

MERCEDES RAFFIÑAN, PETITIONER AND APPELLEE, VS. FELIPE L. ABEL, DEFENDANT AND FORTUNATO ROSILLOSA, DEFENDANT AND APPELLANT.

G.R. No. L-17082. April 30, 1962

Ponente: BARRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/29d93d38a6cb/>

BARRERA, J.:

This is an appeal, certified to us by the Court of Appeals, against the decision of the Court of First Instance of Quezon Province in Civil Case No. 5833 of its docket, declaring that the defendant-appellant Fortunato Rosillosa had already lost his right to repurchase the homestead in question and decreeing the foreclosure of the mortgage over the same land executed by the other defendant Felipe Abel, as purchaser, in favor of the plaintiff-appellee Mercedes Raffiñan.

Appellant Rosillosa acquired the disputed land by homestead in whose favor Original Certificate of Title No. 5483 was issued. On August 17, 1944 he sold the land to the spouses Margarita de la Cruz and Filomena Tolentino for the sum of P3,000.00 in Japanese war notes, and Transfer Certificate of Title No. 20483 was issued to the vendees in cancellation of the Original Certificate of Title No. 5483. On September 14 of the same year, de la Cruz and Tolentino in turn sold the land to Felipe Abel and wife Nieves Sandoval for P13,800.00 also in Japanese war notes, in whose favor a new Transfer Certificate of Title No. 20485 was issued.

On September 1, 1947, the spouses Abel and Sandoval, mortgaged the land, with others, in favor of herein appellee Mercedes Raffiñan, to guarantee the payment of a loan of P5,000.00, which mortgaged was duly registered and annotated on Abel's title No. 20485.

Subsequently or on January 4, 1949, the homesteader Rosillosa, exercising his right to repurchase within 5 years from date of conveyance, filed an action (in Civil Case No. 4945) to compel the spouses Abel and Sandoval (last vendees) to resell the land to him. After due hearing, the trial court rendered judgment ordering the therein defendants Abel and Sandoval to resell the land in question to Rosillosa upon the latters' paying to them of the sum of P120.00 Philippine Currency which the court found to be the equivalent of the P3,000.00 Japanese war notes for which the property was purchased from Rosillosa by the spouses de la Cruz and Tolentino. Abel and Sandoval appealed to the Court of Appeals, but the Appellate Court, in its decision promulgated on June 18, 1951, affirmed the judgment of the trial court.

Meantime, Abel and Sandoval had defaulted in their mortgage obligation and so on January 18, 1956, the mortgagee Raffiñan filed the present foreclosure suit. Rosillosa was included as party defendant because of his interest in the property sought to be foreclosed by reason of the judgment in his favor in Civil Case No. 4945. In his answer, Rosillosa denied any knowledge of the mortgage constituted by Abel over the property in question and claimed that such mortgage was null and void, the same not having been approved by the Secretary of Agriculture and Natural Resources and denounced it as made in bad faith because the parties thereto knew that the property was subject to repurchase within 5 years from the conveyance. Rosillosa further contended that his right

to repurchase as judicially upheld, enjoyed preference over that of the plaintiff as creditor-mortgagee, by reason of public policy.

After due hearing during which the parties submitted a stipulation of facts, the trial court rendered judgment in favor of the plaintiff-mortgagee, "declaring the mortgage in question valid and binding in view of the failure of the defendant Fortunato Rosillosa to duly exercise his right to purchase" and decreeing the foreclosure thereof and the sale in public auction of the mortgaged property upon failure of defendant Abel to pay plaintiff Raffiñan within 90 days the sum of P4,000.00 representing the balance of the mortgage indebtedness with interest thereon at the rate of 12% per annum from September 1, 1947 until full payment thereof.

From this decision, only defendant Rosillosa appealed contending that the trial court erred in declaring that he (Rosillosa) had lost his right to repurchase his homestead because "this is not the question at issue in the present case for (that) question was already determined in Civil Case No. 4945" and in not holding that the mortgage contract was null and void for being against moral and public order and without the approval of the Secretary of Agriculture and Natural Resources.

We first take the issue of the validity of the mortgage. In several case[1]the doctrine has been set that the requirement for the approval of the Secretary of Agriculture and Natural Resources prescribed in Section 118 of Commonwealth Act 141 (Public Lands Law) is merely directory and its absence does not invalidate any alienation, transfer or conveyance of the homestead after 5 years and before 25 years from the issuance of the title. Upon the other hand, we find no provision of law, and none has been cited, which prohibits the encumbrance of the homestead by the purchaser thereof during the statutory period of 5 years within which the vendor-homesteader may repurchase the same as provided in Section 119 of Commonwealth Act 141. The prohibition against such encumbrance or alienation, as prescribed in Section 118 of the same law, refers to those constituted by the homesteader himself within the term of 5 years from and after the date of the issuance of the patent or grant. In the present case, the Original Certificate of Title obtained by Rosillosa as homesteader was issued in 1933 long before he sold the land in 1944 and the encumbrance thereof by the purchaser Abel in 1947. It must be observed, of course, that such encumbrance or alienation, is subject to the right of the homesteader to repurchase the land within 5 years from the date of conveyance.

The next question is, has homesteader Rosillosa lost his right to repurchase? The lower court ruled in the affirmative on the ground that when Rosillosa filed his complaint on January 4, 1949, to compel Abel to resell the land to him, four (4) years, four (4) months and seventeen (17) days had already elapsed out of the five (5) years from August 17, 1944, date of the conveyance. And since the decision in his favor, as affirmed by the Court of Appeals, became final and executory on July 18, 1951 (it was promulgated June 18, 1951), he had only seven (7) months and thirteen (13) days within which to effectuate the repurchase, or only until February (should be March) 1, 1952, after which date Rosillosa has already lost his right to repurchase.

We do not agree to this view. As stated by the Court of Appeals in its confirmatory decision of June 18, 1951, the complaint filed by Rosillosa in 1949 against the Abels was a clear demand of repurchase and was well within the 5-year period prescribed in Section 119 of Commonwealth Act 141. The judgment of the court in that case not only recognized and upheld Rosillosa's right to repurchase, but compelled and ordered the vendees Abel to resell the property to Rosillosa. The dispositive part of the decision affirmed in toto reads as follows:

"IN VIEW THEREOF, the Court hereby renders judgment ordering the defendants to resell the land in question which is more specifically described in the second paragraph of the complaint and in the original Homestead Certificate of Title No. 5483, cancelled by Transfer Certificate of Title No. 20483 in the name of the spouses Margarita de la Cruz and Filomena Tolentino, and lastly cancelled by Transfer Certificate of Title No. 20485 in the name of the herein defendants; to the herein plaintiff, upon the payment to them by the latter

of the sum of F120.00 in Philippine currency, and to pay the costs of this suit."

And this judgment, which contains no term, may be executed, under Section 6 of Rule 39, by mere motion within 5 years from the date of its entry, or by means of an action after 5 years but within 10 years from such entry. In other words, Rosillosa complied with the provisions of Section 119 of C.A. No. 141 when, according to the Court of Appeals, he had to file his complaint to enforce his right. Under the circumstances of this case, upon the rendition of the judgment in his favor, Rosillosa's right to repurchase was no longer secured and guaranteed by the provisions of the Land Registration Act, but by the court decision.

We, therefore, declare and hold that the mortgage in question is valid and may be foreclosed, subject of course to the prior superior right of appellant Rosillosa, secured by the final judgment in Civil Case No. 4945, if still enforceable under Rule 39 of the Rules of Court, to repurchase the land in accordance with the said decision.

As thus modified, the decision of the lower court is affirmed, without costs. This is without prejudice to any action appellee Raffiñan may have against defendant Felipe Abel in case Rosillosa succeeds in repurchasing the mortgaged property. So ordered.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B, L., and Paredes, JJ., concur.

[1] Evangelista vs. Montano, 93 Phil., 275; Flores vs. Plasina, 94 Phil., 327; 50 Off. Gaz., [8] 1073; De los Santos vs. Roman Catholic Church, 94 Phil., 396; 50 Off. Gaz., [4] 1588; Jacinto vs. Jacinto 105 Phil., 1218; 56 Off. Gaz., [52] 7942.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.