

**HEIRS OF ENRIQUE ZAMBALES AND JOAQUINA ZAMBALES,
PETITIONERS, VS. THE COURT OF APPEALS, NIN BAY MINING
CORPORATION, ANGELA C. PREYSLER AND JOAQUIN B. PREYSLER,
RESPONDENTS.**

G.R. No. 54070. February 28, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The Decision of respondent Court of Appeals in the case entitled "Enrique Zambales and Joaquina Zambales, Plaintiffs-appellees vs. Atty. Perfecto de los Reyes, Nin Bay Mining Corporation and Joaquin B. Preysler, Defendants-appellants" (CA-G.R. No. 59386-R), setting aside the judgment of the Court of First Instance of Palawan in Civil Case No. 678 for Annulment of a Deed of Sale with Recovery of Possession and Ownership with Damages", is the subject of this Petition for Review on Certiorari.

Joaquin B. Preysler is now deceased and was substituted by Angela C. Preysler, his widow.

Atty. Perfecto de los Reyes was originally a defendant in Civil Case No. 678 but he did not appeal from the Decision of the lower Court.

The Zambales spouses (Zambaleses, for brevity) were the homestead patentees of a parcel of land with an area of 17.8474 hectares situated in the Municipality of Del Pilar, Roxas, Palawan, covered by Original Certificate of Title No. G-1193 of the Registry of Deeds for the Province of Palawan, issued pursuant to Homestead Patent No. V-59502 dated September 6, 1955.

Claiming that the Nin Bay Mining Corporation (Corporation, for short) had removed silica sand from their land and destroyed the plants and other improvements thereon, the Zambaleses instituted, on November 10, 1958, Civil Case No. 316 before the Court of First Instance of Palawan claiming damages in the total sum of P48,000.00.

The Corporation denied having caused any damages and claimed that it had excavated and extracted silica sand only from its own mining claims and on which it had mining lease contracts with the Philippine Government.

On October 29, 1959, the Zambaleses, duly assisted by their counsel, Atty. Perfecto delos Reyes, and the Corporation, entered into a Compromise Agreement, the portions of which, pertinent to this case, read:

"1. DEFENDANT shall pay the PLAINTIFFS a rental of TWENTY (P20.00) PESOS per hectare per year from September 9, 1955 to September 30, 1960, or a total rental price of ONE THOUSAND SEVEN HUNDRED EIGHTY-FOUR PESOS AND SEVENTY-FOUR CENTAVOS (P1,784.74), Philippine currency, in lieu of all damages. . . .

"2. The payment to the PLAINTIFFS of the above-mentioned rental price shall be considered full, absolute and final payment and indemnity for all the alleged damages to PLAINTIFFS' property and its improvements, or any other actual, moral, exemplary or other damages that PLAINTIFFS may have suffered or will suffer in

connection with the mining operations of DEFENDANT on the property in question, which property, by virtue of the terms of this Agreement shall be used by DEFENDANT as occupant thereof until September 30, 1960.

"3. PLAINTIFFS hereby agree and bind themselves to sell, transfer and convey, and DEFENDANT or its assigns, qualified to acquire or hold lands of the public domain, hereby agrees to purchase and pay for, the aforesaid property of the PLAINTIFFS, containing an area of 17.8474 hectares, situated in the Municipality of Del Pilar, Roxas, Palawan, and covered by Original Certificate of Title No. G-1193 of the Registry of Deeds of Palawan, at the fixed selling price of FIVE HUNDRED (P500.00) PESOS per hectare or a total purchase price of EIGHT THOUSAND NINE HUNDRED TWENTY THREE PESOS and SEVENTY CENTAVOS (P8,923.70), Philippine currency. The contract to purchase and sell herein provided for, shall be reciprocally demandable and enforceable by the parties hereto on September 10, 1960. PLAINTIFFS hereby irrevocably constitute and appoint DEFENDANT, its successors and/or assigns their true and lawful attorney-in-fact with full power and authority to sell, transfer and convey on September 10, 1960 or at any time thereafter the whole or any part of PLAINTIFFS' property hereinabove mentioned to the DEFENDANT, its successors and/or assigns, or to any third party, and to execute and deliver all instruments and documents whatsoever necessary for the purpose, and all acts done and to be done by DEFENDANT, its successors and/or assigns in conformity with the powers herein granted are hereby ratified and confirmed by the PLAINTIFFS. . . .

"4. In consideration of the payment of the amount of P1,784.74 by DEFENDANT, and of other good and valuable consideration, PLAINTIFFS, jointly and severally, do hereby forever release, fully and completely, said DEFENDANT, its successors and/or assigns in interest, from any and all liabilities, whether arising from past, present or future excavation or removal of silica sand from the property in question or otherwise, and from all the other claims against the DEFENDANT contained in their Complaint in Civil Case No. 316 of the Court of First Instance of Palawan."[1]

The Trial Court rendered judgment on October 29, 1959 based on the Compromise Agreement. The document was duly annotated an OCT No. G-1193 (Exhibit "A") the day after, or on October 30, 1959 (Exhibit "10-A").

On September 10, 1960, the Corporation, as attorney-in-fact for the Zambaleses, as Vendors, sold the disputed property to Joaquin B. Preysler for the sum of P8,923.70 fixed in the Compromise Agreement (Exhibit "11"). Transfer Certificate of Title No. T-970 was issued in the vendee's name on December 19, 1960 (Exhibit "12").

The Deed of Sale to Preysler contained the following proviso:

"The VENDORS hereby represent and warrant that the five-year restrictive period on alienation of lands acquired under the homestead provisions of Commonwealth Act No. 141, as amended, otherwise known as the Public Land Act, has already expired, the date of issuance of the herein homestead patent to the VENDORS as aforesaid being September 6, 1955 as shown in Original Certificate of Title No. G-1193."

On October 18, 1960, the Secretary of Agriculture and Natural Resources approved the sale to Preysler of the subject property (Exhibit "13").

On December 6, 1969, or ten (10) years after the Trial Court's Decision based on the Compromise Agreement, and nine (9) years after the sale to Preysler, the Zambaleses filed Civil Case No. 678 before the Court of First Instance of Palawan for "Annulment of a Deed of Sale with Recovery of Possession and Ownership with Damages". They contended that it was their lawyer who prevailed upon them to sign the Compromise Agreement; that they are unschooled and did not understand the contents thereof; that they were made to understand that they would receive the sum of P10,700.00, only as payment for damages sustained by the land from 1955 to 1960; that through fraud, deceit and manipulation by their lawyer and the Corporation, they were made to agree to appoint the Corporation as their attorney-in-fact with full power and authority to sell; that it was never their intention to sell the land; that in September 1969, they were surprised to learn that the land was already titled in the name of

Joaquin B. Preysler; that the land was acquired and registered in the latter's name through fraud and deceit. The Zambaleses then prayed that the deed of sale and the title in Preysler's name be annulled on the ground of fraud and that the property be reconveyed to them.

In their Answer, the Corporation denied all allegations that the Zambaleses had signed the Compromise Agreement without understanding the contents thereof, the truth being that it was read to them by their counsel, Atty. Perfecto de los Reyes, who explained thoroughly the full implication and legal consequence of each and every provision, which was then submitted and approved by then Presiding Judge Juan L. Bocar; and that the Corporation had sold the property to Preysler as a duly constituted attorney-in-fact pursuant to the Compromise Agreement.

After trial, the lower Court rendered judgment in favor of the Zambaleses, the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants as follows:

- 1) That the deed of sale executed by Nin Bay Mining Corporation through its president, to Joaquin B. Preysler is hereby declared null and void;
- 2) That the defendant Joaquin B. Preysler is hereby ordered to reconvey the land subject matter of this litigation to the plaintiffs;
- 3) That the defendants Nin Bay Mining Corporation and Joaquin B. Preysler shall pay the plaintiffs the sum of P85,000.00 as actual damages plus the legal rate of interest from September 30, 1960 up to the time the amount is fully paid;
- 4) That the defendants to pay the sum of FIVE THOUSAND (P5,000.00) PESOS as attorneys fees; and
- 5) The defendants to pay the costs."

On Appeal by the Corporation, the Court of Appeals reversed the Trial Court, after finding that the alleged fraud or misrepresentation in the execution of the Compromise Agreement had not been substantiated by evidence.

The case is now before us on review.

The controversy revolves around the issue of due execution and validity of the Compromise Agreement (Exhibit "8") dated October 29, 1959, and of the subsequent Deed of Sale (Exhibit "11"), dated 10 September 1960.

I

The general rule is that whoever alleges fraud or mistake must substantiate his allegation, since the presumption is that a person takes ordinary care of his concerns and that private transactions have been fair and regular. The rule admits of an exception in Article 1332 of the Civil Code, which provides:

"When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former."

For the proper application of said provision, it has first to be established convincingly that the illiterate or the party at a disadvantage could not read or understand the language in which the contract was written.[2] The evidence discloses that the spouses Zambales are unschooled. They cannot read, speak, much less understand English or write, except to sign their names.[3] The Zambaleses alleged in their Complaint that the Compromise Agreement (Exhibit "8") was executed through fraud by the Corporation and by their counsel Atty. Perfecto de los Reyes, whom they included as a defendant. The burden of proof, therefore, shifted to the Corporation to show that

the compromise agreement had been fully explained to the plaintiffs.

In refuting the allegation that plaintiffs were misled into signing the compromise agreement, their former counsel, Atty. Perfecto de los Reyes, and the notary, Atty. Salomon Reyes, a lawyer for Nin Bay Mining Corporation, established that the terms and conditions of the Compromise Agreement were thoroughly explained and fully understood by the spouses Zambales in accordance with their proposal to sell the land at P500.00 a hectare; that before the signing of the Compromise Agreement, the notary requested Atty. de los Reyes to read and explain each and every provision to the spouses, and with the help of Ricardo Nuñala, Atty. de los Reyes did so in their dialect (Cuyuno). Thereafter, the parties went to Judge Juan Bocar, who was assured that the spouses Zambales understood and signed the Compromise Agreement.[4]

We sustain the finding of the Court of Appeals that fraud and misrepresentation did not vitiate petitioners' contents to the Agreement when it observed:

"Taking into account the foregoing observations, this Court is not convinced that indeed appellees were victims of a fraudulent scheme employed upon them by their former counsel by reason of their alleged illiteracy and ignorance. The evidence discloses that appellees, although unschooled, are intelligent, well-informed and intelligent people. They are not the kind of persons who could easily be fooled of their rights and interests. Even as commented by court a quo, which had a chance to observe the demeanor of the witness, it had no observation that the witness, Joaquina Zambales, is ignorant. As correctly observed by appellants, appellees 'are political leaders and chief campaigners; they speak in the platform during political rallies; and they are widely travelled' (p. 28, Appellants' Brief). As a matter of fact they are knowledgeable of the right connections in the government. They had approached former Sen. Rogelio de la Rosa, no less, the congressman and the governor. Even the lawyers they have retained previous to their present counsel are the Padilla Law Office and the Diokno Law Office. It is common knowledge that these law offices are among the established law offices in Manila. It is far convincing that an ignorant couple would have knowledge of these law firms. All these are obvious manifestations of their being well-informed and the way they have conducted their way of living apparently is inconsistent with the plea of being illiterate and/or ignorant. They cannot capitalize on the fact that they are uneducated only because they had no formal schooling inasmuch as one's knowledge of the facts of life is not dependent on whether one had formal schooling or not and it does not necessarily follow always that if one is unschooled he is ignorant.

Furthermore, when plaintiffs-appellees signed the questioned compromise agreement they were duly assisted and represented by their counsel, Atty. de los Reyes. When Atty. de los Reyes testified in court he categorically declared that it was to the best interest of his clients that they compromise Civil Case No. 316. This declaration finds support in Joaquina Zambales' testimony wherein she stated thus:

ATTY. SEMBRANO:

Q.

Except for this present case, would you say to the Court that Atty. de los Reyes extended to you legal assistance to your satisfaction?

A. Yes, sir, he is good to us.

.....

Q. So these people never gave their services to you?

A.

Nobody was able to help us except Atty. de los Reyes. (Tsn., pp. 29, 31 & 32, June 19, 1974)

. . . Thus, it having been established that appellees could not have been misled by their former counsel into signing the compromise agreement and taking into account the acts of the appellees and their children subsequent to the execution of the compromise agreement perforce the court a quo erred in not giving credence to the clear and convincing testimonies of Atty. Perfecto de los Reyes and Atty. Salomon Reyes anent the execution of the compromise agreement."^[5]

However, although we find that the Zambaleses were not misled into signing the Compromise Agreement, we hold that there has been violation of the Public Land Act. The evidence on record shows that the land in question was awarded to the Zambaleses as a homestead on September 6, 1955 (Exhibit "A"). Before us, the Zambaleses now argue that the Compromise Agreement executed on October 29, 1959 is in violation of the Public Land Act, which prohibits alienation and encumbrance of a homestead lot within five years from the issuance of the patent.^[6]

We sustain that contention. The fact that the issue was not raised in the Courts below is not a deterrent factor considering that the question affects the validity of the agreement between the parties. The Supreme Court has the authority to review matters even if they are not assigned as errors in the appeal, if it is found that their consideration is necessary in arriving at a just decision of the case.^[7] Moreover, a party may change his legal theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.^[8] In the case at bar it is indisputable that Homestead Patent No. V-59502 was issued on September 6, 1955 as shown in Original Certificate of Title No. 1193 (Exhibit "A").

The sale of a homestead lot within the five-year prohibitory period is illegal and void. The law does not distinguish between executory and consummated sales.

"The law prohibiting any transfer or alienation of homestead land within five years from the issuance of the patent does not distinguish between executory and consummated sales; and it would hardly be in keeping with the primordial aim of this prohibition to preserve and keep in the family of the homesteader the piece of land that the state had gratuitously given to them, to hold valid a homestead sale actually perfected during the period of prohibition but with the execution of the formal deed of conveyance and the delivery of possession of the land sold to the buyer deferred until after the expiration of the prohibitory period, purposely to circumvent the very law that prohibits and declares invalid such transaction to protect the homesteader and his family."^[9]

In the compromise agreement executed between the parties, (1) the Zambaleses promised to sell and the Corporation agreed to buy the disputed lot at P500.00 per hectare, the contract to be reciprocally demandable and enforceable on September 10, 1960; and as a substitute procedure, (2) an irrevocable agency was constituted in favor of the Corporation as attorney-in-fact to sell the land to any third person on September 10, 1960 or any time thereafter.

Clearly, the bilateral promise to buy and sell the homestead lot at a price certain, which was reciprocally demandable,^[10] was entered into within the five-year prohibitory period and is therefore, illegal and void. Further, the agency to sell the homestead lot to a third party was coupled with an interest inasmuch as a bilateral contract was dependent on it and was not revocable at will by any of the parties.^[11] To all intents and purposes, therefore, there was an actual executory sale perfected during the period of prohibition except that it was reciprocally demandable thereafter and the agency to sell to any third party was deferred until after the expiration

of the prohibitory period. That "rentals" were ostensibly to be paid during the five-year prohibitory period, and the agency to sell made effective only after the lapse of the said period, was merely a devise to circumvent the prohibition.

To hold valid such an arrangement would be to throw the door wide open to all possible subterfuges that persons interested in homesteads may devise to defeat the legal prohibition against alienation within five years from the issuance of the patent.

We hold, therefore, that the bilateral promise to buy and sell, and the agency to sell, entered into within five years from the date of the homestead patent, was in violation of section 118 of the Public Land Law, although the executed sale was deferred until after the expiration of the five-year prohibitory period.

As the contract is void from the beginning, for being expressly prohibited by law^[12] the action for the declaration of its inexistence does not prescribe.^[13] Being absolutely void, it is entitled to no authority or respect, the sale may be impeached in a collateral proceeding by any one with whose rights and interest it conflicts. There is no presumption of its validity.^[14] The approval of the sale by the Secretary of Agriculture and Natural Resources after the lapse of five years from the date of the patent would neither legalize the sale.^[15]

The homestead in question should be returned to the Zambaleses, petitioners herein, who are, in turn, bound to restore to the Corporation the sum of P8,923.70 as the price thereof. The actual damages awarded by the Trial Court of P85,000.00 have not been adequately substantiated. Moreover, under the agreement, the total rental price of P1,784.74 was intended to be "in lieu of all damages, or any other actual, moral, exemplary or other damages."

This is without prejudice to the corresponding action on the part of the State for reversion of the property and its improvements, if any, under Section 124 of the Public Land Act.^[16]

WHEREFORE, the judgment under review is hereby REVERSED, and another one entered (1) declaring null and void a) the bilateral promise to buy and sell entered into between Enrique Zambales and Joaquina Zambales, on the one hand, and the Nin Bay Mining Corporation on the other, and b) the sale executed by Nin Bay Mining Corporation in favor of Joaquin B. Preysler; (2) ordering Angela C. Preysler to reconvey the land subject matter of this litigation to petitioners upon refund by the latter to the Nin Bay Mining Corporation of the sum of P8,923.70, all expenses for the reconveyance to be borne by private respondents; (3) ordering Nin Bay Mining Corporation to pay rentals to petitioners at the price of P20.00 per hectare per year from December 6, 1969, the date of the institution of the Complaint, till the date that possession is turned over to petitioners; and (4) ordering the Register of Deeds for the Province of Palawan to cancel Transfer Certificate of Title No. T-970 of his Registry, and reissue to the Heirs of Enrique Zambales and Joaquina Zambales the title to the homestead in question.

Let a copy of this Decision be served on the Solicitor General.

No costs.

SO ORDERED.

Teehankee (Chairman), Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

[1] Annex "E", pp. 88-90, Rollo.

[2] *Bunyi vs. Reyes*, 39 SCRA 504 (1971).

[3] T.s.n., February 23, 1972, p. 18; t.s.n., January 8, 1973, pp. 4, 20 & 26; t.s.n., June 19, 1974, p. 30.

- [4] T.s.n., July 28, 1975, pp. 23-27; Deposition of Atty. Salomon F. Reyes (Exhibit "18"), pp. 27-33.
- [5] Pp. 61-63, Rollo.
- [6] Sec. 118, Commonwealth Act No. 141, as amended.
- [7] Saura Import & Export Co., Inc. vs. Phil. International Surety Co., Inc., 8 SCRA 143 (1963); Miguel vs. Court of Appeals, 29 SCRA 760 (1969).
- [8] Lianga Lumber Company vs. Lianga Timber Co., Inc., 76 SCRA 197 (1977).
- [9] Manzano vs. Ocampo, 1 SCRA 691, 697 (1961).
- [10] Article 1479, Civil Code.
- [11] Article 1927, *ibid.*
- [12] Article 1409, *ibid.*
- [13] Article 1410, *ibid.*
- [14] Inton vs. Quintana, 81 Phil. 97 (1948).
- [15] Santander vs. Villanueva, 103 Phil. 1 (1958); Cadiz vs. Nicolas, 102 Phil. 1032 (1958); cited in Manzano vs. Ocampo, 1 SCRA 691 (1961).
- [16] Sec. 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State.

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