

**TAGAYTAY DEVELOPMENT COMPANY, PETITIONER AND APPELLEE,  
VS. ANTONIO E. OSORIO, OPPOSITOR AND APPELLANT***G.R. No. 46069. November 16, 1939*

Ponente: IMPERIAL, J.

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On October 28, 1936, Marina Osorio de Ysmael and her husband Halim Ysmael, Antonio E. Osorio, represented by his attorney-in-fact Leonardo Osorio, Leonardo Osorio and Natividad Osorio entered into a contract of barter, set out in the public deed marked Exhibit A, with the Tagaytay Development Company, et al., whereby they conveyed to this corporation a portion of land measuring 30,000 square meters, situated in Mahabang-Kahoy, municipality of Indang, Province of Cavite, bounded on the North by the provincial road, on the South by the Tagaytay Development Company et al., and Baldomero Roxas, on the East by Carmen A. de Melencio and on the West by Concepcion Aure, which portion of land was a part of that described in the Transfer Certificate of Title No. 9911 issued in their favor by the registrar of deeds of the Province of Cavite; and Tagaytay Development Company et al., in turn, conveyed to the said Osorios another portion of land containing the same area of 30,000 square meters, situated in Paros, barrio of Birinayan, municipality of Talisay, Province of Batangas, which formed a part of the land described in Transfer Certificate of Title No. 704 issued in its favor by the registrar of deeds of the Province of Cavite. In the deed, the parties stated that the barter was temporary in nature, inasmuch as the portions conveyed had not yet been subdivided and the technical descriptions thereof not definitely known, whereupon, the parties agreed that later on the subdivision would be made, the necessary plan would be drafted to be approved by the Director of Lands, another final deed of barter would be executed, and all the expenses of survey, subdivision and registration would be charged against the Tagaytay Development Company, et al. In accordance with this stipulation, Tagaytay Development Company ordered the subdivision of the portions of land in question and the surveyor who made the subdivision prepared plan Psd-12907 as well as the technical descriptions, which were approved by the Director of Lands and by the chief surveyor of the General Land Registration Office. By a motion filed in registration case No. 145, Tagaytay Development Company submitted the plan and technical descriptions for the court's approval, and the latter, by its order of June 22, 1937, approved the same. On August 27, 1937, Tagaytay Development Company prepared the final deed of barter and submitted it to the Osorios for signature. Antonio Osorio refused to sign it on the ground that he had not authorized his brother Leonardo Osorio to barter his share in the land but to sell it definitely. In view of this, Tagaytay Development Company put in a motion in the same registration case asking the court, under section 112 of Act No. 496, to compel Antonio Osorio to sign the final deed of barter or, should he refuse, to authorize his attorney-in-fact Leonardo Osorio to sign the deed in his name and to register it thereafter in the office of the registrar of deeds, the latter official, in turn, issuing the consequent transfer certificates of title. Antonio Osorio objected in writing to the petition and alleged that he had not authorized his brother Leonardo Osorio to barter his share in the land, and that he should not sign the final deed of barter because in so doing he would be in estoppel in view of the pendency in the same court of a civil case between him and his brothers, which has. to do with the right which the latter claim to have in the land which was bartered to Tagaytay Development Company. After

trial, the court entered its order of September 27, 1937, providing that Antonio Osorio sign the final deed of barter within five days, and should he fail to do so, Leonardo Osorio was authorized to sign for him as his attorney-in-fact. The order further stated that if Antonio Osorio and Leonardo Osorio do not sign the deed, the court would order the registrar of deeds of the Province of Cavite to register the provisional deed of barter of October 22, 1936 and to issue the corresponding transfer certificates of title in favor of the interested parties. As the motion for reconsideration filed by Antonio Osorio was denied, the latter took the present appeal.

In his first assignment of error the appellant contends that the trial court, acting as a land registration court, had no jurisdiction to take cognizance of the motion because it was in truth an ordinary civil action the purpose of which was to compel him to sign the final deed of barter. He invokes in support of his contention article 1279 of the Civil Code under which the contracting parties may compel each other, by an ordinary action, to comply with an extrinsic formality required by any kind of contract. We are of the opinion that the error assigned is unsound and that the cited article is not applicable, because while the purpose of the motion was to compel the appellant to sign the final deed of barter, an act which cannot be obtained except by judgment to be rendered in an ordinary civil action, the motion had for its further purpose to eliminate real rights which had already come to an end and to make of record new rights and interests which had arisen after the issuance of the final decrees and of the certificates of title, which is expressly provided and authorized by section 112 of Act No. 496.

The contract entered into by the parties on October 28, 1936 was a perfected contract of barter under article 1538 of the Civil Code and it was consummated from the time the parties mutually took possession of the portions of land which were the subject matter of the contract. It was perfected from the execution of the deed because the parties described with sufficient clearness and accuracy the portions of land mutually conveyed; and the stipulation to execute later another final deed of barter did not prevent the already existing contract from producing its legal effects. Presently we shall dwell on the capacity of the attorney-in-fact Leonardo Osorio to bind the appellant.

The appellant was represented in the contract by his attorney-in-fact Leonardo Osorio by virtue of the power conferred upon the latter from New York on June 15, 1935. The appellant contends in his second assignment of error that the contract of barter is null and void and does not bind him because he did not expressly authorize his brother Leonard Osorio to barter his share in the portion of land which had been conveyed; he alleges that in the power of attorney he merely authorized his brother to sell said share. This contention of the appellant is also not well-founded. In the contract of agency which the appellant executed, he expressly authorized his brother to dispose of his share in any manner, and we are of the opinion and so hold that the power so conferred included the contract of barter entered into by the attorney-in-fact. If any doubt existed as to the true intention of the appellant, such doubt was dispelled against him when on January 20, 1937, he voluntarily signed with his brothers a memorandum agreement whereby he undertook to lease to the Manila Hotel Company a certain piece of land in which was included the land which he and his brothers had received by way of barter from the Tagaytay Development Company. This last act performed by the appellant constitutes a ratification by him of the power which he conferred upon his brother and of the contract of barter executed by the latter, and purged the contract of barter of any vice or defect which it may have (arts. 1309-1313 of the Civil Code).

In the same Court of First Instance there was pending Civil Case No. 3348 wherein the appellant questioned the right of his brothers to share in various lands, among them the one bartered to Tagaytay Development Company; this corporation was not a party in the said case. The appellant argues in his third assignment of error that the trial court could not legally compel him to sign the final deed of barter because it would stop and prevent him from further questioning the right of his brothers. We hold that the assignment of error is unsound and indefensible because the pendency of the case was not a bar to the remedy to which the appellee was entitled by virtue of the

motion which it filed in the registration case. The right conferred by section 112 of Act No. 496 is independent of the judgment which may be rendered in the aforesaid civil case.

The last assigned error is also without basis. because the trial court correctly denied the motion for reconsideration filed by the appellant.

The appellee Tagaytay Development Company makes the point in its brief that the appeal interposed by Antonio Osorio should be dismissed because Leonardo Osorio, acting as the former's attorney-in-fact and complying with the appealed order, signed the final deed of barter, wherefore, the appeal has become an academic question. We believe that the appellee's contention is without merit because the appealed order should not have been executed before it became final, and to dismiss the appeal taken by Antonio Osorio is to deprive him of a right granted to him by law.

The appealed order is modified and the registrar of deeds of the Province of Cavite shall register the deed of barter executed on October 28, 1936, and shall issue transfer certificates of title in favor of the contracting parties, adopting as the descriptions of the bartered lands the technical descriptions approved by the order of June 22, 1937, all at the expense of the Tagaytay Development Company, without special pronouncement as to the costs in this instance. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.  
Moran, J., see dissenting opinion.

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### DISSENTING OPINION

#### MORAN, J.:

I dissent because the majority decision permits the commencement of a personal action for specific performance in a registration case, and further orders the registration of a deed which is temporary in nature. Under this doctrine, many personal actions bearing upon registered lands may, in the future,, be instituted in the corresponding registration cases, which is contrary to our procedural laws.

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