

MARTIN BAGUINGUITO ET AL., PLAINTIFFS AND APPELLANTS, VS. NICOLAS RIVERA, DEFENDANT AND APPELLANT. FELIPE PILARES ET AL., INTERVENORS AND APPELLEES, AND MANUEL DE GUIA, INTERVEN...*G. R. No. 34646. December 31, 1931*

Ponente: STREET, J.

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An intelligent conception of these cases can be reached only through a knowledge of prior litigation to which they are related and from which they are in part derived. Many years ago proceedings were instituted by the Tuasons as owners of the Maysilo Estate in the municipality of Malabon, Province of Rizal, to register the estate under the Torrens system. Trouble arose with the occupants of various lots in the estate, and a compromise was effected by which opposition to the registration of the estate in the name of the Tuasons was withdrawn, with the understanding that one Nicolas Rivera should take an option on lots Nos. 27, 28 and 29. The first payment on this option, in the amount of P1,879, was made out of funds collected by Rivera as representative from the numerous intending purchasers. By the terms of this option, extended in the name of Rivera as purchaser, full payment was required within four years from January, 1918. As between Rivera and the Tuason estate, this contract was personal, his representative character not being recognized. Time passed and the rights of the tenants lapsed because of their failure to make further payments. Rivera, however, managed to transfer the option before it died to Remigia Sanchez. The latter in turn transferred it to Vicente Singson Encarnacion who, by paying the contract price for the property involved, secured a deed to the property and in the end obtained the certificate of transfer in his own name. Singson thereafter sold lot No. 28 to Vicente Arias and lots Nos. 27 and 29 to Baldomero Roxas, after which the occupants of parts of these lots for whom Rivera had originally undertaken to act instituted an action (*Dizon vs. Rivera*, 48 Phil., 996), seeking to recover lots Nos. 27, 28 and 29 and to secure the cancellation of the successive transfers of the property from Rivera to Sanchez and, through Singson, to the ultimate vendees. The effect of the decision of this court in that case was to deny the right of the plaintiffs to recover the land, with reservation to them of the right to obtain an accounting from Rivera for alleged breach of trust.

The following excerpt from the decision of this court in that case exhibits our conclusion in so far as affected the claim of the plaintiffs to the land:

"* * * The plaintiffs acknowledged that the ownership of these lots was in the owners of the Maysilo Estate and they only obtained the option to buy these lots upon the conditions specified in the contract entered into with them. All that they did, through their representative Nicolas Rivera, in regard to this option was to pay the amount of P1,879, equivalent to 10 per cent of the purchase price of the lots; but this was not all that was necessary in order for them to acquire the ownership of these lots. In addition, they had to complete the payment of the purchase price within four years from January, 1918, failing in which their option would expire and the estate would be free to sell the lots to other persons. The plaintiffs, neither by themselves nor through their representative Nicolas Rivera, have paid the balance of the purchase price of these lots wherefore they

have not acquired their ownership."

Going back now to the deed of December, 1919, from Rivera to Sanchez, we observe that in that conveyance Rivera reserved to himself the right to repurchase 40 hectares to be carved out of lots Nos. 27, 28 and 29. This right to repurchase was also noted in the conveyance from Sanchez to Singson, as well as in the later conveyances from Singson to Arias and Roxas. The result was that the last named owners were obligated to respect Rivera's option to repurchase an area of 40 hectares. This obligation was not fixed upon any defined tract containing 40 hectares, but was in the nature of a personal obligation on the part of the vendees to allow Rivera to repurchase 40 hectares somewhere or anywhere within the confines of the three lots mentioned.

The existence of this reservation did not escape the attention of the litigants or of the court in *Dizon vs. Rivera*, supra; and while testifying as a witness in that case, Rivera explained that the purpose of the reservation was to protect those of the occupants who had bought and had paid, or were paying, for specified amounts of land in the three lots.

Attention is thus roughly drawn to the fact that there were two classes of occupants on the land, namely, those who had never done anything more than to make the first payment on the original option through Rivera, and those who continued their payments and ultimately completed the same. These two classes of persons will appear as opposing parties in the litigation now before us, the first class comprising the plaintiffs (hereinafter to be referred to as Baguinguito and associates); and the second class comprising the intervenors-appellees (to be referred to as Pilares and associates). In testifying as a witness in the litigation above referred to, Rivera gave the names of the individuals who had continued their payments and in whose favor consequently the reservation of right of repurchase was principally made. These individuals were subsequently introduced to Singson by Rivera, and to Singson the final payments were made through M. P. Leuterio, agent of Singson. It is pretended by the appellants in this case that the payments above-mentioned were never in fact made. But everybody who had any interest in receiving the money admits its payment and the receipts, though involved in a little confusion, sufficiently prove that those payments in fact were made, as the trial court found.

We have said that the reservation of 40 hectares was made in the interest of those occupants who had completed or were completing their payments, a statement which is not exactly true, for the land to be allocated to them was only part of the area reserved. The other portion was intended for other individuals who were outsiders, namely, Julio Gregorio, Jose B. Sanchez, M. P. Leuterio, and Judge Fermin Mariano, whose rights are in the main undisputed.

During the litigation which terminated in *Dizon vs. Rivera* (48 Phil., 996), transfers of the property involved in that dispute were held in abeyance, but after that case had been terminated and the title of Singson and his successors to lots Nos. 27, 28 and 29 had been declared indefeasible, the problem presented itself as to the most convenient method of conveying to Pilares and associates the amount of land to which they were severally entitled; and as the demon of confusion would have it, it was decided that the land intended for Pilares and associates should be reconveyed to Rivera, and that he, in turn, should thereupon transfer the several smaller lots to the individuals respectively entitled thereto. A transfer to him was accordingly effected, and a certificate of title was issued to him covering the land intended for the prospective owners.

With all due respect to the aforesaid demon of confusion, we further note that Pilares and associates were already occupants in fact of discrete parcels, and the owners of the larger mass found that if they conveyed to Pilares and associates the particular parcels already occupied by them, the larger mass would be ruined by the irregular division. It was therefore decided, with the consent of the persons entitled, to convey to the intending owners the appropriate amount of land in a mass, their separate lots being in juxtaposition with one another. It was also

agreed that the land so to be allotted should be carved out of the precise area then occupied by Baguinguito and associates, who had been unsuccessful plaintiffs in the litigation lately concluded but who were still in possession of the lots originally held by them. The necessary separate conveyances were therefore made to Pilares and associates, but these transfers have not as yet been followed by the issuance of the Torrens certificates, on account of the pendency of the litigation now before us.

At this point we must interrupt what appears to be the natural sequence of things to call attention to another case, wherein Manuel de Guia, one of the losing plaintiffs in *Dizon vs. Rivera*, supra, sued Rivera, Singson and Arias for the purpose of recovering some 3 hectares out of the 40 reserved for Rivera in his deed to Sanchez. The trial court decided against De Guia, and upon appeal to the Supreme Court the decision was affirmed (*De Guia vs. Rivera*, G. R. No. 29677)[1] The vital point in the decision was that the case was merely an attempt to get what had been sought in *Dizon vs. Rivera*, and it was held that the last-named case constituted a conclusive decision against the alleged right of the plaintiff.

But, to resume the main narrative, it will be remembered that Baguinguito and associates, one of the two elements comprising the parties plaintiff in *Dizon vs. Rivera* supra, had a grievance against Rivera arising from his alleged breach of trust towards them. These individuals, therefore, now finding Rivera in possession of the legal title to the land held by him for the benefit of Pilares and associates, descended upon him in the two actions now before us, instituted on March 10 and October 28, 1926, in the Court of First Instance of Rizal. In the first of these actions (civil case No. 3262), Martin Baguinguito and others are plaintiffs, while Nicolas Rivera is the defendant. In the second action (civil case No. 3478), Raymundo Andres and others are plaintiffs and Nicolas Rivera defendant. The purpose of each of the two actions is primarily to obtain an accounting for various sums of money received by Rivera from them, as well as to recover the profits received by him from selling the option to Sanchez. But the plaintiffs further seek in these actions to recover severally various parcels of land out of the 40 hectares reserved for Rivera in the conveyance to Sanchez and in part already conveyed to him as above stated.

In these actions Pilares and associates, altogether ten in number, intervened, asserting their rights to the parcels conveyed to them in the deeds previously executed in their favor by Rivera. Also, Manuel de Guia, undaunted by his previous ill-success as a litigant, intervened, claiming the same property that had been denied to him in the prior litigation. Other individuals also intervened, with whom we are not so extensively concerned, namely, M. P. Leuterio and persons claiming under him. The two actions, identical in their principal features, were consolidated for the purpose of trial and were disposed of by the trial court in a single opinion. Meanwhile Rivera had died and his estate was, at the time of the decision, represented by Emilio Rivera as his administrator.

The appealed decision has a number of dispositive provisions, but the only parts of it that are brought into discussion in this appeal are those relating to the title of the land which had been conveyed back to Rivera and which has been deeded by him to the appellees in these cases or their predecessors in interest. The basic point in the decision is that all these individuals are the lawful owners of the parcels thus conveyed and that, on the contrary, the plaintiffs in the two actions, including the intervenor De Guia, have no enforceable legal claim to any part of it. In order to carry this fundamental finding into effect, the trial judge ordered that the certificate of title in the name of Rivera covering this land should be cancelled and that other certificates for various portions thereof should be issued to the following individuals in the amounts stated, to wit:

sq. m.

To Felipe Pilares

25,000

To Luciano Espiritu

28,000

To Marcos Gajudo

31,000

To Mariano Pilares

22,000

To Crispulo Baetiong

2,731

To Maximo Pangyarihan

8,736

To Eugenio Espiritu

25,000

To Martin Alcantara

14,000

To Francisco Esguerra

15,000

To Quintin Gutierrez.

11,000

The total thus allotted to the claimants above-mentioned is 182,467 square meters. In addition to this the court awarded to the estate of Carlos Cuyugan, as successor in interest of M. P. Leuterio, a parcel containing 53,824.40 square meters, also recognizing that a further portion of 79,013.60 square meters that had belonged to Leuterio had passed under execution to Salas and others. Finally, the court found that there still remained in the same mass a lot containing 500 square meters that had not been conveyed away by Rivera to any one, and that consequently this amount of land still pertained to Rivera's estate. The court thus accounted for a mass containing 315,805 square meters, or about 31 1/2 hectares. This constitutes the major portion of the 40 hectares which had been reserved for Rivera, the remainder being the part which went to Judge Fermin Mariano and others as already indicated.

From the decision disposing of the principal contention as above stated, an appeal was taken (1) by Baguinguito and associates, (2) by the administrator of Nicolas Rivera, and (3) by Manuel de Guia.

An assignment of error common to the briefs of all of the appellants is directed towards the supposed lack of authority, or jurisdiction, on the part of the trial judge to sign the judgment in this case on the date signed to the opinion. In this connection it appears that the trial judge, Francisco Zandueta, was specially assigned by the Secretary of Justice for duty in the Court of First Instance of Rizal during the vacation period of April and May, 1930; and this case was heard and finally submitted on May 23. Upon this occasion all the parties concerned were present in person or by attorney in the court; and after the submission of proof had been completed, the court declared the trial terminated. The attorney for the plaintiffs then requested that a period of twenty-five days be allowed for the presentation of his written argument, and a like period was asked by the attorney for the appellees.

The court, however, conceded a period of fifteen days only to all. This announcement met the approval of all concerned, except De Guia who was present in person and objected. Upon these facts the point is now made that the hearing of the cause on the date mentioned was incomplete and that, inasmuch as the memorandums of the litigants were permitted to be filed after the assignment of the trial judge to the Court of First Instance of Rizal had lapsed, the court had no jurisdiction to prepare the judgment later. The point, in our opinion, is not well taken. Section 13 of Act No. 867 of the Philippine Commission authorizes the judge to prepare his judgment after leaving the province where the case is tried, "if the case was heard and duly argued or an opportunity given for argument to the parties or their counsel in the proper province." Under the facts above stated it must be considered that the parties waived the opportunity to present an oral argument at the time the cause was submitted; and the fact that they were permitted to file written memorandums later did not render the hearing incomplete. The submission of the memorandums was not, properly speaking, a part of the hearing or trial as understood in the provision cited. It has been held that memorandums of this sort form no necessary part of the bill of exceptions (*Alino vs. Villamor*, 2 Phil., 234). It results that the trial judge had authority to sign the judgment in this case.

When the facts contained in the preceding narrative relative to the merits of the case are clearly understood, it is at once seen that the decision of the trial court was correct and that the appeal is untenable. There are two reasons for this. The first is that the decision in *Dizon vs. Rivera* (48 Phil., 996), was a conclusive adjudication that the plaintiffs have no right to any of the land with which we are here concerned. With respect to the intervenor De Guia there is the additional conclusive adjudication in the action brought by him alone against Rivera (G. R. No. 29677). The second reason is that, even supposing that the plaintiffs herein have a right of action against Rivera, they have no right to take from him land the title to which is held by him in trust for others (Pilares and associates) and in which he has no beneficial interest whatever.

Upon the first point attention is directed to the fact that the land which the plaintiffs seek to recover in this case is a part of the land which the present plaintiffs (with others) sought to recover from Rivera in *Dizon vs. Rivera*, and the action is brought against the same individual who was primary defendant in that action. Our decision in that case declared that the plaintiffs had no right to recover any part of the land there sued for. That determination is necessarily decisive of this. Moreover, the 40 hectares which were reserved for repurchase by Rivera in the sale made by him to Sanchez, and in the later sales to her successors, were not 40 hectares with any defined boundaries. On the contrary, the obligation imposed by said reservation was personal to the contracting parties and was not fixed upon any definite parcel. It results that our decision that *Dizon* and his fellow-plaintiffs had no right to the property necessarily covered every square meter of the three lots which were the subject of action in that case. In addition to this the fact should not be forgotten that although the reservation contemplating repurchase by Rivera of 40 hectares was the subject matter of discussion and proof in *Dizon vs. Rivera*, yet the plaintiffs did not procure, or even seek to procure, in that case a pronouncement that they were entitled to share in the 40 hectares thus to be reserved. Testifying as a witness in that case, Rivera made it clear that the reservation was made for the purpose of protecting Pilares and others who had completed the payments necessary to entitle them to a conveyance. To recognize the claim of the plaintiffs in this case to any part of the land sued for in this action would be a direct reversal of the decision of this court in that case.

Furthermore, as the trial judge pointed out in his decision in this case, the point here in controversy was determined adversely to the contention of the present plaintiffs in the case of *De Guia vs. Rivera*, G. R. No. 29677; and the sole difference between the two cases is that in the last named case De Guia exhibited a deed executed by Rivera actually transferring to De Guia the land which De Guia sought to recover in that case. In finally disposing of *De Guia vs. Rivera* upon appeal, this court observed that the subject matter of the action had been involved in the earlier case (*Dizon vs. Rivera*), although the theories upon which the two actions had been brought were different, and it was said that a party could not be permitted to split up a single cause of action and

make it the basis of several suits. "To hold otherwise," said the court, "would lead to the encouragement of endless litigation." We see no reason to doubt the correctness of that decision; and in the case before us it is necessary to apply the same rule.

Upon the second point, even supposing the present plaintiffs to have a right of action against Rivera, the plaintiffs have no right to take from him land which he holds in trust for others and in which he has no beneficial interest. The fact that the reservation in Rivera's favor, recognizing his right to buy back 40 hectares of land was made with a view to the protection of Pilares and associates who had paid the value of the land intended for them, and for no one else, is clearly established; and the fact that this is proved by oral testimony does not impair the rights of the persons to be benefited. It is well settled that a trust can be raised by parol proof, without the assistance of any writing.

There is a rule of equity to the effect that if a person who is under an equitable obligation to convey land, which obligation is defeated by his conveyance of the same to an innocent purchaser, yet, if such person after-wards takes a reconveyance to himself, all the equities that had formerly existed against him will revive and become attached to the land in his hands. (2 Pom. Eq. Jur. 4th ed., sec. 754.) This rule might supposedly supply a clue for here evading the effect of our decision in *Dizon vs. Rivera*, but the difficulty is that the rule above stated cannot be applied where the person who is subject to the equitable obligation has no beneficial interest in the property when the title comes back to himself, and where on the contrary such reconveyance is taken in trust for third persons. In the case before us Rivera was a mere conduit for conducting the title of the property from Encarnacion and others to the actual purchasers of the property.

In whatever way the rights of the litigants in this case be viewed, whether as depending upon the conclusiveness of the former judgments, or as depending upon equitable rights to the land, the result is inevitably reached that the actual purchasers, Pilares and associates, have the better right, and that the plaintiffs have no just claim upon the property in question.

The foregoing considerations are decisive of the case, although in the briefs of the three different classes of appellants a number of other questions are raised which have been the subject of extensive discussion. For instance, it is asserted in behalf of the appellants that if the plaintiffs and Manuel de Guia were plaintiffs in *Dizon vs. Rivera*, and bound by that decision, so also were the intervenors-appellees (PHares and associates); and it is contended that the latter are precluded by said judgment from asserting any right to the property which was" the subject of contention in that case. The answer is that while the appellees were nominal party plaintiffs in that case, they now claim by a title consistent with the decision therein reached, namely, a title derived by purchase from the successful litigant. In fact their arrangement for such purchase supplies the explanation of the fact that they were not active litigants in the effort to defeat the title of the then defendants. The appellants of course are not in any position effectually to object to that arrangement; and even if the entire purchase price had not been paid by the appellees, yet the successful parties litigant in that case have a perfect right to convey it to whom they please, whether for a valuable consideration or not. Under that judgment Encarnacion and his successors had a complete *jus disponendi* and had full power to transfer a perfect title even to a volunteer.

What has been said effectively disposes of the controversy, and we deem it unnecessary to extend this opinion by entering into certain questions relative to the admissibility of certain proof and the efficacy of the transfer from Leuterio to Carlos Cuyugan.

The judgment appealed from will be affirmed, and it is so ordered, with costs against the appellants.

Avanceña, C. J., Ostrand, and Romualdez, JJ., concur.

[1] Promulgated January 30, 1929, not reported.

CONCURRING

MALCOLM, J., concurring specially in the result:

This is a case for a division of seven or more. Nine members were present to constitute a quorum. Eight of the nine members participated in the consideration and decision of the case and one was disqualified. Of the eight members participating, four voted to affirm and four voted to reverse. I was one of those who believed that the judgment should be reversed.

Under these conditions, what should be done? Should the case be continued for re-argument, or await future changes in membership in the court? Should the mere failure to agree have the effect of an affirmance? Or, statutory provisions precluding such a rule, should it be considered the duty of the judges in favor of reversal to join with their colleagues in voting for the affirmance of the judgment?

Act No. 136 is the basic law for the organization of the courts in the Islands, including the Supreme Court. It provided for a Supreme Court of seven members and for the concurrence of at least four members to pronounce a judgment. It further provided for decisions in writing, to be signed by the judges concurring in the decision. That law has been modified from time to time. Section 15 of Act No. 136, requiring decisions to be in writing, was expressly repealed by the Administrative Code of 1917, although section 144 of the Administrative Code continues to provide for written opinions or memoranda to be filed and recorded. At present, by Act No. 3816, for a division of seven or more judges, the case before us, seven of the judges of the Supreme Court are necessary to form a quorum and the concurrence of five judges are necessary for the pronouncement of a judgment.

It is a well recognized rule of appellate practice in nearly all other jurisdictions that, where the judges of the appellate court are equally divided in opinion, the judgment appealed from stands affirmed. For instance, this is the practice in the United States Supreme Court and in the English courts. But the provisions of Philippine law requiring the concurrence of a definite number of judges, at least a majority, and in the case at bar of five judges, for the rendition of a judgment, prevents the unqualified adoption of this rule in the Philippines. We have a situation here quite similar to that which was presented in the States of California and Florida, and we can wisely turn for enlightenment to the jurisprudence of those States.

In California, the state constitution provides that the concurrence of the majority of the members of the Supreme Court shall be necessary to a decision. In the case of *Luco vs. De Toro* ([1891], 88 Cal., 26), the Supreme Court of California, after inviting attention "to jurisdictions presided over by judges holding for life, or for terms so great as to make the probability of a change in the membership of the court remote," where "the judgment of affirmance follows a division *ex necessitate rei*" continued:

"In such a case the decree does not import a division as to the nature of the judgment, but as to the questions of law and fact involved in it. * * * The judges simply agree that it is expedient to finish the litigation. It is a public expediency, and is often expedient also with respect to the interests of the parties. Supported by these considerations, and the presumption of correctness which always attaches to the judgment of the court below, it is proper and right that the judges who were in favor of a reversal should waive any insistence of opinion, and unite with their associates in an affirmance of the judgment. This they do without in any way relinquishing their convictions upon the questions of law or fact involved in the case. * * *"

In Florida likewise, the constitution prescribes that the concurrence of the majority of the members of the

Supreme Court shall be necessary to a decision. The rule consistently followed in that State is that, where the members of the appellate court are equally divided in opinion as to whether a judgment on writ of error or appeal should be reversed or affirmed, and there is no prospect of a change of judicial opinion, the judgment should be affirmed so that the litigation may not be unduly prolonged. In the leading Florida case on this point, *State ex rel. Hampton vs. McClung* ([1904], 47 Fla., 224), it was pointed out that it becomes the duty of those who favor reversal to vote with those who favor affirmance, and thereby affirm the judgment of the lower court.

It is my opinion that the Philippines, with statutory provisions like the constitutional provisions of California and Florida, should adopt the practice followed in those States when there is an equal division in the court. Cases could be pointed out in the history of our Supreme Court which could not be decided for long periods of time because, with one judge disqualified, the requisite number of the remaining members were unable to agree on a judgment. There are two such cases in the court now. This presents an intolerable judicial situation. It is not doing justice to the litigants who have the right to a speedy administration of the law. It is not doing justice to the court, for it is indicative of a judicial breakdown in the disposition of particular cases. The decision of the trial judge carries with it the presumption that it is right, and until a clear majority of the Supreme Court are able to say that the decision appealed from is wrong, the appealed decision should be accepted even by those who think it wrong. The legislative body could declare the rule by statute, but in lieu of such a statute, the court has it within its own power to lay down a general rule. As I am firmly convinced that the court should do so, I make this opinion the vehicle for expressing my views. These observations are, of course, limited to civil cases, and no attempt will be made to state what should be done in criminal cases in which there are equal divisions on appeal, until an opportunity affords itself in a criminal case where the vote is equally divided and where I vote to reverse.

In view of the foregoing, I consider it my duty, although being in favor of reversal, to unite with those of my associates who are in favor of affirmance, as I here do, in order to end the litigation.[1]

[1] Note.—In accordance with the practice followed in the Supreme Court, this opinion was prepared after the completion of the majority opinion and the dissenting opinion, and all three opinions were circulated for the signatures of the remaining members. It then developed that one of the Justices did not desire to take part. However, although there is thus not an equal division in the court, I will let this opinion stand as expressing my views on the question of what should be done when there are equal divisions in court in civil cases, and will continue to join in voting for affirmance so as to dispose of the case.

DISSENTING

VILLA-REAL, J., with whom concurs VILLAMOR, J., dissenting:

The plaintiffs and appellants Martin Baguinguito and associates, and Raymundo Andres and associates, in G. R. Nos. 34646 and 34647, respectively, have been in possession of the parcels of land claimed by them respectively, having succeeded their parents who had been tenants of the Maysilo Estate from time immemorial.

Their natural attachment to the soil of their birth made them long for its ownership. Accordingly they and the intervenors and appellees, Felipe Pilares and associates, raised by subscription among themselves first the amount of P2,801 and later on the sum of P2,420.50, to secure an option for the purchase of lots Nos. 27, 28 and 29 of said estate which contained the parcels of land occupied by the said plaintiffs and appellants, and commissioned Nicolas Rivera for the purpose.

In January 1918, Nicolas Rivera secured the option by paying the sum of P1,879, which was the 10 per cent of the purchase price. The whole purchase price was to be completed in four years. Because the purchasers were so

many, the deed was made in the name of said Nicolas Rivera with the understanding that the latter will convey to the said purchasers the respective parcels occupied by them as soon as the definite sale of the said lots was made.

Betraying the trust thus reposed in him, Nicolas Rivera took advantage of the fact that the option was issued in his name and sold it on December 6, 1919 to Remigia Sanchez for P11,700, who reserved to said Nicolas Rivera the right to repurchase 400,000 square meters at 2 centavos per square meter.

On February 7, 1920, Remigia Sanchez sold to Vicente Singson Encarnacion for P70,000 the option which she had bought from Nicolas Rivera, as above stated, with the same reservation. Thereafter, Vicente Singson Encarnacion paid the purchase price and received the deed to the property. On the strength of said deed he obtained a transfer certificate of title in his own name.

On August 5, 1920, Vicente Singson Encarnacion sold lot No. 28 to Vicente Arias for the sum of P370,371.70, and on the 7th of the same month he sold lots Nos. 27 and 29 to Baldoxnero Roxas for the sum of P74,568.30, the same reservation being made in both sales in favor of Nicolas Rivera for the repurchase of 40 hectares.

On March 1, 1926, Vicente Singson Encarnacion, Vicente Arias and Baldomero Roxas jointly executed a deed of sale in favor of Nicolas Rivera on 79,013 square meters in lot No. 28-A for the sum of P1,580.27, and on 62,661.40 square meters in lot No. 27-A and on 174,130 square meters in lot No. 29-A for the sum of P4,735.83.

On October 20, 1922, Nicolas Rivera executed a public instrument (Exhibit 3—Pilares) whereby he acknowledged that previous to said date he had sold to Felipe Pilares and associates by means of private deeds of sale portions of the 40 hectares of land which had been reserved to him.

On March 3, 1926, Nicolas Rivera sold to the intervenors and appellees Felipe Pilares and others 174,130 square meters corresponding to lot No. 29-A of the subdivision plan Psu-2345 of the Maysilo Estate, covered by transfer certificate of title No. 10535, issued on March 5, 1926 by the register of deeds of the Province of Rizal in favor of Nicolas Rivera, of which 174,130 square meters the plaintiffs and appellants Martin Baguinguito and associates and Raymundo Andres and associates are in possession.

Upon learning of said conveyance by Nicolas Rivera of the right of option to Remigia Sanchez, and by the latter to Vicente Singson Encarnacion, who paid the purchase price and sold portions of said lots to Vicente Arias and Baldomero Roxas, the herein plaintiffs and appellants brought an action in the Court of First Instance of Rizal asking that Nicolas Rivera be compelled to render an accounting of all the money entrusted to him, and that the conveyance of the option made by him to Remigia Sanchez and by the latter to Vicente Singson Encarnacion, as well as the sales made by said Vicente Singson Encarnacion to Vicente Arias and Baldomero Roxas be declared null and void.

The Court of First Instance of Rizal rendered judgment absolving Remigia Sanchez, Vicente Singson Encarnacion, Baldomero Roxas and Vicente Arias from the complaint and ordering Nicolas Rivera to render to the plaintiffs and appellants an accounting of all the moneys received by him from them for the purchase of lots Nos. 27, 28 and 29 and the proceeds of the sale of the option to Remigia Sanchez, with interest upon said money from the date that he received the same until fully paid, reserving to the plaintiffs such rights of action as they may have against Nicolas Rivera and the other defendants. Upon appeal to this court in G. R. No. 23239, entitled Felipe Dizon et al. vs. Nicolas Rivera et al., the said decision of the lower court was affirmed.

Availing themselves of the right of action thus reserved to them in said decision, the herein plaintiffs and appellants brought this action against Nicolas Rivera for tije purpose, among other things, of annulling the sale made by him to the herein intervenors and appellees Felipe Pilares and others of the 174,130 square meters corresponding to lot No. 29-A of subdivision plan Psu-2345 of the Maysilo Estate which Vicente Singson

Encarnacion, Vicente Arias and Baldomero Roxas had sold to him by virtue of the reservation made in his favor to repurchase 40 hectares of the lots, the right of option to which was sold by him to Remigia Sanchez and by the latter to Vicente Singson Encarnacion, and the cancellation of transfer certificate of title No. 10535 issued in his name.

It will thus be seen that the cause of action in the *Dizon vs. Rivera* case is not identical to the cause of action in the present case: the cause of action in that case being the fraudulent sale made by Nicolas Rivera of the right of option to purchase lots Nos. 27, 28 and 29 of the Maysilo Estate to Remigia Sanchez and by the latter to Vicente Singson Encarnacion; and the cause of action in the present case being the fraudulent sale to the intervenors Felipe Pilares and others of part of the 40 hectares the right of option to purchase which was reserved to Nicolas Rivera.

There is therefore no *res adjudicata* in the present case.

It is contended and held that the right of option which Nicolas Rivera had secured for the plaintiffs and appellants for the purchase of lots Nos. 27, 28 and 29 of the Maysilo Estate had already lapsed for failure to pay the other instalments when they became due. In answer to this contention suffice it to say that Nicolas Rivera had received from the plaintiffs and appellants more money than he paid for the first instalment, and that the fact that he was able fraudulently to sell the right of option to Remigia Sanchez for P11,700 shows that the right of option had not lapsed.

It is also contended and maintained that the reservation made by the purchasers of the right of option in favor of Nicolas Rivera for the repurchase of 40 hectares to be taken from said lots Nos. 27, 28 and 29 was in his personal capacity and not as representative of the herein plaintiffs and appellants. The mere fact that Nicolas Rivera sold the option entrusted to him, reserving to himself the right to repurchase 40 hectares of the lands covered by said option, does not relieve him from the obligation of accounting for the said 40 hectares after he had repurchased them; because the plaintiffs and appellants, being the owners of the option to purchase lots Nos. 27, 28 and 29 of the Maysilo Estate, they continue to be the owners of the option to buy the 40 hectares which form part of said lots*, Nicolas Rivera being their representative although negotiating in his own name. If a man sells a property which he had bought for another with the money of the latter, thus committing the crime of *estafa*, the fact that he had repurchased the same property or part thereof from the purchaser does not make him the owner of it. nor relieve him from the responsibility of giving an account of the same to the person for whom he bought it. When Nicolas Rivera sold to the intervenors and appellees, Felipe Pilares and associates, certain portions of the 40 hectares, he was selling a property for which he knew he had to account to the plaintiffs and appellants, and the said intervenors, who together with the said plaintiffs and appellants contributed money for the obtention of the option to purchase lots Nos. 27, 28 and 29 of the Maysilo Estate, knew such fact, and, therefore, were not acting in good faith when they purchased from Nicolas Rivera said portions of the 40 hectares. This being the case, the sale made by Nicolas Rivera of portions of the 40 hectares which Vicente Singson Encarnacion, Vicente Arias and Baldomero Roxas sold him by virtue of the reservation made in his favor, was null and void.

As to the other portions of the 40 hectares which were sold to other parties who were not contributors to the funds for the purchase of the right of option, transfer certificates of title having already been issued in their name, and, it not appearing that they have acted in bad faith in securing said certificates of title, the said sales cannot now be disturbed.

For the foregoing considerations, I am of the opinion that the decision of the lower court should be reversed.

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