

[Title]

Cancellation of contract

[Court of Decision]

Supreme Court

[Date of Decision]

29 August 1969

[Case No.]

Case No 330 (o) of 1969

[Case Name]

Claim for Registration of Transfer of Property Rights Case

[Source]

Hanrei Jiho No. 570: 49, *Hanrei Taimuzu* No. 239:155

[Party Names]

Yasushi Kanazawa and Another (X, Appellants to Court of Last Resort, Intermediate Appellants, Plaintiffs)

Vs.

Nissan Shatai Koki Co., Ltd. and Tatsugoro Shimada (Y, Appellees at Court of Last Resort, Intermediate Appellees, Defendants)

[Summary of Facts]

Y (Appellee) was in the business of reselling land. Y sold a 16,500 m² parcel of land designated as licensed quarters to B, a licensed quarter's association for which A, who was in the same business as Y, acted as managing director. Although it seems that the price of the land was considerably lower than the going rate due to the fact that licensed quarters were to be built, payment was not made for an amount equivalent to the value of 5,696 m². Y sought at that point to cancel the transaction, but the above contract was terminated by agreement on the 9th of February 1955 and a new sale contract was entered into between A in his personal capacity and Y for the 5,696 m² of the land, on the basis that A would no longer have the status of managing director. However although the undertaking was that the entire price was to be paid by 10th of March 1955, this obligation was not performed. Meanwhile, A resold the above land to X (the Appellant to the Court of Last Resort). Under these circumstances, X filed this suit seeking an order that Y carry out the procedure for registering the transfer of ownership rights (it is not clear why there is a further Appellee with a company name). The lower Court (Osaka High Court) accepted that the land sale transaction between A and Y is what is known as a fixed time sale under the Commercial Code and rejected X's claim. X filed an appeal to the court of last resort on the basis that as A was not a merchant, and that as A merely showed special concern for the payment of the price to be made on due date, the sales contract did not equate to a fixed time sale.

[Summary of Decision]

Appeal dismissed

“That both Y and A are persons in the business of re-selling land, and that the sale of land in this case between Y and A was a sale between merchants for profit-making purposes are facts lawfully recognized by the lower court... When, in contracts for sale between merchants, pursuant to the intentions expressed by the parties, the purpose of the contract cannot be achieved unless it is performed within a fixed period or at a fixed time, the sale should be understood to be a fixed time sale. The facts that when Y sold 5,696 m² of land to

A on the 9th of February 1955, that the land was sold at a price considerably lower than market rate as special circumstances were in existence in the form of the land being designated for use to build licensed quarters and that so long as Y was in the business of subdividing land, it was both unsatisfactory and unreasonable for Y to be indefinitely bound to providing land at a cheap price... and the facts that A was also aware of this and promised to make payment by that day were lawfully established by the lower Court. It follows that the decision of the lower Court which states that according to the intentions of the parties expressed through the sale, the contract was a fixed time sale, the purpose of which could not be achieved if A did not make payment by that date, was appropriate. Under the fixed time sale cancellation occurred by means of the objective fact of the passing of the prescribed time, irrespective of whether or not the obligor is responsible for the delay, or in other words, irrespective of whether or not the delay amounts to a default.”