

**LEONARDO AMPER, AND HIS WIFE LEONISA C. AMPER,
PETITIONERS, VS. THE HON. PRESIDING JUDGE, BRANCH III,
CFI-MISAMIS ORIENTAL (MEDINA); THE DEPUTY SHERIFF DETAILED
WITH SAID BRANCH...**

G.R. No. L-35595. May 17, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition seeks to annul the writ of execution issued by the Court of First Instance of Misamis Oriental, Branch III and the levy, sale, and registration of the properties covered by the writ. The petition likewise seeks to prohibit the respondent judge from confirming the sale, and, the sale if confirmed, to order it cancelled or set aside.

Private respondent Ignacio Naduma filed with the Court of First Instance of Misamis Oriental, Branch III, Civil Case No. 2454, entitled Ignacio Naduma, plaintiff, vs. Alejandro (Alias) Leonardo Amper, Leonisa Cimagala (Amper), and Cocoy Amper, defendants, for Recovery of Possession and Damages.

The background facts of the main case for recovery of possession and damages are found in the decision of the trial court as follows:

"Plaintiff in his complaint alleged that he is the owner of a parcel of land described in and covered by O.C.T. No. P-4815 (Free Patent No. 183747) situated at Samay, Gingoog City, designated as lot No. 4119 of the cadastral survey of Gingoog City, with an area of 19,526 square meters, the boundaries of which are marked by cement posts at the corners and by coconut trees planted in pairs (locally called 'tinindak'), and planted with fruit-bearing coffee trees, coconut trees, bananas, fruit trees, and others; that plaintiff and his predecessors-in-interest have been in the continuous, public, adverse, and peaceful possession of the land in the concept of owners since 1940 and have introduced considerable improvements thereon; that by means of strategy and stealth defendants entered the southern portion of the land, harvested the ripe coffee berries from the coffee trees planted thereon, pulled out the cement posts indicating the southern boundary of the land, and cut down the 'kapok' trees planted to mark the said southern boundary; that defendants unlawfully entered the said southern portion in 1962 and since then have by means of stealth harvested the coffee and bananas inside; . . . that on October 18, 1964, plaintiff had his land described in and covered by O.C.T. No. P-4815 relocated to definitely ascertain whether defendants have lawful claim to the portion in dispute but on relocation it was definitely established that the coconut trees planted in pairs (the 'tinindak' trees) correctly mark the southern boundary of the land although no cement posts could be located anymore; that when plaintiff returned on October 20, 1964, he discovered that the defendants had enclosed the southern portion in dispute with a wire fence. Plaintiff claims actual damages representing the value of the coffee, coconuts and bananas on the portion in dispute which defendants have harvested since 1962, attorney's fees in the amount of P400.00 and expenses of litigation in the amount of P500.00.

"In brief, the defense of the defendants is that the portion in dispute belongs to them, which they and their predecessors-in-interest have occupied long before the war, openly, adversely, and continuously in the concept

of owners. As affirmative defenses, defendants alleged that supposing without admitting that plaintiff has a piece of land supposedly covered by a free patent, the patent is null and void because it was issued without jurisdiction of the issuing officer; that the original records show that the survey plat for the land claimed by plaintiff has up to the present not been verified and approved; that there was no proper publication of the application for free patent both of which matters are jurisdictional in nature; that even supposing again without admitting that plaintiff has a free patent and a certificate of title for the land claimed by him, the description of the land is erroneous and embraces a parcel of land not belonging to the plaintiff as the latter's land is specifically described by metes and bounds in the deed of sale between him and the original owner Dionisio Collantes, and the Title, therefore, is subject to correction under the provision of Section 112 of Act 496 in relation to Section 38 of the same law and both in relation to the Cadastral Act."

When the case was called for pre-trial, the defendants and their counsel failed to appear and were, therefore, declared in default. The plaintiff was allowed to present evidence before the deputy clerk of court who was commissioned to receive the evidence. The order of default was, however, subsequently reconsidered and set aside upon agreement of plaintiff.

During trial, the lower court commissioned Mr. Celedonio Mondigo, a geodetic engineer to conduct a relocation of the common boundary of the parcel of land covered by Original Certificate of Title No. P-5306 in the name of defendant Leonardo Amper and the parcel of land covered by Original Certificate of Title No. P-5307 in the name of defendant Leonardo Amper and the parcel of land covered by Original Certificate of Title No. 4815 in the name of Naduma.

The commissioner rendered his report and found the disputed land with an area of 1,315.99 square meters within the property of Naduma described and covered by Original Certificate of Title No. P-4815.

The lower court rendered a decision in favor of Naduma. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants:

"1. Ordering defendants to immediately vacate the area in dispute of 1,315.99 square meters, indicate the sketch plan, Exhibit H, and to restore possession thereof to plaintiff;

"2. Ordering defendant Alejandro Amper to pay plaintiff actual damages in the amount of P7,200.00 and attorney's fees in the amount of P400.00, and the costs of the suit."

The petitioners appealed the decision to the Court of Appeals where it was docketed as CA-G.R. No. 48037-R. The appellate court resolved to dismiss the appeal. The decision of the Court of Appeals became final and executory (Rollo, p. 89).

For failure of the Ampers to pay the actual damages of P7,200.00 and the attorney's fees of P400.00 in the decision sustained on appeal, the Court of First Instance of Misamis Oriental issued the order for a writ of execution now challenged in this petition. And by virtue of the said writ of execution, the Provincial Sheriff of Misamis Oriental levied on the following properties of petitioners:

"1. 'A parcel of land, coffee and maizal, situated at Samay, Gingoog City, Cadastral Lot No. Steep Bank C-4, bounded on the North, by Petra Mijares; on the East, by Gingoog River; on the South, by Gingoog River and on the West, by Sofronio Gundaya, containing an area of 2.5513 Has., under Tax Declaration No. 13439 and assessed value of P990.00, registered in the name of defendant Leonardo Amper.'

"2. 'A parcel of land, coffee and maizal, situated at Samay, Gingoog City, with Certificate of Title No. P-5307, Cadastral Lot No. 4114 Case-4, bounded on the North, by Candelaria Magdalena-Lot 4083, C. Abios-Lot 4084; on the East, by Lot No. 4114; on the South, by Lot No. 4113 and on the West, by Tamula Creek, containing an area of 2.3056 has., under Tax Declaration No. 00549 and assessed value of P1,090.00, registered in the name

of defendant Leonardo Amper.'

"3. 'A parcel of land cocal, situated at Kidisin, Gingoog City, Cadastral Lot No. 326 Pls.-30, bounded on the North, by Communal Forest; on the East, by Lot No. 327 Apolinar Cabanaz; on the South, by Lot No. 325 Leonardo Amper and on the West, by communal forest, containing an area of .9066 ha., under Tax Declaration No. 13638 and assessed value of P450.00, registered in the name of defendant Leonardo Amper.'

"4. 'A parcel of land, coffee, situated at Samay, Gingoog City, with Certificate of Title No. 5306, Cadastral Lot No. 4120 Case-4, bounded on the North, by Lot 4119 NE Lot 4117; on the East, by Road; on the South, by Lot 4121 and on the West, by Road, containing an area of .9961 ha., under Tax Declaration No. 13441 and assessed value of P3,070.00, registered in the name of defendant Leonardo Amper.'"

The issue in this petition is whether or not the sale at public auction made by the respondent deputy provincial sheriff based on the order for the writ of execution issued by the Court of First Instance of Misamis Oriental is valid. The petitioners contend that execution on their properties which they acquired under the Homestead Law and whose titles were issued to them on July 25, 1965 and July 26, 1965, is null and void ab initio pursuant to Section 118 of Commonwealth Act No. 141, the Public Land Act.

Petitioners rely on the case of *Artates v. Urbi* (37 SCRA 395) where we ruled that damages imposed by way of civil liability on persons who are convicted for criminal offenses are included in the term "debts" for which homesteads cannot be levied upon if the alienation, transfer, or conveyance as payment falls within the 5-year period from issuance of the homestead patents or titles. The rule is:

"... Consequently, it is evident that it can not be enforced against, or satisfied out of, the sale of the homestead lot acquired by appellants less than 5 years before the obligation accrued. And this is true even if the sale involved here is not voluntary. For purposes of complying with the law, it is immaterial that the satisfaction of the debt by the encumbering or alienation of land grant was made voluntarily, as in the case of an ordinary sale, or involuntarily, such as that effected through levy on the property and consequent sale at public auction. In both instances, the spirit of the law would have been violated." (*Artates v. Urbi*, 37 SCRA 395, 402).

Was the sale of the petitioners' properties to satisfy the judgment of the lower court covered by the prohibition governing alienations of homesteads?

Section 118, Commonwealth Act No. 141, as amended, reads:

"SEC. 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations. . . ."

The date when the prohibition against the alienation of lands acquired by homesteads or free patents commences is "the date of the approval of the application" and the prohibition embraces the entire five-year period "from and after the date of issuance of the patent or grant." As stated in *Beniga v. Bugas* (35 SCRA 111), the provision would make no sense if the prohibition starting "from the date of the approval of the application" would have no termination date.

The specific period of five years within which the alienation or encumbrance of a homestead is restricted starts to be computed from the date of the issuance of the patent. But the prohibition of alienation commences from the date the application is approved which comes earlier.

The plain intent of the law is to give the homesteader or patentee every chance to preserve for himself and his

family the land that the State had gratuitously given to him as a reward for his labor in cleaning and cultivating it (Simeon v. Pena, 36 SCRA 610).

In the instant case, the auction sale conducted by the respondent sheriff took place on October 3, 1972, and this is exactly seven (7) years, two (2) months and seven (7) days from the date of the issuance of Original Certificates of Titles Nos. P-5306 and P-5307, which were issued on July 26, 1965. With respect to the parcel of land described in Tax Declaration No. 13439 (Item No. 1, Notice of Levy, Rollo, pp.8-59), petitioners did not show that it is covered by any free patent or homestead title. But assuming the truth of their contentions that this lot was titled only in 1965, the five-year period has already elapsed. Clearly therefore, Sec. 118 of Commonwealth Act No. 141, the Public Land Act, does not apply to the facts of their case.

The instant petition is different from cases where the homesteader or grantee of a free patent incurs a debt prior to the expiration of the five-year period but levy upon the property is effected only after its expiration. (Francisco v. Parsons Hardware Co., 67 Phil. 234). If we reckon the five-year period as of the date the debt was incurred, it will have to be December 28, 1971, when the judgment of the lower court became final and executory. Up to October 27, 1971, the case was pending before the Court of Appeals and after this date it could still be reviewed by the Supreme Court. Theoretically, the lower court's judgment could still be reversed or modified before it became final and executory. The arguments of the petitioners which would fix an earlier date for their involuntary indebtedness are, therefore, without merit.

Petitioners also argue that the land under Tax Declaration No. 13638 (Item No. 3, Notice of Levy, Rollo, pp. 58-59) should be considered exempt because it forms part of their family home.

There is no merit in this contention.

The provisions of the Civil Code with respect to the extrajudicial creation of a family home are explicit and clear:

ART. 240. The family home may be extrajudicially constituted by recording in the Registry of Property a public instrument wherein a person declares that he thereby establishes a family home out of a dwelling place with the land on which it is situated.

ART. 241. The declaration setting up the family home shall be under oath and shall contain:

- (1) A statement that the claimant is the owner of, and is actually residing in the premises;
- (2) A description of the property;
- (3) An estimate of its actual value; and
- (4) The names of the claimant's spouse and the other beneficiaries mentioned in article 226.

ART. 242. The recording in the Registry of Property of the declaration referred in the two preceding articles is the operative act which creates the family home.

Petitioners themselves admit in their petition (pp. 12-13) that there is no written statement declaring that the house and lot is their family home and that there is no indication of beneficiaries mentioned in Article 226 of the Civil Code. The operative act which creates the family home is the registration in the Registry of Property of the declaration prescribed by Arts. 240 and 241 of the Civil Code. There is no such registration in this case.

Furthermore, the records show that the petitioners are residing at Samay, Gingoog City, on their land identified as Lot No. 4120, Cad. 295 and which is covered by Original Certificate of Title No. P-5306, and not at Kadisin, Gingoog City, where the land covered by Tax Declaration No. 13638 (Lot No. 326, Pls-30, Kadisin, Gingoog City) is situated.

The equities of the case are also in favor of the private respondent. The facts of the main case show that the petitioners entered the homestead of the private respondent, harvested the respondents' coffee from his coffee trees, cut down his kapok trees, harvested the bananas he had planted, and harvested his coconuts from 1962 until the dispute was finally settled in 1971. The public auction conducted by the Sheriff later on when the judgment was eventually executed is valid and legal.

WHEREFORE, the petition for certiorari and prohibition with preliminary injunction is hereby dismissed for lack of merit.

SO ORDERED.

Teehankee (Acting C.J.), Plana, Escolin and Vasquez, JJ., concur.
Melencio-Herrera and Relova, JJ., are on leave.

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