Supreme Court E-Library

SECOND DIVISION

(G.R. No. 165005. September 16, 2005)

SPOUSES ROBERTO AND NATIVIDAD VALDERAMA,[1] *petitioners vs.* **SALVACION V. MACALDE, for herself and her brothers and sisters, substituted by FLORDELIZA V. MACALDE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; REASONS.— At the outset, the Court stresses that the issues raised by the petitioners are factual and, under Rule 45 of the Rules of Court, only questions of law may be raised. The reason for the rule is that this Court is not a trier of facts and is not to reexamine and calibrate the evidence of the parties. Furthermore, the findings of the trial court and its conclusion on the basis thereof, as affirmed by the CA, are conclusive on this Court, absent any showing that the trial court ignored, misconstrued or misinterpreted cogent facts and circumstances which, if considered, would change the outcome of the case. We have reviewed the records and find no justification to modify, much less reverse the findings of the court *a quo* and affirmed by the CA.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LEASE; URBAN LANDS; P.D. NO. 1517 OR THE URBAN LAND REFORM LAW; RIGHT OF FIRST REFUSAL GRANTED TO LEGITIMATE TENANTS IN THE PURCHASE OF THE PROPERTY.— Central to the resolution of the first issue is Section 6 of P.D. No. 1517 which grants a right of first refusal to legitimate tenants in the purchase of the property, to wit: SECTION 6. *Land Tenancy in Urban Land Reform Areas.* – Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be

---

[1] Also spelled "Valderrama" in other parts of the records.

Supreme Court E-Library

dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree. The petitioners reiterate the contention that, based on the testimony of Albano, she repeatedly offered to sell the property to the respondents, through Salvacion Macalde, for ₱1,000,000.00, later reduced to ₱800,000.00; because of financial constraints, the respondents rejected the offer. Respondents became interested to purchase the property when they discovered that Albano had sold it to the petitioners for only ₱300,000.00. But then, the trial court gave no credence to the testimony of Albano, and instead gave full probative weight to the testimony of respondent Salvacion Macalde, that she learned only sometime in March 1991 that the petitioners had purchased the property from Albano for ₱300,000.00. Moreover, Albano never adduced any documentary evidence to prove that she had earlier offered to sell the property to the respondents. Indeed, the trial court found it incredible that Albano did not even require the respondents to sign any document rejecting the offer or waiving their right to purchase the property: x x x. Albano even failed to respond to the respondents' letter of November 9, 1990, in which they informed her of their desire to purchase that portion of the property where their house stood. Albano even failed to inform the respondents, shortly after receipt of the said letter, that she had already sold the property to the petitioners. Indeed, Albano even received from the respondents on March 5, 1991 the rentals for the property for July 1990 to March 1991. The respondents had no inkling before March 5, 1991 that the property had already been sold by Albano to the petitioners. It was only on March 14, 1991 that Albano told the respondents, for the first time, that she had already sold the property.

3. **ID.; ID.; ID.; ID.; ID.; LANDOWNERS ARE REQUIRED TO DECLARE TO THE LAND COMMITTEE THE PROPOSAL TO SELL THE PROPERTY; PRE-EMPTIVE RIGHT OF THE GOVERNMENT TO ACQUIRE THE PROPERTY; CASE AT BAR.**— As provided in Section 9 of P.D. No. 1517, Albano was mandated to declare to the Land Management Committee her proposal to sell the property: SECTION 9. *Compulsory Declaration of Sale and Pre-emptive Rights.* – Upon the

Supreme Court E-Library

proclamation by the President of an area as an Urban Land Reform Zone, all landowners, tenants and residents thereupon are required to declare to the Ministry any proposal to sell, lease or encumber lands and improvements thereon, including the proposed price, rent or value of encumbrances and secure approval of said proposed transaction. The Ministry shall have the pre-emptive right to acquire the above-mentioned lands and improvements thereon which shall include, but shall not be limited to lands occupied by tenants as provided for in Section 6 of this Decree. However, Albano failed to comply with the law, and instead executed a deed of absolute sale over the property in favor of the petitioners. Even the government was deprived of its preemptive right to acquire the property.

4. **ID.; ID.; ID.; ID.; ID.; WAIVER OF THE RIGHT OF FIRST REFUSAL MUST BE SUPPORTED BY COMPETENT AND CREDIBLE EVIDENCE; ESSENTIAL ELEMENTS OF A VALID WAIVER OF RIGHTS.**— The contention of the petitioners that the respondents had waived their right of first refusal is not supported by the evidence. For a waiver of rights to exist, three elements are essential: (a) existence of a right; (b) the knowledge of the evidence thereof; and (c) an intention to relinquish such right. In *People v. Bodoso*, this Court held that: It is elementary that the existence of waiver must be positively demonstrated since a waiver by implication cannot be presumed. The standard of waiver requires that it "not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences." There must thus be persuasive evidence of an actual intention to relinquish the right. Mere silence of the holder of the right should not be easily construed as surrender thereof; the courts must indulge every reasonable presumption against the existence and validity of such waiver. . . . Thus, the petitioners and Albano failed to adduce sufficient, competent and credible evidence that the respondents had waived their right of first refusal to buy the property.

5. **ID.; ID.; ID.; ID.; ID.; VIOLATED BY THE PETITIONERS IN CASE AT BAR; AS BETWEEN TWO PARTIES, HE WHO, BY HIS ACTS, CAUSED THE LOSS SHALL BEAR THE SAME.**— The submission of petitioners has no merit. First. Contrary to their contention, the respondents paid rentals for the property to Albano up to March 5, 1991. Second. Even if the petitioners

Supreme Court E-Library

filed a complaint for ejectment against the respondents, the same would not have prospered because Section 6 of P.D. No. 1517 prohibits the latter's eviction from the property. Third. The petitioners and Albano violated P.D. No. 1517 when they clandestinely consummated the sale of the entire property. Worse, they undervalued the property to enable the petitioners to evade the payment of the lawful capital gains tax, registration, and other fees/charges of the sale. The petitioners should not be rewarded by obliging the respondents to pay 12% per annum interest on the aforesaid amount of ₱500,000.00. It is a well-established principle in law that as between two parties, he who, by his acts, caused the loss shall bear the same. *He who comes to court for equity must do so with clean hands.*

APPEARANCES OF COUNSEL

Roxas Roxas & Associates Law Offices for petitioners.
Luis Sementilla, Jr. for respondents.

D E C I S I O N

CALLEJO, SR., *J.*:

Before us is a petition for review on *certiorari* of the Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 48899.

The case stemmed from the following facts:

Years before World War II, the parents of Salvacion V. Macalde rented a lot located at No. 551 Pampanga Street, Tondo, Manila. Their house was constructed on a two-thirds portion of the said property, with an area of 175 square meters. It was in that house that Salvacion was born in 1934. Sometime in 1977, Herminia Albano, who was engaged in the buy-and-sell of PX goods, acquired the said lot, Thereafter, Transfer Certificate of Title (TCT) No. 129569 was issued in her name. Macalde and her siblings leased the property from Albano and paid their monthly rentals to her. On the remaining one-third

[2] Penned by Associate Justice Noel G. Tijam, with Associate Justices Ruben T. Reyes and Edgardo P. Cruz, concurring; *Rollo,* pp. 28-38.

Supreme Court E-Library

portion of the parcel of land stood an apartment which was being leased to the spouses Roberto and Natividad Valderama.

On June 11, 1978, then President Ferdinand E. Marcos issued Presidential Decree (P.D.) No. 1517 proclaiming specific parcels of urban lands as Urban Land Reform Zones (otherwise known as "Urban Zones"). Under Section 6 of the law, "legitimate tenants within the urban zones who had been residing on the land for ten years or more, who have built their homes on the land, and residents who have legally occupied the lands by contract continuously for the last ten years, shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee" created under the law. Section 7 further provides that, in case the tenants and residents are unable to purchase the said land, the government shall acquire the same and/or the improvements thereon by expropriation or other land acquisition techniques provided under Section 11 of the said decree. Landowners, tenants and residents are also required to declare any proposal to sell, lease or encumber lands and improvements thereon, including the proposed price, rent or value of encumbrances and secure approval of said proposed transactions.[3]

On May 14, 1980, former President Marcos issued Proclamation (Proc.) No. 1967, declaring the Metropolitan Manila area as an Urban Zone. On April 13, 1983, Proc. No. 2284 was issued amending Proc. No. 1967. The proclamation identified 244 sites in Metro Manila as areas for priority development, including Albano's property.

Sometime in November 1990, Albano offered to sell the property to Salvacion Macalde and her siblings. In a Letter[4] dated November 9, 1990, Macalde, in her behalf and in behalf of her siblings, informed Albano of her desire and readiness to buy the property, and suggested that they discuss the price, as well as the other terms and conditions of the sale at the soonest possible time. Beth Diaz, Albano's grandchild, received the letter. Albano did not respond.

---

[3] Section 9 of Presidential Decree No. 1517.

[4] Exhibit "E".

Supreme Court E-Library

Nevertheless, Macalde sent a Letter dated November 12, 1990 to the Housing and Land Use Regulatory Board (HLURB), inquiring whether Albano's property was included in the areas for priority development under P.D. No. 1517. In its Reply[5] dated November 26, 1990, the HLURB informed Macalde that the property was, indeed, within the coverage of Areas for Priority Development under Proc. No. 1967, as amended by Proc. No. 2284.

In the meantime, Macalde and her siblings continued paying their rentals to Albano for the property. In fact, Macalde paid the amount of ₱3,321.00 on March 5, 1991, representing the rental of the property for the period of July 1990 to March 1991.[6] On March 14, 1991, Albano told Macalde, for the first time, that she had already sold the property. However, Albano did not divulge to Macalde the identity of the person to whom she sold the property. In a Letter dated March 21, 1991, Macalde complained to Albano about the sale of the property to another, despite her prior offer to buy the property way back in November 1990. She also requested Albano to rescind the sale of the property, insofar as the portion occupied by their house was concerned.[7] Sometime later, Macalde learned that Natividad Valderama was the purchaser of Albano's property. Forthwith, on March 26, 1991, Macalde wrote the spouses Valderama, and expressed her willingness to buy the two-thirds portion of the property where their ancestral house was constructed.[8] Macalde enclosed therein a copy of her letter to Albano dated March 21, 1991.

Albano and the spouses Valderama rejected Macalde's offer, and the latter brought the matter to the *Barangay Lupon* for conciliation. However, the parties failed to settle the case amicably.[9]

---

[5] Exhibit "D".

[6] Exhibit "O".

[7] Exhibit "F".

[8] Exhibit "G".

[9] Exhibit "A".

Supreme Court E-Library

In the meantime, Macalde discovered that Albano had executed a Deed of Absolute Sale over the property in favor of Natividad Valderama, and that TCT No. 129569 was cancelled and, in lieu thereof, TCT No. 198661 was issued to "Natividad Valderama, married to Roberto Valderama."[10]

On December 5, 1991, Macalde, for herself and on behalf of her brothers and sisters, namely, Ma. Patria, Juan, Jr., Bienvenido, Fredeswinda, Ricardo and Flordeliza, all surnamed Macalde, filed a Complaint[11] against Herminia Albano and the spouses Valderama for the annulment of sale, cancellation of title, reconveyance and damages with the Regional Trial Court (RTC) of Manila, Branch 2. The case was docketed as Civil Case No. 91-59504.

The Macaldes averred therein that they had a preferential right to buy the property under P.D. No. 1517, and prayed:

> Wherefore, it is most respectfully prayed of the Honorable Court that –
>
> 1. Transfer Certificate of Title No. 198661, Registry of Deeds of Manila, in the name of Natividad Valderama married to Roberto Valderama (Annex "I"), be ordered cancelled;
>
> The deed of sale by and between Herminia Albano and Natividad Valderama, vendor and vendee, respectively, dated May 28, 1990, regarding TCT No. 129569 (Annex "J") be declared null and void;
>
> The subject parcel of land be ordered partitioned or subdivided, 2/3 to and in favor of Salvacion Macalde, 1/3 to remain in the name of Natividad Valderama, and proper transfer titles thereto issue. The plaintiff shall pay defendant Natividad Valderama ₱200,000.00 correspondingly.
>
> 2. Order the defendants, jointly and solidarily, to pay the plaintiff, collectively with her brothers and sisters, the following:

---

[10] Exhibit "1".

[11] Records, pp. 1-5.

Supreme Court E-Library

a. ₱70,000.00 moral damages;
b. ₱10,000.00 attorney's fees; to double this rate in case of appeal;
c. ₱800.00 appearance fee of counsel per hearing;
d. ₱8,000.00 litigation expenses for documentation, transportation and other necessary expenses, or in such higher sums as may be proved.

Plaintiff prays for other available reliefs.[12]

In her answer,[13] Albano alleged, *inter alia*, that the property with an area of 175 square meters was not within the coverage of the law. She insisted that as the owner of the property, she had that right to dispose the same, and the Macaldes had been notified of her intention to sell the property but that they ignored the offer.

In their answer to the complaint, the spouses Valderama averred that the Macaldes had waived their preferential right to buy the property since they failed to exercise their right when Albano first offered the property to them. They insisted that no right of the plaintiffs had been violated; Albano assured them that she had already offered the subject property to the plaintiffs, and that they did not exercise their right to purchase the same. They claimed that while the amount of ₱300,000.00 was stated in the deed of sale as the purchase price, they had actually paid ₱750,000.00 to Albano in installment. They further alleged that it was the amount of ₱300,000.00 in the deed of sale that motivated the Macaldes to pursue the purchase of the property.

On March 26, 1992, the Valderama spouses filed a cross-claim[14] against Albano for the amount of ₱750,000.00 which they claimed they had paid for the subject property. They prayed that Albano reimburse them the difference, in the event that the RTC ordered the re-selling of the disputed portion to the Macaldes for only ₱300,000.00 pursuant to the deed of sale.

---

[12] Records, p. 4.
[13] *Id.* at 33.
[14] Records, p. 49.

Supreme Court E-Library

After the trial on the merits, the RTC rendered its Decision[15] on August 8, 1994, in favor of the Macaldes. The decretal portion reads as follows:

WHEREFORE, prescinding from the foregoing, judgment is hereby rendered:

1. The questioned deed of sale dated May 28, 1990 (Exhibit J) is partially annulled insofar as it affects the two-thirds (2/3) portion of the lot in question being occupied by the plaintiffs who built their ancestral home;

2. Perforce, TCT No. T-198661, of the land records of the City of Manila (Exhibit I) issued in the name of Natividad Valderama married to Roberto Valderama dated July 9, 1991, is likewise ordered partially cancelled insofar as it affects the 2/3 portion occupied by the plaintiffs;

3. Defendant Natividad Valderama and her husband, are ordered to execute the corresponding Deed of Reconveyance in favor of the plaintiffs represented by Salvacion V. Macalde, covering the said two-thirds (2/3) portion of the lot in question presently occupied by the plaintiffs, for a consideration of ₱500,000.00 upon full payment of said amount within a reasonable time of thirty (30) days from receipt of this decision together with and including the interest cost on said amount of 12% per annum, starting from May 28, 1990 up to the date of actual reconveyance, which is estimated to be ₱240,000.00 more or less for a total [a]mount of ₱740,000.00. Failing which, plaintiffs are deemed to have waived their right of first refusal and the questioned sale in favor of the Valderamas shall *ipso facto* be affirmed with full force and legal effect including their title thereto;

4. The spouses Natividad Valderama and Roberto Valderama are declared the absolute owners of the undivided one/third (1/3) portion of the lot where their ancestral home stands, with all the rights blossoming forth from such ownership;

5. Should the reconveyance be consummated, the parties may hire the services of a geodetic surveyor of their choice to effect the soonest segregation and titling of their respective lots;

---

[15] Penned by Judge Efren N. Ambrosio.

Supreme Court E-Library

6. Defendants are ordered to jointly and severally pay plaintiffs the sum of ₱10,000.00 by way of reasonable attorney's fees.

7. Defendants to pay the costs.

SO ORDERED.[16]

The Macaldes appealed the decision and averred that:

1. The Honorable Trial Court erred in finding that the purchase price of the disputed parcel of land is ₱740,000.00, when the facts and the law show that it is only ₱300,000.00.

2. The Honorable Trial Court erred in imposing the burden of interest cost of 12% per annum against the appellants, when the same was not pleaded nor taken up on the merits.

3. The Honorable Trial Court erred in denying an award of damages in favor of the plaintiff-appellants, who have shown in evidence vivid moral shock, mental torture and serious anxiety.[17]

On October 29, 2003, the CA rendered judgment partially granting the appeal. The *fallo* of the decision reads:

WHEREFORE, the instant appeal is hereby ***PARTIALLY GRANTED***. The *ITEM NO. 3* in the assailed decision dated August 8, 1994 of the Regional Trial Court of Manila, Branch 2 in Civil Case No. 91-59504 is hereby MODIFIED to read as follows:

Conformably with PD 1517 or the Urban Land Reform Law, the Urban Zone and Land Management Committee is hereby directed to ascertain and determine the reasonable price and the other terms and conditions of the sale, by Valderama to plaintiffs-appellants, covering the portion of the land under TCT No. 198661 occupied by the latter's ancestral house;

The plaintiffs-appellants are granted the period of 30 days to exercise their right of first refusal, from receipt of, and in accordance

---

[16] Records, pp. 264-265.

[17] CA *Rollo*, p. 22.

Supreme Court E-Library

with, the terms and conditions set by the Urban Zone and Land Management Committee.

The rest of the decision is hereby affirmed in all other respect.

SO ORDERED.[18]

The CA ruled that under P.D. No. 1517, Albano cannot, on her own, fix the purchase price of the property, as it was yet to be determined by the Urban Zone Expropriation and Land Management Committee under P.D. No. 1517, in relation to Republic Act No. 7279.

The CA also held that since the controversy did not involve an obligation to pay money or interest on liquidated claims or damages, or a court judgment awarding a sum of money, no interest on the purchase price of the property should be imposed. It found no basis to award any moral or exemplary damages, since the Macaldes failed to present any evidence to warrant such award.[19] The CA, likewise, denied the spouses Valderama's motion for reconsideration of the said decision.[20]

In the present recourse, the spouses Valderama, as petitioners, raise the following issues:

I. IS THE FORMER OWNER OF THE PROPERTY WHO OFFERED TO SELL IT TO THE TENANT UNDER PD No. 1517 WHO COULD NOT AFFORD TO BUY AND THEREFORE WAIVED SAID RIGHT NO LONGER OBLIGED TO REFER THE OFFER TO SELL TO THE URBAN ZONE AND LAND MANAGEMENT COMMITTEE UNDER PD 1517 TO DETERMINE THE PRICE THEREFOR?

II. IS THE PURCHASE PRICE OF ₱750,000.00 PAID BY THE PETITIONERS TO THE FORMER OWNER IN A DIRECT SALE CORRECT AND PROPER PRICE, CONSIDERING THAT THE BUYERS-PETITIONERS DID NOT BUY UNDER PD NO. 1517?

---

[18] *Rollo*, p. 37.

[19] *Id.* at 36.

[20] *Id.* at 39.

Supreme Court E-Library

III. IS THE INTEREST IMPOSED BY THE TRIAL COURT JUSTICEABLE, WHICH IS STRICKENED OUT BY THE HONORABLE COURT OF APPEALS, CONSIDERING THAT RESPONDENTS HAVE NOT BEEN PAYING THEIR ₱120.00 MONTHLY RENTALS EITHER TO THE FORMER OWNER OR TO THE BUYERS-PETITIONERS SINCE MAY 28, 1990 (purchased by petitioners), UP TO THE PRESENT? [21]

The petition has no merit.

At the outset, the Court stresses that the issues raised by the petitioners are factual and, under Rule 45 of the Rules of Court, only questions of law may be raised. The reason for the rule is that this Court is not a trier of facts and is not to reexamine and calibrate the evidence of the parties. Furthermore, the findings of the trial court and its conclusion on the basis thereof, as affirmed by the CA, are conclusive on this Court, absent any showing that the trial court ignored, misconstrued or misinterpreted cogent facts and circumstances which, if considered, would change the outcome of the case.[22] We have reviewed the records and find no justification to modify, much less reverse the findings of the court *a quo* and affirmed by the CA.

Central to the resolution of the first issue is Section 6 of P.D. No. 1517 which grants a right of first refusal to legitimate tenants in the purchase of the property, to wit:

SECTION 6. *Land Tenancy in Urban Land Reform Areas.* – Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree.

---

[21] *Rollo*, p. 18.

[22] *Toralba v. Mercado*, G.R. No. 146480, 14 July 2004, 434 SCRA 433; *Padunan v. Department of Agrarian Reform Adjudication Board*, G.R. No. 132163, 28 January 2003, 396 SCRA 196.

Supreme Court E-Library

The petitioners reiterate the contention that, based on the testimony of Albano, she repeatedly offered to sell the property to the respondents, through Salvacion Macalde, for ₱1,000,000.00, later reduced to ₱800,000.00; because of financial constraints, the respondents rejected the offer.Respondents became interested to purchase the property when they discovered that Albano had sold it to the petitioners for only ₱300,000.00. But then, the trial court gave no credence to the testimony of Albano, and instead gave full probative weight to the testimony of respondent Salvacion Macalde, that she learned only sometime in March 1991 that the petitioners had purchased the property from Albano for ₱300,000.00. Moreover, Albano never adduced any documentary evidence to prove that she had earlier offered to sell the property to the respondents. Indeed, the trial court found it incredible that Albano did not even require the respondents to sign any document rejecting the offer or waiving their right to purchase the property:

> It is interesting to note, however, why defendant Albano, who is admittedly a businesswoman, did not require the plaintiffs to sign any note, memorandum or any public or private document to evidence the waiver or refusal of the plaintiffs to buy the lot in question, expressly stating therein that they lack sufficient funds to purchase the lot. The insistence of Albano to offer the lot for purchase by the plaintiffs is an implied admission that, indeed, the Macaldes had the right of first refusal. And the waiver of such right requires some note or memorandum or any private or public document for the waiver to be effective. Such verbal offer may not be sufficient basis to support the alleged waiver. Thus, plaintiffs may not now be faulted if they insist in demanding for their right of first refusal involving a real property where they have built their ancestral home and stayed thereat for about 50 long years. Defendant Albano does not claim that the Macaldes failed to pay the rentals of the lot where their ancestral home was constructed so that they may be rejected therefore as squatters or deforcients.
>
> On the other hand, herein plaintiffs assert that they were not notified of the sale of the lot in favor of the Valderamas. They only came to know during the *barangay* conciliation conference, where no settlement was effected, (Exhibit A, dated August 28, 1991) based on a written complaint, the plaintiff Salvacion Macalde sent to Mrs.

Supreme Court E-Library

Juanita Limcolioc dated May 16, 1991, informing the latter that about a year before, Herminia Albano offered to sell to them the lot where their ancestral home stands. She was surprised to know, however, that the same lot was sold to the Valderamas; hence, the need for conciliation. (Exhibit C). On November 9, 1990, Salvacion Macalde wrote a personal note to defendant Albano, informing her that they are accepting the offer for them to buy the lot in question and that they request an early meeting with her to discuss the sale and other conditions soonest possible and said note was sent by registered mail on November 9, 1990 (Exhibits E and E-1). Again on 21 March 1991, plaintiff Salvacion Macalde sent a letter to defendant Albano, requesting the latter to rescind the Sale Contract of the lot to defendant Valderama, and same was sent by registered mail, received by Herminia Albano thru one Beth A. Diaz on March 23, 1991 (Exhibits F, F-1, F-2 and F-3). On March 26, 1991, same plaintiff sent a registered letter to defendant spouses Valderamas, attaching thereto her letter to defendant Albano and requested that they consider their complaint about the sale made to them (Exhibits G, G-1, G-2). Finally, on April 3, 1991, counsel for the plaintiff made a final demand for defendant Albano to cancel or rescind the sale in favor of the Valderamas and requested them not to register the sale, so that title to the Valderamas may not be issued (Exhibits H, H-1 to H-5).

Notwithstanding these efforts to stop the sale, the document of conveyance was registered and on July 9, 1991, TCT No. 198661 was issued in the name of defendants Valderamas, which cancelled TCT No. 129569/T-922 in the name of defendant Albano (Exhibit I and Exhibit 1 – Albano). In other words, about five (5) months lapsed from March 26, 1991, when defendant Valderamas were notified by plaintiffs about their insistence to buy the lot and that the sale be cancelled/rescinded.[23]

Albano even failed to respond to the respondents' letter of November 9, 1990, in which they informed her of their desire to purchase that portion of the property where their house stood.[24]

Albano even failed to inform the respondents, shortly after receipt of the said letter, that she had already sold the property to the petitioners. Indeed, Albano even received from the

---

[23] Records, pp. 258-260.

[24] Exhibit "E".

Supreme Court E-Library

respondents on March 5, 1991 the rentals for the property for July 1990 to March 1991.[25] The respondents had no inkling before March 5, 1991 that the property had already been sold by Albano to the petitioners. It was only on March 14, 1991 that Albano told the respondents, for the first time, that she had already sold the property.

Significantly, Albano even concealed from the respondents the identity of the buyer. This prompted the respondents to write Albano on March 21, 1991, informing her that her property was a part of the Urban Land Reform areas for priority development, and requested her to rescind the sale. The respondents even reminded Albano that they had been ready with the down payment for the property since the year before.[26] It was only after writing Albano on March 21, 1991 that the respondents discovered the sale of the property to their neighbor, Natividad Valderama.

As provided in Section 9 of P.D. No. 1517, Albano was mandated to declare to the Land Management Committee her proposal to sell the property:

> SECTION 9. *Compulsory Declaration of Sale and Pre-emptive Rights.* – Upon the proclamation by the President of an area as an Urban Land Reform Zone, all landowners, tenants and residents thereupon are required to declare to the Ministry any proposal to sell, lease or encumber lands and improvements thereon, including the proposed price, rent or value of encumbrances and secure approval of said proposed transaction.
>
> The Ministry shall have the pre-emptive right to acquire the above-mentioned lands and improvements thereon which shall include, but shall not be limited to lands occupied by tenants as provided for in Section 6 of this Decree.

However, Albano failed to comply with the law, and instead executed a deed of absolute sale over the property in favor of the petitioners. Even the government was deprived of its preemptive right to acquire the property.

---

[25] Exhibit "O".

[26] Exhibit "F".

Supreme Court E-Library

That the petitioners and Albano sought to conceal the sale of the property from the respondents is evidenced by the fact that the parties executed the same on May 28, 1990.[27] However, TCT No. 198661 was issued only on July 9, 1991 in the name of petitioner Natividad Valderama.[28] There was no valid reason why the said deed could not have been registered on or shortly after May 28, 1990, when the petitioners had paid in full the purchase price of the property to Albano.[29] Worse, it is made to appear, in the said deed, that Santos Albano, the husband of Herminia Albano, had affixed his signature therein. However, Albano testified in the court *a quo* that her husband died in 1982. This is gleaned from the trial court's decision:

In passing, the Court observes that, in the deed of sale executed in favor of the Valderamas (Exhibit J and Exhibit 2 – Albano) dated and acknowledged on May 28, 1990, there appears a signature on top of the typewritten name "Santos V. Albano," below the words "with my marital consent."

If this is clearly so, then it is safe to conclude that the husband of Herminia Albano was still living or alive on May 28, 1990, which is diametrically opposed and/or inconsistent with the testimony of Herminia Albano that her husband died in the year 1982.

ATTY. SEMENTILLA: (cross-exam. – Herminia Albano)

Q. Your husband is Mr. Santos Albano, am I correct Mrs. Witness?
A. Yes, Sir.

Q. He signed this deed of sale for his marital consent?

ATTY. TAMAYO:
The document is the best evidence.

ATTY. SEMENTILLA:
I will reform.

---

[27] Exhibit "J".
[28] Exhibit "I".
[29] Exhibits "2" to "2-H".

Supreme Court E-Library

COURT:
Proceed.

ATTY. SEMENTILLA:
Q. Am I correct Mrs. Witness that your husband died five (5) years ago?
A. Yes, in 1982.

Q. So he died in 1982, he was not there when the document was acknowledged?

ATTY. TAMAYO:

The document speaks for itself, Your Honor.
(TSN, December 16, 1993 session, pp. 25-27).

The Court finds the above created inconsistency very unfortunate.[30]

In sum then, the respondents were deprived of their right of first refusal when, without their knowledge, Albano sold the property to the petitioners.

The contention of the petitioners that the respondents had waived their right of first refusal is not supported by the evidence. For a waiver of rights to exist, three elements are essential: (a) existence of a right; (b) the knowledge of the evidence thereof; and (c) an intention to relinquish such right. In *People v. Bodoso*,[31] this Court held that:

It is elementary that the existence of waiver must be positively demonstrated since a waiver by implication cannot be presumed. The standard of waiver requires that it "not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences." There must thus be persuasive evidence of an actual intention to relinquish the right. Mere silence of the holder of the right should not be easily construed as surrender thereof; the courts must indulge every reasonable presumption against the existence and validity of such waiver. ...

---

[30] Records, pp. 260-261.
[31] 446 Phil. 838 (2003).

Supreme Court E-Library

Thus, the petitioners and Albano failed to adduce sufficient, competent and credible evidence that the respondents had waived their right of first refusal to buy the property.

Anent the issue of whether the petitioners are entitled to 12% interest per annum of the ₱750,000.00 paid for the property, they assert that the respondents had not paid rentals from May 28, 1990, either to them or to Albano. The petitioners claim that they had been considerate to the respondents, as they did not file any complaint for ejectment against them, nor appealed the RTC decision. They submit that these are valid justifications for the respondents to pay 12% per annum interest on the amount of ₱500,000.00 which corresponds to the purchase price of the two-thirds portion of the subject property where the house of the respondents stands.

The respondents, on the other hand, aver that:

II

On the second issue, the purchase price of ₱750,000.00 allegedly paid by Valderama to Albano is improper, illegal and, in fact, non-existent in evidence. Petitioner Valderama's own exhibit, the deed of sale, shows their purchase price of only ₱300,000.00 they paid to Albano. Petitioners' allegation of a bloated price is, in fact, illegal, a blatant violation of internal revenue rules on property taxation. If true, then buyer and seller are both guilty of tax evasion. Petitioners' insistence on this point is actually a very stubborn impropriety.

III

Petitioners now want 12% interest on their money, awarded by the trial court but deleted by the Court of Appeals. But this is not a breach of contract where it may be awarded the intermediate appellate court properly ruled. The Macaldes are only invoking their rights of first refusal. It is strange that petitioners are after the Macaldes on this issue, not after their co-defendant below, Mrs. Albano, the previous owner-seller. And yet, petitioners admit that they launched a counterclaim/crossclaim against Albano. Besides, petitioners did not ask for this relief in the courts below. In fact, they did not appeal the RTC decision.

Supreme Court E-Library

> Basic is the rule that matters or issues not raised in the court *a quo* cannot be raised for the first time on appeal. (*Orosa vs. CA,* 329 SCRA 652; *PBA vs. CA*, 337 SCRA 358; *Jimenez vs. Patricia*, 340 SCRA 525.)

It is an irony, too, that petitioners are asking monthly rent from the Macaldes after nearly depriving them of their ancestral home. They are asking premium on their secret and illegal transaction with Mrs. Albano. Had they been openly honest with their neighbor, the Macaldes, there is no rent to speak of. Then and there, when Albano decided to sell, both of them, Macalde and Valderama, would have been owners of their respective adjacent portions of the land. Petitioners did not do this. In bad faith, unknown to the Macaldes, they maliciously maneuvered the sale. Those who come to court should come with clean hands.

"On ground of equity and fairness," petitioners pray. But petitioners should re-assess what they understand by the words equity and fairness. They admitted buying the whole lot, knowing fully well that the Macaldes occupy more than half of it. This is not equity. They purchased it secretly, without notifying the Macaldes. This is not fair. Now they want the Macaldes, not Albano, to pay interest and rent. This is not "equity and fairness."[32]

Resolving the issue, the CA ruled that:

With respect to the award of interest on the purchase price, We agree with the plaintiffs-appellants' asseveration that the same has no basis. The circumstance obtaining herein is not a breach of an obligation to pay money. Neither is it an interest on liquidated claims or damages nor on a court judgment awarding a sum of money that has become final and executory. Only in these cited circumstances, is an award of interest in the concept of actual and compensatory damages allowed, as set-forth in the early case of *Eastern Shipping Lines, Inc. vs. CA* and reiterated in the case of *Eastern Assurance* and *Surety Corporation vs. CA, et al.* Consequently, the interest at 12% per annum adjudged by the Trial Court should not have been imposed. This is specially so since the same was neither prayed for by the parties nor justified in the assailed decision.[33]

The submission of petitioners has no merit.

---

[32] *Rollo,* pp. 49-51.

[33] *Id.* at 36.

Supreme Court E-Library

First. Contrary to their contention, the respondents paid rentals for the property to Albano up to March 5, 1991.[34]

Second. Even if the petitioners filed a complaint for ejectment against the respondents, the same would not have prospered because Section 6 of P.D. No. 1517 prohibits the latter's eviction from the property.

Third. The petitioners and Albano violated P.D. No. 1517 when they clandestinely consummated the sale of the entire property. Worse, they undervalued the property to enable the petitioners to evade the payment of the lawful capital gains tax, registration, and other fees/charges of the sale. The petitioners should not be rewarded by obliging the respondents to pay 12% per annum interest on the aforesaid amount of ₱500,000.00. It is a well-established principle in law that as between two parties, he who, by his acts, caused the loss shall bear the same.[35] *He who comes to court for equity must do so with clean hands.*

IN VIEW OF ALL THE FOREGOING, the petition is **DENIED** for lack of merit. The Decision of the Court of Appeals and its Resolution in CA-G.R. CV No. 48899 are hereby *AFFIRMED.* Costs against the petitioners.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., Tinga, and *Chico-Nazario, JJ.* concur.

---

[34] Exhibit "O".

[35] See *Bacaltos Coal Mines v. Court of Appeals,* G.R. No. 114091, 29 June 1995, 245 SCRA 460; *Cuison v. Court of Appeals,* G.R. No. 88539, 26 October 1993, 227 SCRA 391; *Francisco v. Government Service Insurance System,* G.R. No. L-18287, 30 March 1963, 7 SCRA 577 where the Court reiterated the equitable maxim that between two innocent parties the one who made it possible for the wrong to be done should be the one to bear the resulting loss.