties be enjoyed, even to own them, by Wong Heng because Dona Justina told me that she did not have any relatives, near or far, and she considered Wong Heng as a son and his children her grandchildren; especially her consolation in life was when she would hear the children reciting prayers in Tagalog."^[17]

"She was very emphatic in the care of the seventeen (17) dogs and of the maids who helped her much, and she told me to see to it that no one could disturb Wong Heng from those properties. That is why we thought of the

ninety-nine (99) years lease; we thought of the adoption, believing that thru adoption Wong Heng might acquire Filipino citizenship; being the adopted child of a Filipino citizen." [18]

This is not to say, however, that the contracts (Plff Exhs. 3-7) are valid. For the testimony just quoted while dispelling doubt as to the intention of Justina Santos, at the same time gives the clue to what we view as a scheme to circumvent the Constitutional prohibition against the transfer of land of aliens. "The illicit purpose then becomes the illegal cause [19] rendering the contracts void.

Taken singly, the contracts show nothing that is necessarily illegal, but considered collectively, they reveal an insidious pattern to subvert by indirection what the Constitution directly prohibits. To be sure, a lease to an alien for a reasonable period is valid. So is an option giving an alien the right to buy real property on condition that he is granted Philippine citizenship. As this said in *Krivenko vs. Register of Deeds*: [20]

" [A] liens are not completely excluded by the Constitution from the use of lands for residential purposes. Since their residence in the Philippines is temporary, they may be granted temporary rights such as a lease contract which is not forbidden by the Constitution. Should they desire to remain here forever and share our fortunes and misfortunes, Filipino citizenship is not impossible to acquire."

But if an alien is given not only a lease of, but also an option to buy, a piece of land, by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, [21] this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land (*jus possidendi*, *jus utendi*, *jus fruendi* and *jus abutendi*), but also of the right to dispose of it (*jus disponendi*) — rights the sum total of which make up ownership. It is just as if today the possession is transferred, tomorrow, the use, the next day, the disposition, and so on, until ultimately all the rights of which ownership is made up are consolidated in an alien. And yet this is just exactly what the parties in this case did within this space of one year, with the result that Justina Santos' ownership of her property was reduced to a hollow concept. If this can be done, then the Constitutional ban against alien landholding in the Philippines, as announced in *Krivenko vs. Register of Deeds*, [22] is indeed in grave peril.

It does not follow from what has been said, however, that because the parties are in *pari delicto* they will be left where they are, without relief. For one thing, the original parties who were guilty of a violation of the fundamental charter have died and have since been substituted by their administrators to whom it would be unjust to impute their guilt. [23] For another thing, and is not only Cogent but also important, article 1416 of the Civil Code provides, as an exception to the rule on *pari delicto*, that "When the agreement, is not illegal per se but is merely prohibited and the prohibition by law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered." The Constitutional provision that "Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines [24] is an expression of public policy to conserve lands for the Filipinos, As this Court said in *Krivenko*:

' It is well to note at this juncture that in the present case we have no choice. We are construing the Constitution as it is and not as we may desire it to be. Perhaps the effect of our construction is to preclude aliens admitted freely into the Philippines from owning sites where they may build their homes. But if this is the solemn mandate of the Constitution we will not attempt to compromise it even in the name of amity or equity. . . .

"For all the foregoing, we hold that under the Constitution aliens may not acquire private or public agricultural lands, including residential lands and, accordingly, judgment is affirmed, without costs," [25]

That policy would be defeated and its continued violation sanctioned if, instead of setting the contracts aside and

ordering the restoration of the land to the estate of the deceased Justina Santos, this Court should apply the general rule of *pari delicto*. To the extent that our ruling in this case conflicts with that laid down in *Rellosa vs. Gaw Chee Hun*[26] and subsequent similar cases, the latter must be considered as *pro tanto* qualified.

The claims for increased rentals and attorney's fees made in behalf of Justina Santos, must be denied for lack of merit.

And what of the various amounts which Wong received in trust from her? It appears that he kept two classes of accounts, one pertaining to amounts which she entrusted to him from time to time, and another pertaining to rentals from the Ongpin property and from the Rizal Avenue property, which he himself was leasing.

With respect to the first account, the evidence shows that he received P33,724.27 on November 8, 1957 (Plff. Exh. 16); P7,354.42 on December 1, 1957 (Plff. Exh. 13); P10,000 on December 6, 1957 (Plff. Exh. 14); and P18,928.50 on August 26, 1959 (Def. Exh. 246), or a total of P70,007.19. He claims, however, that he settled his accounts and that last amount of P18,928.50 was in fact payment to him of what in the liquidation was found to be due to him.

He made disbursements from this account to discharge Justina Santos' obligations for taxes, attorneys' fees, funeral services and security guard services, but the checks (Def. Exhs. 247-278) drawn by him for this purpose amount to only P38,442.84. Besides, if he had really settled his accounts with her on August 26, 1959, we cannot understand why he still had P22,000 in the bank and P3,000 in his possession, or a total of P25,000. In his answer, he offered to pay this amount if the court so directed him. On these two grounds, therefore, his claim of liquidation and settlement of accounts must be rejected.

After subtracting P38,442.84 (expenditures) from P70,007.19 (receipts), there is a difference of P31,564 which, added to the amount of P25,000, leaves a balance of P56,564.3528 in favor of Justina Santos.

As to the second account, the evidence shows that the monthly income from the Ongpin property until its sale in July 1959 was P1,000 and that from the Rizal Avenue property, of which Wong was the lessee, was P3,120. Against this account the household expenses and disbursements for the care of the 17 dogs and the salaries of the 8 maids of Justina Santos were charged. This account is contained in a notebook (Def. Exh. 6) which shows a balance of P9,210.49 in favor of Wong. But it is claimed that the rental from both the Ongpin and Rizal Avenue properties was more than enough to pay for her monthly expenses and that, as a matter of fact, there should be a balance in her favor. The lower court did not allow either party to recover against the other. Said court:

"[T]he documents bear the earmarks of genuineness; the trouble is that they were made only by Francisco Wong and Antonia Matias, nicknamed Toning, which was the way she signed the loose sheets, and there is no clear proof that Dona Justina had authorized these two to act for her in such liquidation; on the contrary if the result of that was a deficit as alleged and sought to be there shown, of P9,210.49, that was not what Dona Justina apparently understood for as the court understands her statement to the Honorable Judge of the Juvenile Court . . . the reason why she preferred to stay in her home was because there she did not incur in any debts . . . this being the case, . . . the Court will not adjudicate in favor of Wong Heng on his counterclaim; on the other hand, while it is claimed that the expenses were much less than the rentals and there in fact should be a superavit, . . . this Court must concede that daily expenses are not easy to compute, for this reason, the Court faced with the choice of the two alternatives will choose the middle course which after all is permitted by the rules of proof, Sec 69, Rule 123 for in the ordinary course of things, a person will live within his income so that the conclusion of the Court will be that there is neither deficit nor superavit and will let the matter rest here:"

Both parties on appeal reiterate their respective claims but we agree with the lower court that both claims should be denied. Aside from the reasons given by the court, We think that the claim of Justina Santos totalling P37,235

as rentals due to her after deducting various expenses, should be rejected as the evidence is none too clear about the amounts spent by Wong for food,[29] masses[30] salaries of her maids.[31] His claim for P9,210.49 must likewise be rejected as his averment of liquidation is belied by his own admission that even as late as 1960 he still had P22,000 in the bank and "P3,000 in his possession.

Accordingly, the contracts in question (Plff Exhs. 3-7) are annulled and set aside; the land subject-matter of the contracts is ordered returned to the estate of Justina Santos as represented by the Philippine Banking Corporation; Wong Herig (as substituted by the defendant-appellant Lui She) is ordered to pay the Philippine Banking Corporation the sum of ₱56,564J5, with legal interest from the date of the filing of the amended complaint; and the amounts consigned in court by Wong Heng shall be applied to the payment of rental from November 15, 1959 until the premises shall have been vacated by his heirs. Costs against the defendant-appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Angeles, JJ., concur.

Fernando, J., concurs in a separate opinion.

Contracts annulled and set aside.

[1] 43 Phil. 873, (1922).

[2] *Id.* at 876.

[3] 55 Phil. 99 (1930).

[4] 77 Phil. 470 (1946).

[5] Civ. Code, art 1197.

[6] *Jakosalem v. Rafols*, 73 Phil. 628 (1942).

[7] T.s.n., pp. 73-74, June 20, 1960.

[8] T.s.n., pp. 70-71, 73-74, June 20, 1960 (*italics added*).

[9] T.s.n., pp. 69-70, June 20, 1960.

[10] T.s.n. p. 86, June 20, 1960 (*italics added*).

[11] T.s.n., pp. 69-70, June 20, 1960.

[12] Article 1332 of the Civil Code provides that "when one of the parties is unable to read or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former."

[13] T.s.n., P11, June 21, 1960.

[14] T.s.n., pp. 119-120, June 20, 1960.

[15] T.s.n., p. 78, June 6, 1960.

[16] *Rodriguez v. Rodriguez*, 65 Off. Gaz; [6] 1275; *Enriquez de la Cavada v. Diaz*, 37 Phil. 982 (1918); see also *Puato v. Mendoza*, 64 Phil 457 (1937).

[17] T.s.n., p. 79, July 6, 1960 (*italics added*).

[18] T.s.n., p. 121, June 20, 1960.

[19]Rodriguez v. Rodriguez, supra, note 16.

[20] 79 Phil, 461, 480-481 (1947) (italics added), The statement in Smith, Bell & Co, v. Register of Deeds, 96 Phil. 53, 61-62 (1954) to the effect that an alien may lease lands in the Philippines for as long as 99 years under article 1643 of the Civil Code, is obiter as the term of the lease in that case for 25 years only, renewable for a like period, and the character (whether temporary or permanent) of rights under a 99-year lease was not considered.

[21] The contract (Plff Exh. 6) of November 18, 1958 provides that "Sa loob nang nabanggit na panahon limangpung (50) taon na hindi pa ginagamit ni WONG o kaniyang kaanak ang karapatan nilang bumili, ay ang nabanggit na lupa ay hindi maaaring ipagbili, ibigay, isangla, o itali ng MAYARI sa iba" [Within the said period of fifty (50) years during which neither WONG nor any of his children has exercised the option to buy, the said piece of land cannot be sold, donated, mortgaged or encumbered in favor of other persons by the owner.

[22] Supra, note 20.

[23] Cf. Rellosa v. Gaw Chee Hun, 93 Phil. 827, 836 (1953) (Cesar Bangzon, J. concurring): "Perhaps the innocent spouse of the seller and his creditors are not barred from raising the issue of invalidity."

[24] Const art XIII, sec. 5.

[25] Supra, note 20, at 480-481.

[26] 93 Phil. 827 (1953).

[27] According to the lower court the amount should be P38,422.94, but the difference appears to be the result of an error in addition.

[28] According to the trial court the amount should be P56,554.25, but the difference appears to be due to the error pointed out in note 27.

[29] T.s.n., pp. 6-8, July 26, 1960.

[30] T.s.n. p. 35, July 26, 1960.

[31] T.s.n., pp. 31-35, July 26, 1960.

CONCURRING

FERNANDO, J.,

With the able and well-written opinion of Justice Castro, I am in full agreement. The exposition of the facts leaves nothing to be desired and the statement of the law notable for its comprehensiveness and clarity. This concurring opinion has been written solely to express what I consider to be the unfortunate and deplorable consequences of applying the *pari delicto* concept, as was, to my mind, indiscriminately done, to alien landholding declared illegal under the Krivenko doctrine in some past decisions.

It is to be remembered that in *Krivenko v. The Register of Deeds of Manila*,^[1] this Court over strong dissents held that residential and commercial lots may be considered agricultural within the meaning of the constitutional provision prohibiting the transfer of any private agricultural land to individuals, corporations or associations not qualified to acquire or hold lands of the public domain in the Philippines save in cases of hereditary succession.

That provision of the Constitution took effect on November 15, 1935 when the Commonwealth Government was

established. The interpretation as set forth in the Kri-venko decision was only handed down on November 15, 1947. Prior to that date there were many who were of the opinion that the phrase agricultural land should be construed strictly and not be made to cover residential and commercial lots. Acting on that belief, several transactions were entered into transferring such lots to alien vendees by Filipino vendors.

After the Krivenko decision, some Filipino vendors sought recovery of the lots in question on the ground that the sales were null and void. No definite ruling was made by this Court until September of 1953, when on the 29th of said month, *Rellosa v. Gaw Chee Hun*,^[2] *Bautista v. Uy Isabelo*,^[3] *Talento v. Makiki*,^[4] *Caoile v. Chiao Peng*^[5] were decided.

Of the four decisions in September 1953, the most extensive discussion of the question is found in *Rellosa v. Gaw Chee Hun*, the opinion being penned by retired Justice Bautista Angelo with the concurrence only of one Justice, Justice Labrador, also retired. Former Chief Justice Paras as well as the former Justices Tuason and Montemayor concurred in the result. The necessary sixth vote for a decision was given by the then Justice Bengzon, who had a two-paragraph concurring opinion disagreeing with the main opinion as to the force to be accorded to the two cases,^[6] therein cited. There were two dissenting opinions by former Justices Pablo and Alex Reyes.

The doctrine as announced in the *Rellosa* case is that while the sale by a Filipino-vendor to an alien-vendee of a residential or a commercial lot is null and void as held in the *Krivenko* case, still the Filipino-vendor has no right to recover under a civil law doctrine, the parties being in *pari delicto*. The only remedy to prevent this continuing violation of the Constitution which the decision impliedly sanctions by allowing the alien vendees to retain the lots in question is either escheat or reversion. Thus "By following either of these remedies, or by approving an implementary law as above suggested, we can enforce the fundamental policy of our Constitution regarding our natural resources without doing violence to the principle of *pari delicto*"^[7]

Were the parties really in *pari delicto*? Had the sale by and between Filipino-vendor and alien-vendee occurred after the decision in the *Krivenko* case, then the above view would be correct that both Filipino-vendor and alien-vendee could not be considered as innocent parties within the contemplation of the law. Both of them should be held equally guilty of evasion of the Constitution.

Since, however, the sales in question took place prior to the *Krivenko* decision, at a time when the assumption could be honestly entertained that there was no constitutional prohibition against the sale of commercial or residential lots by Filipino-vendor to alien-vendee, in the absence of a definite decision by the Supreme Court, it would not be doing violence to reason to free them from the imputation of evading the Constitution. For evidently evasion implies at the very least knowledge of what is being evaded. The new Civil Code expressly provides: "Mistakes upon a doubtful or difficult question of law may be the basis of good faith." ^[8]

According to the *Rellosa* opinion, both parties are equally guilty of evasion of the Constitution, based on the broader principle that "both parties are presumed to know the law," This statement that the sales entered into prior to the *Krivenko* decision were at that time already vitiated by a guilty knowledge of the parties may be too extreme a view. It appears to ignore a postulate of a constitutional system, wherein the words of the Constitution acquire meaning through Supreme Court adjudication.

Reference may be made by way of analogy to a decision adjudging a statute void. Under the orthodox theory of constitutional law, the act having been found unconstitutional was not a law, conferred no rights, imposed no duty, afforded no protection.^[9] As pointed out by former Chief Justice Hughes though in *Chicot County Drainage District v. Baxter State Bank*: ^[10] "It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past

cannot always be erased by a new judicial declaration. The effect of subsequent ruling as to invalidity may have to be considered in various aspects, — with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, or public policy in the light of the nature both of the statute and of its previous application, demand examination."

After the Krivenko decision, there is no doubt that continued possession by alien-vendee of property acquired before its promulgation is violative of the Constitution. It is as if an act granting aliens the right to acquire residential and commercial lots were annulled by the Supreme Court as contrary to the provision of the Constitution prohibiting aliens from acquiring private agricultural land.

The question then as now, therefore, was and is how to divest the alien of such property rights on terms equitable to both parties. That question should be justly resolved in accordance with the mandates of the Constitution not by a wholesale condemnation of both parties for entering into a contract at a time when there was no ban as yet arising from the Krivenko decision, which could not have been anticipated. Unfortunately, under the Rellosa case, it was assumed that parties, being in *pari delicto*, would be left in the situation in which they were, neither being in a position to seek judicial redress.

Would it not have been more in consonance with the Constitution, if instead the decision compelled the restitution of the property by the alien-vendee to the Filipino-vendor? The Krivenko decision held in clear, explicit and unambiguous language that: "We are deciding the instant case under section 5 of Article XIII of the Constitution which is more comprehensive and more absolute in the sense that it prohibits the transfer to aliens of any private agricultural land including residential land whatever its origin might have been. . . . This prohibition [Rep. Act No. 133] makes no distinction between private lands that are strictly agricultural and private lands that are residential or commercial. The prohibition embraces the sale of private lands of any kind in favor of aliens, which is again a clear implementation and a legislative interpretation of the constitutional prohibition. ... It is well to note at this juncture that in the present case we have no choice. We are construing the Constitution as it is and not as we may desire it to be. Perhaps the effect of our construction is to preclude aliens, admitted freely into the Philippines, from owning sites where they may build their homes. But if this is the solemn mandate of the Constitution, we will not attempt to compromise it even in the name of amity or equity." [11]

Alien-vendee is therefore incapacitated or disqualified to acquire and hold real estate. That incapacity and that disqualification should date from the adoption of the Constitution on November 15, 1935. That incapacity and that disqualification, however, was made known to Filipino-vendor and to alien-vendee only upon the promulgation of the Kriveitko decision on November 15, 1947. Alien-vendee therefore, cannot be allowed to continue owning and exercising acts of ownership over said property, when it is clearly included within the Constitutional prohibition. Alien-vendee should thus be made to restore the property with its fruits and rents to Filipino-vendor, its previous owner, if it could be shown that in the utmost good faith, he transferred his title over the same to alien-vendee, upon restitution of the purchase price of course.

The Constitution bars alien-vendees from owning the property in question. By dismissing those suits, the lots remained in alien hands. Notwithstanding the solution of escheat or reversion offered, they are still at the moment of writing, for the most part in alien hands. There have been after almost twenty years no proceedings for escheat or reversion.

Yet it is clear that an alien-vendee cannot consistently with the constitutional provision, as interpreted in the Krivenko decision, continue owning the exercising acts of ownership over the real estate in question. It ought to follow then, if such a continuing violation of the fundamental law is to be put an end to, that the Filipino-vendor,

who in good faith entered into a contract with an incapacitated person, transferring ownership of a piece of land after the Constitution went into full force and effect, should, in the light of the ruling in the Krivenko case, be restored to the possession and ownership thereof, where he has filed the appropriate case or proceeding. Any other construction would defeat the ends and purposes not only of this particular provision in question but the rest of the Constitution itself.

The Constitution frowns upon the title remaining in the alien-vendees. Restoration of the property upon payment of price received by Filipino vendor or its reasonable equivalent as fixed by the court is the answer. To give the constitutional provision full force and effect, in consonance with the dictates of equity and justice the restoration to Filipino-vendor upon the payment of a price fixed by the court is the better remedy. He thought he could transfer the property to an alien and did so. After the Krivenko case had made clear that he had no right to sell nor an alien-vendee to purchase the property in question, the obvious solution would be for him to reacquire the same. That way the Constitution would be given, as it ought to be given, respect and deference.

It may be said that it is too late at this stage to hope for such a solution, the Rellosa opinion, although originally concurred in by only one justice, being too firmly in-bedded. The writer however sees a welcome sign in the adoption by the Court in this case of the concurring opinion of the then Justice, later Chief Justice, Bengzon. Had it been followed then, the problem would not be still with us now. Fortunately, it is never too late— not even in constitutional adjudication.

[1] 79 Phil. 461 (1947).

[2] 93 Phil. 827.

[3] 93 Phil. 843.

[4] 93 Phil. 855.

[5] 93 Phil. 861. See also *Arambulo v. fcu So*, (1954) 95 Phil. 749; *Dinglasan v. Lee Bun Ting* (1956) 99 Phil. 427.

[6] *Bough v. Cantiveros* (1919) 40 Phil. 210 and *Perez v. Herranz*, (1902) 7 Phil. 693.

[7] At p. 835.

[8] Art. 526, par. 3. The above provision is merely a reiteration of the doctrine announced in the case of *Kasilag v. Rodriguez*, decided on December 7, 1939 (69 Phil. 217), the pertinent excerpt follows:

"This being the case, the question is whether good faith may be premised upon ignorance of the laws. Manresa, commenting on article 434 in connection with the preceding article, sustains the affirmative. He says:

" 'We do not believe that in real life there are not many cases of good faith founded upon an error of law. When the acquisition appears in a public document, the capacity of the parties has already been passed upon by competent authority, and even established by appeals .taken from final judgments and administrative remedies against the qualification of registrars, and the possibility or error is remote under such circumstances; but, unfortunately, private documents and even verbal agreements far exceed public documents in number, and while no one should be ignorant of the law, the truth is that even we who are called upon to know and apply it fall into error not infrequently; However, a clear, manifest, and truly unexcusable ignorance is one thing, to which undoubtedly refers article 2, and another and different thing is possible and excusable error arising from complex legal principles and from the interpretation of conflicting doctrines.

' But even ignorance of the law may be based upon an error of fact or better still, ignorance of a fact is possible as to the capacity to transmit and as to the intervention of certain persons, compliance with certain formalities and appreciation of certain acts, and error of law is possible in the interpretation of doubtful doctrines.' " Manresa, Commentaries on the Spanish Civil Code, Volume IV, pp. 100, 101 and 102),

[9] Norton v. Shelby County, (1886) 118 U.S. 425.

[10] 308 U.S. 731 (1940).

[11] 79 Phil, 461, 480 (1947).

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