

**ROSENDO V. ONGLENGCO, PETITIONER AND APPELLANT, VS.
ROMAN OZAETA AND MELITONA HERNANDEZ, RESPONDENT AND
APPELLEE.***G.R. No. 46685. June 20, 1940*

Ponente: LAUREL, J.

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On February 19, 1936 a complaint was filed in the Court of First Instance of Tayabas by Rosendo V. Onglengco, petitioner, against the spouses Roman Ozaeta and Melitona Hernandez, respondents, praying that he be declared the sole owner and possessor of a parcel of land situated in the barrio of Santa Catalina, municipality of Candelaria, Province of Tayabas, and more particularly described in the complaint, and that the sale executed by the provincial sheriff of Tayabas on July 29, 1935 by virtue of a writ of execution issued by the Court of First Instance of Tayabas in civil case No. 3506 of said court, conveying the aforesaid land to the respondents, be annulled. Roman Ozaeta and Melitona Hernandez, in their answer and cross-complaint, prayed for the dismissal of the complaint, for a judicial declaration that they are the sole and exclusive owners of the land described in the complaint, and for an order requiring Rosendo V. Onglengco to deliver to them the possession thereof. After trial, the Court of First Instance of Tayabas rendered judgment decreeing that Rosendo V. Onglengco is the owner of the land in question, without special pronouncement as to costs. Appealed to the Court of Appeals, this judgment was reversed and substituted by another annulling the sale Exhibit "A" executed by Mariano Villanueva and Marta Macalalag in favor of Rosendo V. Onglengco and holding that Roman Ozaeta and Melitona Hernandez are the absolute owners of the land in controversy with right to its immediate and peaceful possession, with costs against Onglengco. Hence, the present petition for certiorari the contention of the petitioner, Rosendo V. Onglengco, being that the Court of Appeals erred:

- In declaring null and void the deed of sale executed by the spouses Villanueva and Macalalag on January 11, 1935, in favor of the petitioner herein, simply because it was presumed to be fraudulent for having been made after a judgment was rendered on February 9, 1934, in favor of Paciencia Ona and her children and against Villanueva and Macalalag, and notwithstanding the fact that it has not been proved that Villanueva and Macalalag were rendered insolvent by the sale, and that their creditors, particularly Paciencia Ona and her children, could no longer recover their credit from said Villanueva and Macalalag if the sale made by the latter in favor of the petitioner herein would not be annulled
- In not holding that the burden of proving the insolvency of the debtors Villanueva and Macalalag, to such extent that they can no longer pay their creditors, which insolvency is necessary for the annulment of a contract of sale executed by the debtor, is upon the one who asks for the rescission or annulment of the contract of sale executed by the debtors;
- In not ordering, assuming that the petitioner is the one who should have proved in the trial court the solvency of Villanueva and Macalalag to an extent whereby they can, with their other properties, fully pay their creditors, Paciencia Ona and her children, a new trial so that the petitioner may be able to prove this fact;

- In not holding that the petitioner herein acquired the right of ownership over the property in question by reason of his having bought the same from the Provincial Government of Tayabas who has confiscated it for nonpayment of taxes;
- In reversing the decision of the Court of First Instance of Tayabas which is favorable to the petitioner herein; and in not confirming it with costs against the respondents.

The land in question originally pertained to Gregorio Hernandez and Paciencia Ona. After the death of Gregorio Hernandez, Paciencia Ona, together with her children some of whom were minors, sold the same on November 13, 1930 to the spouses Mariano Villanueva and Marta Macalalag for the sum of ₱3,000, the latter having paid upon account of the purchase price the sum of ₱2,157. Upon default of Villanueva and Macalalag to pay the balance of ₱843, Paciencia Ona and her children commenced an action (civil case No. 3506 of the Court of First Instance of Tayabas) against Villanueva and Macalalag for the recovery of said balance, in which action judgment was rendered in favor of Paciencia Ona and her children on February 9, 1934, a judgment that was affirmed on appeal on February 2, 1935.

On the one hand, the petitioner alleges that Mariano Villanueva and Marta Macalalag conveyed to him the land in question on January 11, 1935, the deed of conveyance being registered on June 22, 1935, and that he presented a third-party claim when said land was the subject of execution in civil case No. 3506. On the other hand, the respondents claim that on December 18, 1930 they acquired the interest of Paciencia Ona and her son Eleuterio Hernandez in the same property for the sum of ₱650 by virtue of a pacto de retro sale executed by the latter in their favor; that title consolidated in the respondents on July 11, 1932 by reason of the failure of Paciencia Ona and Eleuterio Hernandez to exercise their right of redemption; that the respondents further acquired the said land by virtue of the execution sale of July 29, 1935 in civil case No. 3506; that after the sheriff's sale became definitive on September 7, 1936, in default of redemption by the judgment debtors, it was registered in the office of the register of deeds on September 14, 1936.

The Court of Appeals found and so held that, as the alleged sale from Villanueva and Macalalag to the petitioner took place on January 11, 1935, or subsequent to the judgment against his vendors in civil case No. 3506, it was presumptively fraudulent. It also found that said sale is fictitious in view of strong indications revealed in the record and summarized as follows:

* * * La esposa del comprador Onglengco es sobrina carnal del la del vendedor Mariano Villanueva. No obstante la citada venta, los vendedores han permanecido hasta hoy en posesion material del terreno en cuestion, aprovechandose de sus productos. El comprador, como mero empleado en el Philippine Army, no percibe mas que el sueldo ₱68.50 al mes. El comprador vive con su familia en la Ciudad de Manila, donde como es sabido, es elevado el costo de vida. No consta probada en autos ninguna otra fuente de ingreso del comprador. Su pretensi6n de haber tornado en prestamo la suma de ₱700 de su codemandante Felix Hocson, para completar el precio del terreno en cuestion, es inverosimil, porque el Exhibito E que lo acredita, esta fechado en 13 de enero de 1935, mientras que la venta Exhibito A lleva la fecha de 11 del mismo mes y afio. En este ultimo documento consta que el comprador Onglengco ya habia pagado a sus supuestos vendedores la suma de ₱2,000, de tal suerte que en la fecha de la venta el comprador ya no tenia necesidad de los referidos ₱700. Esta contradiccion de fechas suscita el dilema de que, o no se ha pagado el precio de ₱2,000 de la supuesta venta consignada en el Exhibito A, o no era cierto el alegado prestamo de los ₱700 mencionados en el Exhibito E, "para completar el pago de este terreno." En cualquiera de estos casos, el testimonio del comprador Onglengco merece naturalmente escaso credito.

The pronouncement of the Court of Appeals regarding the fictitious character of the sale under which the petitioner claims title is based on the facts above found which, as heretofore held, we cannot review. (*Hodges vs. People*, G. R. No. 45446, promulgated May 25, 1939; *Mora Electric Co., Inc. vs. Matic et al.*, G. R. No. 45441,

promulgated June 26, 1939; *Bundoc vs. Hilario et al.*, G. R. No. 46852, promulgated February 27, 1940.) It is argued that said sale could not be declared null and void without proof that Villanueva and Macalalag were thereby rendered insolvent and that their judgment creditors, Paciencia Ona and her children, could not recover in any other manner what was due them. It should be observed that the respondents, in their answer and cross-complaint, sought the annulment of the aforesaid sale, not its rescission, and that the Court of Appeals, in the decision complained of, did not order the rescission thereof under the provisions of article 1291 of the Civil Code. Contracts capable of rescission are those validly entered into (Art. 1290, Civil Code), as an action to rescind is founded upon and presupposes the existence of a contract (*Tan Chay Heng vs. West Coast Life Insurance Co.*, 51 Phil., 80). It is therefore futile on the part of the petitioner to invoke article 1291, paragraph 3, of the Civil Code in view of the ruling of the Court of Appeals that the sale to the petitioner from Villanueva and Macalalag is fictitious, and hence non-existent. (Art. 1261, Civil Code.) It is true that the Court of Appeals held that the sale is to be presumed fraudulent for having been executed posterior to the entry of the judgment against the petitioner's supposed vendors in civil case No. 3506, evidently in pursuance of the provisions of article 1297 of the Civil Code. But as there is nothing else in the appealed decision to indicate that rescission was contemplated under article 1291 of said Code, the aforesaid presumption must have been considered merely as one of the grounds for holding that the sale is fictitious.

The petitioner's motion for new trial for the reception of evidence on the solvency of Mariano Villanueva and Marta Macalalag consequently loses its basis and should be, as the same is hereby, denied.

The petitioner further contends that admitting the nullity of the sale above referred to, he became the owner of the land in question when he purchased the same from the Government after it was confiscated for non-payment of land taxes. This is a conclusion which must be founded on facts which we are not permitted to review in these proceedings.

The petition for certiorari is accordingly dismissed and the appealed decision affirmed, with costs against the petitioner. So ordered.

Avanceña, C.J., Imperial, Diaz, and Moran, JJ., concur.

Petition dismissed, judgment affirmed.

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