

**JAIME ABOGADO, PLAINTIFF AND AFTPELLE, VS. IGMIDIO AQUINO
JUAN AQUINO, JULIANA PASION, CAMILO MATEO AND
CONSOLACION VELUAN, DEFENDANTS AND APPELLANTS.***G.R. No. L-8773. October 31, 1956*

Ponente: PADILLA, J.

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On 9 January 1939, a homestead patent was issued under the provisions of the Public Land Law (Commonwealth Act No. 141) upon a parcel of land containing an area of 21.4876 hectares situated in barrio Callang, municipality of formerly Gamu now Roxas, province of Isabela, in the name of Jaime Abogado married to Sinforosa Orcales, upon which original certificate of Title No. 1-5734 was issued on 15 February 1939 by the Registrar of Deeds in and for the province of Isabela (Exhibit C). On 26 June 1947, for and in consideration of the sum of P6,000, Jaime Abogado sold the homestead land to Igmidio Aquino (Exhibit A). This sale was not registered until 23 April 1953 when transfer certificate of Title No. T-4221 was issued, in lieu of the original certificate of No. 1-5734, by the Registrar of Deeds in and for the province of Isabela, in the name of Igmidio Aquino married to Filomena Victorio (Exhibit D). On 27 May 1948, Igmidio Aquino sold to Juan Aquino married to Juliana Pasion part of the homestead land containing an area of 11.4876 hectares and to Camilo Mateo married to Consolacion Veluan the rest containing an area of 10 hectares (Exhibit B). Transfer certificate of Title No. T-4221 was cancelled and transfer certificate of title No. T-4222 was issued in the name of the vendees (Exhibit E).

On 31 July 1953, Jaime Abogado, the original patentee, brought an action in the Court of First Instance of Isabela alleging that the sale of the homestead land executed by Igmidio Aquino in favor of Juan Aquino and Camilo Mateo was fictitious and without consideration, and made just to defeat his right to repurchase it; and that, notwithstanding demands upon the defendants to reconvey the homestead land to him, they refused to do so, and praying that judgment be rendered compelling the defendants to reconvey the land to him and pay him damages for the unnecessary action he had to bring to enforce his right.

The defendants answered that the plaintiff could no longer demand the reconveyance of the homestead land because the period of five years from 26 June 1947, the date of the sale, within which the right to repurchase may be availed of by him, his widow or legal heirs; already had expired. They filed a counterclaim for attorney's fees in the amount of P2,000 and P6,000 for actual and moral damages for the bringing of an action devoid of legal foundation.

After trial, on 21 December 1953 the Court rendered judgment holding that, as the action to repurchase was brought within five years from 23 April 1953, the date of registration of the deed of sale (3 months and 8 days after registration), the plaintiff was entitled to repurchase the homestead land and ordering the defendants to reconvey it to the plaintiff. The defendants moved for reconsideration of the judgment and further prayed that they be allowed to introduce evidence to support their claim that they are entitled to be reimbursed for improvements introduced in the homestead land. The Court reconsidered and set aside its judgment to allow the defendants to

present evidence in support of their claim for improvements and set the hearing of the case for 23 January 1953. After hearing, on 10 May 1954, the Court rendered judgment reiterating its previous judgment and denying the defendants' claim to be reimbursed for improvements on the homestead land and damages. The defendants have appealed. The Court of Appeals certified the appeal to this Court for the reason that only a question of law has to be determined.

The only assignment of error raises the question as to when does the five year period, as provided for in section 119 of the Public Land Law (Commonwealth Act No. 141), within which a homestead may be repurchased, begin to run. In *Galanza vs. Nuesa*, 50 Off. Gaz., 4213; *Galasinao vs. Austria*, 51 Off. Gaz., 2874; *Ignacio vs. Baradi*, 52 Off-Gaz., 5172; and *Visaya vs. Suguitan*, 99 Phil, 389; 31 May 1956, this Court held that the five year period within which a homestead land sold by a patentee may be repurchased by him, his widow, or legal heirs, starts from the date of execution of the instrument of sale and not from the date of registration or issuance of the certificate of title after registration of the deed of sale. As the action to enforce the right to repurchase the homestead land was filed on 31 July 1953, or 6 years, 1 month and 5 days from and after the date of the execution of the deed of sale, the plaintiff was no longer entitled to repurchase the homestead land from the defendants.

The judgment appealed from is reversed and the complaint dismissed, without pronouncement as to costs.

Paras, C. J., Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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