

**ADOLFO E. CASTILLO AND ESTRELLA S. CASTILLO,
PLAINTIFFS-APPELLANTS, VS. ISAAC ABALAYAN,
DEFENDANT-APPELLEE.**

G.R. No. L-27444. November 27, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal by plaintiffs Mr. and Mrs. Adolfo E. Castillo, from a decision of the Court of First Instance of Davao, the only issue raised therein being one purely of law.

Defendant-appellee Isaac Abalayan is the registered holder of a homestead, consisting of a lot of twenty-four (24) hectares, located in the municipality of Sta. Cruz, province of Davao. Some-time after he had filed therefor homestead application No. 98238 (E-47421) and the approval of his entry into said lot, but long before the issuance of the patent, or on October 7, 1948, defendant executed an affidavit (Exhibit A) stating that, for and in consideration of the sum of One Thousand Eight Hundred (P1,800.00) Pesos, paid to him, he had conveyed to Adolfo E. Castillo - plaintiff herein - his heirs and assigns, one-half of the area covered by said application and the improvements thereon, as well as relinquished his rights thereto in their favor, he being in need of cash to develop another lot covered by a lease application, apart from the fact that he is getting old, and not for the purpose of speculation.

Alleging that "plaintiffs wanted to submit" said instrument "to the proper authorities for approval", so that defendant's home-stead application may be amended, "to exclude the one-half (1/2) which he relinquished to the plaintiffs"; that the defendant had dissuaded the plaintiffs from doing so "so as not to delay the issuance of his patent" and "promised that he would just take care of the area relinquished to the plaintiffs and that as soon as the title is issued and the transfer is proper he will make the transfer according to law"; that on September 21, 1957, OCT No. P-1101 "was issued by virtue of the homestead application already mentioned"; and that despite "repeated demands, the defendant has failed and has refused to make the promised conveyance", as well as "to pay back the sum of ONE THOUSAND EIGHT HUNDRED PESOS (P1,800) he had received from the plaintiffs", thereby compelling them to engage the services of counsel and file the present action, as well as causing upon them moral and exemplary damages, plaintiffs prayed in their complaint, filed on February 10, 1959, "that the defendant be ordered to execute a deed of conveyance over one-half (1/2) of the area formerly covered by his H. A. No. 98238 (E-47421), Patent No. H. V. - 4015, now OCT No. P-1101" and "that if this can not be legally done, the defendant be ordered to refund the money of the plaintiffs in the sum of P1,800, with interest at the legal rate from October 7, 1948, until it is fully paid", in addition to attorney's fees and expenses of litigation.

In his answer, the defendant admitted some allegations and denied other allegations of the complaint, and alleged, by way of affirmative and/or special defenses that, sometime in October, 1948, plaintiffs had agreed to help him drive away and eject the squatters from the lots covered by his homestead and lease applications, in Digos,

Davao, and that, "after the same is accomplished, one-half (1/2) portion of the lot under lease would be segregated by the defendant to plaintiff Adolfo E. Castillo"; that "said agreement did not push through as Adolfo E. Castillo failed to drive away or eject the squatters"; and that, consequently, defendant's lease application was cancelled and defendant had to bring an action against the squatters to recover the lot covered by his homestead application, in view of which he suffered damages for which he set up a counterclaim against the plaintiffs.

After appropriate proceedings, the Court of First Instance of Davao rendered the decision appealed from, finding that the allegations in plaintiffs' complaint had been duly proven and rejecting the version given in the answer of the defendant, who was, accordingly, sentenced to refund to the plaintiffs "the sum of P1, 800, with legal interest from the date of the filing of the complaint until fully paid", in addition to "P500, as attorney's fees and costs, or in the alternative, to execute a deed of conveyance in favor of the plaintiffs of one-half (1/2) of the area of defendant's lot formerly covered by Homestead Application No. 98238 (E-47421) Patent No. H.V. -4015, now Original Certificate of Title No. V-1101." Plaintiffs moved for a reconsideration of this decision and the amendment of its dispositive part so as to eliminate therefrom the alternative, given to the defendant, to refund the sum of P1,800, with interest thereon, and to require him to merely execute the deed of conveyance prayed for, aside from the payment of attorney's fees and the costs. Upon denial of this motion, plaintiffs interposed the present appeal.

They maintain that the allegations in their complaint having been sustained by the lower court, and the same having found that the defendant may be and should be sentenced to execute the deed of reconveyance prayed for in said pleading, it was error to grant the defendant the alternative to refund the sum he had received from the plaintiffs, instead of making said reconveyance, the aforementioned refund having been prayed for in the event only that the reconveyance "cannot be legally done."

Appellants' pretense is devoid of merit. Section 20 of Commonwealth Act No. 141 reads:

"SEC. 20. If at any time after the approval of the application and before the patent is issued, the applicant shall prove to the satisfaction of the Director of Lands that he has complied with all the requirements of the law, but can not continue with his homestead, through no fault of his own, and there is a bona fide purchaser for the rights and improvements of the applicant on the land, and that the conveyance is not made for purposes of speculation, then the applicant, with the previous approval of the Secretary of Agriculture and Commerce, may transfer his rights to the land and improvements to any person legally qualified to apply for a homestead, and immediately after such transfer, the purchaser shall file a homestead application to the land so acquired and shall succeed the original homesteader in his rights and obligations beginning with the date of the approval of said application of the purchaser. Any person who has so transferred his rights may again apply for a new homestead. Every transfer made without the previous approval of the Secretary of Agriculture and Commerce shall be null and void and shall result in the cancellation of the entry and the refusal of the patent." [1]

To be valid, the conveyance or transfer of rights to a land covered by a homestead application and the improvements thereon, the following conditions must, pursuant to this provision, be present, to wit: (1) the homestead application must have already been approved; (2) the patent must not have been issued as yet; (3) the homesteader must prove to the satisfaction of the Director of Lands, that he (the former) has complied with the requirements of the law, but cannot continue working on it; (4) the approval of the Secretary of Agriculture and Natural Resources must have been previously secured; (5) the purchaser or transferee must be "legally qualified to apply for a homestead"; and (6) the latter must immediately file his homestead application for the portion purchased by or conveyed to him.

In the case at bar, neither plaintiffs' complaint nor the evidence on record shows that any of these requirements, except the first two (2), has been complied with. Moreover, said requirements reflect a basic policy of our

legislation on public lands, tending to prevent that its main purpose, which is to give land to the landless, be defeated through sales, conveyances or other forms of alienation of public lands and the improvements thereon to persons not qualified to apply for a homestead, and without complying with the conditions to which the latter are subject. To this end, the previous approval of the Secretary of Agriculture and Natural Resources is absolutely necessary. Without such previous approval, the transfer or conveyance in question is "null and void"² or non-existent. As a consequence, the specific performance of the obligation thus sought to be constituted cannot be directed, since the obligation does not exist, In the language of *Tinio v. Frances*³:

"The legislative policy or intent is to conserve the land which a homesteader has acquired under the Public Land Law, as above stated, for him and his heirs. The legislative policy is so strong and consistent that the original period of five years from the issuance of the patent, without which period conveyance or sale thereof by the homesteader or his heirs was prohibited (section 116 of Act No. 2874) is now extended to 25 years if no approval of the Secretary of Agriculture and Commerce is secured. (Sec. 118, par. 2, C.A. No. 141, as amended by C.A. No. 456.) Provision has also been inserted authorizing the re-purchase of the homestead when properly sold by the homesteader within five years from the date of the sale. (Sec. 119, C.A. No. 141.) This legislative intent and policy is also sought to be carried out in Section 20, as may be seen from the fact that transfer of homestead rights from a homesteader can only be justified upon proof satisfactory to the Director of Lands that the homesteader cannot continue with his homestead through no fault of his own. This is not the only requirement; a previous permission of the Secretary of Agriculture and Commerce should first be obtained, as it is also expressly provided that any transfer made without such previous approval is null and void and shall result in the cancellation of the entry and the refusal of the patent. x x x "⁴

It is noteworthy that the transfer involved in the *Tinio* case had been made with the approval of the Secretary of Agriculture and Commerce. Yet, it was declared null and void, said approval having been given subsequently to the transfer, not before it was made, as required by law, thus underscoring the mandatory nature thereof. In the case at bar, the transfer to plaintiffs herein had never been approved by said officer.

Upon the other hand, it is neither right nor fair for the homesteader to refuse to comply with his promise and, at the same time, keep the money he got in consideration thereof. Since the contract intended to be made does not exist, he has no title whatsoever to the money received by him in connection therewith⁵ and should re-fund it, with interest thereon at the legal rate until fully paid.

WHEREFORE, the decision appealed from is hereby affirmed, without special pronouncement as to costs.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

[1] Underscoring supplied.

² *Oliveros v. Porcioncola*, 69 Phil. 305, 306.

³ 98 Phil. 32, 34-35. See, also, *Dauan v. Secretary of Agriculture and Natural Resources*, L-19547, Jan. 31, 1967; *Guiting v. Director of Lands*, L-12906, Sept. 29, 1960.

⁴ Underscoring Supplied.

⁵ *Oliveros v. Porcioncola*, supra; *Tinio v. Frances*, supra.

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