

CONCHITA NOOL AND GAUDENCIO ALMOJERA, PETITIONER, VS. COURT OF APPEALS, ANACLETO NOOL AND EMILIA NEBRE, RESPONDENTS.

G.R. No. 116635. July 24, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A contract of repurchase arising out of a contract of sale where the seller did not have any title to the property “sold” is not valid. Since nothing was sold, then there is also nothing to repurchase.

Statement of the Case

This postulate is explained by this Court as it resolves this petition for review on certiorari assailing the January 20, 1993 Decision[1] of Respondent Court of Appeals[2] in CA-G.R. CV No. 36473, affirming the decision[3] of the trial court[4] which disposed as follows:[5]

“WHEREFORE, judgment is hereby rendered dismissing the complaint for no cause of action, and hereby:

1. Declaring the private writing, Exhibit ‘C’, to be an option to sell, not binding and considered validly withdrawn by the defendants for want of consideration;
2. Ordering the plaintiffs to return to the defendants the sum of P30,000.00 plus interest thereon at the legal rate, from the time of filing of defendants’ counterclaim until the same is fully paid;
3. Ordering the plaintiffs to deliver peaceful possession of the two hectares mentioned in paragraph 7 of the complaint and in paragraph 31 of defendants’ answer (counterclaim);
4. Ordering the plaintiffs to pay reasonable rents on said two hectares at P5,000.00 per annum or at P2,500.00 per cropping from the time of judicial demand mentioned in paragraph 2 of the dispositive portion of this decision, until the said two hectares shall have been delivered to the defendants; and
5. To pay the costs.

SO ORDERED.”

The Antecedent Facts

The facts, which appear undisputed by the parties, are narrated by the Court of Appeals as follows:

“Two (2) parcels of land are in dispute and litigated upon here. The first has an area of 1 hectare . It was formerly owned by Victorino Nool and covered by Transfer Certificate of Title No. T-74950. With an area of 3.0880 hectares, the other parcel was previously owned by Francisco Nool under Transfer Certificate of Title No. T-100945. Both parcels are situated in San Manuel, Isabela. The plaintiff spouses, Conchita Nool and Gaudencio Almojera, now the appellants, seek recovery of the aforementioned parcels of land from the defendants, Anacleto

Nool, a younger brother of Conchita, and Emilia Nebre, now the appellees.

In their complaint, plaintiff-appellants alleged inter alia that they are the owners of subject parcels of land, and they bought the same from Conchita's other brothers, Victorino Nool and Francisco Nool; that as plaintiffs were in dire need of money, they obtained a loan from the Iligan Branch of the Development Bank of the Philippines, in Ilagan, Isabela, secured by a real estate mortgage on said parcels of land, which were still registered in the names of Victorino Nool and Francisco Nool, at the time, and for the failure of plaintiffs to pay the said loan, including interest and surcharges, totaling P56,000.00, the mortgage was foreclosed; that within the period of redemption, plaintiffs contacted defendant Anacleto Nool for the latter to redeem the foreclosed properties from DBP, which the latter did; and as a result, the titles of the two (2) parcels of land in question were transferred to Anacleto Nool; that as part of their arrangement or understanding, Anacleto Nool agreed to buy from the plaintiff Conchita Nool the two (2) parcels of land under controversy, for a total price of P100,000.00, P30,000.00 of which price was paid to Conchita, and upon payment of the balance of P14,000.00, plaintiffs were to regain possession of the two (2) hectares of land, which amounts defendants failed to pay, and the same day the said arrangement[6] was made; another covenant[7] was entered into by the parties, whereby defendants agreed to return to plaintiffs the lands in question, at anytime the latter have the necessary amount; that plaintiffs asked the defendants to return the same but despite the intervention of the Barangay Captain of their place, defendants refused to return the said parcels of land to plaintiffs; thereby impelling them (plaintiffs) to come to court for relief.

In their answer defendants-appellees theorized that they acquired the lands in question from the Development Bank of the Philippines, through negotiated sale, and were misled by plaintiffs when defendant Anacleto Nool signed the private writing agreeing to return subject lands when plaintiffs have the money to redeem the same; defendant Anacleto having been made to believe, then, that his sister, Conchita, still had the right to redeem the said properties.

The pivot of inquiry here, as aptly observed below, is the nature and significance of the private document, marked Exhibit 'D' for plaintiffs, which document has not been denied by the defendants, as defendants even averred in their Answer that they gave an advance payment of P30,000.00 therefor, and acknowledged that they had a balance of P14,000.00 to complete their payment. On this crucial issue, the lower court adjudged the said private writing (Exhibit 'D') as an option to sell not binding upon and considered the same validly withdrawn by defendants for want of consideration; and decided the case in the manner abovementioned.

There is no quibble over the fact that the two (2) parcels of land in dispute were mortgaged to the Development Bank of the Philippines, to secure a loan obtained by plaintiffs from DBP (Iligan Branch), Ilagan, Isabela. For the non-payment of said loan, the mortgage was foreclosed and in the process, ownership of the mortgaged lands was consolidated in DBP (Exhibits 3 and 4 for defendants). After DBP became the absolute owner of the two parcels of land, defendants negotiated with DBP and succeeded in buying the same. By virtue of such sale by DBP in favor of defendants, the titles of DBP were cancelled and corresponding Transfer Certificates of Title (Annexes 'C' and 'D' to the complaint) issued to the dependants.”[8]

It should be stressed that Manuel S. Mallorca, authorized officer of DBP, certified that the one-year redemption period was from March 16, 1982 up to March 15, 1983 and that the Mortgagors' right of redemption was not exercised within this period.[9] Hence, DBP became the absolute owner of said parcels of land for which it was issued new certificates of title, both entered on May 23, 1983 by the Registry of Deeds for the Province of Isabela.[10] About two years thereafter, on April 1, 1985, DBP entered into a Deed of Conditional Sale[11] involving the same parcels of land with Private Respondent Anacleto Nool as vendee. Subsequently, the latter was issued new certificates of title on February 8, 1988.[12]

The Court of Appeals ruled:[13]

“WHEREFORE, finding no reversible error infirming it, the appealed Judgment is hereby AFFIRMED in toto. No pronouncement as to costs.”

The Issues

Petitioners impute to Respondent Court the following alleged “errors”:

“1. The Honorable Court of Appeals, Second Division has misapplied the legal import or meaning of Exhibit ‘C’ in a way contrary to law and existing jurisprudence in stating that it has no binding effect between the parties and considered validly withdrawn by defendants-appellees for want of consideration.

2. The Honorable Court of Appeals, Second Division has miserably failed to give legal significance to the actual possession and cultivation and appropriating exclusively the palay harvest of the two (2) hectares land pending the payment of the remaining balance of fourteen thousand pesos (P14,000.00) by defendants-appellees as indicated in Exhibit ‘C’.

3. The Honorable Court of Appeals has seriously erred in affirming the decision of the lower court by awarding the payment of rents per annum and the return of P30,000.00 and not allowing the plaintiffs-appellants to re-acquire the four (4) hectares, more or less upon payment of one hundred thousand pesos (P100,000.00) as shown in Exhibit ‘D’.”[14]

The Court’s Ruling

The petition is bereft of merit.

First Issue: Are Exhibits “C” and “D” Valid and Enforceable?

The petitioner-spouses plead for the enforcement of their agreement with private respondents as contained in Exhibits “C” and “D,” and seek damages for the latter’s alleged breach thereof. In Exhibit C, which was a private handwritten document labeled by the parties as Resibo ti Katulagan or Receipt of Agreement, the petitioners appear to have “sold” to private respondents the parcels of land in controversy covered by TCT No. T-74950 and TCT No. T-100945. On the other hand, Exhibit D, which was also a private handwritten document in Ilocano and labeled as Kasuratan, private respondents agreed that Conchita Nool “can acquire back or repurchase later on said land when she has the money.”[15]

In seeking to enforce her alleged right to repurchase the parcels of land, Conchita (joined by her co-petitioner-husband) invokes Article 1370 of the Civil Code which mandates that “(i)f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.” Hence, petitioners contend that the Court of Appeals erred in affirming the trial court’s finding and conclusion that said Exhibits C and D were “not merely voidable but utterly void and inexistent.”

We cannot sustain petitioners’ view. Article 1370 of the Civil Code is applicable only to valid and enforceable contracts. The Regional Trial Court and the Court of Appeals ruled that the principal contract of sale contained in Exhibit C and the auxilliary contract of repurchase in Exhibit D are both void. This conclusion of the two lower courts appears to find support in *Dignos vs. Court of Appeals*,[16] where the Court held:

“Be that as it may, it is evident that when petitioners sold said land to the Cabigas spouses, they were no longer owners of the same and the sale is null and void.”

In the present case, it is clear that the sellers no longer had any title to the parcels of land at the time of sale. Since Exhibit D, the alleged contract of repurchase, was dependent on the validity of Exhibit C, it is itself void. A void

contract cannot give rise to a valid one.[17] Verily, Article 1422 of the Civil Code provides that “(a) contract which is the direct result of a previous illegal contract, is also void and inexistent.”

We should however add that Dignos did not cite its basis for ruling that a “sale is null and void” where the sellers “were no longer the owners” of the property. Such a situation (where the sellers were no longer owners) does not appear to be one of the void contracts enumerated in Article 1409 of the Civil Code.[18] Moreover, the Civil Code[19] itself recognizes a sale where the goods are to be “acquired x x x by the seller after the perfection of the contract of sale,” clearly implying that a sale is possible even if the seller was not the owner at the time of sale, provided he acquires title to the property later on.

In the present case however, it is likewise clear that the sellers can no longer deliver the object of the sale to the buyers, as the buyers themselves have already acquired title and delivery thereof from the rightful owner, the DBP. Thus, such contract may be deemed to be inoperative[20] and may thus fall, by analogy, under item no. 5 of Article 1409 of the Civil Code: “Those which contemplate an impossible service.” Article 1459 of the Civil Code provides that “the vendor must have a right to transfer the ownership thereof [object of the sale] at the time it is delivered.” Here, delivery of ownership is no longer possible. It has become impossible.

Furthermore, Article 1505 of the Civil Code provides that “where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller’s authority to sell.” Here, there is no allegation at all that petitioners were authorized by DBP to sell the property to the private respondents. Jurisprudence, on the other hand, teaches us that “a person can sell only what he owns or is authorized to sell; the buyer can as a consequence acquire no more than what the seller can legally transfer.”[21] No one can give what he does not have – *nemo dat quod non habet*. On the other hand, Exhibit D presupposes that petitioners could repurchase the property that they “sold” to private respondents. As petitioners “sold” nothing, it follows that they can also ‘repurchase’ nothing. Nothing sold, nothing to repurchase. In this light, the contract of repurchase is also inoperative – and by the same analogy, void.

Contract of Repurchase Dependent on Validity of Sale

As borne out by the evidence on record, the private respondents bought the two parcels of land directly from DBP on April 1, 1985 after discovering that petitioners did not own said property, the subject of Exhibits C and D executed on November 30, 1984. Petitioners, however, claim that they can exercise their alleged right to “repurchase” the property, after private respondents had acquired the same from DBP.[22] We cannot accede to this, for it clearly contravenes the intention of the parties and the nature of their agreement. Exhibit D reads:

“WRITING

Nov. 30, 1984

That I, Anacleto Nool have bought from my sister Conchita Nool a land an area of four hectares (4 has.) in the value of One Hundred Thousand (100,000.00) Pesos. It is our agreement as brother and sister that she can acquire back or repurchase later on said land when she has the money. [Underscoring supplied]

As proof of this agreement we sign as brother and sister this written document this day of Nov. 30, 1984, at District 4, San Manuel, Isabela.

Sgd ANACLETO NOOL

Anacleto Nool

Sgd Emilio Paron

Witness

Sgd Conchita Nool

Conchita Nool”[23]

One “repurchases” only what one has previously sold. In other words, the right to repurchase presupposes a valid contract of sale between the same parties. Undisputedly, private respondents acquired title to the property from DBP, and not from the petitioners.

Assuming arguendo that Exhibit D is separate and distinct from Exhibit C and is not affected by the nullity of the latter, still petitioners do not thereby acquire a right to repurchase the property. In that scenario, Exhibit D ceases to be a “right to repurchase” ancillary and incidental to the contract of sale; rather, it becomes an accepted unilateral promise to sell. Article 1479 of the Civil Code, however, provides that “an accepted unilateral promise to buy or sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.” In the present case, the alleged written contract of repurchase contained in Exhibit D is bereft of any consideration distinct from the price. Accordingly, as an independent contract, it cannot bind private respondents. The ruling in *Diamante vs. CA*[24] supports this. In that case, the Court through Mr. Justice Hilario G. Davide, Jr. explained:

“Article 1601 of the Civil Code provides:

‘Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of article 1616 and other stipulations which may have been agreed upon.’”

In *Villarica, et al. Vs. Court of Appeals, et al.*, decided on 29 November 1968, or barely seven (7) days before the respondent Court promulgated its decisions in this case, this Court, interpreting the above Article, held:

“The right of repurchase is not a right granted the vendor by the vendee in a subsequent instrument, but is a right reserved by the vendor in the same instrument of sale as one of the stipulations of the contract. Once the instrument of absolute sale is executed, the vendor can not longer reserve the right to repurchase, and any right thereafter granted the vendor by the vendee in a separate instrument cannot be a right of repurchase but some other right like the option to buy in the instant case. x x x.”

In the earlier case of *Ramos, et al. vs. Icasiano, et al.*, decided in 1927, this Court had already ruled that “an agreement to repurchase becomes a promise to sell when made after the sale, because when the sale is made without such an agreement, the purchaser acquires the thing sold absolutely, and if he afterwards grants the vendor the right to repurchase, it is a new contract entered into by the purchaser, as absolute owner already of the object. In that case the vendor has nor reserved to himself the right to repurchase.’”

In *Vda. De Cruz, et al. vs. Carriaga, et al.* this Court found another occasion to apply the foregoing principle.

Hence, the Option to Repurchase executed by private respondent in the present case, was merely a promise to sell, which must be governed by Article 1479 of the Civil Code which reads as follows:

“Art. 1479. – A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

‘An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.’”

Right to Repurchase Based on

Homestead or Trust Non-Existent

Petitioners also base their alleged right to repurchase on (1) Sec. 119 of the Public Land Act^[25] and (2) an implied trust relation as “brother and sister.”^[26]

The Court notes that Victorino Nool and Francisco Nool mortgaged the land to DBP. The brothers, together with Conchita Nool and Anacleto Nool, were all siblings and heirs qualified to repurchase the two parcels of land under Sec. 119 of the Public Land Act which provides that “(e)very conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow or legal heirs, within a period of five years from the date of conveyance.” Assuming the applicability of this statutory provision to the case at bar, it is indisputable that Private Respondent Anacleto Nool already repurchased from DBP the contested properties. Hence, there was no more right of repurchase that his sister Conchita or brothers Victorino and Francisco could exercise. The properties were already owned by an heir of the homestead grantee and the rationale of the of the provision to keep homestead lands within the family of the grantee was thus fulfilled.^[27]

The claim of a trust relation is likewise without merit. The records show that private respondents did not purchase the contested properties from DBP in trust for petitioners. The former, as previously mentioned, in fact bought the land from DBP upon realization that the latter could not validly sell the same. Obviously, petitioners bought it for themselves. There is no evidence at all in the records that they bought the land in trust for private respondents. The fact that Anacleto Nool was the younger brother of Conchita Nool and that they signed a contract of repurchase, which as discussed earlier was void, does not prove the existence of an implied trust in favor of petitioners.

Second Issue: No Estoppel in Impugning the Validity of Void Contracts

Petitioners argue that “when Anacleto Nool took the possession of the two hectares, more or less, and let the other two hectares to be occupied and cultivated by plaintiffs-appellants, Anacleto Nool cannot later on disclaim the terms or contents (sic) agreed upon and his actuation is within the ambit of estoppel x x x.”^[28] We disagree. The private respondents cannot be estopped from raising the defense of nullity of contract, specially in this case where they acted in good faith, believing that indeed petitioners could sell the two parcels of land in question. Article 1410 of the Civil Code mandates that “(t)he action or defense for the declaration of the inexistence of a contract does not prescribe.” It is well-settled doctrine that “as between parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or it is against public policy (19 Am. Jur. 802). It is not within the competence of any citizen to barter away what public policy by law seeks to preserve.”^[29] Thus, it is immaterial that private respondents initially acted to implement the contract of sale, believing in good faith that the same was valid. We stress that a contract void at inception cannot be validated by ratification or prescription and certainly cannot be binding on or enforceable against private respondents.^[30]

Third Issue: Return of P30,000.00 with Interest and Payment of Rent

Petitioners further argue that it would be a “miscarriage of justice” to order them (1) to return the sum of P30,000.00 to private respondents when allegedly it was Private Respondent Anacleto Nool who owed the former a balance of P14,000.00 and (2) to order petitioners to pay rent when they “were allowed to cultivate the said two hectares.”^[31]

We are not persuaded. Based on the previous discussion, the balance of P14,000.00 under the void contract of sale may not be enforced. Petitioners are the ones who have an obligation to return what they unduly and improperly

received by reason of the invalid contract of sale. Since they cannot legally give title to what they “sold,” they cannot keep the money paid for the object of the sale. It is basic that “(e)very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same.”[32] Thus, if a void contract has already “been performed, the restoration of what has been given is in order.”[33] Corollarily and as aptly ordered by respondent appellate court, interest thereon will run only from the time of private respondents’ demand for the return of this amount in their counterclaim.[34] In the same vein, petitioners’ possession and cultivation of the two hectares are anchored on private respondents’ tolerance. Clearly, the latter’s tolerance ceased upon their counterclaim and demand on the former to vacate. Hence, their right to possess and cultivate the land ipso facto ceased.

WHEREFORE, the petition is DENIED and the assailed Decision of the Court of Appeals affirming that of the trial court is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 20-25.

[2] Second Division, composed of J. Fidel P. Purisima, ponente and Chairman, and JJ. Asaali S. Isnani and Corona Ibay Somera, concurring.

[3] In Civil Case No. Br. 23-242.

[4] Regional Trial Court of Roxas, Isabela, Second Judicial Region, Branch 23, presided by Judge Teodulo E. Mirasol.

[5] Decision of the Regional Trial Court, p. 5; Record of the Regional Trial Court, p. 180.

[6] Exhibit C, executed in the parties’ native dialect, Ilocano, dated November 30, 1984, Record of the Regional Trial Court, p. 95.

[7] Exhibit D, executed in the parties’ native dialect, Ilocano, dated November 30, 1984, Record of the Regional Trial Court, p. 97.

[8] Decision of the Court of Appeals, pp. 2-3; rollo, pp. 21-22.

[9] Affidavit of Non-redemption, p. 1; Record of the Regional Trial Court, p. 27.

[10] DBP Transfer Certificates of Title, Record of the Regional Trial Court, pp. 28-29.

[11] Record of the Regional Trial Court, pp. 30-32.

[12] Anacleto Nool’s Transfer Certificates of Title, Record of Regional Trial Court, pp. 33-34.

[13] Ibid., p. 5; rollo, p. 24.

[14] Petition, pp. 7-8; rollo, pp.8-9.

[15] Exhibit D-1, English translation of the document marked as Exhibit D; records, p. 98.

[16] 158 SCRA 375, 383, February 29, 1988.

[17] Ibid., p. 732.

[18] Article 1409 of the Civil Code provides.

ART. 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose case, object or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose case or object did not exist at the time of the transaction;
- (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.”

[19] Article 1402. Civil Code.

[20] Cf. Vitug, *Compendium of Civil Law and Jurisprudence* (1993), p. 547.

[21] *Segura vs. Segura*, 165 SCRA 368, 374, September 19, 1988.

[22] *Petitioners’ Memorandum*, pp. 14-15; *rollo*, pp. 58-59.

[23] *Records*, p. 98. The original document in Ilocano reads as follows:

“Kasuratan

Nov. 30, 1984

Siak ni Anacleto Nool adda ginatang ko keni kabsat ko nga ni Conchita Nool nga daga nga uppat nga hectarya (4 has.) nga aggatad iti One Hundred Thousand (100,000.00) pesos. Ket nagtulagan mi nga agkabsat nga mabalin nanto nga pasublien wenno repurchase nanto to nasao nga daga no maadaan iti kuwarta.

Kas pammaneknek iti daytoy nga katulagan agpirma kami nga agkabsat iti daytoy nga kasuratan ita nga aldaw Nov. 30, 1984 ditoy Dist. No. 4 San Manuel, Isabela.

(Sgd.) Emilio Padron (Sgd.) Anacleto Nool

Testigo

(Sgd.) Conchita Nool”

(*Records* p. 97)

[24] 206 SCRA 52, 60-61, February 7, 1992.

[25] *Memorandum*, p. 12; *rollo*, p. 56.

[26] *Ibid.*, p. 14; *rollo*, p. 58.

[27] See *Ferrer vs. Mangente*, 50 SCRA 424, April 13, 1973.

[28] *Petition*, pp. 12-13; *rollo*, pp. 13-14.

[29] *Prudential Bank vs. Panis*, 153 SCRA 390, 398, August 31, 1987; citing *Arsenal vs. IAC*, 143 SCRA 54, (1986) and *Gonzalo Puyat & Sons, Inc. vs. De los Amas and Alino*, *supra*.

[30] Tolentino, Arturo A., Commentaries and Jurisprudence on the Civil Code of the Philippines, p. 633, Vol. IV, (1991).

[31] Memorandum, p. 13; rollo, p. 57.

[32] Article 22, Civil Code of the Philippines.

[33] Tolentino, supra, p. 632; citing Perez Gonzales & Alguer; 1-I Ennecerus, Kipp & Wolff 364-366; 3 Von Tuhr 311; 3 Fabres 231.

[34] Answer with Counterclaim, p. 7; Record of the Regional Trial Court, p. 22.

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