

**SIGBE LASUD, LUMAGUS MAMADUD AND PRIMITIVA MAMADUD,
PLAINTIFFS AND APPELLANTS, VS. SANTAY LASUD AND
GUINANTANA CIA, DEFENDANTS AND APPELLEES.***G.R. No. L-19242. February 29, 1964*

Ponente: LABRADOR, J.

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According to the Stipulation of Facts entered into by and between the parties, the parcel of land subject of the action was originally a homestead of the deceased father of plaintiff Sigbe Lasud and defendant Santay Lasud. Original Certificate of Title No. 1232 was issued pursuant to Homestead Patent No. 26114 in the name of their father on February 1, 1934. Because of the death of their father plaintiff Sigbe Lasud and defendant Santay Lasud inherited the land and became co-owners thereof.

On July 14, 1955 plaintiff Sigbe Lasud sold her interest, right and participation in said parcel of land including her improvements thereon in favor of her brother defendant Santay Lasud and his wife Guinantana Cia for the sum of P550.00. Upon registration of this sale, the original certificate of title was cancelled and a transfer certificate of title issued in the name of Santay Lasud.

On August 10, 1959 Sigbe Lasud brought this action against her brother Santay Lasud to compel him to reconvey back to plaintiff the one-half share that plaintiff had sold to him in July, 1955. Defendant moved to dismiss the action on the ground that it is barred under Article 1391 of the new Civil Code (if the suit is for the annulment of the sale), and it is also barred under Article 1606 of the same code (if the suit is to exercise a right to repurchase. The court sustained these objections and dismissed the action.

Thereafter, the plaintiff filed an amended complaint alleging that the land sought to be purchased was originally acquired as a homestead under the Public Land Act; that plaintiff has offered to repurchase her one-half share that she had sold to defendant but that defendant refused to admit the repurchase.

With the amended complaint as a basis plaintiff's attorney prayed for a reconsideration of the court dismissing the complaint. The court in an order dated December 21, 1959 reconsidered its order of dismissal and ordered defendant to file his answer to the amended complaint. Thereafter, on February 16, 1961, the court entered the order subject of the present appeal, holding that the right to redeem can apply only to sales outside the family circle, unlike the sale in the case at bar. The court held:

"* * * Considering that Sec. 119 of the Public Land Law aims to preserve in the family of the homesteader that portion of the public domain which the State had gratuitously given to him, it is apparent that the conveyance mentioned therein refers to an alienation made to a third person outside the family circle. And certainly the defendant Santay Lasud can not be considered a third party in relation to the original homesteader, his father, because there is a privity of interest between him and his father, the defendant Santay Lasud being the continuity of the legal personality of the former. So much so, that the sale made by the plaintiff, Sigbe Lasud, to her brother, the defendant Santay Lasud, can not be a 'proper' case to be brought under the operations of Sec.

119 of the Public Land Law, because such a sale does not take the land out of the family circle of the homesteader their father, that is, the sale is not in contravention of an avowed fundamental policy, which is, 'to preserve and keep the family of the homesteader', the land granted to him by the State.

"The case would have been different if the plaintiff, as one of the heirs, conveys his share to a third party, in which case he or his co-heir, the defendant herein, may, in consonance with the aim and purpose of the homestead law, as interpreted in the light of the above cited authorities, redeem the property to preserve and keep the same within the family of the original homesteader.

"Considering the nature and circumstances of this case, the Court holds that the provisions of Sec. 119 of Com. Act 141 can not be made to apply in the instant case; and pursuant to its inherent power to suspend and correct its orders and processes;

"The Court resolves to set aside, as it hereby set aside its order dated December 21, 1959, and the order dated November 13, 1959, dismissing this case is hereby reinstated."

The above order is the subject of the present appeal.

It must be remembered that the appellee Santay Lasud against whom the right to repurchase or reconveyance is asserted is a son of the original homesteader himself and is an immediate member of the family of the homesteader and his direct descendant and heir to the property. In point of proximity to the homesteader, the appellee is as close to the original homesteader as the appellant who tries to redeem the property. They are brother and sister, son and daughter of the homesteader. Under the circumstances We agree with the court below that the sale of the homestead or part thereof does not fall within the purpose, spirit and meaning of the provision of the Public Land Act (Com. Act No. 141, Sec. 119) authorizing redemption of the homestead from any vendee thereof.

Wherefore, We affirm the order appealed from, with costs against appellants. So ordered.

Bautista Angelo, Concepción, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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