

**MARIANO M. PARAS, SR., PETITIONER, VS. COURT OF APPEALS,
LAZARO LEODONES AND DEMETRIO LEODONES, RESPONDENTS.***G.R. No. L-4091. May 28, 1952*

Ponente: MONTEMAYOR, J.

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Respondent Lazaro Leodones was originally the owner of lot No. 2817 of the Peñaranda Cadastre No. 226, with an area of about seventeen hectares acquired by him by virtue of Homestead Patent No. 32378, covered by Original Certificate of Title No. 2443 of the Register of Deeds of Nueva Ecija. It was assessed for tax purposes in the sum of P3,283.68.

On July 31, 1935, Lazaro mortgaged the homestead in favor of the Philippine National Bank, Cabanatuan Branch, to secure the payment of a loan in the sum of P650.00. Failing to pay said loan, the Bank instituted extrajudicial foreclosure proceedings under the provisions of Act 3135 as amended. At the auction sale held on September 7, 1940, the Bank was the sole bidder and bought the land for P400 although the mortgage indebtedness of Lazaro at the time of the auction amounted to P668.25, thereby leaving Lazaro still indebted to the Bank in the sum of P268.25. Because of his failure to repurchase the lot within one year, the Bank on October 23, 1941, executed an affidavit of consolidation of ownership, and upon the registration of the same in the office of the Register of Deeds, Homestead Patent No. 32378 as well as Original Certificate of Title No. 2443, both in the name of Lorenzo, were cancelled and in lieu thereof, Transfer Certificate of Title No. 18876 was issued in favor of the Bank.

On October 7, 1942, the Philippine National Bank executed a deed of promise to sell the land in question in favor of petitioner Mariano M. Paras Sr. upon his making a down payment of P1,000; and because Paras complied with the terms contained in said promise to sell, the Bank on May 25, 1943 executed a deed of absolute sale of the property to him for the total sum of P1,800. By virtue of this deed of absolute sale, the Register of Deeds issued in favor of Paras Transfer Certificate of Title No. 19339.

On November 19, 1941, however, about a year before the Bank executed the deed of promise to sell in favor of Paras, and about a month after said Bank had consolidated its ownership over the property, Lazaro made a written offer to the Bank to repurchase the property, subject of the auction sale, and to show his good faith, he deposited the sum of P200 with the Bank. According to the evidence as found by the Court of Appeals, on November 20, 1942, Lazaro withdrew this deposit because Paras after he had received the deed of promise to sell by the Bank in October 1942, approached Lazaro and persuaded him to make the withdrawal, telling him that it was unnecessary inasmuch as he (Paras) would reconvey the same land to him when it shall have been definitely sold to him (Paras), for a sum in genuine Philippine currency not a centavo more than what he paid the Bank.

The Court of Appeals equally found that immediately after liberation Lazaro offered to repurchase the land from the appellant with genuine Philippine currency but the appellant turned down the offer unless he was paid P4,000. Again, Lazaro offered to buy the land from Paras on November 23, 1945 and on February 12, 1946, but Paras

refused both offers.

Despite the purchase of the land at the auction sale by the Bank and its subsequent conveyance to Paras, Lazaro Leodones and his son Demetrio Leodones continued in possession of the property and presumably in the enjoyment of the fruits thereof. Because of this, Paras brought the original action, Civil Case No. 44, in the Court of First Instance of Nueva Ecija against Lazaro and Demetrio to have himself declared absolute owner of the property, to obtain possession from defendants, and to compel them to render accounting of the products of the land from the year 1943. In an amended decision, Judge Melendres of the trial court annulled the auction sale on foreclosure on the ground that it was not held in the place required by law and also because the inadequacy of the price of P400 paid by the Bank was shocking to the conscience, and so ordered that upon payment by Lazaro of the sum of P668.25 with interest at the rate of P0.13 a day from June 30, 1940, the Register of Deeds was to cancel Transfer Certificate of Title No. 19339 in the name of Paras, and in lieu thereof to issue a Certificate of Title in the name of Lazaro, with the annotation of the mortgage in favor of the Bank originally noted in Original Certificate of Title No. 2443, but with a memorandum to the effect that said mortgage was already redeemed. On appeal to the Court of Appeals by Paras, this Tribunal affirmed the decision appealed from. We quote:

"* * *, the decision appealed from is hereby affirmed in so far it grants appellee Lazaro Leodones the right to redeem the property described in Original Certificate of Title No. 2443 of the Registry of Deeds of Nueva Ecija, upon payment by said appellee to the appellant of the sum of P668.25 with interests thereon at the rate of P0.13 daily from June 20, 1940 until fully paid; and in so far it orders the Register of Deeds or Nueva Ecija,—after such payment—to cancel Transfer Certificate of Title No. 19339, issued to the appellant, and to issue, in lieu thereof, another in the name of appellee Lazaro Leodones making appear therein the mortgage in favor of the Philippine National Bank executed on July 31, 1935 (Exh. D) with subsequent memorandum to the effect that the same has been paid and redeemed. With costs against the appellant."

The Court of Appeals did not agree with the trial court as to the annulment of the auction sale, and considered that sale valid. However, it held that Lazaro had offered to repurchase the land within the five-year period provided by the Public Land Act. Paras has now brought the case to us on appeal by certiorari.

Although petitioner assigns six errors said to have been committed by the Court of Appeals, all of them may be consolidated into the single question of how to compute the five-year within which a homesteader may repurchase his homestead after having conveyed the same.

Section 119 of Commonwealth Act 141 reads as follows:

"SEC. 119. 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 heirs, within a period of five years from the date of the conveyance." (*Italic supplied.*)

In this connection the Court of Appeals said:

"In the instant case, we believe, and so hold, that the five-year period should be counted from October 27, 1941, when the Transfer Certificate of Title No. 18876, Exhibit N, was issued to the Philippine National Bank or, at most, from September 8, 1941, the day following the expiration of the right of redemption reserved to the appellee pursuant to the Certificate of Sale, Exhibit 1, and from which date the final Certificate of Sale could have been properly issued in favor of the bank as purchaser. Certificate Exhibit I, issued to the Bank, was only provisional in character and intended to be a mere memorial of the fact that purchase was made by the person named therein as buyer. 'It is not intended to operate as an absolute transfer of the property but merely to identify the property, to show the price paid and the date when the right of redemption expires. The effective conveyance of the land is accomplished by the deed which is issued only after the period of redemption has expired.' (*Gonzales vs. Calimbas and Poblete*, 51 Phil., 355-358, underlining supplied.) 'The rights secured by

an execution purchaser are inchoate before the deed, and it is necessary for the purchaser to procure his deed to complete his title.' (Pike vs. Halpin, 181 Mich. 447, 450). Since the term 'conveyance' imports the transfer of legal title to land from one person or class of persons to another (Frame vs. Bivens, 89 F., 789 citing Bouvier's Law Dictionary, p. 434) it stands to reason that only from the dates above mentioned, after the expiration of the term of redemption, should the property be considered as conveyed for the purposes of Sec. 119 of Act 141. It being conceded that the defendant-appellee herein 'offered to buy the land in question on November 23, 1945 and on February 12, 1946 but that the plaintiff (appellant) refused the offer' (See No. 20 Stipulation of Facts) said offer to redeem was seasonably made. Hence the trial court was correct in granting appellee Lazaro Leodones the right to redeem the land in question."

We share the feeling of the trial court as to the inadequacy of the price paid by the Bank at the auction sale. It will be remembered that the homestead mortgaged to the Philippine National Bank, Cabanatuan Branch, was assessed for purposes of taxation in the sum of P3,283.68. To realize the extreme discrepancy between the real value of the property and the price at which the Bank bought it, we all know that the assessed value of real property, specially in the provinces is much below its real market value, sometimes only a fraction thereof. So that at the time of the auction sale, the homestead must have been worth several thousand pesos. In fact, the Bank sold it to Paras for P1,800, and the latter demanded P4,000 as sales price to Lazaro. At the time of the foreclosure of the mortgage, homesteader Lazaro was indebted to said Bank in the sum of P668.25 and yet said Bank in the absence of other bidders purchased the mortgaged property not even in the same amount of the indebtedness but only for the meagre sum of P400, leaving still a balance of P268.25 against the mortgage-debtor. The Bank certainly not only was able to recover the full indebtedness of the mortgage-debtor but also made a clean profit of P1,000 in the transaction. One cannot say that the mortgagor-homesteader received a fair deal. That the price paid by the Bank at the auction sale for the homestead was grossly inadequate and shocking to the conscience, is obvious, and for this reason alone, we are disposed to annul said sale. However, because of our view as to the validity of the offer of repurchase made by Lazaro, resulting in the return of the land to him upon payment of his indebtedness, we find that to hold the auction sale void, would be unnecessary.

After a careful study of the point raised in the present appeal by certiorari, we agree with the Court of Appeals that the five-year period within which a homesteader or his widow or heirs may repurchase a homestead sold at public auction or foreclosure sale under Act 3135 as amended, begins not at the date of the sale when merely a certificate is issued by the Sheriff or other official, but rather on the day after the expiration of the period of repurchase, when the deed of absolute sale is executed and the property formally transferred to the purchaser. As this Court said in the case of Gonzales vs. Calimbas and Poblete, 51 Phil, 355, the certificate of sale Issued to the purchaser at an auction sale is intended to be a mere memorandum of the purchase. It does not transfer the property but merely identifies the purchaser and the property, states the price paid and the date when the right of redemption expires. The effective conveyance is made by the deed of absolute sale executed after the expiration of the period of redemption.

In the present case it is clear that whether the five-year period fixed by Sec. 119 of Commonwealth Act No. 141 be computed as commencing to run from the date of the expiration of the one year for repurchase or from the date of the affidavit of consolidation of ownership and the issuance of the corresponding Transfer Certificate of Title in favor of the Bank, the offer of repurchase by Lazaro in November 1945, was made on time. Not only this, but according to the findings of the Court of Appeals, Lazaro made the first offer to repurchase the property as early as November 1941, altho he desisted from it because of the promise made by Paras. Again, Lazaro made another offer immediately after liberation which must have been around April or May, 1945, considering the date when Nueva Ecija was liberated from the Japanese, which date was certainly less than five years even from the day of the auction sale made in September, 1940. So that in all respects and from whatever angle we view this case, respondent Lazaro Leodones is entitled to repurchase his homestead.

Finding no reversible error in the decision of the Court of Appeals appealed from, the same is hereby affirmed with costs against appellant.

Paras, C.J., Feria, Pablo, Bengzon, Tuason, and Labrador, JJ., concur.

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