

## FIRST DIVISION

[ G.R. Nos. 102526-31, May 21, 1998 ]

**SPS. LORENZO V. LAGANDAON AND CECILIA T. LAGANDAON AND OVERSEAS AGRICULTURAL DEVELOPMENT CORPORATION, PETITIONERS, VS. COURT OF APPEALS, SPS. MELITON BANOYO AND ASUNCION P. BANOYO, SPS. DEMETRIO B. BATAYOLA AND ANITA A. BATAYOLA, BONIFACIO VASQUEZ, SPS. ROMEO M. GOMEZ AND ESTER M. GOMEZ, AURORA GOMEZ, SPS. CARLOS V. DAVID AND MANUELA C. DAVID, SPS. LEONIDO D. BONGCO AND FE V. BONGCO, SPS. RAFAEL S. SOLIDUM AND LUCENDA M. SOLIDUM, SPS. RAYMUNDO SITJAR AND LUCIA SITJAR AND SPS. BENJAMIN V. VIVA AND GILDA VIVA, RESPONDENTS.**

### DECISION

#### **PANGANIBAN, J.:**

Questions of fact, as a general rule, may not be raised in a petition for review under Rule 45. This is especially true where - as in this case - such questions have already been disposed of by the trial court and affirmed by the appellate court. The failure of the petitioner to justify a departure from this rule warrants the dismissal of the petition.

#### **The Case**

This doctrine is used by the Court in denying this petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> promulgated on August 30, 1991 in CA-G.R. Nos. 26671-26676, which disposed as follows:

“PREMISES CONSIDERED, the decision appealed from is hereby modified by deleting the award of attorney’s fees in favor of the defendant[s]-appellees.”

The Court of Appeals actually affirmed, with the slight modification of deleting the award of attorney’s fees, the decision of the Regional Trial Court of Valenzuela, Metro Manila, Branch 172,<sup>[3]</sup> in Civil Case Nos. 3188-V-89 to 3192-V-89, the dispositive portion of which reads:<sup>[4]</sup>

“WHEREFORE, in view of the foregoing the Complaints have to be as they are hereby ordered DISMISSED, including their claims for attorney’s fees and costs of litigation.

On defendants/purchasers’ counterclaims, defendant Spouses Demetrio Batayola et al. in Civil Case No. 3188-V-89 are awarded P10,000.00 attorney’s fees in resisting this case; and all defendants in the rest of the cases are awarded P10,000.00 in each case as attorney’s fees, likewise for resisting these claims.”

Hence, this petition for review.<sup>[5]</sup>

### **The Facts**

The uncontested facts<sup>[6]</sup> are narrated by Respondent Court of Appeals, as follows:  
<sup>[7]</sup>

"On different dates specified herein below, Pacweld Steel Corporation (Pacweld) a now defunct domestic corporation executed in favor of present defendants herein a Contract to Sell pieces of lots payable in installment [for] which payments started to be made. For a better perspective, the following are herein reflected:

Defendants/Purchasers	Dates of Contracts
Meliton Banoyo	Feb. 6, 1967
Batayola Spouses	Nov. 25, 1967
Romeo M. Gomez	Feb. 27, 1968
Carlos V. David	March 4, 1968
Leonido Bongco	March 15, 1968
Bonifacio Vasquez	May 31, 1967

<u>Purchasers/</u>	<u>Total</u>	<u>Total</u>	<u>Last</u>
<u>Defendants</u>	<u>Consideration</u>	<u>Payments</u>	<u>Payments</u>
			<u>Dates</u>
Banoyo	P10,000.00	P4,303.43	Nov. 23, 1971
Batayola	7,271.92	7,232.24	
Romeo Gomez	6,945.68	8,669.55	April 24, 1972
David	11,430.00	7,221.13	Nov. 22, 1972
Bongco	11,700.00	8,855.18	Jan. 22, 1974
		+ 303.20	
Vasquez	8,730.00	7,505.37	Aug. 9, 1972

On or about the year 1972[,], the above-mentioned defendant[s]-purchasers deferred/refused further payments on their amortization to Pacweld because of [the] refusal of Lorenzo V. Lagandaon, then President of Pacweld officials [sic] to undertake the development of the areas bought. Defendants/Purchasers, together

with other lot buyers filed an action for Specific Performance with the then Court of First Instance of Manila, Branch XXVII, docketed as Civil Case No. 87763 entitled Rolando Fadul et al., Plaintiffs vs. Pacweld Steel Corporation et al.

On October 12, 1976 the said Court promulgated its decision stating therein the following.

'From all the foregoing evidence introduced by the plaintiffs, as well as the stipulation of facts entered into by the defendants with the former, the Court is fully convinced that defendants indeed have not lived up to the conditions of its [sic] contract particularly paragraph 6-A thereof. The roads which were supposed to be cemented in fact, had been constructed as clearly shown in Exhibits B, B-1, B-2 and B-3. So also, with the big holes existing on the roads. For this reason, the Court further concludes that plaintiffs have adequately proven their cause of action by clear preponderance of evidence.'

The dispositive portion of the said decision reads as follows:

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

1. Ordering the defendants to strictly comply with their obligations under the contract to sell (par. 6-a) within sixty (60) days from receipt hereof, in the event of defendants' failure to comply with said undertakings, the plaintiffs are authorized to avail of the services of a contractor to undertake the cementing of the roads, gutters and concrete curbs including the drainage system, all at the expense of the defendants;
2. Ordering the defendants jointly and severally to pay plaintiffs the sum of P35,000.00 as and by way of moral damages, which amount is considered just and reasonable considering the sufferings of the plaintiffs;
3. Ordering the defendants jointly and severally to pay plaintiffs the sum of P10,000.00 as and by way of exemplary damages;
4. Ordering the plaintiffs who have not up-dated their accounts and/or have not complied with their undertakings in the contract to sell to comply with same also within sixty days from receipt of this decision;
5. Ordering the defendants jointly and severally to pay plaintiffs attorney's fees in the sum of P4,000.00 with costs against the defendants

SO ORDERED.'

To be mentioned in connection with this case are the following separate facts and incidents.

Pursuant to real estate mortgages constituted on the entire Pacweld [s]ubdivision lots by Pacweld Steel Corporation (Pacweld) in favor of the Development Bank of the Philippines to secure a loan of P1.5 million, the said DBP foreclosed the mortgaged properties including the properties sold to defendants/purchasers at public auction on June 2, 1975 due to the failure of Pacweld to pay its loan at maturity. As there were no

bidders, the DBP as creditor participated in the bidding and thereafter, owing to the non-redemption of the properties, titles to the Pacweld Subdivision lots were consolidated in the name of DBP.

On May 12, 1980, a Deed of Absolute Sale was executed by DBP in favor of herein plaintiffs [now petitioners] covering 69 parcels of land known as Pacweld Village located at Marulas. Plaintiffs became the registered owners by virtue of said Deed of Absolute Sale, under TCT No. B-42988.

Although no copy of the said Deed of Absolute Sale was furnished this Court, it appears in one of the pleadings submitted to Court that in said Deed of Absolute Sale is a typewritten condition to which plaintiffs are now bound and which is below quoted:

'It is hereby understood that any and all claims, liens, assessments, liabilities and/or damages whatsoever arising from any case or litigation involving the above, properties shall wholly be assumed and borne by the vendees to the exclusion of the vendor.'

In the similarly worded complaints in all these civil cases, plaintiffs allege that by virtue of the acquisition of ownership by DBP over the entire Pacweld [s]ubdivision lots including the lots in question and under the authority of the above-mentioned Deed of Absolute Sale executed by DBP in favor of plaintiffs, the unregistered Contract to Sell executed by Pacweld and herein defendants were rendered stale and/or inoperative and consequently, defendants lost their rights and interests over the parcels of land agreed to be sold to them by Pacweld under their respective Contract to Sell; that without necessarily recognizing the defendants' rights under the Contract to Sell, but out of pure liberality and Christian compassion, the plaintiffs agreed to continue with the sale on installment of the above-mentioned parcels of land, pursuant to the Contract to Sell in favor of the defendants provided that they would update their account consistent with the provisions of the said Contract to Sell and provided further that plaintiffs have the right of forfeiture and would not be bound or liable to comply with the obligation of the developer under the Contract to Sell.

In all these civil cases, plaintiffs have one common prayer, which is, that defendants be declared to have unjustifiably failed to comply with their obligations under the Modified Contract to Sell, and pronouncing that said Contract to Sell over the said parcels of land and the rights and obligations arising therefrom as rescinded and/or cancelled; that plaintiffs be declared as legally entitled to the possession of the above-described parcels of land, ordering defendants and all persons acting under them to vacate the said parcels of land and surrender them to plaintiffs; that defendants be ordered to pay damages and attorney's fees which amount they specified in each of the cases. (Decision, pp. 1-5)"

For the sake of clarity, we stress that there were three undisputed transactions involving the property subject of this controversy:

1. The contract to sell executed by Pacweld, then headed by Petitioner Lorenzo Lagandaon, in favor of herein private respondents;

2. The foreclosure sale by which DBP acquired ownership of the property from Pacweld; and
3. The contract of sale executed by DBP in favor of herein petitioners, the Lagandaon spouses.

This case began when petitioners filed several identical complaints before the CFI to rescind the first item, *i.e.*, the contracts to sell executed by Pacweld in favor of private respondents. In their aforesaid complaint, petitioners alleged that the contract to sell had become “stale and/or inoperative” “by virtue of the acquisition of ownership by the DBP over the entire Pacweld Subdivision x x x.”<sup>[8]</sup> Petitioners also averred that the relationship of petitioners and private respondents was governed by an alleged “modified agreement to sell,” which provided that private respondents “would update their account consistent with the provisions of said [original] Contract to Sell”; while petitioners “have the right of forfeiture and would not be bound nor liable to comply with the obligation of the developer under the [original] Contract to Sell.”<sup>[9]</sup> Petitioners justified the filing of the complaints for rescission on the ground that private respondents failed to pay their outstanding account.

In their answer, private respondents denied the existence of a modified contract to sell.<sup>[10]</sup> They also argued that petitioners, as successors-in-interest of Pacweld, had no right to demand rescission or payment of the unpaid balance, “until such time that they have completed the development of the subdivision pursuant to the provisions of the x x x Contract to Sell and the Decision of the CFI of Manila.”<sup>[11]</sup>

In its decision, the trial court held that petitioners “cannot base their acts on [an] alleged modified contract to sell, which this Court believes to be non-existent not only physically but also legally.”<sup>[12]</sup>

### **Respondent Court’s Ruling**

Although the petitioners’ cause of action was premised on the *existence* of an alleged *modified* contract to sell, the Court of Appeals<sup>[13]</sup> (CA) observed that petitioners did not challenge the trial court’s finding that no such contract existed. The CA further ruled that petitioners could no longer raise on appeal their alleged ownership rights over the lots in litigation arising from the May 12, 1980 sale by the Development Bank of the Philippines (DBP) and from the execution sale. To do so would change their theory before the trial court that herein private respondents defaulted their obligation under the alleged modified contract to sell.

Thus, the CA held that petitioners had no right to demand the rescission of the various contracts to sell on the basis of the alleged modified contracts to sell which were inexistent. Hence, it affirmed the trial court’s decision dismissing the complaint, but deleted the award of attorney’s fees.

### **The Issues**

In their Memorandum, petitioners present the following issues:<sup>[14]</sup>