

NIEVES TINIO, ET AL., PLAINTIFFS AND APPELLANTS, VS. GREGORIO FRANCES, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-7747. November 29, 1955*

Ponente: LABRADOR, J.

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This action was brought by the heirs of the deceased Sergio Nicolas to annul the sale of a homestead which had been inherited by them from said decedent. Sergio Nicolas applied for a parcel of land containing an area of 10.0709 hectares, more or less, in San Fabian, Santo Domingo, Nueva Ecija in the year 1917. His application was approved on June 22, 1917. He filed the corresponding final proof papers in relation to the homestead and on June 15, 1943 the said final proof was approved by the Director of Lands, who thereupon ordered the issuance of a patent in his favor. (Exhibit A.) At the time of the issuance of the above order, Sergio Nicolas had already died, so the order directs the issuance of the patent to his heirs, represented by his widow. In or about the year 1947 the heirs transferred their rights to the homestead to the defendants. The above transfers were approved by the Secretary of Agriculture and Commerce on March 9, 1948 and thereafter the defendants secured the issuance of a homestead patent in their favor. Original Certificate of Title No P-558 has been issued also in their favor covering the said parcel of land.

The present action was commenced on April 27, 1953 to annul the conveyances executed by plaintiffs to defendants and to recover the land, together with the fruits of the land received by the defendants, as damages. The defendants alleged the execution of the sales in their favor. After the issues had been joined the parties presented an agreed statement of facts, the most pertinent parts of which have already been set forth above. The trial court held that the transfer or conveyance of the homestead made by the heirs to the original homesteader was a mere transfer of the rights of the original homesteader to the land authorized under the provisions of Section 20 of the Public Land Act (C. A. 141) ; therefore, as it was approved by the Secretary of Agriculture and Commerce, the conveyance was valid. It held, that section 118 of the Public Land Act is not applicable; that both Section 20 and Section 118 being apparently conflicting, they should be reconciled such that the prohibition, contained in section 118 should be made to apply only if the patent had already been issued, otherwise section 20 would be absolutely useless. Against this judgment the appeal was prosecuted in this Court.

The provisions which affect, the conveyance sought to be annulled are as follows:

"Sec. 20. If at any time after the approval of the application and before patent is issued the applicant shall prove to the satisfaction of the Director of Lands that he has complied with all the requirements of the law, but, cannot continue with his homestead, through no fault of his own, and there is a bona fide purchaser for the rights and improvements of the applicant on the land, and that conveyance is not made for purposes of speculation, then the applicant, with the previous approval of the Secretary of Agriculture and Commerce, may transfer his rights to the land and improvements to any person legally qualified to apply for a homestead, and immediately after such transfer, the purchaser shall file a homestead application to the land so acquired and shall succeed the original homesteader in his rights and obligations beginning with the date of the approval of said application of the purchaser. Any person who has so transferred his rights may not again apply for a new

homestead. Every transfer made without the previous approval of the Secretary of Agriculture and Commerce shall be null and void and shall result in the cancellation of the entry and the refusal of the patent." (C. A. 141)

"Sec. 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provision shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of the issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period but the improvements or crop on the land may be mortgaged or pledged to qualified persons, associations, or corporations."

"No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds." (Id.)

The legislative policy or intent is to conserve the land which a homesteader has acquired under the Public Land Law, as above stated, for him and his heirs. The legislative policy is so strong and consistent that the original period of five years from the issuance of the patent, within which period conveyance or sale thereof, by the homesteader or his heirs was prohibited (section 116 of Act No. 2874) is now extended to 25 years if no approval of the Secretary of Agriculture and Commerce is secured (Sec. 118, par. 2, C. A. No. 141, as amended by C. A. No. 456.) Provision has also been inserted authorizing the repurchase of the homestead when properly sold by the homesteader within five years from the date of the sale. (Sec. 119, C. A. No. 141.) This legislative intent and policy is also sought to be carried out in Section 20, as may be seen from the fact that transfer of homestead rights from a homesteader can only be justified upon proof satisfactory to the Director of Lands that the homesteader cannot continue with his homestead through no fault of his own. This is not the only requirement; a previous permission of the Secretary of Agriculture and Commerce should first be obtained, as it is also expressly provided that any transfer made without such previous approval is null and void and shall result in the cancellation of the entry and the refusal of the patent. As the conveyances made under the provisions of section 20 of the Public Land Act, the important question to be determined is whether said conveyances satisfy requirements of said section 20 of the Act.

The stipulation of facts on this point is as follows:

"That the heirs of, Sergio Nicolas executed in or. about 1947 a transfer of homestead rights over the land in question in favor of the defendants, which transfer was approved by the Secretary of Agriculture and Commerce on March 9, 1948; that with the approval of said transfer of Homestead rights, the defendants caused the issuance of a homestead patent in their favor, the title being evidenced by Original Certificate of Title No. P—558 of the land records of Nueva Ecija."

The above stipulation does not state expressly that the Director of Lands had, after investigation, been satisfied that the applicant or homesteader "has complied with all the requirements of the law, but cannot continue with the homestead through no fault of his own." Furthermore, according to the stipulation, the transfer was made in 1947 and approved by the Secretary of Agriculture in 1948 so that the conveyances were not made with the previous approval of the Secretary of Agriculture and Commerce. So neither of the requirements of section 20 has been complied with.

But it is suggested that in accordance with the presumption of regularity of official acts the Director of Lands must have recommended the approval of the transfer. Admitting *arguendo* that such is the case, the conveyances still suffer from at least one fatal defect in that it does not appear that they had to be made because the homesteader could not continue with his homestead through no fault of his own. We may not and cannot indulge in presumptions on this necessary requirement, because the order for the issuance of the patent states just the

opposite. The order for the, issuance of the patent states expressly that the homesteader had already complied with all the requirements of the law with respect to cultivation, possession and otherwise thus:

"(5) That an investigation for the purpose of verifying the statements contained in the final proof papers was conducted by a representative of the Bureau of Lands, who found that the applicant has fully complied with the residence and cultivation requirements of the law; and"

* * *

"* * *, the undersigned is of the opinion that the applicant has complied with the requirements of law preliminary to the issuance of patent to the land applied for and already surveyed." (Exhibit A.)

The order for the issuance of a patent as well as the statements of fact therein contained, as above-quoted conclusively disprove the existence of the requirement that the homesteader could not continue with the homestead through no fault of his own.

In a legal sense, furthermore, when the Director of Lands issues the order for the issuance of a patent after the approval of the final proof, the right of the homesteader to the patent becomes absolute and then it becomes the ministerial duty of the corresponding officials of the Government to issue said patent. To all intents and purposes the order for the issuance of a patent is the same in effect as the issuance of a patent itself (*Balboa vs. Ferrales*, 51 Phil 499). And if the law (section 118, C. A. No. 114) prohibits the sale or conveyance of a homestead after the issuance of a patent, the prohibition should be extended, in view of the apparent policy of the law, to the date on which the order for the issuance of the patent is issued, which in this case is June 13, 1943.

Resuming what we have stated above, we find that the conveyances made by the heirs of the homesteader to the defendants herein in the year 1947 do not comply with the first requirement of section 20 of the Public Land Act that the Director of Lands is satisfied from proofs submitted by the homesteader that he (homesteader) could not continue with his homestead through no fault of his own, and with the second that a conveyance must be made with the prior or previous approval of the Secretary of Agriculture and Commerce; that from the date of an order for the issuance of a patent for a homestead the homesteader to all intents and purposes is considered as having the patent actually issued to himself, in so far as the prohibition contained in section 118 of the Public Land Act, otherwise the intent and policy of the law may be avoided by the homesteader by postponing the getting of his patent.

In accordance herewith the conveyances executed by the plaintiffs to the defendants, are hereby declared null and void, the transfer certificate of title issued in the name of the defendants (P-558 of the Office of the Register, of Deeds of Nueva Ecija) ordered cancelled, and the possession of the land returned, to the plaintiffs upon return to the defendants of the amounts received as price for the sale.

No damages or costs. So ordered.

Paras C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

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