

**SOLEDAD PROVIDO, PLAINTIFF-APPELLANT, VS. OCTAVIO ACENAS,
NATIONAL DEVELOPMENT CO. AND DOLE (PHILIPPINES) INC.,
DEFENDANTS-APPELLEES.**

G.R. No. L-48610. March 31, 1987

Ponente: PARAS, J.

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PARAS, J.:

This case was certified to Us by the Court of Appeals in its Resolution promulgated February 20, 1978 in CA-G.R. No. 50069-R[1] as the issues raised therein are purely legal.

Plaintiff-appellant Soledad Provideo was granted a homestead patent over Lot No. 58, Pls-247-D, at Silway 7, Polomolok, South Cotabato, consisting of 79,986 sq. m. which is covered by OCT No. V-19264 issued by the Register of Deeds of Cotabato on October 1, 1954 under the Public Land Act.

On October 15, 1963, Soledad Provideo sold said land to Octavio Acenas for the sum of P6,000.00 by means of a public document. In 1966, Acenas sold it to the National Development Company (NDC for short) which entity in turn leased it to Dole (Philippines), Inc., (Dole for short) under a Grower Agreement.

On September 19, 1968, Soledad Provideo filed an action against Octavio Acenas docketed as Civil Case No. 140 (1008) in the Court of First Instance (CFI) of Cotabato, wherein she sought to exercise her right of repurchase under Sec. 119 of Commonwealth Act No. 141 or the Public Land Act as amended.

Octavio Acenas filed his answer on November 28, 1968, admitting some and denying other material allegations and by way of special and/or affirmative defenses alleging among other things that the complaint states no cause of action and that he no longer owns or holds the property in question, "he having already sold and ceded same by absolute sale to the NDC sometime in the year 1966, which in turn leased it to Dole Philippines which now holds the same, which absolute sale and cession was contained in a deed of sale, but that defendant lost his copy thereof and inspite diligent efforts, he is unable to procure other copies thereof, hence his inability to attached a copy of same hereto."[2]

Soledad Provideo filed her answer to the counter-claim on December 6, 1968 and on December 24, 1968, a Motion for Leave to Amend Complaint in order to implead NDC and Dole Philippines, attaching thereto her amended complaint.

Both parties who were impleaded in the amended complaint filed their separate Motions to Dismiss on the grounds that the claim therein set forth had already been extinguished or was barred by the Statute of Limitations and that the Complaint stated no cause of action.

The court a quo dismissed the case insofar as Dole and NDC are concerned in its Orders dated September 5, 1970 and September 19, 1970 respectively.

A Motion for Reconsideration of the Orders of Dismissal was filed by plaintiff Soledad Provideo which was denied

by the trial court for lack of merit.

Hence this appeal with this lone assignment of error:

"The lower court erred in dismissing the complaint on ground of prescription of action."

The main crux on appeal is whether plaintiff-appellant has lost her right to repurchase the homestead in question as provided for under Sec. 119 of the Public Land Act as amended which reads as follows:

"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 his legal heirs, within a period of five years from the date of conveyance."

It is appellant's contention that she did not lose her right to repurchase since the action to repurchase filed on September 19, 1968 against defendant-appellee Octavio Acenas, was well within the five (5) years period stated in the law. She avers that the filing of the original complaint suspended the running of the prescriptive period pursuant to Article 1155 of the New Civil Code and although the action against defendants-appellees NDC & DOLE was actually brought on December 24, 1968, or more than five years after October 15, 1963, the action is still timely because prescription had ceased to run on September 19, 1968.

Defendants-appellees NDC and DOLE contend otherwise alleging that the Amended Complaint which had im-pleaded them was filed only on December 24, 1968, and therefore, already beyond the five-year period. In other words, appellees aver that the filing of the Amended Complaint should be construed as the beginning of a new action as of the date of filing of the amendment.

Plaintiff-appellant maintains that NDC is subject to the same conditions that the original buyer had, thus when NDC bought the land from the original buyer it (NDC) was likewise bound to honor the right of repurchase of the appellant. She argues that the right of repurchase cannot be avoided by the vendee through the simple expedient of conveying it to the Government or any of its branches, units or instrumentalities. This right is a part of public policy. It is the benevolent intention of the State to give the homesteader every chance to preserve for himself and his family the land that the State granted him as a reward for his labor in clearing and cultivating it.[3] Appellant claims that appellee NDC, which succeeded Acenas, cannot be in a better position than the source of its rights and that the action against Acenas also interrupts the running of the prescription period against NDC just as well - to maintain otherwise would enable a succession of vendees to successively put up the defense of prescription to defeat the right of the vendor, who is not aware of any subsequent sale by the original purchaser.

In controversion, defendants-appellees declare that it is not correct for appellant to say that she had no knowledge that the lot was already sold to defendant NDC because the sale on December 23, 1963 was registered and a Transfer Certificate of Title No. T-13803, T-2078 was issued in favor of the NDC on July 9, 1965[4] and knowledge of such sale is presumed from the registration. Plaintiff-appellant therefore had legal or constructive knowledge that the subject lot was already sold to and owned by the NDC.

The contentions of plaintiff-appellant Provide merit Our consideration.

Firstly, the original complaint clearly states a cause of action against Acenas, namely, the right given by the law to the appellant Provide to repurchase the property from the buyer within five (5) years from the date of the sale. The allegation in the Answer that the NDC had already purchased the same from Acenas is of no consequence, for it is not the allegations in the answer, but those in the complaint which determine whether or not the complaint itself states a cause of action.

Secondly, even if We concede that the registration of the sale in favor of the NDC was on July 9, 1965 and that

therefore should have been constructively known by appellant - the fact is - if an original complaint already states a cause of action in favor of a plaintiff, the subsequent filing of an amended complaint makes the filing retroact to the time the original complaint was filed. (Pangasinan Transportation Co. vs. Philippine Farming Co., Ltd., 81 Phil. 273) Thus, insofar as the NDC and Dole are concerned, the filing of the amended complaint against them (even if they were not the original defendants) was legally effectuated upon the filing of the original complaint (and therefore within the prescribed prescriptive period of five years), they having merely stepped into the shoes of their predecessor-in-interest, Acenas.

Be it noted that the appellees NDC and Dole cannot invoke their rights under their relationship with their predecessor-in-interest (Acenas) and yet disclaim the effects of said relationship on exactly the same subject matter when it is to their disadvantage. This is less than fair, eminently less than just.

It is also averred by appellees that appellant cannot now question the validity of the title of the NDC because an action to repurchase is inconsistent with a denial of defendant's title to the subject matter thereof. It is not paradoxically so because NDC and Dole were impleaded by plaintiff not necessarily as an admission of the validity of their titles but because they are indispensable parties to the final disposition of the lot in question, if during the trial on the merits, appellant's claim will be proven to be valid.

WHEREFORE, premises considered, the assailed Orders dated September 5, 1970, September 19, 1970 and December 2, 1970 of the trial court are hereby SET ASIDE. Let this case be REMANDED to the court a quo for trial on the merits.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

[1] Penned by Justice Ameurfina Melencio-Herrera, concurred in by Justices Lorenzo Relova and Simeon Gopengco.

[2] Printed Record on Appeal, p. 7.

[3] Appellant's Brief, p. 6 citing *Barcelon vs. Arambulo, et al.* (C.A.) 48 O.G. 3976, citing also *Pascual vs. Talens*, 45 O.G. No. 9, p. 413).

[4] p. 4, Brief for Appellee.

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