

JUAN EUGENIO AND BASILIA EUGENIO, PETITIONERS, VS. SILVINA PERDIDO, ROSITA, JOSE, ROMUALDO, FELIX, ALEJANDRINO, FRANCISCA, ASUNCION, FLORENCIA, AND AMADO, ALL SURNAMED SALANG, R...

G.R. No. L-7083. May 19, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

Review on certiorari of a decision of the Court of Appeals, wherein the relevant facts may be stated as follows:

1. On November 1, 1927 Homestead Patent No. 10847 was issued in the name of Teodoro Eugenio; 2. On March 12, 1932 Teodoro Eugenio in the presence of his son Juan, and daughter Basilia, (plaintiffs in this case) sold the homestead and delivered possession thereof, for the sum of P1,300.00 to the defendant Silvina Perdido and her husband Clemente Sadang, whose heirs are joined as defendants and respondents; 3. On May 4, 1949 this action was filed to recover the : land, upon the theory that the contract was a mere mortgage of the homestead, which plaintiffs inherited from their father; and that they had attempted unsuccessfully to repay the debt; 4. The court of first instance held the contract to be a contract of sale, which was void, because executed within five years from the issuance of the homestead patent; therefore it ordered to return of the property upon repayment of P1,300.00 with interest; 5. On appeal, the Court of Appeals reversed the award holding' that plaintiffs had no personality to attack the validity of the sale, and that all they had was the right to re-purchase which they failed to exercise within five years from March 12, 1932.

Denial of plaintiffs' motion to reconsider, led to the presentation of this petition for review, which is based upon two legal propositions, to wit: (1) The action to annul the sale in 1932 has not prescribed; (2).the right to repurchase within the five-year period has not lapsed, inasmuch as the sale was never registered.

There is no question that the sale in March 1932 having been made within five years from "the date of issuance of the patent" was "unlawful and null and void from its execution", by express provision of sections 116 and 122 of Act No. 2874. (Now Com. Act No. 141).

Under the existing classification, such contract would be "inexisting" ancj "the action or defense for declaration" of such inexistence "does not prescribe". (Art. 1410 New Civil Code). While it is true that this is a new provision of the New Civil Code, it is nevertheless a principle recognized since *Tipton vs. Velasco* 6 Phil. 67 that "mere lapse of time cannot give efficacy to contracts that are null and void"[1].

The imprescriptibility of plaintiff's action to recover is further strengthened by Sec. 46 of the Land Registration Act (Act 496) providing that "no title to registered land in derogation to that of the registered owner ; shall be acquired by prescription or adverse possession". ; .

In this connection it should be explained that the patent issued to the homesteader Teodoro: Eugenio was recorded in the registry of deeds of Nueva Vizcaya, and that Original Certificate of Title No. 62 dated December 5,1927

Exhibit X was issued in his name. Such being the case his interest is considered "registered within the meaning of the Land Registration Act No. 496"[2], and enjoys the same privileges as Torrens titles issued under said legislations.[3]

The imprescriptibility of such title has recently been recognized in *Acierto vs. de los Santos* L-5828, Sept. 1954.

We are aware, of course, that title by adverse possession (acquisitive prescription) is distinct from the statute of limitations (extinctive prescription)[4] and the operation and effects of such distinction has been explored during the discussions of this petition for review.

But we have finally agreed that as to lands registered under the Torrens system, ten years' adverse possession may not be permitted to defeat the owners' right to possession— which is the necessary incident ownership. Otherwise loss of the land by prescription would be indirectly approved, in violation of Sec. 46 of the Land Registration Act. This statute, being a later enactment, may be said to have partially amended the Statute of Limitations established in Act No. 190 in so far as the registered lands are concerned. :

Nevertheless petitioners' case may not so easily prevail on the foregoing considerations, for respondents have vigorously pressed several points needing particular attention.

Admitting arguendo, they say, that the Deed of Sale violated the Homestead Law, nevertheless, the petitioners have no personality to prosecute the instant suit, since it is the Government that is the real party in interest, and the object of its suit would be reversion of the property to the State. They cite section 124 of Public Land Law (2874) providing that sale "shall be unlawful and null and void from its execution; and shall produce the effect of annulling and cancelling the grant, title, patent etc. * * * and cause the reversion of the property" to the State. The answer to this is that the reversion is not automatic, (*Villacorta vs. Ulanday*, 73 Phil. 655) and so long as the Government has not chosen to act, the rights of the homesteader stand and must be recognized in the courts of law.[5]

Respondents also contend that, having executed the deed of sale, petitioners are estopped from denying defendants' ownership and possession, or that, at least, being in *pari delicto* they should not be allowed to recover.

As to the first point, it is enough to remember that no estoppel can be predicated on an illegal act. (19 Am. Jur. p. 804). The principle of estoppel as contended by respondents would mean something like this: petitioners having represented and led the respondents to believe, that the sale was valid, they may not thereafter allege it is invalid. Yet the respondents are conclusively presumed to know the law, and should not be allowed to plead estoppel which is founded on ignorance.

"It is generally considered that as between the parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or is against public policy." (19 Am. Jur. p. 802, citing many cases.)

As to the rule of in *pari delicto*, homesteaders or their heirs have heretofore been allowed to maintain actions similar to this.[6]

In a recent decision annulling a homestead sale, this Court thru Mr. Justice Alex. Reyes said:

"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 *pari delicto*, and that, since the same provision says the illegal sale shall have the effect of annulling the grant and cause of 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 of his heirs, and that until the State has 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'" (Acierto vs. De los Santos 95 Phil., 887).

Lastly respondents say, "Granting, without conceding, that petitioners' predecessor-in-interest, Teodoro Eugenio, could not have conveyed his homestead title on March 12, 1932, yet his subsequent acquisition of a complete homestead title sufficient for conveyancing under the Homestead Law on November 1, 1932 validated whatever defect the title of Clemente Sadang might have had."

A similar consideration was rejected in *Sabas vs. Garma* 66 Phil. 471, probably for the reason that a non-existent contract could not be ratified.

Wherefore, in view of the foregoing consideration, the decision under review should be, and is hereby reversed. Plaintiffs are permitted to recover the homestead upon payment of P1,300.00 to defendants. Costs shall be paid by the latter. So ordered.

Pablo, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion and Reyes, J.B.L., JJ., concur.

[1] See *Sabas vs. Garma* 66 Phil. 471.

[2] *Manolo vs. Lukban and Liwanag* 48 Phil. 973.

[3] *El Hogar Filipino vs. Olviga*, 60 Phil. 17.

[4] *Corporacion de P. Agustinos vs. Crisostomo* 32 Phil. 427.

[5] *De los Santos vs. Roman Catholic Church*, 94 Phil., 405.

[6] *Labrador and Canonizado vs. De los Santos*, 66 Phil. 579; *Kasilag vs. Rodriguez*, 69 Phil., 217; *Oliveros vs. Porciungcula*, 69 Phil., 305; *De los Santos vs. Roman Catholic Church*, 94 Phil., 405.

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