SERAFIN MODINA, PETITIONER VS. COURT OF APPEALS AND ERNESTO HONTARCIEGO, PAUL FIGUEROA, TEODORO HIPALLA AND RAMON CHIANG, MERLINDA CHIANG, RESPONDENTS.

G.R. No. 109355. October 29, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a Petition for Review on Certiorari assailing the decision of the Court of Appeals in CA - G.R. CV No. 26051 affirming the decision of the trial court in the case, entitled “Serafin Modina vs Ernesto Hontarciego, Paulino Figueroa and Ramon Chiang vs Merlinda Plana Chiang, intervenors”, which declared as void and inexistent the deed of definite sale dated December 17, 1975 as well as the Certificates of Title Nos. T-86912, T-86913, T-86914 in the name of Ramon Chiang.

The facts that matter are as follows:

The parcels of land in question are those under the name of Ramon Chiang (hereinafter referred to as CHIANG) covered by TCT Nos. T-86912, T-86913, and T-86914. He theorized that subject properties were sold to him by his wife, Merlinda Plana Chiang (hereinafter referred to as MERLINDA), as evidenced by a Deed of Absolute Sale dated December 17, 1975,[1] and were subsequently sold by CHIANG to the petitioner Serafin Modina (MODINA), as shown by the Deeds of Sale, dated August 3, 1979 and August 24, 1979, respectively.

MODINA brought a Complaint for Recovery of Possession with Damages against the private respondents, Ernesto Hontarciego, Paul Figueroa and Teodoro Hipalla, docketed as Civil Case No. 13935 before the Regional Trial Court of Iloilo City.

Upon learning the institution of the said case, MERLINDA presented a Complaint-in-intervention, seeking the declaration of nullity of the Deed of Sale between her husband and MODINA on the ground that the titles of the parcels of land in dispute were never legally transferred to her husband. Fraudulent acts were allegedly employed by him to obtain a Torrens Title in his favor. However, she confirmed the validity of the lease contracts with the other private respondents.

MERLINDA also admitted that the said parcels of land were those ordered sold by Branch 2 of the then Court of First Instance of Iloilo in Special Proceeding No. 2469 in “Intestate Estate of Nelson Plana” where she was appointed as the administratix, being the widow of the deceased, her first husband. An Authority to Sell was issued by the said Probate Court for the sale of the same properties.[2]

After due hearing, the Trial Court decided in favor of MERLINDA, disposing thus:

> “WHEREFORE, judgment is hereby rendered (1) declaring as void and inexistent the sale of Lots 10063, 10088, 10085 and 10089 of the Cadastral Survey of Sta. Barbara by Merlinda Plana in favor of Ramon Chiang as evidenced by the deed of definite sale dated December 17, 1975 (Exhibits “H”; “3”-Chiang; “9” Intervenor) as well as the Certificates of Title Nos. T-86912, T-86913, T-86914 and T-86915 in the name of

> Ramon Chiang; (2) declaring as void and inexistent the sale of the same properties by Ramon Chiang in favor of Serafin Modina as evidenced by the deeds of sale (Exhibits 'A', 'B', '6' – Chiang and '7' – Chiang) dated August 3, and 24, 1979, as well as. Certificates of Title Nos. T-102631, 102630, 102632 and 102890 in the name of Serafin Modina; (3) ordering the Register of Deeds of Iloilo to cancel said certificates of title in the names of Ramon Chiang and Serafin Modina and to reinstate the Certificates of Title Nos. T-57960, T-57962, T-57963 and T-57864 in the name of Nelson Plana; (4) ordering Serafin Modina to vacate and restore possession of the lots in question to Merlinda Plana Chiang; (5) ordering Ramon Chiang to restitute and pay to Serafin Modina the sum of P145,800.00 and; (6) ordering Serafin Modina to pay Ernesto Hontarciego the sum of P44,500.00 as actual and compensatory damages plus the sum of P5,000.00, for and as attorney's fees, with costs in favor of said defendants against the plaintiff."

On appeal, the Court of Appeals affirmed the aforesaid decision in toto.

Dissatisfied therewith, petitioner found his way to this Court via the present Petition for Review under Rule 45 seeking to set aside the assailed decision of the Court of Appeals.
Raised for resolution here are: (1) whether the sale of subject lots should be nullified, (2) whether petitioner was not a purchaser in good faith, (3) whether the decision of the trial court was tainted with excess of jurisdiction; and (4) whether or not only three-fourths of subject lots should be returned to the private respondent.

Anent the first issue, petitioner theorizes that the sale in question is null and void for being violative of Article 1490[3] of the New Civil Code prohibiting sales between spouses. Consequently, what is applicable is Article 1412[4] supra on the principle of in pari delicto, which leaves both guilty parties where they are, and keeps undisturbed the rights of third persons to whom the lots involved were sold; petitioner stressed.

Petitioner anchors his submission on the following statements of the Trial Court which the Court of Appeals upheld, to wit:

> "Furthermore, under Art. 1490, husband and wife are prohibited to sell properties to each other. And where, as in this case, the sale is inexistent for lack of consideration, the principle of in pari delicto non oritur actio does not apply. (Vasquez vs Porta, 98 Phil 490). (Emphasis ours) Thus, Art. 1490 provides:

Art. 1490. The husband and the wife cannot sell property to each other, except:

> (1) when a separation of property was agreed upon in the marriage settlements; or
>
> (2) when there has been a judicial separation of property under Art. 191.
>
> The exception to the rule laid down in Art. 1490 of the New Civil Code not having existed with respect to the property relations of Ramon Chiang and Merlinda Plana Chiang, the sale by the latter in favor of the former of the properties in question is invalid for being prohibited by law. Not being the owner of subject properties, Ramon Chiang could not have validly sold the same to plaintiff Serafin Modina. The sale by Ramon Chiang in favor of Serafin Modina is, likewise, void and inexistent.

xxx xxx xxx"[5]

The Court of Appeals, on the other hand, adopted the following findings a quo: that there is no sufficient evidence establishing fault on the part of MERLINDA, and therefore, the principle of in pari delicto is inapplicable and the sale was void for want of consideration. In effect, MERLINDA can recover the lots sold by her husband to petitioner MODINA. However, the Court of Appeals ruled that the sale was void for violating Article 1490 of the Civil Code, which prohibits sales between spouses.

The principle of in pari delicto non oritur actio[6] denies all recovery to the guilty parties inter se. It applies to cases where the nullity arises from the illegality of the consideration or the purpose of the contract.[7] When two

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persons are equally at fault, the law does not relieve them. The exception to this general rule is when the principle is invoked with respect to inexistent contracts.[8]

In the petition under consideration, the Trial Court found that subject Deed of Sale was a nullity for lack of any consideration.[9] This finding duly supported by evidence was affirmed by the Court of Appeals. Well-settled is the rule that this Court will not disturb such finding absent any evidence to the contrary.[10]

Under Article 1409[11] of the New Civil Code, enumerating void contracts, a contract without consideration is one such void contract. One of the characteristics of a void or inexistent contract is that it produces no effect. So also, inexistent contracts can be invoked by any person whenever juridical effects founded thereon are asserted against him. A transferor can recover the object of such contract by accion reivindicatoria and any possessor may refuse to deliver it to the transferee, who cannot enforce the transfer.[12]

Thus, petitioner's insistence that MERLINDA cannot attack subject contract of sale as she was a guilty party thereto is equally unavailing.

But the pivot of inquiry here is whether MERLINDA is barred by the principle of in pari delicto from questioning subject Deed of Sale.

It bears emphasizing that as the contracts under controversy are inexistent contracts within legal contemplation, Articles 1411 and 1412 of the New Civil Code are inapplicable. In pari delicto doctrine applies only to contracts with illegal consideration or subject matter, whether the attendant facts constitute an offense or misdemeanor or whether the consideration involved is merely rendered illegal.[13]

The statement below that it is likewise null and void for being violative of Article 1490 should just be treated as a surplusage or an obiter dictum on the part of the Trial Court as the issue of whether the parcels of land in dispute are conjugal in nature or they fall under the exceptions provided for by law, was neither raised nor litigated upon before the lower Court. Whether the said lots were ganancial properties was never brought to the fore by the parties and it is too late to do so now.

Futhermore, if this line of argument be followed, the Trial Court could not have declared subject contract as null and void because only the heirs and the creditors can question its nullity and not the spouses themselves who executed the contract with full knowledge of the prohibition.[14]

Records show that in the complaint-in-intervention of MERLINDA, she did not aver the same as a ground to nullify subject Deed of Sale. In fact, she denied the existence of the Deed of Sale in favor of her husband. In the said Complaint, her allegations referred to the want of consideration of such Deed of Sale. She did not put up the defense under Article 1490, to nullify her sale to her husband CHIANG because such a defense would be inconsistent with her claim that the same sale was inexistent.

The Trial Court debunked petitioner's theory that MERLINDA intentionally gave away the bulk of her and her late husband's estate to defendant CHIANG as his exclusive property, for want of evidentiary anchor. They insist on the Deed of Sale wherein MERLINDA made the misrepresentation that she was a widow and CHIANG was single, when at the time of execution thereof, they were in fact already married. Petitioner insists that this document conclusively established bad faith on the part of MERLINDA and therefore, the principle of in pari delicto should have been applied.

These issues are factual in nature and it is not for this Court to appreciate and evaluate the pieces of evidence introduced below. An appellate court defers to the factual findings of the Trial Court, unless petitioner can show a glaring mistake in the appreciation of relevant evidence.

Since one of the characteristics of a void or inexistent contract is that it does not produce any effect, MERLINDA can recover the property from petitioner who never acquired title thereover.

As to the second issue, petitioner stresses that his title should have been respected since he is a purchaser in good faith and for value. The Court of Appeals, however, opined that he (petitioner) is not a purchaser in good faith. It found that there were circumstances known to MODINA which rendered their transaction fraudulent under the attendant circumstances.

As a general rule, in a sale under the Torrens system, a void title cannot give rise to a valid title. The exception is when the sale of a person with a void title is to a third person who purchased it for value and in good faith.

A purchaser in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price at the time of the purchase or before he has notice of the claim or interest of some other person in the property.

In the case under scrutiny, petitioner cannot claim that he was a purchaser in good faith. There are circumstances which are indicia of bad faith on his part, to wit: (1) He asked his nephew, Placido Matta, to investigate the origin of the property and the latter learned that the same formed part of the properties of MERLINDA's first husband; (2) that the said sale was between the spouses; (3) that when the property was inspected, MODINA met all the lessees who informed that subject lands belong to MERLINDA and they had no knowledge that the same lots were sold to the husband.

It is a well-settled rule that a purchaser cannot close his eyes to facts which would put a reasonable man upon his guard to make the necessary inquiries, and then claim that he acted in good faith. His mere refusal to believe that such defect exists, or his wilful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation.[15]

Thus, petitioner cannot claim that the sale between him and MODINA falls under the exception provided for by law.

With regard to the third issue posed by petitioner - whether the Trial Court's decision allowing recovery on the part of Merlinda Chiang of subject properties was void - petitioner's contention is untennable. It is theorized that as the sale by MERLINDA was by virtue of an Order to Sell issued in the Intestate Estate Proceedings of her late husband, Nelson Plana - to allow recovery will defeat the said order of the Probate Court. Petitioner equated the aforesaid Order to Sell as a judgment, which another court in a regular proceeding has no jurisdiction to reverse.

Petitioner is under the mistaken impression that as the Order to Sell had become a judgment in itself as to the validity of the sale of the properties involved, any question as to its nullity should have been brought before the Court of Appeals on appeal when the said Order was issued.

It is a well-settled rule that a Court of First Instance (now Regional Trial Court) has jurisdiction over a case brought to rescind a sale made upon prior authority of a Probate Court. This does not constitute an interference or review of the order of a co-equal Court since the Probate Court has no jurisdiction over the question of title to subject properties. Consequently, a separate action may be brought to determine the question of ownership.[16]

Lastly, on the issue of whether only three-fourths of the property in question should have been returned to MERLINDA, petitioner's stance is equally unsustainable. It is a settled doctrine that an issue which was neither averred in the Complaint nor raised during the trial before the lower court cannot be raised for the first time on

appeal, as such a recourse would be offensive to the basic rules of fair play, justice, and due process.[17]

The issue of whether only three-fourths of subject property will be returned was never an issue before the lower court and therefore, the petitioner cannot do it now. A final word. In a Petition for Review, only questions of law may be raised. It is perceived by the Court that what petitioner is trying to, albeit subtly, is for the Court to examine the probative value or evidentiary weight of the evidence presented below[18] The Court cannot do that unless the appreciation of the pieces of evidence on hand is glaringly erroneous. But this is where petitioner utterly failed.

WHEREFORE, the Petition is DENIED and the decision of the Court of Appeals, dated September 30, 1992, in CA-G.R. CV No. 26051 AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), and Gonzaga Reyes, JJ., concur.

Vitug, and Panganiban, JJ., in the result.

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[1] Rollo, p. 17

[2] Rollo, p. 143

[3] Art. 1490. The husband and the wife cannot sell property to each other, except:

> (1) when a separation of property was agreed upon in the marriage settlements; or
>
> (2) when there has been a judicial separation of property under Art. 191.

[4] Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

> (1) When the fault is on the part of the both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;
>
> (2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

[5] Rollo, pp. 33-34.

[6] Art. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in pari delicto, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of the effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

[7] Gustilo vs. Maravilla, 48 Phil 442, 449-450.

[8] Gonzales vs. Trinidad , 67 Phil 682 (1939).

[9] Rollo, p. 33.

[10] Cayabyab vs. Intermediate Appellate Court, 232 SCRA 1.

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[11] Art. 1409. The following contracts are inexistent and void from the beginning:

> (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
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> (2) Those which are absolutely simulated and fictitious;
>
> (3) Those whose cause or object did not exist at the time of the transaction;
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> (4) Those whose object is outside the commerce of men;
>
> (5) Those which contemplate an impossible service;
>
> (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
>
> (7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[12] Ibid, p. 632.

[13] ibid, p. 683.

[14] Tolentino, Arturo M. Civil Code of the Philippines, Vol. V., page 39, 1997 Edition.

[15] Leung Yee vs. Frank L. Strong Machinery Co., 37 Phil 644; RFC vs. Javillanar, 107 Phil. 664; Manacop, Jr. vs. Cansino, 111 Phil 166; Egao vs. Court of Appeals, 174 SCRA 484.

[16] Pizarro vs Court of Appeals, 99 SCRA 72; Pio Barretto Realty Development , Inc. vs Court of Appeals, 131606.

[17] Roman Catholic Archbishop of Manila vs Court of Appeals, 269 SCRA 145.

[18] Vda. de Arroyo vs El Beaterio del Santissimo Rosario de Molo, L-22005, May 3, 1968, 23 SCRA, 525.

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