

[G.R. No. L-5828. September 29, 1954]

EUFEMIA ACIERTO, ET AL., PLAINTIFFS AND APPELLEES, VS. FRANCISCO DE LOS SANTOS, ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

REYES, A., J.:

On February 15, 1940, Pelagio Acierto was granted a homestead patent to a (portion of public land situate in the municipality of Tuao, Cagayan province. Two months later, the land was, as required by the Land Registration Act (section 122), brought under its operation through the registration of the patent in the register of deeds for the province and issue of the corresponding certificate of title and owner's duplicate thereof.

Pelagio Acierto died on January 20, 1945. On April 3, 1951, his children, the plaintiffs herein, brought an action in the Court of First Instance of Cagayan against the defendants Francisco de los Santos and Maria de los Santos for the recovery of the land in question and damages, the complaint, as later amended, alleging that the land was on August 1, 1941 wrested by defendants from plaintiff's father through force, intimidation, strategy and stealth, and that defendants have since then been cultivating the same and harvesting its crops and refusing, despite repeated demands, to restore its possession to plaintiffs. Answering the complaint, defendants denied having obtained possession of the land through any of the means mentioned, and alleged that the land was in 1939 and then again in 1940 purchased from Pelagio Acierto by defendant Francisco de los Santos' landlady, Francisca de los Santos, and by the latter sold later to the defendant Maria de los Santos. And further alleging adverse, open, peaceful and continuous

possession of the land by them for more than 12 years, they set up prescription as a defense.

After trial, the lower court found that the land in dispute was, for a consideration of P200, sold by Pelagio Acierto to Francisca de los Santos, a part of it on May 15, 1939 and the whole of it on October 5, 1940, but holding the sale void for having been made before the lapse of 5 years from the date of the patent, rendered judgment declaring plaintiffs still owners of the land and entitled to its possession but under obligation to pay defendant Maria de los Santos the sum of P200. From this judgment, defendants appealed to the Court of Appeals, but that court has certified the case here on the ground that the questions raised are purely legal.

The appeal is without merit.

Section 118 of the Public Land Act, as amended, provides that lands acquired as a homestead shall not be subject to encumbrance or alienation from the date of the approval of the application for homestead and during the five years following the issuance of the patent. And section 124 of the same Act provides that any acquisition, conveyance, transfer or any other contract made or executed in violation of section 118 "shall be unlawful and null and void from its execution." It appearing that the cessions or sales agreement on which defendants rely were executed within the period of the prohibition, the same must be declared void *ab initio*.

Appellants, however, contend that the voiding provision of the Act may not be invoked in favor of plaintiffs as their predecessor in interest was *in par delicto*, and that, since the same provision says the illegal sale shall have the effect of annulling the grant and cause the reversion of the property and its improvements to the State, plaintiffs may no longer claim the homestead. Similar contentions were made in the case of Catalina de los Santos vs. Roman Catholic Church of Midsayap et al., G. R. No. L-6088, decided February 25, 1954, but they were there overruled, this Court holding that the *pari delicto* doctrine may not be invoked in a case

of this kind since it would run counter to an avowed fundamental policy of the State, that the forfeiture of the homestead is a matter between the State and the grantee or his heirs, and that until the State had taken steps to annul the grant and asserts title to the homestead the purchaser is, as against the vendor or his heirs, "no more entitled to keep the land than any intruder."

The contention that appellants have acquired title to this land by prescription is untenable. As provided in section 46 of the Land Registration Act "no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession." And there is no question that, as stated in the beginning, the land involved in this case has been brought under the operation of that Act and has therefore become "registered land." For where land is granted by the Government to a private individual, as a homesteader, under the provisions of the Public Land Law, and the corresponding patent is registered and issued to the grantee, said land is considered registered within the meaning of the Land Registration Act (*El Hogar Filipino vs. Olviga*, 60 Phil., 17, 22; *Ramoso vs.*

Obligado, 70 Phil., 86, 87.) This is in accordance with section 122 of the Land Registration Act which provides that after due registration of the grant and issue of the certificate of title and owner's duplicate "such land shall be registered land for all purposes under this Act."

In view of the foregoing, the judgment below is affirmed in so far as it adjudges possession of the homestead to plaintiffs and declares the latter under obligation to pay P200 to defendants. Costs against defendants-appellants.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Concepcion and Reyes, J.B.L., JJ., concur.

