

FLORENCIA R. SORIANO, ASSISTED BY HER HUSBAND MANUEL A. Q. SORIANO, PLAINTIFF AND APPELLANT, VS. ONG HOO, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 10931. May 28, 1958

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Manila, Hon. Edilberto Barot, presiding, dismissing the action which was brought to recover two lots sold by plaintiff and her co-owner to the defendants.

On and before November 29, 1943, Florencina R. Soriano and her brother Teodoro R. Soriano were the registered co-owners, and their father Ramon Soriano (widower), the registered usufructuary of Lots Nos. 16 and 17, Block No. 1881 of the cadastral survey of Manila, covered by Transfer Certificate of Title No. 6147 of the Registry of Deeds of Manila. On November 29, 1943, the above co-owners and usufructuary sold the said lots to Ong Hoo for P160,000, of which P90,000 was paid at the time of the sale and P70,000 on December 4, 1943. On January 17, 1944, Ong Hoo registered the deed of sale executed in his favor and, thereupon, Transfer Certificate of Title No. 70030 was issued in his name. Ramon Soriano died on September 15, 1944 and Teodoro R. Soriano, on September 5, 1946 and as they both died intestate, Florencina R. Soriano as their sole heir succeeded in their rights to said properties.

On January 16, 1946, Ong Hoo sold the land to defendants Chung Te, Ching Leng and Ching Tan. The sale was registered on January 22, 1946 and, thereupon, Transfer Certificate of Title No. 9597 of Manila was issued in their name.

The above facts appear in the stipulation of facts submitted by the parties in this case. The complaint alleges that both the original sale and the subsequent transfer made are null and void because the vendee and transferees are Chinese citizens and cannot acquire ownership of private agricultural land. It is, therefore, prayed that the sale executed in favor of the defendants be declared null and void and that the plaintiff be declared owner of the lots upon reimbursement by her of the price of the sale. The defendants in their answer allege that the complaint states no cause of action, inasmuch as the plaintiffs had participated in the execution of an illegal contract and so they can not maintain an action to recover what they had conveyed by virtue thereof; that defendants are innocent purchasers of the property for value; and that the sale was executed during the Japanese regime, at which time the Constitution of the Philippines was not in force.

The Court of First Instance of Manila held that the sale cannot be annulled at the instance of the vendor or vendors citing the cases of Cabauatan, et al., vs. Uy Hoo, 88 Phil., 108; Ricamara, et al. vs. Ngo Ki, G.R. No. L-5836, April 29, 1953; and especially Rellosa vs. Gaw Chee Hun, 93 Phil., 827; 49 Off. Gaz., [10], 4345.

It is argued on this appeal that the principle of in part delicto is not applicable to the vendors for the reason that the provision of law supposed to have been violated is not a very clear provision but is a doubtful one, and its interpretation could have been the subject of mistake on the part of any of the parties. The constitutional

prohibition against the acquisition of agricultural lands by aliens is absolute and unconditional; it contains no saving clause in favor of those who were not aware of its meaning or implications. The argument of the appellant is also contrary to the general rule of law that knowledge thereof is to be presumed. The claim that the principle of *in pari delicto* does not apply to the plaintiffs is, therefore, without merit.

It is also claimed that, in consonance with the policy of the State to retain lands in favor of its citizens and prohibiting aliens from acquiring them, the vendor in the case at bar should be allowed to recover back the property in the same manner as holders of homesteads who have disposed of the same as decided by Us in the case of *Eugenio, et al. vs. Perdido, et al.*,^[1] G. R. No. L-7083, May 19, 1955. Distinction should be made between the prohibition against the disposition of homesteads and the prohibition made in the Constitution against the acquisition of lands by aliens. The evident purpose of the Public Land Law, especially the provisions thereof in relation to homesteads, is to conserve ownership of lands acquired as homesteads in the homesteader or his heirs. (*De los Santos vs. Roman Catholic Church of Midsayap*,^[2] 50 Off. Gaz., [4], 1588; *Acierto vs. De los Santos*,^[3] G.R. No. L-5828, Sept. 29, 1954; *Eugenio, et al. vs. Perdido, et al.*, supra; *Angeles, et al. vs. The Court of Appeals*,^[4] G.R. No. L-11024, Jan. 31, 1958.) This is evident from the provisions of the law, such as the prohibition against sale of the homestead within a period of five years from and after the date of the issuance of the patent or grant, and after five years and before 25 years after issuance of title without the consent of the Secretary of Agriculture and Natural Resources (C.A. No. 141, section 118), and the permission granted the homesteader or his legal heirs to repurchase the land within five years from the date of the conveyance (*Id.*, Sec. 119). In the case of the constitutional prohibition, the law is silent; it merely prohibits acquisition of land by foreigners. The prohibition stops there; as to the effects or results of a violation of the prohibition, both with respect to the citizen selling his land and the alien purchasing or acquiring the same, the Constitution is silent. If the citizen voluntarily disposes of his property, it would seem too much to expect that the law should order the return of the property to him. In the United States where a prohibition similar to our constitutional prohibition exists, it has been held that the vendor has no recourse against the vendee despite the alien's disability to hold the property, and that it is only the State that is entitled by proceedings in the nature of office found to have a forfeiture or escheat declared against the vendee who is incapable of holding title. (*Vasquez vs. Li Seng Giap, et al.*,^[1] G.R. No. L-3676, January 31, 1955.) As the Constitution is silent as to the effects or consequences of a sale by a citizen of his land to an alien, and as both the citizen and the alien have violated the law, none of them should have a recourse against the other, and it should only be the State that should be allowed to intervene and determine what is to be done with the property subject of the violation. We have said that what the State should do or could do in such matters is a matter of public policy, entirely beyond the scope of judicial authority. (*Dinglasan, et al. vs. Lee Bun Ting, et al.*,^[2] G.R. No. L-5996, June 27, 1956.) While the legislature has not definitely decided what policy should be followed in cases of violations against the constitutional prohibition, courts of justice cannot go beyond by declaring the disposition to be null and void as violative of the Constitution. We, therefore, feel We are not in a position to concede the remedy prayed for, for which reason the judgment dismissing the action should be, as it hereby is, affirmed, with costs against the plaintiffs.

Paras, C.J., Bengzon, Montemayor, Bautista Angelo, Endencia, and Felix, JJ., concur.

[1]97 Phil., 41

[2]94 Phil., 405.

[3]95 Phil., 887.

[4]102 Phil., 1006

[1]96 Phil., 447, 51 Off. Gaz., [2], 717

[2]99 Phil., 427, 52 Off. Gaz., [7], 3566.

DISSENTING

REYES, J. B. L., J.,

While the opinion of Justice Labrador is fully supported by authority, I believe the time is ripe for a revision of the position of the Court in cases of alien land tenures.

For thirteen years since liberation, the Legislature has failed to enact a statute for the escheat of agricultural lands acquired by aliens in violation of the Constitution. Between this apparent reluctance of the legislative branch to implement the prohibition embodied in section 5 of Art. XIII of our fundamental charter, and the strict application by the courts of the part delicto rule, the result has been that aliens continue to hold and enjoy lands admittedly acquired contrary to constitutional prohibitions, just as if the inhibition did not exist.

In view of the prolonged legislative inaction, it is up to the courts to vindicate the Constitution by declaring the pari delicto rule not applicable to these transactions. After all, the rule is but an instrument of the public policy, and its application is justified only in so far as it enforces that policy. Therefore, where its continued application to a given set of cases leads to results plainly contrary to the wording and spirit of the Constitution, there is every reason, to discard it. Otherwise, the express rule against alien land tenures will speedily become the object of mockery and derision.

It may be that Filipinos who parted with their lands in favor of aliens morally do not deserve protection; but they are in no worse case than the alien purchasers, and moreover the Constitution is clearly in their favor. I submit that it is more important that the constitutional inhibition be enforced than to wait for another branch of the government to take the initiative.

Concepcion, J., concurs.

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