

**CLAUDIO DELOS REYES AND LYDIA DELOS REYES, PETITIONERS,
VS. THE HON. COURT OF APPEALS AND DALUYONG GABRIEL,
SUBSTITUTED BY HIS HEIRS, NAMELY: MARIA LUISA G. ESTEBAN,
MARIA RITA...**

G.R. No. 129103. September 03, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

In this petition for review on certiorari, petitioners seek to set aside the Decision[1] of the Court of Appeals[2] in CA-G.R. CV No. 36955 reversing the consolidated Decision[3] of the Regional Trial Court, Branch I, Tagum, Davao del Norte in Civil Case Nos. 2326 and 2327.

This petition was originally filed with the Court on June 16, 1997. In a Resolution (of the Third Division) dated October 13, 1997,[4] the petition was denied for failure to show that the respondent Court of Appeals committed any reversible error. However, the motion for reconsideration filed by petitioners on November 14, 1997 was granted by the Court in its Resolution dated December 03, 1997[5] and the petition was reinstated.

The antecedents are:

1.

Private respondent Daluyong Gabriel, (who died on September 14 1995 and was substituted herein by his children RENATO GABRIEL, MARIA LUISA B. ESTEBAN and MARIA RITA G. BARTOLOME) was the registered owner under Transfer Certificate of Title No. T-17932 of the Registry of Deeds of Tagum, Davao del Norte of a 5,010 square meter parcel of land situated in Barrio Magugpo, Tagum, Davao del Norte,[6] having acquired the same by hereditary succession sometime in 1974 as one of the children and heirs of the late Maximo Gabriel.

2.

Because Daluyong Gabriel together with his family was then residing in Mandaluyong, Metro Manila, his sister Maria Rita Gabriel de Rey acted as administratrix of the said parcel of land and took charge of collecting the rentals for those portions which have been leased to certain tenants/lessees. One of these lessees is LYDIA DE LOS REYES who by virtue of a Contract of Lease executed on June 21, 1985 by and between Maria Rita G. de Rey as lessor and Lydia de los Reyes as lessee, leased a portion of One Hundred Seventy Six (176) square meters for a term of one year beginning June 15, 1985 renewable upon agreement of the parties at the rental rate of Two Hundred (P200.00) pesos, per month.[7]

3.

Sometime in 1985 Daluyong Gabriel sent his son Renato Gabriel to Tagum reportedly with instructions to take over from Maria Rita G. de Rey as administrator of the said parcel of land. Upon agreement of the parties, the June 21, 1985 Contract of Lease covering the one hundred seventy-six square meter portion of land was novated and replaced by a Contract of Lease executed on September 26, 1985 by and between RENATO GABRIEL as Lessor and Lydia de los Reyes as Lessee.[8] The term of the lease was changed to six (6) years from and after June 15, 1985 or up to June 15, 1991; receipt of the payment in advance of the total rental amount of Fourteen Thousand Four Hundred (P14,400.00) Pesos was acknowledged by Lessor Renato Gabriel.

4.

Sometime in November 1987, during the effectivity of the lease contract, Lydia de los Reyes verbally agreed to buy two hundred fifty (250) square meters (including the 176 square meters leased by her), and thereafter an additional fifty (50) square meters or a total of three hundred (300) square meters of Daluyong Gabriel's registered property, at three hundred pesos (P300.00) per square meter or for a total amount of P90,000.00. Receipt of the payment of the purchase price made in several installments by Lydia de los Reyes was acknowledged by Renato Gabriel as evidenced by official receipts issued and signed by him dated November 25, 1987, November 26, 1987, January 8, 1988, February 10, 1988, February 15, 1988 and February 29, 1988 all bearing the letter head "Gabriel Building." No deed of sale was executed covering the transaction. Purchaser Lydia de los Reyes however proceeded with the construction of a two-storey commercial building on the said 300 square meter lot after obtaining a building permit from the Engineer's Office in Tagum.

5.

Acting on the information given by his daughter Maria Luisa Gabriel Esteban upon the latter's return from a trip to Tagum that spouses Claudio and Lydia de los Reyes were constructing a two-storey building on a portion of his land, Daluyong Gabriel, through his lawyer, sent a letter on August 30, 1989 to the De los Reyes couple demanding that they cease and desist from continuing with their construction and to immediately vacate the premises, asserting that the construction was unauthorized and that their occupancy of the subject portion was not covered by any lease agreement.

6.

On September 20, 1989, spouses Claudio and Lydia de los Reyes through counsel sent their letter reply explaining that the De los Reyeses are the innocent party who entered into the lease agreement and subsequent sale of subject portion of land in good faith and upon the assurance made by the former administratrix, Maria Rita G. Rey, her nephew Tony Rey, Mrs. Fe S. Gabriel and Mr. Daluyong Gabriel himself that Renato Gabriel is the new administrator authorized to enter into such agreements involving the subject property.

7.

Dissatisfied with the explanation, Daluyong Gabriel commenced an action on November 14, 1989 against spouses Claudio and Lydia de los Reyes for the recovery of the subject portion of land before the Regional Trial Court,

Branch 1, Tagum, Davao del Norte docketed as Civil Case No. 2326. In his complaint Daluyong maintained that his son Renato was never given the authority to lease nor to sell any portion of his land as his instruction to him (Renato) was merely to collect rentals.

8.

Spouses Claudio and Lydia delos Reyes countered that the sale to them of the subject portion of land by Renato Gabriel was with the consent and knowledge of Daluyong, his wife Fe and their other children, and filed before the same trial court a complaint for specific performance, docketed as Civil Case No. 2329 against Daluyong and his children, namely Renato Gabriel, Maria Luisa Gabriel Esteban and Maria Rita Gabriel Bartolome praying that the defendants therein be ordered to execute the necessary deed of conveyance and other pertinent documents for the transfer of the 300 square meter portion they previously bought from Renato.

9.

Civil Case Nos. 2326 and 2327 were heard jointly and on September 10, 1991 the trial court rendered a consolidated decision, the dispositive portion[9] of which reads:

“WHEREFORE” premises considered, Daluyong Gabriel, Renato Gabriel, Maria Luisa Esteban and Maria Rita G. Bartolome are hereby ordered to execute a Deed of Conveyance and other necessary documents in favor of Claudio delos Reyes and Lydia delos Reyes over an area of 300 square meters from TCT No. T-17932 comprising of 5,010 square meters located at Tagum, Davao which portion is presently occupied by Delos Reyes couple.

SO ORDERED”

10.

On appeal by the Gabriels, the Court of Appeals reversed and set aside the decision of the Regional Trial Court and rendered a new one “ORDERING appellee spouses Claudio and Lydia delos Reyes to immediately vacate the 300 square meter portion of that land covered by TCT No. T-17932 which they presently occupy and to turn over possession thereof to the appellants. x x x x”[10]

Not satisfied with the decision of the Court of Appeals, petitioners came to this Court by way of petition for review, alleging that:

- “a. The Court of Appeals gravely abused its discretion in overlooking facts extant in the record;
- b. The Court of Appeals erred in not finding the document of sale and receipts (exhibits for the herein Petitioners), as valid and enforceable;
- c. The Court of Appeals erred in its apprehension and appreciation of the undisputed facts for the Petitioners;
- d. The Court of Appeals erred in making speculative conclusions on the facts of the case;
- e. The Court of Appeals erred in reversing the Decision of the Regional Trial Court based on credible, relevant and material evidence adduced by the Petitioners in the lower court.”[11]

Petitioners aver that respondent Court of Appeals gravely abused its discretion when it totally disregarded the oral and documentary evidence adduced by appellees, and in giving credence to the oral testimonies of appellants, which are replete with inconsistencies and contradictions. Petitioners cite specifically Exhibits “1” to “19”

consisting of a contract of lease involving the subject property and certain official receipts with the letterhead “Gabriel Building” showing payments received (by Renato Gabriel) for the lease and/or sale of portions of subject real property of Daluyong Gabriel e.g. sale by installment of portion (700 square meters) of land to spouses Ruben Carriedo and Abdula Sanducan (Exhs. 13, 14, 15 & 16) and lease (Exhs. 3-3-BBBB, 5, 6 & 7) and sale (Exhs. 8, 9, 10, 11 & 12) of land made by Renato Gabriel to petitioners-spouses. In other words, respondent Court of Appeals “gravely abused its discretion” in the misapprehension and misappreciation of the facts of the case and in going beyond the issues involved contrary to the admissions of both the appellants and appellees. And since the appellate court’s findings of facts contradict that of the trial court a thorough review thereof by the Supreme Court is necessary.

In their Comment, private respondents restated their arguments to support the appellate court’s conclusion that the alleged sale made by Renato Gabriel to the petitioners in 1987 without authority from Daluyong Gabriel is not valid and therefore unenforceable.

Petitioners submitted their Reply to the Comment contending that the assailed decision of the Court of Appeals is “patently fallacious” in that while petitioners’ payment to Renato Gabriel of the amount of P90,000.00 as purchase price of the three hundred (300) square meter portion of subject land was neither denied nor controverted, the appellate court’s decision failed to order private respondent Renato Gabriel to refund or reimburse petitioners the said amount together with the value of the improvements and the two-storey commercial building which petitioners constructed thereon in violation of Articles 2142, 2143 and 2154 of the Civil Code and the time-honored principle of substantial justice and equity.

Petitioners allege further that even if Renato Gabriel was not (yet) the owner of the subject portion of land when he sold the same to petitioners, after the death of his parents Daluyong and Fe Gabriel, he, as heir, inherited and succeeded to the ownership of said portion of land by operation of law thereby rendering valid and effective the sale he executed in favor of petitioners. Petitioners also maintain that on the basis of the facts proven and admitted during the trial, Daluyong Gabriel appears to have not only authorized his son Renato Gabriel to sell the subject portion of land but also ratified the transaction by his contemporaneous conduct and actuations shown during his lifetime.

In their respective memorandum submitted by petitioners and private respondents, substantially the same arguments/contentions were raised. Petitioners maintain that the sale is valid or validated pursuant to Articles 1433 and 1434 of the Civil Code and identified the legal issues involved as follows:

“1. Whether or not the sale by respondent Renato Gabriel of the land registered in the name of his deceased father Daluyong Gabriel, during the lifetime of the latter, in favor of the herein petitioners, by operation of law, automatically vests title on the latter under the principle of estoppel as provided for in Arts. 1433 and 1434 of the New Civil Code;

2. Whether or not the sale by Renato Gabriel of the land registered in the name of his deceased father during the lifetime of the latter, to the herein petitioners is null and void.”[12]

On the other hand, private respondents contend that the petition has no legal or factual basis. It is argued that petitioners changed their theory of the case in that while in the regional trial court, petitioners claim that the subject property was sold to them by the late Daluyong Gabriel through his son Renato Gabriel, in the instant petition, they claim that it was Renato Gabriel who sold the property to them and that although at that time, Renato was not yet the owner of the property, he is nonetheless obligated to honor the sale and to convey the property to the petitioners because after the death of Daluyong Gabriel, Renato became the owner of the subject property by way of hereditary succession. According to private respondents, litigants are barred from changing

their theory, more especially so in the appeal, and that the only issue to be resolved in the instant petition is whether or not Renato Gabriel can be compelled to convey the subject property to petitioners. Private respondents maintain that Renato Gabriel cannot be compelled to convey subject property (to petitioners) because the land never passed on to Renato either before or after the death of Daluyong Gabriel and that the whole property is now owned by Ma. Rita G. Bartolome per Transfer Certificate of Title No. T-68674 entered in the Registry of Deeds of Davao del Norte on January 10, 1991.[13] In short, Renato Gabriel cannot convey that which does not belong to him.[14]

Essentially, the issue here is whether or not the verbal agreement which petitioners entered into with private respondent Renato Gabriel in 1987 involving the sale of the three hundred (300) square meter portion of land registered in the name of Renato's late father Daluyong Gabriel is a valid and enforceable contract of sale of real property.

By law[15] a contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. It is a consensual contract which is perfected by mere consent.[16] Once perfected, the contract is generally binding in whatever form (i.e. written or oral) it may have been entered into[17] provided the three (3) essential requisites for its validity prescribed under Article 1318 supra, are present. Foremost of these requisites is the consent and the capacity to give consent of the parties to the contract. The legal capacity of the parties is an essential element for the existence of the contract because it is an indispensable condition for the existence of consent.[18] There is no effective consent in law without the capacity to give such consent. In other words, legal consent presupposes capacity.[19] Thus, there is said to be no consent, and consequently, no contract when the agreement is entered into by one in behalf of another who has never given him authorization therefor[20] unless he has by law a right to represent the latter.[21] It has also been held that if the vendor is not the owner of the property at the time of the sale, the sale is null and void,[22] because a person can sell only what he owns or is authorized to sell.[23] One exception is when a contract entered into in behalf of another who has not authorized it, subsequently confirmed or ratified the same in which case, the transaction becomes valid and binding against him and he is estopped to question its legality.[24]

The trial court held that the oral contract of sale was valid and enforceable stating that while it is true that at the time of the sale, Renato Gabriel was not the owner and that it was Daluyong Gabriel who was the registered owner of the subject property, Daluyong Gabriel knew about the transaction and tacitly authorized his son Renato Gabriel (whom he earlier designated as administrator of his 5,010 square meter registered property) to enter into it. The receipt by Renato Gabriel of the P90,000.00 paid by petitioner spouses as purchase price of subject portion of land[25] and also of the amount of P14,400.00 paid by petitioners as advance rental fee for the lease of one hundred seventy six (176) square meters thereof, in accordance with the then still existing Contract of Lease (Exh. 10) entered into by Renato Gabriel as Lessor and Lydia delos Reyes as lessee on September 26 1985 which was to expire only on June 15, 1991 was also known not only to Daluyong Gabriel but also to his late wife Fe Salazar Gabriel and his two other children, Maria Luisa Gabriel Esteban and Maria Rita Gabriel Bartolome. And even assuming that Daluyong Gabriel did not expressly authorize Renato Gabriel to enter into such contract of sale with petitioners in 1988, he (Daluyong Gabriel) confirmed/ratified the same by his contemporaneous conduct and actuations shown during his lifetime. More importantly, the trial court noted that Daluyong never presented Renato during the entire proceedings, despite evidence[26] which tends to show that Renato Gabriel was not missing nor were his whereabouts unknown as Daluyong wanted to impress the trial court, but had all the while been staying at the Daluyong Gabriel residence at 185 I. Lopez St., Mandaluyong City but was deliberately prevented (by Daluyong) from testifying or shedding light on the transactions involved in the two cases then at bar. Hence, the decision of the trial court ordered Daluyong Gabriel, Renato Gabriel, Maria Luisa G. Esteban and Maria Rita G. Bartolome to execute a Deed of Conveyance and other necessary documents in favor of petitioners

covering subject area of 300 square meters to be taken from the 5,010 square meters covered by TCT No. T-17932 under the name of Daluyong Gabriel which portion is actually occupied by petitioners Delos Reyes couple.

The Court of Appeals, on the other hand, ruled that the contract of sale cannot be upheld, mainly because Renato Gabriel, as vendor, did not have the legal capacity to enter and to give consent to the agreement, he, being neither the authorized agent (of Daluyong Gabriel) nor the owner of the property subject of the sale. It was pointed out that three theories were advanced by appellees to prove that the transaction they had with Renato concerning the sale of the portion in question was regular, valid and enforceable. First theory is that Renato acted as the duly authorized representative or agent of Daluyong. Second, that the portion in dispute was already given to Renato as his share, hence, he validly sold the same to appellees. And third, that the portion being litigated was part of Renato's inheritance from the estate of her deceased mother which he validly disposed of to appellees. These reasons, according to the appellate court, cannot go together, or even complement each other, to establish the regularity, validity or enforceability of the sale made by Renato. It could not be possible for Renato to have acted in three different capacities - as agent, owner, and heir - when he dealt with appellees, as the legal consequences for each situation would be different. Thus, it was incumbent upon appellees to explain what actually convinced them to buy the land from Renato, and because they failed to do so, no proper basis can be found to uphold the alleged sale made by Renato as it cannot be determined with certainty in what capacity Renato acted. And even assuming that he (Renato) already succeeded to whatever hereditary right or participation he may have over the estate of his father, he is still considered a co-owner with his two sisters of the subject property and that prior to its partition, Renato cannot validly sell or alienate a specific or determinate part of the property owned in common. Besides, the entire lot covered by TCT No. T-17932 was subsequently donated by Daluyong Gabriel to his daughter Marie Rita G. Bartolome on October 1, 1990 and is now covered by TCT No. T-68674 in her name.[27] Hence, the appellate court's decision ordered appellees (petitioners) spouses Claudio and Lydia delos Reyes to immediately vacate the 300 square meter portion of that land covered by TCT No. T-17932 which they are occupying and to turn-over possession thereof to the appellants, private respondents herein.

As a general rule, the findings of fact of the Court of Appeals are binding upon this Court.[28] When such findings of fact are the same and confirmatory of those of the trial court, they are final and conclusive and may not be reviewed on appeal,[29] In such cases, the authority of the Supreme Court is confined to correcting errors of law, if any, that might have been committed below.[30] In the instant case, it is noted that the trial court and the Court of Appeals are not at variance in their factual findings that sometime in 1988, an oral contract of sale was entered into by Renato Gabriel, (as vendor) with petitioners De los Reyes couple (as vendees) involving a 300 square meter portion of a 5,010 square meter parcel of land located in Barrio Magugpo, Tagum, Davao del Norte owned and registered under Transfer Certificate of Title No. T-17932 in the name of Daluyong Gabriel, father of Renato. Thus, this Court is tasked to review and determine whether or not respondent Court of Appeals committed an error of law[31] in its legal conclusion that at the time the parties entered into said oral agreement of sale, Renato Gabriel as the purported vendor, did not have the legal capacity to enter and/or to give consent to the sale.

We agree with the conclusion of the Court of Appeals that Renato Gabriel was neither the owner of the subject property nor a duly designated agent of the registered owner (Daluyong Gabriel) authorized to sell subject property in his behalf, and there was also no sufficient evidence adduced to show that Daluyong Gabriel subsequently ratified Renato's act. In this connection it must be pointed out that pursuant to Article 1874 of the Civil Code, when the sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise the sale shall be void. In other words, for want of capacity (to give consent) on the part of Renato Gabriel, the oral contract of sale lacks one of the essential requisites for its validity prescribed

under Article 1318, supra and is therefore null and void ab initio.

Petitioners' contention that although at the time of the alleged sale, Renato Gabriel was not yet the owner of the subject portion of land, after the death of Daluyong Gabriel, he (Renato) became the owner and acquired title thereto by way of hereditary succession which title passed by operation of law to petitioners pursuant to Article 1434 of the Civil Code[32] is not tenable. Records show that on October 1, 1990 Daluyong Gabriel donated the entire lot covered by TCT No. T-17932 to his daughter Maria Rita G. Bartolome and the property is now covered by TCT No. T-68674 in her name. This means that when Daluyong Gabriel died on September 14, 1995, he was no longer the owner of the subject property. Accordingly, Renato Gabriel never acquired ownership or title over any portion of said property as one of the heirs of Daluyong Gabriel.

However, respondent Court of Appeals failed to consider the undisputed fact pointed out by the trial court that petitioners had already performed their obligation under subject oral contract of sale, i.e. completing their payment of P90,000.00 representing the purchase price of the 300 square meter portion of land. As was held in "Nool vs. Court of Appeals"[33] if a void contract has been performed, the restoration of what has been given is in order. The relationship between parties in any contract even if subsequently voided must always be characterized and punctuated by good faith and fair dealing.[34] Hence, for the sake of justice and equity, and in consonance with the salutary principle of non-enrichment at another's expense,[35] private respondent Renato Gabriel, should be ordered to refund to petitioners the amount of P90,000.00 which they have paid to and receipt of which was duly acknowledged by him. It is the policy of the Court to strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation especially where the Court is in a position to resolve the dispute based on the records before it and where the ends of justice would not likely be subserved by the remand thereof, to the lower Court. The Supreme Court is clothed with ample authority to review matters, even those not raised on appeal if it finds that their consideration is necessary in arriving at a just disposition of the case.[36]

However, petitioners' claim for the refund to them of P1,000,000.00 representing the alleged value and cost of the two-storey commercial building they constructed on subject portion of land cannot be favorably considered as no sufficient evidence was adduced to prove and establish the same.

WHEREFORE, the decision of the Court of Appeals dated April 30, 1997 in CA-G.R. CV No. 36955 is hereby AFFIRMED in so far as it declared the oral contract of sale entered into by Renato Gabriel of portion of the 5,010 square meter parcel of land registered in the name of Daluyong Gabriel in favor of petitioners, null and void. Renato Gabriel is hereby ordered to refund to petitioners the amount of P90,000.00 which was given in payment for subject land. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Panganiban, and Purisima, JJ., concur. Vitug, J., please see concurring opinion.

[1] Dated April 30, 1997; Annex "A", Rollo, pp. 39-48.

[2] Sixth Division composed of Associate Justices Romeo A. Brawner (ponente), Lourdes Tayao-Jaguros and Antonio M. Martinez (Chairman).

[3] Dated September 10, 1991; Annex "I", Rollo, pp. 182-192.

[4] Rollo, p. 224.

[5] Rollo, p. 242.

- [6] Exh. “2”, Rollo, p. 70.
- [7] Exh. “5”, Rollo, p. 147.
- [8] Exh. “1”, Rollo, p. 69.
- [9] Per Amendatory Order, dated 4th day of October 1991; Rollo, p. 197.
- [10] Dispositive Portion of CA Decision, CA-G.R. CV No. 36955; Rollo, p. 47.
- [11] Petition, p. 6, Rollo, p. 13.
- [12] Petitioners’ Memorandum, pp. 14-15; Rollo, pp. 295-296.
- [13] Annex “C”; Rollo, p. 273.
- [14] Memo of private respondents, pp. 2-3; Rollo, pp. 309-310.
- [15] Article 1475, Civil Code.
- [16] Campillo vs. Court of Appeals, 129 SCRA 513.
- [17] Art. 1356, supra; Lopez vs. Auditor General, 20 SCRA 655.
- [18] Salonga vs. Farrales, 105 SCRA 359.
- [19] Tolentino, “Commentaries and Jurisprudence on the Civil Code of the Philippines,” Vol. IV, p. 445 citing 8 Manresa 646.
- [20] Bumanlag vs. Alzate, 144 SCRA 480.
- [21] Art. 1317, supra.
- [22] Mindanao Academy vs. Yap, 13 SCRA 190; Estoque vs. Pajimela, 24 SCRA 59.
- [23] Article 1453, supra; Segura vs. Segura, 165 SCRA 368.
- [24] Second par. Art. 1317, supra, Frias vs. Esquivel, 67 SCRA 438, 487.
- [25] As evidenced by five (5) official receipts bearing the letterhead “Gabriel Building” issued and signed by Renato Gabriel, to wit: Exh. “8”, 26 November 1987 – P50,000.00; Exh. “9”, 08 January 1988 – P21,000.00; Exh. “10”, 10 February 1988 - P4,000.00; Exh. “11”, 15 February 1988 - P10,000.00, and Exh. “12”, 29 February 1988 – P5,000.00.
- [26] Return of summons executed by Deputy Sheriff Dominador Adriano of the Regional Trial Court of Manila on December 28, 1989, excerpts quoted in RTC Decision, pp. 5-6; Rollo, pp. 186-187.
- [27] See CA Decision pp. 8-10; Rollo, pp. 45-47.
- [28] Mijares vs. Court of Appeals, 271 SCRA 558; Villanueva vs. Court of Appeals, 267 SCRA 89.
- [29] Reyes vs. Court of Appeals, 258 SCRA 651; Chua Tiong Tay vs. Court of Appeals, 243 SCRA 183; Tolentino vs. De Jesus, 156 SCRA 167.
- [30] Odessa Park Inc. vs. Court of Appeals, 280 SCRA 253; Juan Nakpil & Sons, et al. vs. Court of Appeals, et al., 144 SCRA 596, 607-608.
- [31] See Rule 45, Section 1, Revised Rules of Civil Procedure; Floro vs. Llenado, 244 SCRA 713; Remalante vs.

Tibe, 158 SCRA 138, 145; Constantino vs. Mendez, 209 SCRA 18; New Testament Church of God vs. Court of Appeals, 246 SCRA 266.

[32] Art. 1434 provides that “when a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title pass by operation of law to the buyer or grantee.”

[33] 276 SCRA 149.

[34] Bricktown Development Corporation vs. Amor Tierra Development Corporation, 239 SCRA 126.

[35] J.M. Tuason & Co., Inc. vs. Court of Appeals, 94 SCRA 413.

[36] Golangco vs. Court of Appeals, 283 SCRA 493 citing the ruling in Heirs of Crisanta Y. Gabriel-Almoradie vs. Court of Appeals, 229 SCRA 15.

CONCURRING OPINION

VITUG, J.:

I share the view expressed in the ponencia written for the Court by our esteemed colleague, Mme. Justice Minerva P. Gonzaga-Reyes, that holds the verbal contract of sale between petitioner spouses Claudio and Lydia de los Reyes and respondent Renato Gabriel to be void for lack of authority on the part of the latter to convey the property subject thereof.

Article 1409, of the Civil Code of the Philippines, has grouped together contracts which have theretofore been jurisprudentially considered void ab initio under the old code. The nullity of these contracts is rather definitive in nature and cannot thereby be cured by ratification.[1] There are, however, other juridical relations which are specifically declared to be void by law under separate provisions of the code like, such as here, the sale of a piece of land or any interest therein made through an agent whose authority is not reduced in writing[2] or when the agent exceeds the scope of his authority.[3] In these special instances, it would be important and prudent to take a minute longer to look at the law for, at times, the rationale for their being can justify a divergence from the standard rules governing void contracts in general. Although, by statute and jurisprudence[4] denominated void, Article 1874 sales, are, in fact, susceptible to ratification. This intent of the law can be gleaned from some provisions of the code. For instance –

“Art. 1403. The following contracts are unenforceable, unless they are ratified:

“(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

“xxx xxx xxx

“Art. 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

“As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly.”

The susceptibility to ratification could prompt one to say that the contract should, in essence, be deemed merely unenforceable. That, too, may not be totally accurate for outside that feature, other principles of a void contract

could, nevertheless, be apt and relevant. To exemplify, the rule in evidence to the effect that the unenforceable character of a contract is lost by a failure to object at the first opportunity to the presentation of oral evidence to prove the questioned transaction would not necessarily be applicable to contracts specially declared void under Article 1874 of the code which sanctions ratification only if done by an act of affirmation by the principal.

[1] Arsenal vs. Intermediate Appellate Court, 143 SCRA 40; Tongoy vs. Court of Appeals, 123 SCRA 99.

[2] Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise the sale shall be void.

[3] Art. 1898. If the agent contracts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal's ratification.

[4] National Merchandising Corporation vs. National Power Corporation, 117 SCRA 789.

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