

## FIRST DIVISION

[ G.R. No. 186014, June 26, 2013 ]

**ALI AKANG, PETITIONER, VS. MUNICIPALITY OF ISULAN,  
SULTAN KUDARAT PROVINCE, REPRESENTED BY ITS MUNICIPAL  
MAYOR AND MUNICIPAL VICE MAYOR AND MUNICIPAL  
COUNCILORS/KAGAWADS, RESPONDENT.**

### D E C I S I O N

**REYES, J.:**

This case was originally filed as a petition for certiorari under Rule 65 of the Rules of Court. In the Court's Resolution dated March 9, 2009, however, the petition was treated as one for review under Rule 45.<sup>[1]</sup> Assailed is the Decision<sup>[2]</sup> dated April 25, 2008 and Resolution<sup>[3]</sup> dated October 29, 2008 of the Court of Appeals Mindanao Station (CA) in CA-G.R. CV No. 00156, which reversed the Judgment<sup>[4]</sup> dated January 14, 2004 of the Regional Trial Court (RTC) of Isulan, Sultan Kudarat, Branch 19 in Civil Case No. 1007 for Recovery of Possession of Subject Property and/or Quieting of Title thereon and Damages.

#### The Facts

Ali Akang (petitioner) is a member of the national and cultural community belonging to the Maguindanaon tribe of Isulan, Province of Sultan Kudarat and the registered owner of Lot 5-B-2-B-14-F (LRC) Psd 1100183 located at Kalawag III, Isulan, Sultan Kudarat, covered by Transfer Certificate of Title (TCT) No. T-3653,<sup>[5]</sup> with an area of 20,030 square meters.<sup>[6]</sup>

Sometime in 1962, a two-hectare portion of the property was sold by the petitioner to the Municipality of Isulan, Province of Sultan Kudarat (respondent) through then Isulan Mayor Datu Ampatuan under a Deed of Sale executed on July 18, 1962, which states:

**"That for and in consideration of the sum of THREE THOUSAND PESOS ([P]3,000.00), Philippine Currency, value to be paid and deliver to me, and of which receipt of which shall be acknowledged by me to my full satisfaction by the MUNICIPAL GOVERNMENT OF ISULAN, represented by the Municipal Mayor, Datu Sama Ampatuan, hereinafter referred to as the VENDEE, I hereby sell, transfer, cede, convey and assign as by these presents do have sold, transferred, ceded, conveyed and assigned, an area of TWO (2) hectares, more or less, to and in favor of the MUNICIPAL GOVERNMENT OF ISULAN, her (sic) heirs, assigns and administrators to have and to hold forever (sic) and**

definitely, which portion shall be utilized purposely and exclusively as a GOVERNMENT CENTER SITE x x x[.]”<sup>[7]</sup>

The respondent immediately took possession of the property and began construction of the municipal building.<sup>[8]</sup>

Thirty-nine (39) years later or on October 26, 2001, the petitioner, together with his wife, Patao Talipasan, filed a civil action for Recovery of Possession of Subject Property and/or Quieting of Title thereon and Damages against the respondent, represented by its Municipal Mayor, et al.<sup>[9]</sup> In his complaint, the petitioner alleged, among others, that the agreement was one to sell, which was not consummated as the purchase price was not paid.<sup>[10]</sup>

In its answer, the respondent denied the petitioner’s allegations, claiming, among others: that the petitioner’s cause of action was already barred by laches; that the Deed of Sale was valid; and that it has been in open, continuous and exclusive possession of the property for forty (40) years.<sup>[11]</sup>

After trial, the RTC rendered judgment in favor of the petitioner. The RTC construed the Deed of Sale as a contract to sell, based on the wording of the contract, which allegedly showed that the consideration was still to be paid and delivered on some future date – a characteristic of a contract to sell.<sup>[12]</sup> In addition, the RTC observed that the Deed of Sale was not determinate as to its object since it merely indicated two (2) hectares of the 97,163 sq m lot, which is an undivided portion of the entire property owned by the petitioner. The RTC found that segregation must first be made to identify the parcel of land indicated in the Deed of Sale and it is only then that the petitioner could execute a final deed of absolute sale in favor of the respondent.<sup>[13]</sup>

As regards the payment of the purchase price, the RTC found the same to have not been made by the respondent. According to the RTC, the Municipal Voucher is not a competent documentary proof of payment but is merely evidence of admission by the respondent that on the date of the execution of the Deed of Sale, the consideration stipulated therein had not yet been paid. The RTC also ruled that the Municipal Voucher’s validity and evidentiary value is in question as it suffers infirmities, that is, it was neither duly recorded, numbered, signed by the Municipal Treasurer nor was it pre-audited.<sup>[14]</sup>

The RTC also ruled that the Deed of Sale was not approved pursuant to Section 145 of the Administrative Code for Mindanao and Sulu or Section 120 of the Public Land Act (PLA), as amended. Resolution No. 70,<sup>[15]</sup> which was issued by the respondent, appropriating the amount of P3,000.00 as payment for the property, and Resolution No. 644 of the Provincial Board of Cotabato, which approved Resolution No. 70, cannot be considered proof of the sale as said Deed of Sale was not presented for examination and approval of the Provincial Board.<sup>[16]</sup> Further, since the respondent’s possession of the property was not in the concept of an owner, laches cannot be a valid defense for claiming ownership of the property, which has been registered in the petitioner’s name under the Torrens System.<sup>[17]</sup>

The dispositive portion of the RTC Decision<sup>[18]</sup> dated January 14, 2004 reads:

WHEREFORE, upon all the foregoing considerations, judgment is hereby rendered:

- a. Declaring the contract entered into between the plaintiffs and the defendant, Municipal Government of Isulan, Cotabato (now Sultan Kudarat), represented by its former Mayor, Datu Suma Ampatuan, dated July 18, 1962, as a contract to sell, without its stipulated consideration having been paid; and for having been entered into between plaintiff Ali Akang, an illiterate non-Christian, and the defendant, Municipal Government of Isulan, in violation of Section 120 of C.A. No. 141, said contract/agreement is hereby declared null and void;
- b. Declaring the Deed of Sale (Exh. "1"- "E") dated July 18, 1962, null and void [ab] initio, for having been executed in violation of Section 145 of the Administrative Code of Mindanao and Sulu, and of Section 120 of the Public Land Law, as amended by R.A. No. 3872;
- c. Ordering the defendants to pay plaintiffs, the value of the lot in question, Lot No. 5-B-2-B-14-F (LRC) Psd 110183, containing an area of 20,030 Square Meters, at the prevailing market value, as may [be] reflected in its Tax Declaration, or in the alternative, to agree on the payment of monthly back rentals, retroactive to 1996, until defendants should decide to buy and pay the value of said lot as aforestated, with legal interest in both cases;
- d. Ordering the defendant, Municipal Government of Isulan, Sultan Kudarat, to pay plaintiffs, by way of attorney's fee, the equivalent of 30% of the value that defendants would pay the plaintiffs for the lot in question; and to pay plaintiffs the further sum of [P]100,000.00, by way of moral and exemplary damages;
- e. Ordering the defendants, members of the Sangguniang Bayan of Isulan, Sultan Kudarat, to pass a resolution/ordinance for the appropriation of funds for the payment of the value of plaintiffs' Lot 5-B-2-B-14-F (LRC) Psd-110183, and of the damages herein awarded to the plaintiffs; and
- f. Ordering the defendants to pay the costs of suit.

For lack of merit, the counterclaims of the defendants should be, as it is hereby, dismissed.

IT IS SO ORDERED.<sup>[19]</sup>

By virtue of said RTC decision, proceedings for the Cancellation of Certificate of Title No. T-49349 registered under the name of the respondent was instituted by the petitioner under Miscellaneous Case No. 866 and as a result, the respondent's title over the property was cancelled and a new one issued in the name of the petitioner.

The respondent appealed the RTC Decision dated January 14, 2004 and in the Decision<sup>[20]</sup> dated April 25, 2008, the CA reversed the ruling of the RTC and upheld the validity of the sale. The dispositive portion of the CA Decision provides:

WHEREFORE, the assailed decision dated January 14, 2004 is hereby **REVERSED** and a new one entered, upholding the contract of sale executed on July 18, 1962 between the parties.

SO ORDERED.<sup>[21]</sup>

The CA sustained the respondent's arguments and ruled that the petitioner is not entitled to recover ownership and possession of the property as the Deed of Sale already transferred ownership thereof to the respondent. The CA held that the doctrines of estoppel and laches must apply against the petitioner for the reasons that: (1) the petitioner adopted inconsistent positions when, on one hand, he invoked the interpretation of the Deed of Sale as a contract to sell but still demanded payment, and called for the application of Sections 145 and 146 of the Administrative Code for Mindanao and Sulu, on the other; and (2) the petitioner did not raise at the earliest opportunity the nullity of the sale and remained passive for 39 years, as it was raised only in 2001.<sup>[22]</sup>

The CA also ruled that the Deed of Sale is not a mere contract to sell but a perfected contract of sale. There was no express reservation of ownership of title by the petitioner and the fact that there was yet no payment at the time of the sale does not affect the validity or prevent the perfection of the sale.<sup>[23]</sup>

As regards the issue of whether payment of the price was made, the CA ruled that there was actual payment, as evidenced by the Municipal Voucher, which the petitioner himself prepared and signed despite the lack of approval of the Municipal Treasurer. Even if he was not paid the consideration, it does not affect the validity of the contract of sale for it is not the fact of payment of the price that determines its validity.<sup>[24]</sup>

In addition, the CA noted that there was an erroneous cancellation of the certificate of title in the name of the respondent and the registration of the same property in the name of the petitioner in Miscellaneous Case No. 866. According to the CA, this does not affect in any way the ownership of the respondent over the subject property because registration or issuance of a certificate of title is not one of the modes of acquiring ownership.<sup>[25]</sup>

The petitioner sought reconsideration of the CA Decision, which was denied by the CA in its Resolution<sup>[26]</sup> dated October 29, 2008.

Hence, this petition.

### **Issue**

WHETHER THE PETITIONER IS ENTITLED TO RECOVER OWNERSHIP AND POSSESSION OF THE PROPERTY IN DISPUTE.

Resolution of the above follows determination of these questions: (1) whether the Deed of Sale dated July 18, 1962 is a valid and perfected contract of sale; (2) whether there was payment of consideration by the respondent; and (3) whether the petitioner's claim is barred by laches.

The petitioner claims that the acquisition of the respondent was null and void because: (1) he is an illiterate non-Christian who only knows how to sign his name in Arabic and knows how to read the Quran but can neither read nor write in both

Arabic and English; (2) the respondent has not paid the price for the property; (3) the Municipal Voucher is not admissible in evidence as proof of payment; (4) the Deed of Sale was not duly approved in accordance with Sections 145 and 146 of the Administrative Code of Mindanao and Sulu, and Section 120 of the PLA, as amended; and (4) the property is a registered land covered by a TCT and cannot be acquired by prescription or adverse possession.<sup>[27]</sup> The petitioner also explained that the delayed filing of the civil action with the RTC was due to Martial Law and the Ilaga-Blackshirt Troubles in the then Province of Cotabato.<sup>[28]</sup>

The respondent, however, counters that: (1) the petitioner is not an illiterate non-Christian and he, in fact, was able to execute, sign in Arabic, and understand the terms and conditions of the Special Power of Attorney dated July 23, 1996 issued in favor of Baikong Akang (Baikong); (2) the Deed of Sale is valid as its terms and conditions were reviewed by the Municipal Council of Isulan and the Provincial Board of Cotabato; and (3) the Deed of Sale is a contract of sale and not a contract to sell.<sup>[29]</sup>

### **Ruling of the Court**

The Court finds the petition devoid of merit.

#### **Issue Raised for the First Time on Appeal is Barred by Estoppel**

The petitioner asserts that the Deed of Sale was notarized by Atty. Gualberto B. Baclig who was not authorized to administer the same, hence, null and void. This argument must be rejected as it is being raised for the first time only in this petition. In his arguments before the RTC and the CA, the petitioner focused mainly on the validity and the nature of the Deed of Sale, and whether there was payment of the purchase price. The rule is settled that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice, and due process.<sup>[30]</sup> Accordingly, the petitioner's attack on the validity of the Deed of Sale vis-à-vis its compliance with the 2004 New Notarial Law must be disregarded.<sup>[31]</sup>

#### **The Deed of Sale is a Valid Contract of Sale**

The petitioner alleges that the Deed of Sale is merely an agreement to sell, which was not perfected due to non-payment of the stipulated consideration.<sup>[32]</sup> The respondent, meanwhile, claims that the Deed of Sale is a valid and perfected contract of absolute sale.<sup>[33]</sup>

A contract of sale is defined under Article 1458 of the Civil Code:

By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefore a price certain in money or its equivalent.