

LAURO IMMACULATA, REPRESENTED BY HIS WIFE AMPARO VELASCO AS GUARDIAN AD LITEM, PETITIONER, VS. HON. PEDRO C. NAVARRO, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST IN...

G.R. No. L-42230. April 15, 1988

Ponente: PARAS, J.

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PARAS, J.:

Petitioner's Motion for Reconsideration of Our decision dated November 26, 1986 asks Us to consider a point inadvertently missed by the Court - the matter of legal redemption of a parcel of land previously obtained by petitioner Lauro Immaculata thru a free patent. The reconsideration of this issue is hereby GRANTED.

While *res judicata* may bar questions on the validity of the sale in view of alleged insanity and intimidation (and this point is no longer pressed by counsel for the petitioner) still the question of the right of legal redemption has remained unresolved.

Be it noted that in an action (Civil Case No. 20968) filed on March 24, 1975 before the defunct Court of First Instance of Rizal, petitioner presented an alternative cause of action or prayer just in case the validity of the sale would be sustained. And this alternative cause of action or prayer is to allow petitioner to legally redeem the property.

We hereby grant said alternative cause of action or prayer. While the sale was originally executed sometime in December, 1969, it was only on February 3, 1974 when, as prayed for^[1] by private respondent, and as ordered by the court *a quo*, a "deed of conveyance" was formally executed. Since offer to redeem was made on March 24, 1975, this was clearly within the five-year period of legal redemption allowed by the Public Land Act (See *Abuan v. Garcia*, 14 SCRA 759, 761).

The allegation that the offer to redeem was not sincere, because, there was no consignation of the amount in Court is devoid of merit. The right to redeem is a RIGHT, not an obligation, therefore, there is no consignation required (*De Jesus v. Garcia* C.A. 47 O.G. 2406; *Rosales v. Reyes*, 25 Phil. 495, *Vda. de Quirino v. Palarca*, L-28269 Aug. 16, 1969) to preserve the right to redeem (*Villegas v. Capistrano*, 9 Phil. 416).

WHEREFORE, as prayed for by the petitioner Lauro Immaculata (represented by his wife, Amparo Velasco, as Guardian ad litem) the decision of this Court dated November 26, 1986 is hereby MODIFIED, and the case is remanded to the court *a quo* for it to accept payment or consignation^[2] (in connection with the legal redemption which We are hereby allowing the petitioner to do) by the herein petitioner of whatever he received from respondent at the time the transaction was made.

SO ORDERED.

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

[1] "Na matapos maaprobahan ang plano (subdivision plan) ukol sa nasabing lupa, ako ay lalagda o magbibigay ng anomang kinakailangang kasulatan papeles upang ang lupang ito ay masalin at magkatitulo sa pangalan ni JUANITO VICTORIA, na ligtas sa anomang pagkakahalang, suliran o agravamen." (p. 219, Rollo)

[2] To preserve the right to redeem, consignment is not required; but to actually redeem, there must of course be payment or consignment (deposit) itself.

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