

[G.R. No. 129864, August 29, 2000]

**ALFREDO P. ROSETE, OSCAR P. MAPALO AND CHITO P. ROSETE,
PETITIONERS, VS. COURT OF APPEALS, JULIANO LIM AND LILIA
LIM, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for *certiorari* and prohibition seeking the reversal of respondent Court of Appeals' October 30, 1996 Decision^[1] which affirmed the trial court's denial of petitioner's Motion to Dismiss Civil Case No. Q95-25803 for alleged lack of jurisdiction due to improper venue and lack of cause of action.^[2] Also challenged is respondent Court of Appeals' May 9, 1997 Resolution denying petitioners' Motion for Reconsideration.^[3]

It appears that on August 12, 1994, private respondents entered into a Contract to Buy and Sell with the AFP Retirement and Separation Benefits System (hereinafter referred to as AFP-RSBS) whereby they purchased parcels of land located in Bo. Camorong, Abra de Ilog, Occidental Mindoro, covered by eleven (11) individual certificates of title and with an aggregate area of four million two hundred thousand (4,200,000) square meters. The sale was for a total purchase price of Six Million Pesos (P6,000,000.00).

Meanwhile, petitioner Oscar Mapalo, who alleges to have brokered the sale of the properties to private respondents, obtained from the latter an authority to sell the subject properties. Petitioner Mapalo offered the properties to petitioner Alfredo P. Rosete for the amount of Twenty Five Millions Pesos (P25,000,000.00). On October 11, 1995, private respondent Juliano Lim, through their lawyer, Victoria Piñera, executed a Deed of Assignment transferring to petitioner Alfredo P. Rosete their rights under the Contract to Buy and Sell with AFP-RSBS. A supplemental Memorandum of Agreement was entered into by the parties whereby the consideration for the assignment was fixed at Twenty Five Million Pesos (P25,000,000.00), payable as follows: (1) the amount of P2,944,929.11 was to be paid directly to AFP-RSBS to settle the outstanding balance of private respondents; and (2) the remaining P22,055,070.89 was to be paid to private respondents thru a check postdated October 31, 1995. Accordingly, petitioner Alfredo Rosete delivered to private respondents Bank of the Philippine Islands Check No. 369888, in the stipulated date and amount, together with a bank certification issued by the Bank of the Philippine Islands to the effect that petitioner Chito P. Rosete, petitioner Alfredo P. Rosete's brother, had executed an undertaking and instruction to release from his current account the amount covered by the check upon presentation of title of the subject parcels of land in his name.

While these transactions were taking place, petitioner Mapalo bought out petitioner Rosete's rights and interests to the transaction and on October 16, 1995, sold the same property to Espreme Realty Development Corporation (hereinafter referred to

as Espreme Realty), through its representative, Magdalena Lontok-Barnaby, for the price of One Hundred Fifty Million Pesos (P150,000,000.00). Espreme Realty, however, was unable to fully pay the purchase price, leaving an unpaid balance of One Hundred Eighteen Million Five Hundred Thousand Pesos (P118,500,000.00). Petitioners thus filed a complaint against Lontok-Barnaby and others with the Criminal Investigation Service.

Petitioners claim that private respondents were aware of this side agreement and that they knew that the funding of the issued check was dependent on the payment due from Espreme Realty. Yet, on November 10, 1995, private respondents proceeded to deposit the check issued to them by petitioner Chito P. Rosete for the account of petitioner Alfredo P. Rosete. Expectedly, the check was dishonored for being drawn against insufficient funds.

Private respondent then sent a letter to petitioner Alfredo P. Rosete formally notifying him that their Deed of Assignment was automatically revoked and demanding the payment of Five Million Pesos (P5,000,000.00) by way of liquidated damages.

It appears that petitioner Mapalo also brokered the sale by AFP-RSBS of the same properties to Espreme Realty sometime in November, 1995 for which reason title to the properties had been transferred to the latter's name.

These circumstances led private respondents to file with the Regional Trial Court of Quezon City, on December 5, 1995, a complaint against petitioners, AFP-RSBS, Espreme Realty, Bank of the Philippine Islands and the Register of Deeds of Mindoro Occidental, for Annulment and Specific Performance with Damages.^[4] In their Complaint, private respondents sought (a) the annulment of the Deed of Sale by AFP-RSBS in favor of Espreme Realty; (b) the annulment of titles over the subject properties in the name of Espreme Realty; (c) to compel AFP-RSBS and Espreme Realty to execute the necessary documents to restore private respondents' ownership and title to the subject properties; (d) to have the Register of Deeds of Occidental Mindoro cancel the titles in Espreme Realty's name and to transfer the same in their name; (e) the payment by petitioner Alfredo P. Rosete of P5,000,000.00 in liquidated damages; and (f) the payment by all defendants of stated actual, moral and exemplary damages, attorney's fees, litigation expenses and costs of suit.

Instead of filing an answer, petitioners filed a Motion to Dismiss^[5] on January 18, 1996, on the ground of lack of jurisdiction over the subject action or suit and/or improper venue. According to petitioners, actions affecting title to, or for recovery of possession of real property shall be commenced and tried in the province where the property or any part thereof lies; and since the properties subject of the suit are located in Occidental Mindoro, the complaint was dismissible for lack of jurisdiction and/or improper venue.

Petitioners' Motion to Dismiss was denied by the trial court in its Order dated March 12, 1996.^[6] According to the trial court, the provision in the Contract to Buy and Sell between private respondents and AFP-RSBS, setting venue of any disputes thereunder to the courts of Quezon City, is binding upon petitioners who derived their rights, as assignees, therefrom. It also rejected the argument of lack of cause of action by holding that this does not appear indubitable from the face of the