

**HEIRS OF VENANCIO BAJENTING AND FELISA S. BAJENTING,
NAMES: TERESITA A. BAJENTING, RUEL A. BAJENTING, GILBERT A.
BAJENTING, CRESILDA B. PUEBLA, IMELDA B. SALAC, BENEDICTINA
B. ...**

G.R. NO. 166190. September 20, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 76526, as well as its October 31, 2004 Resolution[2] denying the Motion for Reconsideration thereof.

The factual and procedural antecedents are as follows:

Venancio Bajenting applied for a free patent over a parcel of land, Lot 23 (Sgs. 546 D), Davao Cadastre, located in Langub, Davao City, with an area of 104,140 square meters. The application was docketed as Free Patent Application No. IV-45340. In the meantime, Venancio planted fruit trees in the property[3] such as mango, lanzones, coconut and santol. He and his wife, Felisa Bajenting, along with their children, also resided in a house which stood on the property.[4]

On February 18, 1974, Venancio died intestate.[5] His application for a free patent was thereafter approved, and on December 18, 1975, Free Patent No. 577244 was issued in his favor. On February 6, 1976, the Register of Deeds issued Original Certificate of Title (OCT) No. P-5677 over the property in the name of "Venancio Bajenting, married to Felisa Sultan." [6] Selecio Bajenting continued cultivating the land.[7]

In the meantime, the Sangguniang Panglungsod approved City Ordinance No. 263, Series of 1982 and Resolution No. 10254 declaring the properties in Langub as a low density residential zone.[8]

On May 31, 1993, Felisa and the other heirs of Venancio (Heirs, for brevity),[9] executed an Extrajudicial Settlement with Deed of Absolute Sale over Lot 23. They alleged therein that when Venancio died intestate, they had agreed to adjudicate unto themselves as heirs of the deceased the aforesaid property, as follows:

TO: FELISA S. BAJENTING, One half (1/2) share of the whole of Oct. No. P-5677, as her conjugal share; and the remaining one-half (1/2) of OCT No. P-5677.

TO: FELISA S. BAJENTING, MARGARITA BAJENTING, FRANCISCA BAJENTING, SILVERIO BAJENTING (Deceased) represented by his wife and children: Teresita Apas-Bajenting, Renato Bajenting, Gilbert Bajenting, Criselda Bajenting, Imelda Bajenting, Venancio Bajenting and Elizalde Bajenting; MAXIMA BAJENTING (Deceased) represented by her husband, Francisco Malda, and children: Lee B. Malda, Angelina B. Malda, Milagros B. Malda, Editha B. Malda and Susana B. Malda; BENEDICTINA BAJENTING, ARSENIA BAJENTING; and CELECISO BAJENTING, in equal share pro-indiviso.[10]

In the same deed, a 50,000 square meter portion of the property was sold to the spouses Sonia Luz Alfafara; and

the 54,140 square meter portion to Engr. Romeo F. Bañez. The share of Felisa was included in the portion sold to Engr. Bañez.[11] However, the deed was not notarized; neither was the sale approved by the Secretary of Environment and Natural Resources. In the Agreement/Receipt executed by Felisa Bajenting and Romeo Bañez, the parties declared that the price of property was P500,000.00; P350,000.00 was paid by the vendees, the balance of P150,000.00 to be due and payable on or before December 31, 1993 at the residence of the vendors.[12] The owner's duplicate of title was turned over to the vendees. However, the deed was not filed with the Office of the Register of Deeds.

The Heirs, including Felisa, tried to repurchase the property as provided under Section 119 of Commonwealth Act No. 141, but Romeo Bañez and Sonia Alfafara did not allow them to exercise their right.

On May 31, 1995, the Heirs, through Venencio Bajenting, filed a Complaint for recovery of title against Romeo Bañez and the spouses Alfafara in the Office of the Barangay Captain. When no settlement was reached, the Heirs filed a complaint for Quieting of Title, Repurchase of Property, Recovery of Title plus Damages with the Regional Trial Court, claiming that they had tried to repurchase the property from the defendants and that the latter had ignored the summons from the Barangay Captain for an amicable settlement of the case. They prayed that after due proceedings, judgment be rendered in their favor:

WHEREFORE, PREMISES CONSIDERED, it is prayed of this Honorable Court that after hearing, judgment be rendered in favor of plaintiffs and against herein defendants, by quieting and removing any cloud on the Original Certificate of Title No. P-5677, Free Patent No. 577244, of the Registry of Deeds of Davao City, and thereafter ordering the defendants to:

- a) Return the owner's duplicate copy of Original Certificate of Title No. P-5677, Free Patent No. 577244 to plaintiff forthwith;
- b) Vacate the premises including those who are acting for and in their behalf; and,

IN THE ALTERNATIVE, should the defendants prove their superior right over the subject property (i.e., sale) as against the herein plaintiffs that they be ordered to resell back the said property to the plaintiffs consonant to the provision of Sec. 119, C.A. No. 141, and in both instances, defendants be, jointly and severally, ordered to pay plaintiffs:

1. P50,000.00 - Moral Damages;
2. P50,000.00 - Exemplary Damages;
3. P70,000.00 - Actual Damages;
4. P50,000.00 - Attorney's fees.

Plaintiffs further pray for such relief just and equitable in the premises.[13]

On October 29, 1996, the Heirs filed an Amended Complaint, alleging the following:

5. Sometime in May 1993, the afore-described real property was sold to defendants for a consideration of Five Hundred Thousand (P500,000.00) Pesos and several months thereafter, the owner's duplicate copy Original Certificate of Title No. P-5677, Free Patent No. 577244, was handed to them and, thereafter, their representative occupied the area. x x x

6. Defendants paid only the sum of THREE HUNDRED FIFTY THOUSAND (P350,000.00) but did not pay the remaining purchase price in the amount of ONE HUNDRED FIFTY THOUSAND (P150,000.00) PESOS. x x x

7. The aforescribed property sold to defendants, being a Free Patent, can be repurchased within five (5) years from date of conveyance (1993) by the applicant, his widow, or legal heirs pursuant to Sec. 119,

Commonwealth Act No. 141, as amended, which provides that:

"That every conveyance of land acquired under the free patent provisions, when proper, shall be the subject to repurchase by the applicant, his widow, or legal heirs, within a period of five (5) years from the date of the conveyance; (Underscoring supplied).[14]

x x x x

13. Herein Plaintiffs have tendered the amount of THREE HUNDRED FIFTY THOUSAND (P350,000.00) as repurchase price with the Office of the Clerk of Court as shown in hereto attached xerox copy of Official Receipt No. 6547953 as Annex "L."[15]

The Amended Complaint contained the following prayer:

WHEREFORE, PREMISES CONSIDERED, it is prayed of this Honorable Court that after hearing, judgment be rendered ordering defendants to resell the property back to herein plaintiffs in accordance with the provision of Sec. 119, C.A. No. 141 and ordering defendants further to:

- a) Return the owner's duplicate copy of Original Certificate of Title No. P-5677, Free Patent No. 577244 to plaintiffs forthwith;
- b) Vacate the premises including those who are acting for and in their behalf; and
- c) Jointly and severally, pay plaintiffs:

- 1) P 50,000.00 - Moral Damages;
- 2) P 50,000.00 - Exemplary Damages;
- 3) P 70,000.00 - Actual Damages;
- 4) P 50,000.00 - Attorney's fees.

Plaintiffs further pray for such relief just and equitable in the premises. [16]

The Heirs deposited the amount of P350,000.00 with the Clerk of Court, and an official receipt was issued therefor.

In their Amended Answer to the Complaint, the defendants averred, inter alia, that: (1) the plaintiffs, who did not sign the Extrajudicial Settlement and Deed of Absolute Sale, were not heirs of Venancio Bajenting; (2) it was only Venancio Bajenting, Jr. who wanted to repurchase the property for and in behalf of a "speculator" i.e., for the sole use and enjoyment of the interested buyer and not for cultivation of the heirs of the deceased homesteader; and (3) the Heirs have not tendered any amount to perfect their repurchase of the property. They alleged, by way of Compulsory Counterclaim, that:

13. The parties herein have entered into an Extrajudicial Settlement of Estate with Deed of Absolute Sale to evidence their agreement over the land in question. However, such deed has not yet been notarized. Pursuant to Art. 1357 in relation to Art. 1358 (1) of the Civil Code, defendants may require plaintiffs to deliver the proper document in the proper form to evidence the conveyance of the property subject of this case and sufficient to effect the transfer of title to the same in favor of defendants;[17]

The defendants prayed that, after due proceedings, judgment be rendered in their favor as follows:

WHEREFORE, PREMISES CONSIDERED, it is respectfully prayed of this Honorable Court that after trial on the merits, a decision be rendered:

- Finding that plaintiffs are not entitled to exercise their right to repurchase and confirming the right of the defendants to continue to own, possess and enjoy the subject property;

- Ordering plaintiffs to deliver to defendants the proper document in the proper form to evidence the conveyance of the property subject of this case and sufficient to effect the transfer of title to the same in favor of defendants;

- Finding that plaintiffs should pay defendants, jointly and severally, the sum of

- a). equivalent to 25% of the value of the property as attorney's fee and P50,000.00 as expenses of litigation;

- b). P100,000.00 for each defendant as moral damages;

- c). P50,000.00 for each defendant as exemplary damages;

Defendants further pray for such other equitable and legal reliefs as may be just and proper under the premises.[18]

During the pre-trial on January 19, 1998, considering the possibility that the parties would amicably settle the matter (that is, they would agree to entrust the property to a receiver, later sell it to a third party and divide the proceeds among themselves), the court ordered a resetting of the case.

On February 6, 1998, the plaintiffs, through counsel, filed a Manifestation with the trial court. The pertinent portion reads:

3. Plaintiffs are willing to receive the amount of FIVE MILLION (P5,000,000.00) Pesos, as an additional purchase price of their property covered by Original Certificate of Title No. P-5677 within the period of two (2) months counted from today. Should the defendant cannot (sic) pay said amount, the plaintiffs will no longer agree to the payment of P5,000,000.00.

4. Although, the plaintiffs have no intention whatsoever to sell the property, but in order to settle the case amicably, they are willing to look for interested buyers of the property, subject matter of this repurchase, to sell the same for a consideration of not less than P5,000,000.00. And out of the said purchase price, Plaintiffs are willing to give, by way of settlement to defendant, the amount equivalent to twenty percent (20%) of the proceeds;

5. Plaintiffs shall go on with the presentation of their evidence;

6. During the pendency of this case, receiver shall be appointed to take charge of the property;

7. Plaintiffs are willing to meet the defendant for the discussion of the foregoing on February 11, 1998 at 2:30 in the afternoon.[19]

The case was referred to the Barangay Captain and the Lupon Tagapamayapa for a possible settlement, to no avail.[20]

The Heirs presented Vicente Ravino, the husband of Benedicta Bajenting, one of the daughters of Venancio and Felisa. He testified that Felisa had died intestate on January 21, 1996.[21] For a period of two years, he had been demanding that the vendee pay the balance of the purchase price, P150,000.00, but the latter failed to pay the amount. The Heirs authorized Venencio Bajenting[22] to represent them for the purpose of repurchasing the property from the defendants.

The defendants adduced evidence that the Sangguniang Panglunsod approved Ordinance No. 4042, Series of 1996, classifying the properties in Langub as part of a low density property zone.[23] Such properties were primarily intended for housing development with at least 20 dwelling units per hectare density and below per hectare.[24] They pointed out that under Presidential Decree (P.D.) No. 957, the lots could be used as first class residential. The City Planning Office and the Regional Development Council had, likewise, recommended to the

National Economic Development Authority the plan to establish an astrodome, a government center to house government agencies, as well as the construction of a circumferential road; however, no money had yet been appropriated to implement the said plans.[25]

Anne Reyes, a real estate agent, testified that in March 1993, Venencio Bajenting and Margarita Bajenting-Reusora, another heir, asked her to help them sell the property for P350,000.00. She agreed. To enable her to offer the property for sale, the Bajentings entrusted to her a copy of the owner's duplicate of OCT No. P-5677, Tax Declaration No. D-8-8-159, Tax Clearance dated October 22, 1991 and a Certificate from the City Assessor.[26] However, she failed to sell the property. In December 1995, Margarita saw her again and asked her to return the said documents because she (Margarita) wanted to sell the property for P10,000,000.00. Margarita told her that the property had been earlier sold for a cheaper price, but she was requested to accompany any prospective buyers willing to pay P10,000,000.00 to Venencio Bajenting who had a special power of attorney to sell the property in behalf of the Heirs.[27] After her meeting with Margarita, nothing happened. On cross-examination, Anne admitted that she had no written authority to sell the property.[28] In December 1995, she inquired from Engr. Bañez if he was willing to resell the property to the heirs of Venancio Bajenting.[29] In February 1996, Engr. Bañez, accompanied by Atty. Susan Cariaga, saw her (Anne) and asked if the Bajentings were indeed going to repurchase the property; she answered in the affirmative and volunteered to testify.[30]

Ermelinda Oyco testified that during the proceedings of the case in the Office of the Barangay Captain, Margarita told her and her sister that the Bajentings were going to repurchase the property and would resell the same. She told Margarita that she had a prospective buyer, but withheld the person's identity. Margarita told her that the Bajentings would sell the property for P10,000,000.00. Venencio Bajenting confirmed the price and told her that she would receive a 3% commission if she succeeded in selling the property.[31] On cross-examination, she declared that she was invited to testify for Engr. Bañez and that she agreed because she pitied him.

On rebuttal, Venencio Bajenting testified and declared that he did not meet Oyco and her mother in December 1996, and that they had no interest to sell the property.[32]

Before she could testify, Margarita Reusora died on August 24, 1997.[33]

On March 1, 2002, the trial court rendered judgment in favor of the Heirs. The dispositive portion reads:

FOR THE FOREGOING, judgment is hereby rendered in favor of plaintiffs and against defendants, ordering the latter to vacate subject property covered by Original Certificate of Title No. T-5677 and deliver said Certificate of Title to plaintiffs within ten (10) days from receipt hereof.

Accordingly, the Clerk of Court of the Regional Trial Court, Davao City, is hereby ordered to release the amount of P350,000.00 deposited by plaintiffs in favor of defendants, representing the repurchase money of subject property, evidenced by Official Receipt No. 6547953, dated October 11, 1996. Further, the compulsory counter-claim filed by defendants against plaintiffs is hereby DISMISSED.

SO ORDERED.[34]

The RTC ruled that while there is evidence that first-class subdivisions are being developed in the vicinity, no budget had been appropriated for the plans to construct the government center and the sports complex. However, it declared that the defendants failed to present any evidence that the plaintiffs were repurchasing the property for and in behalf of a financier.

The spouses Alfara, and Bañez filed a motion for reconsideration, which the court denied. It declared that the ruling of this Court in *Santana V. Mariñas*[35] is not applicable, and that it was the case of *Hernaez v. Mamalio*[36] that was controlling.

The spouses Alfafara, and Bañez appealed the Decision to the CA, alleging that:

FIRST ASSIGNED ERROR

THE TRIAL COURT ERRED IN NOT FINDING THAT PLAINTIFFS' PURPOSE IN REPURCHASING THE PROPERTY IS ONLY TO BE ABLE TO SELL THE SAME TO ANOTHER BUYER FOR A HIGHER PRICE OR MERELY FOR SPECULATION.

SECOND ASSIGNED ERROR

THE TRIAL COURT ERRED IN NOT FINDING THAT THERE WAS NO PROPER BARANGAY CONCILIATION BEFORE THIS CASE WAS FILED IN THE REGIONAL TRIAL COURT AND THAT THIS DEFECT WAS NEVER CURED.[37]

They averred that the trial court erred in not applying the ruling of this Court in *Santana v. Mariñas*,^[38] reiterated in *Quisumbing v. Court of Appeals*^[39] and *Lacorda v. Intermediate Appellate Court*.^[40] They maintained that the Heirs were exercising their right to repurchase the property for commercial purposes, not for the purpose of using the property for their family home. They asserted that the property is surrounded by first-class subdivisions and is classified as a low-density residential zone.

On February 27, 2004, the CA rendered judgment granting the appeal, and reversed the Decision of the trial court. The CA ruled that as gleaned from the evidence on record and the pleadings of the Heirs, the property was sought to be repurchased for profit, and not to preserve it for themselves and their families.^[41] The appellate court applied the ruling in the *Santana* case.

The Heirs filed a motion for the reconsideration of the Decision, which the CA denied for lack of merit.

Hence, the instant Petition for Review on Certiorari, where petitioners allege that the CA erred in disregarding the findings of the trial court based on the evidence on record in applying the *Santana* case, and in not resolving the issue of respondents' failure to pay the balance of the purchase price of the property.

They insist that the factual backdrop in *Santana* is substantially different from that in this case. The speculative purpose ascribed to them may as well apply to respondents, who refused to resell the property to petitioner, knowing that the value of the property had considerably increased. As between the petitioners and the respondents, the law should be applied in their favor, being the heirs of the beneficiaries under Commonwealth Act 141, as amended.

The petitioners aver that respondents failed to prove with clear and convincing evidence that they were exercising their right to repurchase the property only for the purpose of reselling the same at a higher price, thereby rendering nugatory Section 119 of Commonwealth Act 141. The collective testimonies of Reyes and Oyco were hearsay and inadmissible in evidence under the dead man's statute, Margarita Reusora having died on August 24, 1997 before the witnesses had even testified. Neither Margarita nor Venencio Bajenting could have informed Reyes and Oyco that the petitioners were selling the property for P10,000,000.00 because petitioners, through Venencio Bajenting, had filed a case against the respondents in the Office of the Barangay Captain. They insist that the CA erred in declaring as self-serving the testimony of petitioner Venencio Bajenting.

Worse, petitioners aver, the CA ignored the fact that respondents had not paid them the balance of the purchase price of the property worth P150,000.00; thus, they would have to file a separate suit to collect the amount.

For their part, respondents aver that only petitioner Venencio Bajenting signed the verification and certification of non-forum shopping in the petition. Petitioners failed to attach any power of attorney authorizing Venencio Bajenting to sign the Verification and Certification Against Forum Shopping for and in their behalf. As found by

the CA, the testimonies of Reyes and Oyco were credible and deserving of full probative weight. Indeed, their testimonies are buttressed by the trial court's Order dated January 19, 1998. They add that the findings of the CA are binding on this Court, and that the dead man's statute does not apply to the testimonies of Reyes and Oyco, being as they were, mere witnesses not parties to the case.

Respondents maintain that the ruling of this Court in *Santana* which reiterated its ruling in *Simeon v. Peña*,^[42] applies in this case. They further claim that the CA cannot be faulted for not ordering them to pay the balance of P150,000.00 to petitioners because it was not contained in their prayer.

Petitioners counter that they mentioned the non-payment by respondents of the balance of the purchase price, P150,000.00 to emphasize their point that it was unfair for the CA to reverse the decision of the RTC.

The issues are as follows: (a) whether or not petitioners complied with the rule on verification and certification against forum shopping; (b) whether petitioners are entitled to repurchase the property from respondents; and (c) whether petitioners are obliged to execute a notarized deed of absolute sale over the property.

The petition has no merit.

On the first issue, the Court notes that, of the 23 petitioners, only petitioner Venencio Bajenting signed the Verification and Certification of Non-Forum Shopping. Petitioners did not append to their petition a special power of attorney authorizing petitioner Venencio Bajenting to sign the Certification for and in their behalf. The rule is that the certification of non-forum shopping must be signed by all the petitioners or plaintiffs and the signing by only one of them is not sufficient. However, in *Cavile v. Heirs of Clarita Cavile*,^[43] the Court made the following pronouncement:

The rule is that the certificate of non-forum shopping must be signed by all the petitioners or plaintiffs in a case and the signing by only one of them is insufficient. However, the Court has also stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. It does not thereby interdict substantial compliance with its provisions under justifiable circumstance.

We find that the execution by Thomas George Cavile, Sr. in behalf of all the other petitioners of the certificate of non-forum shopping constitutes substantial compliance with the Rules. All the petitioners, being relatives and co-owners of the properties in dispute, share a common interest thereon. They also share a common defense in the complaint for partition filed by the respondents. Thus, when they filed the instant petition, they filed it as a collective, raising only one argument to defend their rights over the properties in question. There is sufficient basis, therefore, for Thomas George Cavile, Sr. to speak for and in behalf of his co-petitioners that they have not filed any action or claim involving the same issues in another court or tribunal, nor is there other pending action or claim in another court or tribunal involving the same issues. Moreover, it has been held that the merits of substantive aspects of the case may be deemed as "special circumstance" for the Court to take cognizance of a petition for review although the certification against forum shopping was executed and signed by only one of the petitioners.^[44]

In the present case, we find and so rule that petitioners substantially complied with the Rules of Court. Petitioners, as heirs of the spouses Venancio and Felisa Bajenting (the patentees), sought to exercise their right under Section 119, Act 141 to repurchase the property within the statutory period therefor. Petitioner Venencio Bajenting was empowered to act for and in their behalf before the Barangay Captain and in the RTC for the enforcement of their

right as such heirs. Petitioners have not filed any action against respondents in another court or tribunal involving the same issues and property.

We note that the Secretary of Agriculture and Natural Resources had not approved the sale of the property (by the heirs of the patentee) to respondents. It bears stressing that Free Patent No. 577244 which was granted in favor of Venancio Bajenting on December 18, 1975 is subject to the following conditions therein:

NOW, THEREFORE, KNOW YE, That by authority of the Constitution of the Philippines, and in conformity with the provisions thereof and of the aforecited Republic Act No. 782 and Commonwealth Act No. 141, as amended, there is hereby granted unto said VENANCIO BAJENTING, Filipino, of legal age, married to Felisa Sultan, and residing in Langub, Ma-a, Davao City the tract of land above-described.

TO HAVE AND TO HOLD the said tract of land, with the appurtenances thereunto of right belonging unto the said VENANCIO BAJENTING and to his heirs and assigns forever, subject to the provisions of Sections 118, 119, 121, 122 and 124 of Commonwealth Act No. 141, as amended, which provide that except in favor of the Government or any of its branches, units, or institutions, the land hereby acquired shall be inalienable and shall not be subject to encumbrance for a period of five (5) years from the date of this patent, and shall not be liable for the satisfaction of any debt contracted prior to the expiration of said period; that every conveyance of land acquired under the free patent 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 the conveyance; that it shall not be encumbered, alienated, or transferred to any person, not qualified to acquire lands of the public domain under said Commonwealth Act No. 141, as amended; and that it shall not be subject to any encumbrance whatsoever in favor of any corporation, association or partnership except with the consent of the grantee and the approval of the Secretary of Natural Resources and solely for educational, religious or charitable purposes or for a right of way; and subject finally to all conditions and public easements and servitudes recognized and prescribed by law especially those mentioned in Sections 109, 110, 111, 113 and 114 of Commonwealth Act No. 141, as amended, and the right of the Government to administer and protect the timber found thereon for a term of five (5) years from the date of this patent, provided; however, that the grantee or heirs may cut and utilize such timber as may be needed for his use or their personal use.

Sections 118, 119 and 122 of Commonwealth Act No. 141, as amended, reads:

SEC. 118. Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty- five years after issuance of title shall be valid without the approval of the Secretary of Agricultural and Natural Resources, which approval shall not be denied except on constitutional and legal grounds.[45]

SEC. 119. Every 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 the conveyance.

SEC. 122. No land originally acquired in any manner under the provisions of this Act, nor any permanent improvement on such land, shall be encumbered, alienated, or transferred, except to persons, corporations, associations, or partnerships who may acquire lands of the public domain under this Act or to corporations organized in the Philippines authorized therefore by their charters.

Except in cases of hereditary succession, no land or any portion thereof originally acquired under the free

patent, homestead, or individual sale provisions of this Act, or any permanent improvement on such land, shall be transferred or assigned to any individual, nor shall such land or any permanent improvement thereon be leased to such individual, when the area of said land, added to that of his own, shall exceed one hundred and forty-four hectares. Any transfer, assignment, or lease made in violation hereof shall be null and void.[46]

OCT No. P-5677 was issued to and in the name of Venancio Bajenting over the property on February 6, 1976. The 25-year period provided in Section 118 of the law was to expire on February 6, 2001. However, in May 1999, Felisa Bajenting and her children sold the property to respondents without the approval of the Secretary of Environment and Natural Resources (formerly the Department of Agriculture and Natural Resources). There is no showing in the records that the Secretary of Environment and Natural Resources had approved the sale.

The failure of the vendors to secure the approval of the Secretary of the DENR does not, ipso facto, make the sale void. The approval may be secured later, producing the effect of ratifying and adopting the transaction as if the sale had been previously authorized. The approval of the sale subsequent thereto would have the effect of the Secretary's ratification and adoption as if the sale had been previously authorized.[47] The Secretary may disapprove the sale on legal grounds.

The second issue is factual because it involves the determination of petitioners' intention to repurchase the property to enable them to amass a hefty net profit of P9,635,000.00 from its resale to a third party, and not for the purpose of preserving the same for themselves and their families' use as envisioned in Com. Act No. 141, as amended.

Section 1, Rule 45 of the Rules of Court provides that only questions of law and not factual issues may be raised in this Court. Settled is the rule that the jurisdiction of this Court in cases brought before it from the CA via Rule 45 of the Rules of Court is limited to reviewing errors of law. However, while the findings of fact of the CA are conclusive on this Court, there are, likewise, recognized exceptions, to wit: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[48]

In the present case, the findings and conclusions of the trial court are contrary to those of the CA. Indeed, the trial court gave no probative weight to the testimonies of Reyes and Oyco despite the absence of any factual and legal basis for it to do so. It is thus imperative for the Court to delve into and resolve this factual issue.

As elucidated by this Court, the object of the provisions of Act 141, as amended, granting rights and privileges to patentees or homesteaders is to provide a house for each citizen where his family may settle and live beyond the reach of financial misfortune and to inculcate in the individuals the feelings of independence which are essential to the maintenance of free institution. The State is called upon to ensure that the citizen shall not be divested of needs for support, and reclined to pauperism.[49] The Court, likewise, emphasized that the purpose of such law is conservation of a family home in keeping with the policy of the State to foster families as the factors of society, and thus promote public welfare. The sentiment of patriotism and independence, the spirit of citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when the citizen lives permanently in his own house with a sense of its protection and durability.[50] It is intended to promote the spread of small land ownership and the preservation of public land grants in the names of the underprivileged for whose benefits they

are specially intended and whose welfare is a special concern of the State.[51] The law is intended to commence ownership of lands acquired as homestead by the patentee or homesteader or his heirs.[52]

In *Simeon v. Peña*,^[53] the Court declared that the law was enacted to give the homesteader or patentee every chance to preserve for himself and his family the land that the State had gratuitously given to him as a reward for his labor in cleaning and cultivating it. In that sense, the law becomes unqualified and unconditional. Its basic objective, the Court stressed, is to promote public policy, that is, to provide home and decent living for destitutes, aimed at providing a class of independent small landholders which is the bulwark of peace and order.

To ensure the attainment of said objectives, the law gives the patentee, his widow or his legal heirs the right to repurchase the property within five years from date of the sale. However, the patentee, his widow or legal heirs should not be allowed to take advantage of the salutary policy of the law to enable them to recover the land only to dispose of it again to amass a hefty profit to themselves.^[54] The Court cannot sustain such a transaction which would put a premium on speculation which is contrary to the philosophy behind Section 119 of Act 141, as amended.

In this case, we agree with the ruling of the CA that, based on the pleadings of the parties and the evidence on record, petitioners, through Venencio Bajenting and Margarita Reusora, sought to repurchase the property only for the purpose of reselling the same for P10,000,000.00 and in the process, amass a net profit amounting to P9,650,000.00. We quote, with approval, the findings of the CA, thus:

The almost conclusive effect of the findings of the trial court cannot be denied. This is anchored on the practical recognition of the vantage position of the trial judge in observing the demeanor of the witness. However, such rule admits certain exceptions. Almost as well-recognized as the general rule is the exception that We may nonetheless reverse the factual findings of the trial court if by the evidence on record, or lack of it, it appears that the trial court erred. We find that such exception exists in the present case.

The lack of documentary evidence proving that plaintiffs constituted Reyes and Oyco as agents for the sale of the subject property merely shows that Reyes and Oyco were not constituted as agents in accordance with the specific form prescribed by law. It does not, however, render their testimonies improbable nor does it have any tendency to lessen the credibility of their testimonies respecting the fact sought to be proven. What is material and should have been considered by the trial court were the assertions of Reyes and Oyco stating that plaintiff made negotiations for them to find a buyer for the subject property since it would prove that plaintiffs want to repurchase the subject property only in order to resell it to another at a higher price.

The testimony of plaintiff Venencio Bajenting denying the claim of Reyes and Oyco cannot be given much weight and credence. Being one who has a direct interest in the case, Venencio Bajenting necessarily has a motive for coloring his testimony. Besides, apart from his denials, his testimony is uncorroborated. In contrast, there is no evidence that Reyes and Oyco were actuated by any ill motive in testifying against plaintiffs. In fact, their testimonies even show that their mother is a relative of plaintiffs.

The profit motivation behind the instant complaint for repurchase is further shown by plaintiffs' declaration in their Opposition to defendants' motion for reconsideration, that "the Three Hundred Fifty Thousand (P350,000.00) Pesos given for the ten-hectare land would be too small for defendant to own the property." Evidently, it is the same profit motivation that impelled plaintiffs to agree to a settlement during the early stages of the proceedings before the trial court. In the Manifestation filed by plaintiffs on February 4, 1998, plaintiffs expressed their agreement to a settlement but only if defendants pay them an additional purchase price of Five Million Pesos (PhP5,000,000.00) or if the subject property were to be sold to an interested buyer for no less than the said amount with 80% of the proceeds going to the plaintiffs and offering 20% thereof to defendant.

In fine, the trial court committed an error in not applying the doctrine laid down in the *Santana* case. As in the

Santana case, plaintiffs' motive in filing the present complaint for repurchase is not for the purpose of preserving the subject property for themselves and their family but to dispose of it again at a much greater profit for themselves. Hence, the repurchase should not be allowed.[55]

We note that petitioner Venencio Bajenting is merely a mechanic. He had not explained to the trial court how he and his co-heirs were able to produce P350,000.00 in 1996 and deposit the same with the Clerk of Court when they filed their amended complaint. There is no evidence on record that petitioners were financially capable to produce the amount in 1996, considering that they had to sell the property for P500,000.00 three years earlier. The foregoing circumstances buttress the contention of respondents that petitioners, through Venencio Bajenting, sought to repurchase the property for no other purpose than to generate a hefty profit of P9,650,000.00.

That petitioners had no intention of retaining the property for their and their families' use and purpose is fortified by the fact that during pre-trial, they manifested their willingness to have the property sold to a third party and, from the proceeds thereof, to receive the amount of P5,000,000.00; and that in the meantime, a receiver would be appointed by the court.

Contrary to the allegations of petitioners, the collective testimonies of Reyes and Oyco are admissible in evidence despite the fact that when they testified, Margarita Reusora was already dead. Section 20(a), Rule 130 of the Revised Rules of Court reads:

Section 20. Disqualification by reason of interest or relationship. - The following persons cannot testify as to matters in which they are interested, directly or indirectly as herein enumerated:

(a) Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such became of unsound mind.

The bar under aforequoted rule applies only to parties to a case, or assignors of parties to a case or persons in whose behalf a case is prosecuted. Reyes and Oyco were mere witnesses for respondents, not parties in the court a quo, nor assignors of any of the parties in whose behalf the case was prosecuted. Their testimonies were presented only to prove that the petitioners intended to repurchase the property for profit, and not for the purpose of preserving it for their and their families' use and enjoyment.[56]

We agree with the ruling of the CA that the ruling in *Santana v. Mariñas*[57] applies in this case. As in *Santana*, the property in this case was no longer agricultural but residential and commercial, in the midst of several high-class residential subdivisions. The government had planned to construct in the vicinity a circumferential road, a government center and an astrodome. As in *Santana*, petitioners, through counsel, declared their willingness to settle the case for the amount of P5,000,000.00 and the sale of the property to a third party. The money which petitioners were to use to repurchase the property was not theirs, but the money of petitioner Venencio Bajenting's employer.

Petitioner cannot find solace in the ruling of this Court in *Hernaez v. Mamalio*,[58] which in part reads:

In an action to enforce the right to repurchase a homestead within five (5) years from the sale thereof, it is of no consequence what exactly might be the motive of the plaintiff, and it is unnecessary for the Court to inquire before hand into his financial capacity to make the repurchase for the simple reason that such question will resolve itself should he fail to make the corresponding tender of payment within the prescribed period.

First. The decision of the trial court ordering petitioner to execute a deed of sale over the property in favor of

respondent is grounded on the fact that his record on appeal of petitioner, as appellant, does not contain sufficient relevant data showing that the appeal was filed on time;

Second. The ruling in *Hernaez* has not been reiterated by this Court. On the other hand, this Court in *Lacorda v. Intermediate Appellate Court*,^[59] ruled that:

While it is true that the offer to repurchase was made within the statutory period both the trial and appellate courts found as a fact that the petitioners did not really intend to derive their livelihood from it but to resell part of it for a handsome profit. It is now settled that homesteaders should not be allowed to take advantage of the salutary policy behind the Public Land Law to enable them to recover the land in question from vendees only to dispose of it again at much greater profit. (*Simeon v. Peña*, L-29049, Dec. 29, 1970, 36 SCRA 619 and other cases cited therein.)^[60]

In a case of recent vintage, *Fontanilla, Sr. v. Court of Appeals*,^[61] this Court reiterated the doctrine that:

The foregoing construction is merely in keeping with the purpose of Section 119 - "to enable the family of the applicant or grantee to keep their homestead" - for it is well settled that the law must be construed liberally in order to carry out that purpose." As we held in *Ferrer v. Magente*-

"x x x The applicant for a homestead is to be given all the inducement that the law offers and is entitled to its full protection. Its blessings, however, do not stop with him. This is particularly so in this case as the appellee is the son of the deceased. There is no question then as to his status of being a legal heir. The policy of the law is not difficult to understand. The incentive for a pioneer to venture into developing virgin land becomes more attractive if he is assured that his effort will not go for naught should perchance his life be cut short. This is merely a recognition of how closely bound parents and children are in Filipino family. Logic, the sense of fitness and of right, as well as pragmatic considerations thus call for continued adherence to the policy that not the individual applicant alone but those so closely related to him as are entitled to legal succession may take full advantage of the benefits the law confers."^[62]

On the third issue, we agree with respondents' contention that petitioners are obliged to execute a notarized deed of absolute sale over the property upon payment of the P150,000.00 balance of the purchase price of the property. A contract of sale is a consensual contract. Upon the perfection of the contract, the parties may reciprocally demand performance. The vendee may compel transfer of ownership of the object of the sale, and the vendor may require the vendee to pay the thing sold. In this case, the balance of the purchase price of the property was due on or before December 31, 1993.

IN VIEW OF ALL THE FOREGOING, the Petition is DENIED for lack of merit. The Decision of the Court of Appeals in CA-G.R. CV No. 76526 is AFFIRMED with MODIFICATION. Petitioners are ORDERED to execute in favor of respondents a Deed of Absolute Sale over the property upon payment of P150,000.00, the balance of the purchase price. This is without prejudice to any action the Secretary of the Department of Environment and Natural Resources may take on the sale of the property by the petitioners to the respondents. No costs.

SO ORDERED.

Panganiban, C. J., (Chairperson), Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Perlita J. Tria Tirona (retired) and Rosalinda Asuncion-Vicente, concurring, rollo, pp. 32-40.

[2] Rollo, pp. 41-43.

- [3] Records, p. 437.
- [4] TSN, February 16, 1998, p. 31.
- [5] Exhibit "A," records, p. 282.
- [6] Exhibit "C," id. at 286.
- [7] TSN, February 16, 1998, p. 31.
- [8] Exhibit "8," records, p. 356.
- [9] The following are the children/heirs of the deceased: Margarita, Francisca, Renato, Gilbert, Criselda, Imelda, Venencio, Elizalde, Benedictina, Arsenia and Selecio, all surnamed Bajenting, and Teresita Apas, Francisco, Leo, Angelina, Editha and Susana, all surnamed Malda.
- [10] Exhibit "D-1," records, p. 288.
- [11] Exhibits "D" to "D-3," id. at 287-290.
- [12] Exhibit "E," id. at 291.
- [13] Records, pp. 6-7.
- [14] Records, p. 100.
- [15] Id. at 103.
- [16] Id. at 103-104.
- [17] Id. at 128-129.
- [18] Id. at 129-130.
- [19] Records, p. 233.
- [20] Id. at 241.
- [21] Exhibit "B," records, p. 356.
- [22] Venencio is the grandson of Venancio, being the son of Silverio Bajenting, who, in turn is one of the children of Venancio and Felisa.
- [23] Exhibit "8," records, p. 356.
- [24] TSN, August 17, 1999, p. 27.
- [25] Exhibits "7," records, p. 355.
- [26] Exhibits "9" to "13," records, pp. 358-362; TSN, August 18, 1999, pp. 7-9.
- [27] TSN, August 18, 1999, pp. 14-15.
- [28] Id. at 17-18.
- [29] Id. at 21-22.
- [30] Id.
- [31] TSN, May 18, 2000, pp. 10-12.

- [32] TSN, March 2, 2001, pp. 3-4.
- [33] Records, p. 248.
- [34] Records, pp. 416-417.
- [35] G.R. No. L-35537, December 27, 1979, 94 SCRA 853.
- [36] 152 Phil. 71 (1973).
- [37] CA rollo, p. 35.
- [38] Supra note 35.
- [39] 207 Phil. 607 (1983).
- [40] G.R. No. L-67386, February 28, 1985, 135 SCRA 298.
- [41] Rollo, p. 38.
- [42] 146 Phil. 1093 (1970).
- [43] 448 Phil. 302 (2003).
- [44] Id. at 311-312.
- [45] As amended by Com. Act No. 456, approved June 8, 1939.
- [46] As amended by Com. Act No. 615.
- [47] Evangelista v. Manalo, 93 Phil. 275 (1953), cited in Alfredo v. Borras, 452 Phil. 178, 201 (2003).
- [48] Cadungog v. Yap, G.R. No. 161223, September 12, 2005, 469 SCRA 561, 575; Caoili v. Court of Appeals, 373 Phil. 122, 132 (1999).
- [49] Jocson v. Soriano, 45 Phil. 375 (1923).
- [50] Id.
- [51] Cassion v. Banco Nacional Filipino, 89 Phil. 560 (1951).
- [52] Soriano v. Ong Hoo, 103 Phil. 829 (1958).
- [53] Supra note 42, at 1100.
- [54] Santander v. Villanueva, 103 Phil. 1, 5 (1958).
- [55] Rollo, pp. 37-39.
- [56] See Guerrero v. St. Clare's Realty Co., Ltd., 209 Phil. 459, 471-472 (1983).
- [57] Supra note 35.
- [58] Supra note 36, at 79.
- [59] Supra note 38.
- [60] Id. at 299.
- [61] 377 Phil. 382 (1999).

[62] Id. at 373.

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