

SOCORRO M. ORLINO, AUGUSTO ORLINO, LUIS ORLINO, SANTIAGO ORLINO AND MAGIN ORLINO, PLAINTIFFS-APPELLANTS, VS. PHILIPPINE NATIONAL BANK (DAGUPAN BRANCH), DEFENDANT-APPELLEE.

G.R. No. L-32128. August 03, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

Plaintiffs Socorro, Augusto, Luis, Santiago and Magin, all surnamed Orlino, appealed under Republic Act No. 5440 from the order dated August 26, 1969 of the Court of First Instance of Pangasinan, Alaminos Branch XI, in Civil Case No. A-662, dismissing, on the ground of prescription, their complaint for legal redemption.

1. According to the petitioners, Candido Orlino was the possessor of a parcel of unregistered land located at Sitio Tiep, Barrio Lambas, Bani, Pangasinan with an area of twenty hectares. He filed with the Bureau of Lands a free patent application for the said land. In 1925 Candido exchanged the said land with another land belonging to Aniceto Orlino. The Bureau of Lands was not apprised of the exchange. Apparently, Aniceto was not aware that the land, which he had acquired from Candido, was the object of a free patent application. Aniceto took possession of Candido's land.

2. Candido died in 1944. His wife died in 1943. The date of Aniceto's death is not shown in the record. Allegedly through the manipulation of Juan Conde alias Juan Orlino, the free patent for the land was issued by the Director of Lands on February 17, 1956 to the "Heirs of Candido Orlino". After the registration of the patent, or on August 3, 1956, Original Certificate of Title No. P-1179 was issued to the heirs of Candido Orlino. The land covered thereby has an area of twelve hectares.

3. On December 26, 1956, Federico Cabais, Juan Conde, and Feliciano Conde, using the names, Federico Orlino, Juan Orlino and Feliciano Orlino, respectively, and claiming to be the legal heirs of Candido Orlino, executed an extrajudicial partition of the said land. Upon the registration of the deed of partition, OCT No. P-1179 was cancelled and Transfer Certificate of Title No. 22179 was issued in the names of Federico Orlino, Juan Orlino and Feliciano Orlino.

4. Thereafter, the registered owners mortgaged the land to the Philippine National Bank, Dagupan Branch, as security for a loan of P3,500. There was no gravamen on the title when the mortgage was executed. The loan was not paid. The bank foreclosed the mortgage. The land was sold to the bank as mortgagee-creditor and as the only bidder at the auction sale held on July 12, 1961. After the expiration of the one-year period, the sheriff executed a final deed of sale in favor of the bank. TCT No. 40878 was issued to it. However, it should be noted that on July 5, 1961, or prior to the foreclosure sale, a third-party claim was filed with the sheriff, presumably by the heirs of Aniceto Orlino (pp. 41 and 50, Record on Appeal in Civil Case No. A-399). The record is incomplete on that point.

5. Before that foreclosure sale, or on February 14, 1957, the heirs of Aniceto Orlino, namely, his widow Socorro M. Orlino and their four children, Augusto, Luis, Santiago and Magin, filed with the Bureau of Lands, a protest wherein they sought the cancellation of the free patent issued to the heirs of Candido Orlino. That protest was annotated on April 6, 1959 on TCT No. 22179 in the form of a notice of lis pendens. It was already annotated on the title when the bank purchased the mortgaged land at the foreclosure sale but it was not yet annotated when the mortgage was executed.

6. In a decision dated April 30, 1962 the Director of Lands held that the free patent was wrongfully issued to the heirs of Candido Orlino, represented by Juan Orlino. The Director held that appropriate legal action should be taken to restore the said land to the government (pp. 41-42, Rollo; p. 13, Record of Civil Case No. A-662).

7. While that protest was pending in the Bureau of Lands, or on December 20, 1960, Crisanto Cabais, who claimed to be the sole heir of Candido Orlino, sued in the Court of First Instance of Pangasinan Federico Cabais, Juan Conde and Feliciano Conde, and the Philippine National Bank for the purpose of asserting exclusive ownership over the land in question (Civil Case No. A-283; p. 8, Record on Appeal in Civil Case No. A-399).

8. That case was settled amicably. It was agreed that Crisanto Cabais could redeem the land from the bank within one year from January 19, 1962 upon payment of the sum of P5,191. In a subsequent order, the lower court suspended the one-year period until the notice of lis pendens is cancelled (p. 14, Record of Civil Case No. A-662).

9. The heirs of Aniceto Orlino did not intervene in Civil Case No. A-283 or in the case filed by Crisanto Cabais. (Note that conformably with the lower court's order of January 12, 1970 in Civil Case No. A-283, the said land was conveyed by the bank to Roman Cabacungan, the assignee of Crisanto Cabais. TCT No. 84579 was issued to Cabacungan on April 21, 1970. See pages 62 to 66, Rollo herein.)

10. On July 3, 1963, the heirs of Aniceto Orlino sued Federico Cabais, Crisanto Cabais, Juan Conde, Feliciano Conde and the Philippine National Bank also in the Court of First Instance of Pangasinan for the reconveyance of the land in question. The bank pleaded in its answer that it was a mortgagee in good faith and that plaintiffs' remedy was to file an action for damages against the persons who had defrauded them and, if the latter are insolvent, to recover damages against the Assurance Fund (Civil Case No. A-399).

11. After trial, the lower court found that the heirs of Aniceto Orlino "have established their right of ownership over the land in question as against the defendants, except the Philippine National Bank", and that the said defendants, except the bank, "through fraudulent manipulations and connivance, caused to be registered in their names the title of the land in question." However, the lower court found also that the bank was a mortgagee in good faith and that its ownership of the land was not affected by the circumstance that, when it bought the land at the auction sale, the notice of lis pendens was already annotated on the mortgagor's title. The lower court dismissed the complaint filed by the heirs of Aniceto Orlino.

12. The said heirs appealed to this Court under Republic Act No. 5440. The petition for review was denied for lack of merit in this Court's resolution of April 28, 1969 in L-30011, Socorro M. Orlino, et al. vs. Federico Cabais, et al.

13. Notwithstanding that setback, the same heirs, three months later, or on July 16, 1969, filed through another lawyer in the same trial court an action against the bank to enjoin it from selling the land to Cabacungan. They based their action on their claim that they "are the adjudged owners" of the land in question and, as such, they have allegedly the right to redeem it from the bank. (Civil Case No. A-662).

As stated in the opening sentence of this decision, the lower court dismissed that action on the ground of prescription because the auction sale took place on July 12, 1961 and, when the action was filed in 1969, both the

one-year period for redeeming the land sold at a foreclosure sale and the five-year period fixed in section 119 of the Public Land Law had already expired.

The heirs of Aniceto Orlino anchor their instant appeal on the theory that their prior action for reconveyance in Civil Case No. A-399 suspended the five-year period for redemption fixed in section 119. That issue was not raised in the lower court. The Public Land Law provides:

"SEC. 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance."

The bank in its answer to the petition for review alleged that the petitioners are not the persons contemplated in section 119; that the decision of the Director of Lands and the decision of the lower court in Civil Case No. A-399 did not recognize any right on the part of the petitioners to redeem the land from the bank, and that the lower court in Civil Case No. A-283 allowed the bank to sell the land to Cabacungan and, as already stated, it was sold to him on April 21, 1970, for which reason the instant appeal had become moot and academic.

The issue is whether or not petitioners' action for legal redemption against the bank is justified. They assume in their brief that they are clothed with the right of legal redemption. They argue that the lower court erred in holding that their right had prescribed.

We hold that the petitioners have no cause of action against the bank for legal redemption. They were not the registered owners of the disputed land. Their predecessor-in-interest, Aniceto Orlino, was not the applicant for the issuance of a free patent. The Director of Lands, in resolving their protest against the issuance of the patent to the heirs of Candido Orlino, held that the land should be reverted to the government. That means that the petitioners cannot redeem the land.

The lower court's decision in Civil Case No. A-399 confirmed the bank's ownership of the disputed land because it was a mortgagee in good faith. That decision does not sanction the petitioners' exercise of the right of legal redemption.

In passing, it may be observed that if a crime was committed in connection with the issuance of the free patent to the heirs of Candido Orlino and in the execution of the extrajudicial deed of partition, the petitioners may possibly go after the culprits who defrauded them. (See dissent of Justice Diaz in *El Hogar Filipino vs. Olviga*, 60 Phil. 17, 25, 27).

But the fact that impostors were able to mortgage the land to the bank is not a ground for nullifying the mortgage. The Torrens title to the land was in the name of the impostors. The case would be different if the title was in the name of the petitioners and the impostors mortgaged the land to the bank by means of a forged mortgage. In that case, the mortgage would be void. (*De Lara vs. Ayroso*, 95 Phil. 185; *Parqui vs. Philippine National Bank*, 96 Phil. 157; *Joaquin vs. Madrid*, 106 Phil. 1060).

Whether the bank was a purchaser in good faith at the foreclosure sale (See *Leung Yee vs. F. L. Strong Machinery Co.*, 37 Phil. 644, 651); whether the decision of the Director of Lands for the reversion of the disputed land to the government may still be implemented, and whether Cabacungan obtained an indefeasible title to it are matters which are not covered by the instant adjudication. The Director and Cabacungan are not parties in this case.

It should be clarified that what is decided herein is that the petitioners' action for legal redemption against the

bank is unwarranted.

WHEREFORE, the lower court's order of dismissal is affirmed. No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

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