

**MANGULON CALAGAN, FERNANDO CALAGAN, ASUNCION CALAGAN,
MIRASOL CALAGAN, ARSENIA CALAGAN, PAULA CALAGAN,
CRISTITUTO CALAGAN, CANDELARIA CALAGAN AND CRISPINA
CALAGAN, PETITIONERS, ...**

G.R. No. L-30402. January 28, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Sought to be reviewed herein is that portion of the judgment of the Court of First Instance of Davao, Branch II, ordering the payment by petitioners to private respondent of the amount of P3,000.00 representing the value of the house constructed on the homestead in question by said private respondent.

The antecedent facts show that in 1954, petitioner Mangulon Calagan and his wife, Takura, were granted a Homestead Patent over a 5.2905 hectare-land in Dawis, Digos, Davao, and were issued Original Certificate of Title No. P-2388 therefor.

In 1955, Takura died, survived by her husband, Mangulon, and their children, Fernando, Asuncion, Mirasol, Arsenia, Paula, Cristituto, Candelaria and Crispina, all surnamed Calagan, all of whom are petitioners herein.

On August 8, 1961, Mangulon and his daughter, Paula, sold a portion of 9,230 square meters of their homestead to private respondent, Petra Sandoval, in consideration of the sum of P2,340.00. Petitioners' title to the land was borrowed by private respondent so that the latter could have the sale annotated thereon. In 1963, Mangulon offered to repurchase the portion sold but private respondent refused. Petitioners made subsequent offers to repurchase but private respondent was adamant. The latter maintains that she was willing to comply with petitioners' demands provided she was reimbursed the value of the house that she had constructed on the subject land.

On April 15, 1966, petitioners brought this action for reconveyance against private respondent. On October 10, 1968, the trial Court rendered judgment, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, judgment is hereby entered for the plaintiffs and against the defendant:

(1) That the defendant is ordered to reconvey unto the plaintiffs the piece of land having an area of 9,230 described in the complaint upon returning of the sum of P2,340.00 and payment of P3,000.00 as value of the house constructed in good faith by the defendant on the said lot.

(2) To deliver to the plaintiffs the duplicate certificate of Title No. P-2388.

(3) To pay attorney's fees in the sum of P500.00.

(4) And to pay the costs.

SO ORDERED."

In this appeal, petitioners maintain solely that the trial Court erred in ordering petitioners to pay the sum of P3,000.00 "as value of the house constructed in good faith."

There is no dispute on the following basic points: 1) the subject land is a portion of a homestead belonging to petitioners; 2) a repurchase is proper pursuant to Section 119 of the Public Land Act (CA No. 141) providing that "every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow or legal heir within a period of five years from the date of the conveyance"; and 3) this action for repurchase was filed within the five-year period from the date of sale.

The controversy revolves around the legality of that portion of the judgment requiring petitioners to pay private respondent another amount of P3,000.00 representing the value of the residential house built by private respondent on the portion of the land which petitioners seek to repurchase.

Petitioners present their digest of arguments thus:

"1. Only necessary expenses are subject to reimbursement. House constructed on a coconut land is not necessary. It is only useful.

"2. In a repurchase under Section 119 of the Public Land Act, a homesteader is only supposed to tender the purchase price. To require him to pay for the value of the house constructed on the land sought to be repurchased, in addition to the purchase price, constitutes a circumvention of the Public Land Act.

"3. A vendee who introduced a building on a land sought to be repurchased, under the Public Land Act, and during the time when the homesteader can validly repurchase the same, cannot be considered a builder in good faith, because his possession over the land is of a precarious character." [1]

Private respondent's counter-argument is that when she bought the land in dispute "she was not merely a tenant nor a lessee or a possessor in good faith therein but the owner of the tenement itself". [2] As she needed a house where she and her family could live, she constructed a modest house in the lawful exercise of her rights as an owner.

There is no provision in the Public Land Act (CA No. 141) which provides for the terms and conditions under which repurchase may be effected by a homesteader except that it should be made within five years from the date of conveyance. That Act is silent as to the nature of expenses that should be reimbursed by a repurchasing homesteader or his heir. Resort may, however, be had to the general provisions of the Civil Code on the subject, particularly Article 1616 (formerly Article 1518), which provides:

"Art. 1616. The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition:

(1) The expenses of the contract, and any other legitimate payments made by reason of the sale;

(2) The necessary and useful expenses made on the thing sold."

Under the above-quoted codal provision, the vendor a retro cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, the expenses of the contract and other legitimate payments, and the necessary and useful expenses made on the thing sold.

There can be no question but that the house which private respondent constructed is a useful expense, defined as that which increases the value or augments the income of the property, as contrasted to a necessary expense which is incurred for the preservation of the thing. [3]

We agree that the provision of Article 1616 of the Civil Code, *supra*, on redemption, is, in general, the applicable

law to a homesteader desirous to redeem his property. However, considering the purpose of the law on homesteads, which is to conserve ownership in the hands of the homesteader and his family, Article 1616 of the Civil Code should be construed in conjunction with Articles 546 and 547 of the Civil Code prescribing the rules on refund of necessary and useful expenses, inasmuch as a vendee a retro is, as a rule, considered in good faith. Said Articles read thus:

"ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

"Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

"ART. 547. If the useful improvements can be removed without damage to the principal thing, the possessor in good faith may remove them, unless the person who recovers the possession exercises the option under paragraph 2 of the preceding article."

Applying Article 547, therefore, the homesteader desiring to repurchase should be given the option to require the vendee a retro to remove the useful improvements on the land subject of the sale a retro, which option is not granted the vendor a retro under Article 1616. Under the latter Article, the vendor a retro must pay for the useful improvements introduced by the vendee a retro, otherwise, the latter may retain possession of the property until reimbursement is made.[4] To allow a vendee a retro of a homestead, however, the right of retention until payment of useful expenses is made by the redemptioner would be to render nugatory the right of repurchase granted by law to a homesteader because all a vendee a retro can do to prevent repurchase is to build something on the homestead beyond the capacity to pay of the homesteader who seeks to repurchase. Such a situation should not be allowed to pass. To the same effect was our ruling in *Philippine National Bank vs. Landeta*[5] where we held that although the mortgagee-bank therein (after it had bought it at the foreclosure sale), had sold the homestead to a third party within the five-year period, the homesteader should be allowed to repurchase the mortgaged homestead from the bank and not from the third person for, otherwise, a vendee a retro could make "conveyance of the property for amounts beyond the capacity of said owner to pay."

To recapitulate, it being obvious that petitioners are not exercising the option to refund the amount of the expenses incurred by private respondent for the house that the latter built, nor to pay the increase in value acquired by the land by reason of such expenses as provided for in Article 546 of the Civil Code, private respondent, as the vendee a retro, may remove her house since this can be done without damage to the principal thing, as stipulated in Article 547 of the Civil Code. Petitioners should not, as opined by the trial Court, be made to refund the value of that house to private respondent, else, the salutary policy behind the public land law would be thwarted and rendered meaningless.

WHEREFORE, the judgment appealed from is modified by eliminating that portion requiring petitioners to pay private respondent the amount of P3,000.00 representing the value of the house constructed by her. Private respondent, however, is given the right to remove her house without damage to the land on which it is built. In all other respects, the judgment of the trial Court is affirmed.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

[1] pp. i-ii, Brief for the Petitioners.

[2] Brief, p. 2.

[3] Arts. 488-489, Civil Code.

[4] Gargollo vs. Duero and Espejo, 1 SCRA 1311 (1961).

[5] 18 SCRA 273 (1966).

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