I

Antonio Delumen et al., Petitioners-Appellees, vs. Republic of the Philippines, Oppositor-Appellant, G. R. No. L-5552, January 28, 1954.

1. RULES OF COURT; REQUISITES FOR DECLARATORY RELIEF. — A petition for declaratory relief must be predicated on the following requisites: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue invoked must be ripe for judicial determination.

2. IBID; ACTION FOR DECLARATORY RELIEF IMPROPER IN THE CASE AT BAR. — In essence, the appellees merely wanted to remove all doubts in their minds as to their citizenship, but an action for declaratory judgment cannot be invoked solely to determine or try issues or to determine a moot, abstract or theoretical question, or to decide claims which are uncertain or hypothetical. (1 C. J. S., p. 1024.) And the fact that appellees' desires are thwarted by their "own doubts, or by fears of others x x x does not confer a cause of action."

Solicitor General Juan R. Liwag and *Solicitor Florencio Villamor* for appellant.

Romeo M. Escareal for appellees.

D E C I S I O N

PARAS, *C. J.*:

On October 9, 1951, Antonio, Juan and Julito, surnamed Delumen, filed a petition in the Court of First Instance of Samar, alleging that they are legitimate children of Paciencia Pua, a Filipino woman, and Mariano Delumen who was declared a Filipino citizen by the same court in an order dated August 7, 1950, and praying said court to determine whether they are Filipino citizens and to declare their corresponding rights and duties. It is further alleged in the petition that the petitioners have continuously resided in the Philippines since their birth, have considered themselves as Filipinos, had exercised the right to vote in the general elections of 1946 and 1947, and were registered voters for the elections in 1951. The Solicitor General, in behalf of the Republic of the Philippines, filed an answer alleging that the petition states no cause of action, there being no adverse party against whom the petitioners have an actual or justiciable controversy. After hearing, the Court of First Instance of Samar rendered a decision declaring the appellees to be Filipinos by birth and blood. From this decision the Solicitor General had appealed.

Under the first assignment of error, the appellant cites our decision in Hilarion G. Tolentino vs. The Board of Accountancy, et. al., G. R. No. L-3062, September 28, 1951, wherein we held that: "A petition for declaratory relief must be predicated on the following requisites: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue invoked must be ripe for judicial determination."

While the Solicitor General contends that a justiciable controversy is one involving "an active antagonistic assertion of a legal right on one side and a denial thereof on the other concerning a real, and not a mere theoretical question or issue (C. J. S., p. 1026)," and that in the present case " no specific person was mentioned in the petition as having or claiming an adverse interest in the matter and with whom the appellees have an actual controversy," the appellees argue that, by virtue of the answer filed by the Solicitor General opposing the petition for declaratory relief, a justiciable controversy thereby arose. We are of the opinion that appellant's contention is tenable, since there is nothing in the petition which even intimates that the alleged status of the appellees as Filipino citizens had in any instance been questioned or denied by any specific person or authority. Indeed, the petition alleges that the appellees have considered themselves and were considered by their friends and neighbors as Filipino citizens, voted in the general elections of 1946 and 1947, and were registered voters for the elections of 1951, and it is not pretended that on any of said occasions their citizenship was controverted. It is not accurate to say, as appellees do, that an actual controversy arose after the filing by the Solicitor General of an opposition to the petition, for the reason that the cause of action must be made out by the allegations of the complaint or petition, without the aid of the answer. As a matter of fact, the answer herein alleges that the petition states no cause of action. In essence, the appellees merely wanted to remove all doubts in their minds as to their citizenship, but an action for declaratory judgment cannot be invoked solely to determine or try issues or to determine a moot, abstract or theoretical question, or to decide claims which are uncertain or hypothetical. (1 C.J.S., p. 1024.) And the fact that appellees' desires are thwarted by their "own doubts, or by fears of others x x x does not confer a cause of action." (Moran, Comments on the Rules of Court, 1952 ed., Vol. II, p. 148, citing Willing vs. Chicago Auditorium Assn., 277 U. S. 274, 289, 48 Sup. Ct. 507, 509.)

In view of what has been said, it becomes unnecessary to discuss either the second contention of the Solicitor General that the trial court erred in holding that the petition for declaratory relief may be utilized to obtain a judicial pronouncement as to appellees' citizenship, or his third contention that the evidence does not support the conclusion in the appealed decision that the appellees are Filipino citizens.

Wherefore, the appealed decision is reversed and the petition dismissed without pronouncement as to costs. So ordered.

Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and *Labrador, J.J.*, concur.

II

Pilar Bautista, etc. et al., Plaintiffs-Appellants, vs. Hilaria Uy Isabelo, etc., Defendant-Appellant, G. R. No. L-3007, September 29, 1953.

CONSTITUTION; PROVISION THEREOF DISQUALIFYING ALIENS FROM ACQUIRING REAL PROPERTIES IN THE PHILIPPINES. — The question is whether the defendant spouses, assuming that they were Chinese citizens and that the sale was made to both and not solely to Hilaria Uy Isabelo, are disqualified to acquire and hold the property in question in view of section 1 of Article XII of the Constitution, as construed in Krivenko vs. Register of Deeds of Manila, 44 O. G. 471. In the case of Trinidad Gonzaga de Cabauatan, et al. vs. Uy Hoo, et al., G. R. No. L-2207, decided on January 23, 1951, we already held that the Constitution was not in force during the Japanese military occupation and therefore the constitutional provision disqualifying aliens from acquiring real properties in the Philippines was not applicable and the doctrine laid down in the Krivenko case cannot be invoked in a sale that took place during said occupation. This decision was followed in the latter case of Ricamara, et al. vs. Ngo Ki alias Sin Sim, G. R. No. L-5836, decided on April 29, 1953. It results that the sale in question has to be sustained.

Quintin Paredes for defendants-appellants.

Delgado and *Flores* and *Alejandro de Santos* for plaintiffs-appellants.

D E C I S I O N

PARAS, *C. J.*:

On August 18, 1943, Pilar T. Bautista was the owner of four parcels of land, with improvements, located at the corner of Azcarraga and Ylaya Streets in the City of Manila, and more parti-

cularly described in transfer certificates of title Nos. 40007 and 40008 of the Register of Deeds of Manila. On said date she executed a deed of absolute sale in favor of the defendant Hilaria Uy Isabelo, conveying the properties to the latter in consideration of ₱150,000, ₱90,000 of which was then paid. Simultaneously a mortgage was executed by Hilaria in favor of Pilar whereby it was stipulated that the balance of ₱60,000 was to be paid within two years, with interest at 6% per annum, and as a security a first mortgage was constituted in favor of Pilar on the same properties. Although the consideration mentioned in the deed of sale was ₱150,000, there is no question that the true purchase price was ₱300,000, ₱240,000 of which was paid in Japanese military notes and the balance of ₱60,000 was secured by the aforesaid mortgage. The deed of sale and the mortgage contract were presented on August 18, 1943 in the office of the Registrar of Deeds of Manila for registration, but on August 31, Pilar withdrew said documents so as to prevent registration. However, through the filing of signed carbon copies of the instruments the necessary registration was effected and new certificates of title, Nos. 67070 and 67071, were issued in the name of Hilaria.

In the early part of September, 1943, Pilar, assisted by her husband, instituted in the Court of First Instance of Manila a complaint for annulment, subsequently amended, against Hilaria and her husband Eusebio Valdez Tankeh. On September 14, 1944. Pilar deposited in court the sum of ₱240,000, intended to cover that part of the purchase price already paid by Hilaria. On the other hand, after Pilar had previously refused to accept a PNB certified check for ₱60,000 which Hilaria tendered in payment of the balance secured by the mortgage, the said amount was deposited in court. The records and the deposits were burned during the battle for the liberation of Manila, and as the parties were unable to reconstitute the same, Pilar instituted the present action for the annulment of the deed of sale and the contract of mortgage hereinabove referred to.

It appears that the improvements on the land in question were burned, and the land was occupied by the United States Army as part of the supply depot. The payment of the rentals by the Army has been withheld until final adjudication of this case. After the Army had left, Eusebio Valdez Tankeh took possession of the property and constructed thereon a building.

The theory of the plaintiff Pilar Bautista is that the defendants Hilaria Uy Isabelo and Eusebio Valdez Tankeh were Chinese citizens and accordingly disqualified to purchase real properties in this country, and that the consent of Pilar to the sale was obtained through duress and misrepresentation. On the other hand, it is contended for the defendants that Hilaria was and is a Filipino citizen; that, as appears in the deed, she was the sole purchaser; and that the deal was voluntary.

After trial the Court of First Instance of Manila rendered a decision finding that the sale was in fact to the defendant spouses who were Chinese citizens and therefore disqualified to acquire real property in the Philippines; that the sale was obtained through misrepresentation on the part of the defendants, in that Pilar was made to believe, contrary to what is actually recited in the contracts, that the balance of ₱60,000 was to be paid after two years, without interest, and she could continue occupying the portion of the improvements used by her as residence without any rental, and collecting for herself the rentals for the remainder of said improvements. The dispositive part of the decision reads as follows:

> "IN VIEW OF ALL FOREGOING CONSIDERATIONS, the Court hereby declares the deed of sale, Exhibit A, and the deed of mortgage, Exhibit B, null and void, and of no legal effect; and that the consignation in Court of the sum of ₱240,000.00 in Japanese Military notes was legally made by the plaintiff, and therefore, she has fully returned the part of the purchase price of the property received by her from the defendants. The Court also hereby orders the Register of Deeds of Manila to cancel Transfer Certificates of Titles Nos. 67070 and 67071 issued in the name of defendant Hilaria Uy Isabelo, and to issue new ones in the name of plaintiff Pilar T. Bautista. The plaintiff is hereby absolved from the defendants' counterclaim, the same not having been sufficiently proven. No damages are awarded to said plaintiff; and no special pronouncement is made as to costs."

From this decision both the plaintiff and the defendants have appealed, the plaintiffs insofar as the decision fails to declare that they are the owners of the improvements erected by Eusebio Valdez Tankeh, to order the defendants to account for the rentals collected by them, and to appoint a receiver; and the defendants insofar as the deed of sale and mortgage contract are annulled.

While the trial court overruled the contention of the plaintiffs that there was duress on the part of the defendants, consisting in the alleged fact that Pilar was forced to accede to the sale for fear that the defendants would avail themselves of their influence with the Japanese if Pilar had refused, it sustained the contention that there was misrepresentation in the sense already above indicated, namely, that the balance of ₱60,000.00 was to be paid after two years without interest, instead of within two years with interest, Pilar having the right to continue residing in the premises and collecting the rentals. We have examined the evidence thoroughly and found that its preponderance weighs on the side of the defendants. Pilar Bautista is admittedly an intelligent woman with business experience, and it is fair to assume that she would not sign the deed of sale covering her property of considerable size and value without ascertaining its terms and conditions. Indeed, there is enough evidence on record to show that Pilar not only read the document herself but called her daughter to read it aloud, and that even before the signing of the contract in the office of the Register of Deeds of Manila, she again read the document. Of course she denies having read the deed, but this assertion seems to be more unlikely than the theory of the defendants, considering, as already stated, her intelligence and business experience. At any rate, as aptly pointed out by the defendants, the alleged misrepresentation could not have been decisive in the execution of the deed of sale, the material and important factor undoubtedly being the adequacy of the price offered and paid; and there is no controversy on the latter point.

This leads us to the question whether the defendant spouses, assuming that they were Chinese citizens and that the sale was made to both and not solely to Hilaria Uy Isabelo, are disqualified to acquire and hold the property in question in view of section 1 of Article XII of the Constitution, as construed in Krivenko vs. Register of Deeds of Manila, 44 O. G. 471. In the case of Trinidad Gonzaga de Cabauatan, et al. vs. Uy Hoo, et al., G. R. No. L-2207, decided on January 23, 1951, we already held that the Constitution was not in force during the Japanese military occupation and therefore the constitutional provision disqualifying aliens from acquiring real properties in the Philippines was not applicable and the doctrine laid down in the Krivenko case cannot be invoked in a sale that took place during said occupation. This decision was followed in the latter case of Ricamar, et al. vs. Ngo Ki alias Sin Sim, G. R. No. L-5836, decided on April 29, 1953. It results that the sale in question has to be sustained.

Moreover, as also intimated in our decision in Gonzaga de Cabauatan vs. Uy Hoo, et al., even assuming that the constitutional prohibition and the doctrine in the Krivenko case may be invoked by the herein plaintiffs, as both parties were in *pari delicto*, knowing that what they did was in violation of the Constitution, the law will maintain them in their actual situation, in the absence of any statute to the contrary. Another consideration in favor of the defendant Hilaria is that, after the death of her Chinese husband on April 3, 1948, she had admittedly been repatriated and is now beyond question a Filipino citizen.

Wherefore, the appealed decision is reversed and the plaintiffs' ccmplaint dismissed, and the plaintiffs are ordered to execute, within sixty days from the finality of this decision, the necessary cancellation of the mortgage in question.

Bengzon, Tuason, Montemayor, Jugo and Bautista Angelo, J. J., concur.

Mr. Justice Labrador took no part.

Mr. Justice Pablo, dissenting.

REYES, *J.*, concurring:

I concur in the result, it appearing that Hilaria Uy Isabelo,

the buyer of the property in question, though married to a Chinese at the time of the sale, subsequently recovered her Filipino citizenship after the death of her husband.

III

Philippine International Fair, Inc., et al., Petitioners vs. Fidel Ibañez, et al., Respondents, G. R. No. L-6448, February 25, 1954.

1. CERTIORARI: INTERLOCUTORY ORDER.—Although an order denying a motion to dismiss a complaint on the ground of lack of jurisdiction is interlocutory, still if it is clear that the trial court lacks jurisdiction a higher court of competent jurisdiction would be justified in issuing a writ of certiorari and prohibition, for the proceedings in the court below would be a nullity and waste of time.

2. IBID; IBID.—In the absence of a clear showing that the respondent court lacks jurisdiction over the case which involves an actionable wrong or a tortious act, the time-honored rule that from an interlocutory order an appeal does not lie must be adhered to. If from an interlocutory order an appeal does not lie, an extraordinary legal remedy cannot be resorted to have the order reviewed by a higher court.

Victoriano Yamzon for petitioners.
Cornelio T. Villareal, Antonio L. Gregorio and *P. P. Gallardo* for respondents.

DECISION

PADILLA, *J.*:

This is a petition for a writ of certiorari and prohibition. As prayed for a writ of preliminary injunction was issued.

The facts pleaded in the petition are: The Philippines International Fair, Inc. announced and published through daily newspapers the holding of an essay contest entitled "500 Years of Philippine Progress" under the rules which read as follows:

1. The subject of this contest is: "500 Years of Philippine Progress."

2. The length of the essay should be not less than 800 words nor more than 1,000 words.

3. The essay must be a formal type and should be historically correct.

4. The contest is open to everybody, regardless of sex, age, and religion—except to members of the staff of the Philippines International Fair, Inc.

5. The contest opens July 1, 1952, and closes August 30, 1952.

6. Each of the 10 Manila daily newspapers will offer cash prize of ₱200 in the name of the Philippines International Fair, Inc. and a certificate of merit to the first prize winners.

7. Each newspaper running the contest will select and appoint a Jury to determine the winning essay.

8. All first prize winners in the different newspapers are automatically eligible to the Grand Prize of ₱500 and a diploma to be presented by the Philippines International Fair, Inc.

9. The Director General of the Philippines International Fair will select and appoint a Jury of three members, including the Chairman, to determine the winner of the Grand Prize.

10. The grand prize winning essay becomes the property of the Fair, and will be printed in the Official Program of the 1953 Philippines International Fair.

11. Newspaper editors may formulate their own rules and regulations provided these do not conflict with those of the Fair. (Exhibit A.)

Ten newspapers responded to the call and organized preliminary contests. The newspapers certified their respective winners to the Director General of the Philippines International Fair, Inc., who appointed the judges to pass upon and examine the various essays certified to by the newspapers as the winning essays in the preliminary contests. After study of the various essays submitted the board of judges adjudged Enrique Fernandez Lumba, representing *La Opinion*, as winner of the final contest and transmitted its findings to the Director General of the Philippines International Fair, Inc. Upon learning of the result of the contest and the award made by the board of judges, Ponciano B. Jacinto filed a complaint in the Court of First Instance of Manila (civil case No. 18255) where the validity of the award by the board of judges was drawn into question and the respondent court issued a writ of preliminary injunction upon the filing of a bond in the sum of ₱1,000.

The Philippines International Fair, Inc., Luis Montilla, Federico Mangahas and Juan Collas answered the complaint and set up these special defenses: (1) that the subject matter complained of is not of such a character as would allow legally the Court to intervene and that for that reason the Court of First Instance of Manila has no jurisdiction over the subject matter of the action and (2) that the complaint states no cause of action. Simeon G. del Rosario filed a petition for leave to intervene and filed his complaint in intervention. The defendants set up in their answer to the complaint in intervention the same special defenses. The plaintiff and intervenor asked that the case be set for a preliminary hearing on the legal issues raised in the first special defense to the complaints, the defendants invoking the rule laid down in the case of Ramon Felipe, Sr. vs. Hon. Jose N. Leuterio, G. R. No. L-4606, 30 May 1952. After hearing, the respondent court ruled that it had jurisdiction of the case. A motion for reconsideration was denied. The writ of preliminary injunction was dissolved upon the filing by the defendants of a counter bond in the sum of ₱5,000 to answer for any damage which plaintiff Ponciano B. Jacinto and intervenor Simeon G. del Rosario might suffer by reason of the continuance of the deefndants' actions complained of. The hearing on the merits of the case was set for 29 January 1953 at 8:30 a.m., of which the parties were duly notified.

The petitioners, defendants in the case pending in the respondent court, contend that the jurisdiction attempted to be exercised by the respondent court is contrary to law. And as there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law to prevent the respondent court from proceeding with the trial of the case, they pray for a writ of preliminary injunction and after hearing for a writ of certiorari and prohibition to enjoin the respondent court from trying or hearing civil case No. 18255.

In their answer the respondents allege and claim that in the essay contest in question there was an offer and acceptance which constitute the consent or meeting of the minds of the contracting parties; there was the essay contest, an object certain or the subject matter of the contract; and the prize of ₱500, a diploma to be presented by the Philippines International Fair, Inc. and the printing of the winning essay in the official program of the 1953 Philippines International Fair were the cause or consideration of the contract; that the provisions or rules of the essay contest were not complied with, because the winning essay was written in Spanish and it contained 1,864 words, whereas the essay chosen by the committee as winning was written in English and contained less than 1,000 words; that in the Felipe-Leuterio case the attempt to revise the award was made because one of the judges admitted he had committed a mistake in grading, whereas in this case the board of judges made the award in violation of the rules promulgated for the contest; that in the Felipe-Leuterio case it was a mere error, whereas in this case it was a commission of a clear, palpable and manifest wrong, in clear abuse of authority and in gross violation of the rights of respondent Ponciano B. Jacinto, who was the first prize winner in three newspapers, namely, *Bagong Buhay*, Evening News and Star Reporter; and that a wrongful award was made in this case.

Although an order denying a motion to dismiss a complaint on the ground of lack of jurisdiction is interlocutory, still if it is clear that the trial court lacks jurisdiction a higher court of competent jurisdiction would be justified in issuing a writ of certiorari and prohibition, for the proceedings in the court below would be a nullity and waste of time. But the facts alleged in the complaint filed in the respondent court, if proved, constitute an actionable wrong or a tortious act committed by the respondent board of judges. In the absence of a clear showing that the respondent court lacks jurisdiction over the case which involves an actionable wrong or a tortious act, the time-honored rule that from an interlocutory order