

MAXIMA FELIPE, PLAINTIFF AND APPELLEE, VS. PONCIANA DE LA CRUZ, ET AL. DEFENDANTS AND APPELLANTS.*G.R. No. L-9145. September 25, 1956*

Ponente: REYES, J.B.L., J.

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By judgment rendered by the Court of First Instance of Camarines Sur (Civil Case No. 1836), duly affirmed by the Court of Appeals (CA-G. R. No. 10026-R), herein appellant Ponciana de la Cruz was sentenced to pay appellee Maxima Felipe "P50 as damages for the year 1951, and to deliver to her thereafter five cavanes of palay every year, until the land is fully restored." To satisfy the judgment, the Sheriff levied upon appellant's four parcels of rice land and advertised the same for sale. Appellant petitioned the Court to declare three of the parcels, covered by Tax Declarations No. 1836, 1226, and 2233, with a total assessed value of P290, to be exempt from execution as debtor's homestead, under Rule 39, section 12, paragraph (a). The Court below denied the exemption, the parcels were sold, and Ponciana de la Cruz appealed to this Court.

In her brief (pp. 5-6), appellant admits that she has no homestead or residence in the controverted land; but avers that as her house was in the very land that, under the judgment, she must deliver to appellee herein; she is entitled to substitute the three parcels above mentioned *Hin lieu* of her homestead." Appellee avers, on the other hand, that as appellant does not actually occupy any of the parcels claimed, they do not become exempt from execution.

In our opinion, this theory of substitution cannot be maintained. It is to be observed that the rules on execution do in fact contemplate the possibility that property, otherwise exempt (like a homestead), may nevertheless be subject to execution under specified circumstances and yet no substitution provided for. Thus, the last paragraph of section 12 of Rule 39, is to the effect that—

"But no article or species of property mentioned shall be exempt from execution issued upon a judgment recovered for the price or upon a judgment of foreclosure of a mortgage thereon."

The right to exemption from execution is purely statutory and as a matter of fact, Rule 39, section 12, is but a reproduction of section 445 of Act 190, as amended by Act No. 3862. Wherefore, the Courts have no power to extend, modify or restrict the exemption fixed by the Legislature, since such exemption is substantive and not procedural in character. The Legislature not having provided for a substitute homestead in case the home of the debtor is levied upon, courts are powerless to institute the replacement of such homestead with another property of the debtor.

Another argument against the stand of appellant is that by "debtor's homestead" the law means nothing else than the house in which the debtor resides. Interpreting the original provision of section 445 of Act 190 (the old Code of Civil Procedure), this Court has ruled in *Young vs. Olivares*, 41 Phil., 391, to that effect.

"* * * The word 'homestead,' as used in English, usually imports not only the residential house occupied as a home but also the adjacent land necessarily used in connection therewith; and yet the word is sometimes used

for either house or land separately. (See New Standard Dictionary, s. v. homestead.) Now, in drafting the provision under consideration, the authors of the Code of Civil Procedure, out of abundant precaution and in order to avoid a narrow, interpretation of the word 'homestead,' added the expression and land necessarily used in connection therewith.' By giving independent expression to this element in the signification of the word, the codifiers thereby narrowed the necessary import of the word 'homestead with the result that, as it stands here, it means nothing more than house'(Cas. Cit. pp. 393-394).

Since it is not contended that three lots involved in the appeal contain any house, the "homestead" exemption can not apply to them. While the debtor may now have the intention of transferring her dwelling to one of said lots, mere intent can not support the claim for exemption. The rule is well established that, unless otherwise expressly provided, actual occupancy is necessary to acquire a homestead exemption (40 C.J.S., 458; Klots vs. Rhodes 240 Mo. 449, 144 SW 791), and the homestead character can not be impressed upon the property only after its levy and seizure (Ann. Cas. 1913B, 1147-1151). This rule is recognized in the words of our law, declaring as exempt only—

"The debtor's homestead, in which he resides, and land necessarily used in connection therewith."

If not as homestead, may the lots in question be held exempt from execution as 'land necessarily used in connection therewith'? The construction adopted in *Young vs. Olivares*, supra, strongly indicates that[^] since the term "homestead" is limited to the house, "and necessarily used in connection" with it must refer to the land upon which the house stands, and the adjacent lot needed for its dependencies (gardens, orchards, garages driveways, etc.) (29 C.J. 830; 40 C.J.S. 503). It does not seem cogent that "land necessarily used" should be made to apply to any land devoted to produce food for the support of the debtor, considering that the law already exempts, by express provisions, his means of livelihood, such as the tools and implements required for the debtor's trade and employment, his work animals, clothing and household utensils, besides provisions for him and his family "sufficient for three months" only and not indefinitely (Act 190; Rule 39, section 12). Were the "land necessarily used in connection therewith" intended to designate land required for the support of the debtor, as appellant contends, surely the law would have mentioned it either jointly with, or as an alternative to, the exemption of his means of earning a living (instruments, tools, etc.), but not in connection with his homestead.

But granting that "land necessarily used in connection" with the debtor's homestead includes the non-adjacent land upon which the debtors food is grown, there is on record no evidence that the lots here involved were devoted ty such purpose before the levy was made; and the burden of proof lay upon the appellant as claimant of the exemption to show such use (*Agatep vs. Taguinod*, 36 Phil. 435). And considering the finding of the Court below, that appellant owned nine (9) parcels of land in all (R. A. p. 10), we find no reason to consider that the appealed order, denying the exemption of the three lots here involved, constituted reversible error.

The order appealed from is affirmed. Without costs.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ., concur.

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