

LORENZO GAUIRAN, PETITIONER, VS. RUFINO SAHAGUN, RESPONDENT.

G. R. No. L-4645. May 29, 1953

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for review by certiorari of a judgment rendered by the Court of Appeals reversing the judgment of the Court of First Instance of Cagayan, which holds that the defendant Lorenzo Gauiran is the lawful owner of a parcel of land containing an area of two hectares, more or less, in the southern part of the homestead of the plaintiff Rufino Sahagun and orders its subdivision; holding that the agreement between the parties of assigning the two hectares of the homestead of the plaintiff Rufino Sahagun to the defendant Lorenzo Gauiran is a violation of section 21 of Act No. 2874 and therefore null and void; and ordering the defendant Lorenzo Gauiran to return the possession of the two hectares of the homestead to the plaintiff Rufino Sahagun and the latter to pay to the former P95, together with lawful interests thereon from the date of the commencement of the action until fully paid, and to reimburse the defendant Lorenzo Gauiran for what he had paid for taxes on the two hectares of the homestead, also together with lawful interests from the date of the issuance of the certificate of title until paid, without pronouncement as to costs.

As this is a petition for review by certiorari the facts as found by the Court of Appeals are binding upon this Court.

The Court of Appeals makes these findings:

"The fact that Lorenzo Gauiran had been in possession of the property in question for at least 20 years before the commencement of this case, is not controverted. The question is whether his occupancy is that of an owner, as he claimed, or of a tenant, as contended by Sahagun. On this point the matter of veracity is paramount. The court a quo believed in the truth of Gauiran's assertion to the effect that he gave Sahagun the accumulated amount of P95 as a contribution to the expenses for the cleaning of the homestead. The record fails to reveal any reason why we should disturb the trial judge's opinion. Hence, it may be granted that Lorenzo Gauiran possessed the land on the understanding that it would be ultimately deeded to him, as in fact, later on a deed was executed by the plaintiff in favor of the defendant, which translated into English reads as follows;

"We, RUFINO SAHAGUN and GERTRUDES TUNG PALAN, husband and wife, and residents of barrio Naddungan, Gattaran, Cagayan, do hereby truthfully declare that there is a piece of land inside our homestead already with Title, which is being worked on and cultivated by Lorenzo Gauiran; that it is our desire to give the said piece of land to Lorenzo Gauiran as he is the real owner thereof and has been cultivating the same, since it was cleared up to the present for about ten years now; and in view of his having helped us in the payment of all necessary expenses in connection with our said homestead, and because of the fact that Lorenzo Gauiran was the one who cleared and opened said piece of land which is being cultivated by him within our homestead, we believe that it is really proper for us to give to him (L. Gauiran) said piece of land he is cultivating;—but we request at the present that because we have no time yet to execute the proper document segregating said piece

of land from our titles and because we have not yet measured the above-stated piece of land, so we have to wait until after harvest when we will execute the necessary document conveying said land to Lorenzo Gauiran as it is our desire to measure the same in order that we will know how much he has to pay as his share in all necessary expenses for said land.

"IN WITNESS WHEREOF, we hereby affix our signatures hereunder this 28th day of January, 1930, in Naddungan, Gattaran.

(Sgd.) "RUFINO SAHAGUN

"GERTRUDES (Thumbmark) TUNGPALAN

"WITNESSES:

(Sgd.) "GONZALO SAHAGON

(Sgd.) "V. C. (illegible)

(Sgd.) "(illegible)

"The due execution of the aforequoted document was testified to by Gauiran and Guillermo Vicente and it was not denied by plaintiff. Its authenticity therefore cannot be doubted. The original certificate of title for the homestead of the plaintiff which covers the land in question was issued on May 19, 1928 and the aforequoted document was executed on January 28, 1930, or within the five years during which under the law no portion of the homestead could be alienated. Thus, we have a case completely identical to that of Federico Oliveros vs. Pedro Porcioncola and Lucio Gaspar where it was held that the disposition of the homestead in violation of section 21 of Act No. 2874, as amended, is null and void. * * *

* * * * *

Obviously, under the aforementioned decision, the promise of Sahagun to convey the land in question to Gauiran made in 1930 through Exhibit 1 before the expiration of the 5-year period following the issuance of homestead patent on April 14, 1928 is null and void and cannot be enforced, for "it is not within the competence of any citizen to barter away what public policy by law seeks to preserve." (Puyat and Sons vs. De las Ama, et al., G. R. No. 48188, October 23, 1942, Vol. 2 Off. Gaz., No. 2 [Feb., 1943], p. 162.) On the other hand, pursuant to the case cited above, the transaction the parties had over the land in question prior to the issuance of the certificate of title gave no legal rights to defendant Gauiran which may be asserted before the courts of justice."

The petitioner, was then in possession of two hectares of land within the respondent's homestead which contains an area of a little over twelve hectares, situated in the barrio of Nagbaccayan, municipality of Gattaran, Province of Cagayan, more particularly described in the respondent's complaint, "for at least 20 years before the commencement of this case" (17 March 1947). This finding tallies with the testimony of the respondent, plaintiff and appellant in the courts below, to the effect that almost thirty years before giving the testimony he delivered to the petitioner, defendant and appellee in the courts below, two hectares of his homestead for cultivation (p. 10 record on appeal). So that the petitioner must have begun his possession of the two hectares of the respondent's homestead sometime in 1917 when he started to clear the area. And this must be true because if the homestead patent No. 11389 and the original certificate of title No. 426 were issued to the respondent on 14 April, and 19 May, 1928, respectively, the application for the homestead must have been filed by him and approved by the Director of Lands sometime in 1922 or at the beginning of 1923, for "the period within which the land shall be cultivated shall not be less than two nor more than five years, from and after the date of the approval of the application," and "the applicant shall, within the said period, notify the Director of Lands as soon as he is ready to acquire the title." (Section 14, Act No. 2874.) It may safely be stated then that the homestead applied for by the respondent Rufino Sahagun was acquired by means of a joint clearing, occupation and cultivation of the

homestead by the petitioner and the respondent. It was a joint tenancy. And this is confirmed by the document signed by the respondent and thumbmarked by his wife (Exhibit 1), the authenticity of which, according to the Court of Appeals, cannot be questioned.

If these are the facts as found by the Court of Appeals, the rule laid down in *Oliveros vs. Porcioncola*, 40 Off. Gaz., 6th Supp., 7, does not apply to the case, because there he (Oliveros) sold for P1,000 all his rights and interests in the land to the defendant (Porcioncola) before the issuance of the patent; and it was held that section 21, Act No. 2874, was violated, because the transfer was without the previous approval of the Secretary of Agriculture and Natural Resources and there was no application filed by the transferee for him to take the place of the original applicant. Here there was no transfer of the homestead or part thereof at any time after the approval of the application and before the issuance of the patent. It was a joint tenancy and both the petitioner and the respondent occupied, cleared and cultivated the homestead applied for by the respondent since 1917 or at the latest since 1922. It is not an alienation or encumbrance "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," because the joint tenancy came into existence before the filing of the application, the approval thereof and the issuance of the grant or patent. It is unfair for the respondent not to live up to the verbal understanding had with the petitioner and confirmed by him and his wife in a document executed on 28 January 1930. The only provision of the Public Land Act (No. 2874) which would prevent the fulfillment of the verbal understanding between the petitioner and the respondent, confirmed by the document referred to (28 January 1930), would be an administrative action by the Director of Lands who, after finding that material facts set out in the application are not true, such as the statement in the application that it "is made for the exclusive benefit of the applicant and not, either directly or indirectly, for the benefit of any other person or persons, corporations, associations or partnerships," [1] shall cancel "the concession, title or permit granted." [2] But not until this be done by the Director of Lands may the petitioner be prevented from enforcing the fulfillment of the contract. The verbal contract confirmed by a document signed by the party sought to be charged must be performed. As already stated, it is not an alienation or encumbrance which is prohibited by sections 116 and 122, Act No. 2874, as amended. If the parts of the opinion in the case of *Tomas vs. Salvador et al.*, G. R. No. 35580, quoted by the petitioner in his brief, the decision of which has not been published but reported as one of the cases decided by this Court from 5 to 30 April 1932, 57 Phil. 965, be correct, the rule there laid down supports the conclusion herein arrived at. It is unfortunate that the original decision in the case referred to was lost during the battle for liberation of Manila and no authentic copy thereof can be found; but the note under the title of the case which says: "Joint tenancy. Judgment for the defendants affirmed," seems to confirm the parts of the opinion quoted by the petitioner in his briefs. [3]

This case may be likened to one where a co-owner has been deprived of his right, interest, share and participation in a parcel of land which was registered in the name of his co-owner and the period for reopening the decree, pursuant to section 38, Act No. 496, already has expired. The registration of the parcel of land in the name of one of the co-owners does not preclude the court, in the exercise of its equity jurisdiction, from compelling the registered co-owner to reconvey the right, interest, share and participation in the registered parcel of land to the one who has unlawfully been deprived thereof.

The judgment of the Court of Appeals under review is reversed. Let judgment be entered dismissing the complaint and directing the respondent Rufino Sahagun to reconvey to the petitioner Lorenzo Gauran two hectares in the southern part of the homestead which have been in the latter's possession from the time both the petitioner and the respondent began to occupy, clear and cultivate the homestead in compliance with the provisions of the Public Land Act (No. 2874), after subdivision thereof by a qualified surveyor shall have been made, the expense for such subdivision to be borne proportionately by the parties, with costs against the respondent.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1]Section(e), Act No. 2874.

[2]Section 89, Act No. 2874.

[3] La demandante Cayetana Tomas apelo de la decision del Juzgada de Primera Instancia de Cagayan por la que se sobreseyo su demanda, sin costas.

La referida apelante instituyo esta accion para recobrar de los apelados la propiedad y posesion de la mitad de una parcela de terreno agricola, de 16 hectareas de extension aproximadamente, situada en Gattaran, Provincia de Cagayan, mas particularmente deserita en la demanda.

El 26 de julio de 1916 Baltazar Domingo, esposo de la apelante, de una parte, y el apelado Candido Salvador y su hijo Francisco, de la otra, convinieron en que el terreno descrito en la demanda, que era entonces casi un bosque, lo roturarian y cultivarian conjuntamente y que despues que Domingo hubiese adquirido patente de homestead que lo dividirian por igual, habiendose otorgado al efecto el contrato por escrito Exh. 1.

* * * * *

No podemos sancionar la contencion de la apelante por ser injusta. Prescindiendo de la cuestion suscitada en primera instancia acerca de si el contrato Exh. 1 debe registre por la Ley No. 926 o por la Ley No. 2874, declaramos que tal contrato no infringe la prohibicion de la Ley No, 2874 porque por el no se transfiere en efecto el terreno reclamado por la apelante, poseido por el apelado Salvador. Por dicho convenio se ha creado mas bien una comunidad de bienes entre la apelante, como sucesora de Baltazar Domingo, y el apelado Candido Salvador y es innegable el derecho de este a pedir que se le adjudique la porcion que le corresponde. Esto naturalmente da por resultado que la accion de la apelante queda sobreseida y por otro lado obligada a otorgar la correspondiente escritura de traspaso de la mitad del terreno, que es el mismo cuestionado. (Tomas vs. Salvador et al., G. R. No.. 35580, 5 to 30 April 1932, 57. Phil. 965 [unpublished], cited in petitioner's brief, pp. 9-10.)

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