

PERCELINO DIAMANTE, PETITIONER, VS. HON. COURT OF APPEALS AND GERARDO DEYPALUBOS, RESPONDENTS.

G.R. No. 51824. February 07, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Assailed in this petition for review is the Resolution of the respondent Court of Appeals dated 21 March 1979 in C.A.-G.R. No. SP-04866 setting aside its earlier decision therein, promulgated on 6 December 1978, which reversed the decision of the then Court of First Instance (now Regional Trial Court) of Iloilo City. The latter nullified the Orders of the Secretary of the Department of Agriculture and Natural Resources (DANR) dated 29 August 1969, 20 November 1969 and 21 April 1970, declared binding the Fishpond Lease Agreement (FLA) issued to private respondent and disallowed petitioner from repurchasing from private respondent a portion of the fishery lot located at Dumangas, Iloilo, covered by the FLA.

The pleadings of the parties and the decision of the respondent Court disclose the factual antecedents of this case.

A fishery lot, encompassing an area of 9.4 hectares and designated as Lot No. 518-A of the Cadastral Survey of Dumangas, Iloilo, was previously covered by Fishpond Permit No. F-2021 issued in the name of Anecita Dionio. Upon Anecita's death, her heirs, petitioner Diamante and Primitivo Dafeliz, inherited the property which they later divided between themselves; petitioner got 4.4 hectares while Dafeliz got 5 hectares. It is the petitioner's share that is the subject of the present controversy. Primitivo Dafeliz later sold his share to private respondent.

On 21 May 1959, petitioner sold to private respondent his leasehold rights over the property in question for P8,000.00 with the right to repurchase the same within three (3) years from said date.

On 16 August 1960, private respondent filed an application with the Bureau of Fisheries, dated 12 July 1960, for a fishpond permit and a fishpond lease agreement over the entire lot, submitting therewith the deeds of sale executed by Dafeliz and the petitioner.

Pressed by urgent financial needs, petitioner, on 17 October 1960, sold all his remaining rights over the property in question to the private respondent for P4,000.00.

On 25 October 1960, private respondent, with his wife's consent, executed in favor of the petitioner an Option to Repurchase the property in question within ten (10) years from said date, with a ten-year grace period.

Private respondent submitted to the Bureau of Fisheries the definite deed of sale; he did not, however, submit the Option to Repurchase.

Thereafter, on 2 August 1961, the Bureau of Fisheries issued to private respondent Fishpond Permit No. 4953-Q; on 17 December 1962, it approved FLA No. 1372 in the latter's favor.

On 11 December 1963, petitioner, contending that he has a valid twenty-year option to repurchase the subject property, requested the Bureau of Fisheries to nullify FLA No. 1372 insofar as the said property is concerned. On

18 December 1964, his letter-complaint was dismissed. Petitioner then sought a reconsideration of the dismissal; the same was denied on 29 April 1965. His appeal to the Secretary of the DANR was likewise dismissed on 30 October 1968. Again, on 20 November 1968, petitioner sought for a reconsideration; this time, however, he was successful. On 29 August 1969, the DANR Secretary granted his motion in an Order cancelling FLA No. 1372 and stating, *inter alia*, that:

"Evidently, the application as originally filed, could not be favorably acted upon by reason of the existing right of a third party over a portion thereof. It was only the submission of the deed of absolute sale which could eliminate the stumbling block to the approval of the transfer and the issuance of a permit or lease agreement. It was on the basis of this deed of sale, in fact, the one entitled 'option to repurchase' executed barely a week from the execution of the deed of absolute sale, (which) reverted, in effect, the status of the land in question to what it was after the execution of the deed of sale with right to repurchase; that is, the land was again placed under an encumbrance in favor of a third party. Circumstantially, there is a ground (sic) to believe that the deed of absolute sale was executed merely with the end in view of circumventing the requirements for the approval of the transfer of leasehold rights of Diamante in favor of Deypalubos; and the subsequent execution of the 'Option to Repurchase' was made to assure the maintenance of a vendor a retro's rights in favor of Diamante. There was, therefore, a misrepresentation of an essential or material fact committed by the lessee-appellee (Deypalubos) in his application for the permit and the lease agreement, without which the same could not have been issued." [1]

The Secretary based his action on Section 20 of Fisheries Administrative Order No. 60, the second paragraph of which reads:

"Any and all of the statements made in the corresponding application shall be considered as essential conditions and parts of the permit or lease granted. Any false statements in the application of facts or any alteration, change or modification of any or all terms and conditions made therein shall ipso facto cause the cancellation of the permit or lease."

Private respondent moved for a reconsideration of this last Order arguing that the DANR Secretary's previous Order of 30 October 1968 dismissing petitioner's letter-complaint had already become final on the ground that he (private respondent) was not served a copy of petitioner's 20 November 1968 motion for reconsideration. On 20 November 1969, private respondent's motion for reconsideration was denied; a second motion for reconsideration was likewise denied on 20 April 1970.

On 5 May 1970, private respondent filed with the Court of First Instance of Iloilo City a special civil action for certiorari with preliminary injunction (docketed as Civil Case No. 8209), seeking to annul the Secretary's Orders of 20 April 1970, 20 November 1969 and 29 August 1969 on the ground that the Secretary: (1) gravely abused his discretion in not giving him the opportunity to be heard on the question of whether or not the Option to Repurchase was forged; and (2) has no jurisdiction to set aside FLA No. 1372 as the Order of the Bureau of Fisheries dismissing petitioner's 11 December 1963 letter-complaint had already become final.

After issuing a temporary restraining order and a writ of preliminary injunction, the lower court tried the case jointly with Criminal Case No. 520 wherein both the petitioner and a certain Atty. Agustin Dioquino, the Notary Public who notarized the 25 October 1960 Option to Repurchase, were charged with falsification of a public document.

After due trial, the lower court acquitted the accused in the criminal case and decided in favor of the private respondent in Civil Case No. 8209; the court ruled that: (1) the DANR Secretary abused his discretion in issuing the questioned Orders, (2) petitioner cannot repurchase the property in question as the Option to Repurchase is of doubtful validity, and (3) FLA No. 1372 in the name of private respondent is valid and binding.

Petitioner appealed to the respondent Court which, on 6 December 1978, reversed the decision of the trial court[2] on the ground that no grave abuse of discretion was committed by respondent Secretary inasmuch as private respondent was given the opportunity to be heard on his claim that the Option to Repurchase is spurious, and that the trial court merely indulged in conjectures in not upholding its validity. Said the respondent Court:

"With all the foregoing arguments appellee had exhaustively adduced to show the spuriousness of the deed of 'Option to Repurchase', appellee can hardly complain of not having been given an opportunity to be heard, which is all that is necessary in relation to the requirement of notice and hearing in administrative proceedings. Moreover, appellee never asked for a formal hearing at the first opportunity that he had to do so, as when he filed his first motion for reconsideration. He asked for a formal hearing only in his second motion for reconsideration evidently as a mere afterthought, upon realizing that his arguments were futile without proofs to support them.

The only remaining question, therefore, is whether the Secretary acted with grave abuse of discretion in giving weight to the alleged execution by appellee of the deed of Option to Repurchase, on the basis of the xerox copy of said deed as certified by the Notary Public, Agustin Dioquino.

With such documentary evidence duly certified by the Notary Public, which is in effect an affirmation of the existence of the deed of 'Option of Repurchase' (sic) and its due execution, the Secretary may not be said to have gravely abused his discretion in giving the document enough evidentiary weight to justify his action in applying the aforequoted provisions of Fisheries Adm. Order No. 60. This piece of evidence may be considered substantial enough to support the conclusion reached by the respondent Secretary, which is all that is necessary to sustain an administrative finding of fact (Ortua vs. Encarnacion, 59 Phil. 635; Ang Tibay vs. CIR, 69 Phil. 635; Ramos vs. The Sec. of Agriculture and Natural Resources, et al. L-29097, Jan. 28, 1974, 55 SCRA 330). Reviewing courts do not re-examine the sufficiency of the evidence in an administrative case, if originally instituted as such, nor are they authorized to receive additional evidence that was not submitted to the administrative agency concerned. For common sense dictates that the question of whether the administrative agency abused its discretion in weighing evidence should be resolved solely on the basis of the proof that the administrative authorities had before them and no other (Timbancaya vs. Vicente, L-19100, Dec. 27, 1963, 9 SCRA 852). In the instant case the evidence presented for the first time before the court a quo could be considered only for the criminal case heard jointly with this case.

The lower court's action of acquitting the notary public, Agustin Dioquino, and appellant Diamante in Criminal Case No. 520 for falsification of public document is in itself a finding that the alleged forgery has not been conclusively established. This finding is quite correct considering the admission of the NBI handwriting expert that he cannot make any finding on the question of whether appellee's signature on the deed of 'Option to Repurchase' is forged or not, because of the lack of (sic) specimen signature of appellee for comparative examination. The Secretary may have such signature in the application papers of appellee on file with the former's office upon which to satisfy himself of (sic) the genuineness of appellee's signature. It would be strange, indeed, that appellee had not provided the NBI expert with a specimen of his signature when his purpose was to have an expert opinion that his signature on the questioned document is forged.

On the other hand, as to the signature of his wife, the latter herself admitted the same to be her own. Thus -?

'Q - There is a signature below the typewritten words 'with my marital consent' and above the name Edelina Duyo, whose signature is this?

A - That is my signature. (T.s.n., Crim. Case No. 520, April 5, 1971, p. 14).'

In not finding in favor of the perfect validity of the 'Option to Repurchase', the court a quo merely indulged in conjectures. Thus, believing the testimony of appellee that the latter (sic) could not have executed the deed of option to repurchase after spending allegedly P12,000.00, and that if there was really a verbal agreement upon the execution of the deed of absolute sale, as alleged by appellant, that appellant's right to repurchase, as was

stipulated in the earlier deed of sale, shall be preserved, such agreement should have been embodied in the deed of sale of October 17, 1960 (Exh. D), the court doubted the genuineness of the deed of Option to Repurchase (sic).

It is highly doubtful if appellee had spent P12,000.00 during the period from October 17, 1960 to October 25, 1960 when the deed of option was executed. Likewise, the right to repurchase could not have been embodied in the deed of absolute sale since, as the Secretary of DANR found, the purpose of the deed of absolute sale is to circumvent the law and insure the approval of appellee's application, as with his right to the 4.4 hectares appearing to be subject to an encumbrance, his application would not have been given favorable action.

Above all, the speculation and conjectures as indulged in by the court a quo cannot outweigh the probative effect of the document itself, a certified xerox copy thereof as issued by the Notary Public, the non-presentation of the original having been explained by its loss, as was the testimony of the same Notary Public, who justly won acquittal when charged with falsification of public document at the instance of appellee. The fact that the spaces for the document number, page and book numbers were not filled up in the photostatic copy presented by the representative of the Bureau of Records Management does not militate against the genuineness of the document. It simply means that the copy sent to the said Bureau happens to have those spaces unfilled up (sic). But the sending of a copy of the document to the Bureau of Records Management attests strongly to the existence of such document, the original of which was duly executed, complete with the aforesaid data duly indicated thereon, as shown by the xerox copy certified true by the Notary Public.

Indeed, in the absence of positive and convincing proof of forgery, a public instrument executed with the intervention of a Notary Public must be held in high respect and accorded full integrity, if only upon the presumption of the regularity of official functions as is the nature of those of a notary public (*Bautista vs. Dy Bun Chin*, 49 OG 179; *El Hogar Filipino vs. Olviga*, 60 Phil. 17)."

Subsequently, the respondent Court, acting on private respondent's motion for reconsideration, promulgated on 21 March 1979 the challenged Resolution[3] setting aside the earlier decision and affirmed, in toto, the ruling of the trial court, thus:

"x x x the respondent (DANR) Secretary had gone beyond his statutory authority and had clearly acted in abuse of discretion in giving due weight to the alleged option to repurchase whose (sic) genuineness (sic) and due execution had been impugned and denied by petitioner-appellee (*Deypalubos*). While the certified true copy of the option to repurchase may have been the basis of the respondent Secretary in resolving the motion for reconsideration, the Court believes that he should have first ordered the presentation of evidence to resolve this factual issue considering the conflicting claims of the parties. As earlier pointed out, all that was submitted to the Bureau of Fisheries and consequently to the respondent Secretary, was a xerox copy of the questioned document which was certified to by a notary public to be a copy of a deed found in his notarial file which did not bear any specimen of the signatures of the contracting parties. And assuming that a certification made by a notary public as to the existence of a document should be deemed an affirmation that such document actually exists. Nevertheless, (sic) when such claim is impugned, the one who assails the existence of a document should be afforded the opportunity to prove such claim, because, at most, the presumption of regularity in the performance of official duties is merely disputable and can be rebutted by convincing and positive evidence to the contrary."

His motion for reconsideration having been denied, the petitioner filed the instant petition for review.

Petitioner contends that the Rules of Court should not be strictly applied to administrative proceedings and that the findings of fact of administrative bodies, absent a showing of arbitrariness, should be accorded respect.

While the petition has merit, petitioner's victory is hollow and illusory for, as shall hereafter be shown, even as

We reverse the assailed resolution of the respondent Court of Appeals, the questioned decision of the Secretary must, nevertheless, be set aside on the basis of an erroneous conclusion of law with respect to the Option to Repurchase.

The respondent Court correctly held in its decision of 6 December 1978 that the respondent Secretary provided the private respondent sufficient opportunity to question the authenticity of the Option to Repurchase and committed no grave abuse of discretion in holding that the same was in fact executed by private respondent. We thus find no sufficient legal and factual moorings for respondent Court's sudden turnabout in its resolution of 21 March 1979. That private respondent and his wife executed the Option to Repurchase in favor of petitioner on 25 October 1960 is beyond dispute. As determined by the respondent Court in its decision of 6 December 1978, private respondent's wife, Edelina Duyo, admitted having affixed her signature to the said document. Besides, the trial court itself, in Criminal Case No. 520 which was jointly tried with the civil case, acquitted both the petitioner and the notary public, before whom the Option to Repurchase was acknowledged, of the crime of falsification of said document.

We hold, however, that the respondent Secretary gravely erred in holding that private respondent's non-disclosure and suppression of the fact that 4.4 hectares of the area subject of the application is burdened with or encumbered by the Option to Repurchase constituted a falsehood or a misrepresentation of an essential or material fact which, under the second paragraph of Section 29 of Fisheries Administrative Order No. 60 earlier quoted, "shall ipso facto cause the cancellation of the permit or lease." In short, the Secretary was of the opinion that the Option to Repurchase was an encumbrance on the property which affected the absolute and exclusive character of private respondent's ownership over the 4.4 hectares sold to him by petitioner. This is a clear case of a misapplication of the law on conventional redemption and a misunderstanding of the effects of a right to repurchase granted subsequently in an instrument different from the original document of sale.

Article 1601 of the Civil Code provides:

"Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of article 1616 and other stipulations which may have been agreed upon."

In *Villarica, et al. vs. Court of Appeals, et al.*,^[4] decided on 29 November 1968, or barely seven (7) days before the respondent Court promulgated its decision in this case, this Court, interpreting the above Article, held:

"The right of repurchase is not a right granted the vendor by the vendee in a subsequent instrument, but is a right reserved by the vendor in the same instrument of sale as one of the stipulations of the contract. Once the instrument of absolute sale is executed, the vendor can no longer reserve the right to repurchase, and any right thereafter granted the vendor by the vendee in a separate instrument cannot be a right of repurchase but some other right like the option to buy in the instant case. x x x."

In the earlier case of *Ramos, et al. vs. Icasiano, et al.*,^[5] decided in 1927, this Court had already ruled that "an agreement to repurchase becomes a promise to sell when made after the sale, because when the sale is made without such an agreement, the purchaser acquires the thing sold absolutely, and if he afterwards grants the vendor the right to repurchase, it is a new contract entered into by the purchaser, as absolute owner already of the object. In that case the vendor has not reserved to himself the right to repurchase."

In *Vda. de Cruz, et al. vs. Carriaga, et al.*,^[6] this Court found another occasion to apply the foregoing principle.

Hence, the Option to Repurchase executed by private respondent in the present case, was merely a promise to sell, which must be governed by Article 1479 of the Civil Code which reads as follows:

"ART. 1479. - A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price."

A copy of the so-called Option to Repurchase is neither attached to the records nor quoted in any of the pleadings of the parties. This Court cannot, therefore, properly rule on whether the promise was accepted and a consideration distinct from the price, supports the option. Undoubtedly, in the absence of either or both acceptance and separate consideration, the promise to sell is not binding upon the promisor (private respondent).

"A unilateral promise to buy or sell is a mere offer, which is not converted into a contract except at the moment it is accepted. Acceptance is the act that gives life to a juridical obligation, because, before the promise is accepted, the promisor may withdraw it at any time. Upon acceptance, however, a bilateral contract to sell and to buy is created, and the offeree ipso facto assumes the obligations of a purchaser; the offeror, on the other hand, would be liable for damages if he fails to deliver the thing he had offered for sale.

x x x

x x x The contract of option is a separate and distinct contract from the contract which the parties may enter into upon the consummation of the option, and a consideration for an optional contract is just as important as the consideration for any other kind of contract. Thus, a distinction should be drawn between the consideration for the option to repurchase, and the consideration for the contract of repurchase itself."[7]

Even if the promise was accepted, private respondent was not bound thereby in the absence of a distinct consideration.[8]

It may be true that the foregoing issues were not squarely raised by the parties. Being, however, intertwined with the issue of the correctness of the decision of the respondent Secretary and, considering further that the determination of said issues is essential and indispensable for the rendition of a just decision in this case, this Court does not hesitate to rule on them.

In *Hernandez vs. Andal*,[9] this Court held:

"If the appellants' assignment of error be not considered a direct challenge to the decision of the court below, we still believe that the objection takes a narrow view of practice and procedure contrary to the liberal spirit which pervades the Rules of Court. The first injunction of the new Rules (Rule 1, section 2) is that they 'shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding.' In line with the modern trends of procedure, we are told that, 'while an assignment of error which is required by law or rule of court has been held essential to appellate review, and only those assigned will be considered, there are a number of cases which appear to accord to the appellate court a broad discretionary power to waive the lack of proper assignment of errors and consider errors not assigned. And an unassigned error closely related to an error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error.' (4 C.J.S., 1734; 3 C.J., 1341, footnote 77). At the least, the assignment of error, viewed in this light, authorizes us to examine and pass upon the decision of the court below."

In *Insular Life Assurance Co., Ltd. Employees Association-NATU vs. Insular Life Assurance Co., Ltd.*,[10] this Court ruled:

"x x x (t)he Supreme Court has ample authority to review and resolve matters not assigned and specified as errors by either of the parties in the appeal if it finds the consideration and determination of the same essential and indispensable in order to arrive at a just decision in the case.[11] This Court, thus, has the authority to

waive the lack of proper assignment of errors if the unassigned errors closely relate to errors properly pinpointed out or if the unassigned errors refer to matters upon which the determination of the questions raised by the errors properly assigned depend.[12]

The same also applies to issues not specifically raised by the parties. The Supreme Court, likewise, has broad discretionary powers, in the resolution of a controversy, to take into consideration matters on record which the parties fail to submit to the Court as specific questions for determination.[13] Where the issues already raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them. In brief, in those cases wherein questions not particularly raised by the parties surface as necessary for the complete adjudication of the rights and obligations of the parties and such questions fall within the issues already framed by the parties, the interests of justice dictate that the Court consider and resolve them."

WHEREFORE, the instant petition is GRANTED. The Resolution of respondent Court of Appeals of 21 March 1979 in C.A.-G.R. No. SP-04866 and the Decision of the trial court in Civil Case No. 8209, insofar as they declare, for the reasons therein given, Fishpond Lease Agreement No. 1372, valid and binding, are hereby REVERSED and SET ASIDE. The challenged Orders of the respondent Secretary of Agriculture and Natural Resources of 29 August 1969, 20 November 1969 and 21 April 1970 are likewise REVERSED and SET ASIDE and Fishpond Lease Agreement No. 1372 is ordered REINSTATED.

No pronouncement as to costs.

IT IS SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Rollo, 31.

[2] Rollo, 27-38; penned by then Associate Justice Pacifico P. De Castro, concurred in by Associate Justices Samuel F. Reyes and Carlos Sundiam.

[3] Rollo, 41-49; penned by Associate Justice Samuel F. Reyes, concurred in by Associate Carlos Sundiam and Isidro C. Borromeo.

[4] 26 SCRA 189.

[5] 51 Phil. 343.

[6] 174 SCRA 330.

[7] TOLENTINO, Civil Code of the Philippines vol. V. 1959 ed. 20-21.

[8] Mendoza vs. Comple, 15 SCRA 162; Montilla vs. Court of Appeals, et al., 161 SCRA 167.

[9] 78 Phil. 196.

[10] 76 SCRA 50; see also Philippine Commercial and Industrial Bank vs. Court of Appeals, 159 SCRA 24.

[11] Citing Miguel and Miguel vs. Court of Appeals, et al., 29 SCRA 760.

[12] Citing Paterno, et al. vs. Jao Yan, 1 SCRA 631; Saura Import & Export Co., Inc. vs. Phil. International Surety Co., Inc., et al., 8 SCRA 143.

[13] Citing *Baquiran vs. Court of Appeals, et al.*, 2 SCRA 873.

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