

**FELIPA JOLATORIA, ET AL., PLAINTIFFS-APPELLANTS, VS.
SIMPLICIO APOLINARIO, ET AL., DEFENDANTS-APPELLEES.***G.R. No. L-21203. October 20, 1970*

Ponente: ZALDIVAR. J.

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Appeal, on a question of law, from the decision of the Court of First Instance of Basilan City, in its Civil Case No. 79, dismissing the complaint, with costs.

Plaintiff Felipa Jolatoria is the widow, and plaintiffs Alejandro Lasina, Nicanor Lasina, Maria Lasina, Vicente Torres and Benita Lasina are the children, of the late Francisco Lasina. During his lifetime, Francisco Lasina applied for a homestead patent covering a parcel of land identified as lot No. 83, situated in Barrio San Isidro, Isabela, Basilan City, containing an area of 14.3963 hectares. Homestead Patent No. 1653 was issued to him on January 9, 1919. On January 27, 1919, Original Certificate of Title No. 61 was issued in his name. In compliance with Order No. 710, issued on December 29, 1921 by the Court of First Instance of Zamboanga, the Register of Deeds of Zamboanga cancelled Original Certificate of Title No. 61 and issued in lieu thereof Transfer Certificate of Title No. 6786. Later, this TCT No. 6786, upon being administratively reconstituted, became TCT No. T-418(6786).

On June 12, 1923, Francisco Lasina sold the homestead, or lot No. 83, to Angel Bernardo for P450.00. On October 17, 1924, Angel Bernardo in turn sold the 10-hectare portion of the land to the spouses Simplicio Apolinario and Pilar Garcia Apolinario, and said spouses had since then occupied and cultivated that portion for some 30 years by the time the complaint in the court below was filed. During that period, the spouses Apolinario introduced considerable improvements on the land that they had bought, having planted thereon 1,000 coconut trees, 500 coffee trees and other fruit trees, all fruit-bearing.

On July 16, 1954, the plaintiffs filed a complaint in the Court of First Instance of Basilan City against herein defendants - the spouses Apolinario - alleging that as the widow and children of the late Francisco Lasina, as the case may be, they acquired by inheritance the whole of lot No. 83 from said deceased, that a portion of the land was illegally taken possession of by defendants thru stealth and duress after the end of World War II, that in spite of repeated demands by plaintiffs on the defendants to vacate the land, the latter refused to vacate the same, and because of the illegal possession of the land by the defendants they (plaintiffs) had suffered damages, consisting of P2,000.00 representing the reasonable rental for the use of the land and P500.00 which they had to pay their counsel as attorney's fees.

The plaintiffs thereby prayed that the defendants be ordered to vacate the land and to pay the damages as alleged.

On September 22, 1954, the defendants filed a motion to dismiss the complaint upon the ground that the complaint did not state a cause of action. The trial court denied the motion to dismiss. The defendants filed their answer, alleging that Francisco Lasina had sold the whole parcel of land covered by TCT No. 6786 to Angel Bernardo before he died, so that the said land could not be inherited by the plaintiffs, and that Angel Bernardo

later sold a portion of the land to the defendants. The defendants further alleged that the plaintiffs had never been in possession of the land after the same was sold to Angel Bernardo, and after a portion of the land was sold to the defendants, the plaintiffs had never occupied, or attempted to occupy, the portion of the land that had been sold to the defendants.

On October 8, 1956, plaintiffs filed an amended complaint, adding as a second cause of action the allegation that the sale by Francisco Lasina to Angel Bernardo was "fictitious, fraudulent, without consideration, and illegal, and as such it never took effect and should be expressly declared void and non-existent." [1] The defendants filed an opposition to the admission of the amended complaint, but the opposition was overruled by the trial court. Thereafter, or on April 30, 1957, the defendants filed a motion to dismiss the amended complaint, reiterating the argument put up by them in their previous motion to dismiss, and adding the contention that inasmuch as defendants had been in possession of the portion in question for over 30 years the plaintiffs were estopped to claim ownership and possession of the land. This motion to dismiss was also denied by the lower court in its order of February 12, 1960. The defendants presumably relied on their answer to the original complaint, because they did not answer the amended complaint.

The case was set for trial on September 7, 1962. On said date, however, plaintiffs and their counsel failed to appear in court, and so the trial judge dismissed the complaint without prejudice and without pronouncement as to costs. On October 1, 1962, the plaintiffs filed a motion to reconsider the order of dismissal, giving as a reason the circumstance that their former counsel, Atty. Rafael C. Climaco, was appointed Judge of the Court of First Instance of Samar and the notice of hearing that was sent to him at the City of Zamboanga was not received by him, and so the plaintiffs did not have notice of the hearing. Over defendants' opposition to the motion for reconsideration, the lower court granted the motion, reinstated the case, and set the case for trial.

On February 6, 1963, after the parties had presented their evidence, oral and documentary, the lower court rendered its decision dismissing plaintiffs' complaint, with costs. The lower court found that Francisco Lasina actually acquired lot No. 83 as a homestead on January 9, 1919 pursuant to the provisions of Act 926, and that he had actually sold said lot to Angel Bernardo. The lower court ruled that inasmuch as the homestead patent was issued to Francisco Lasina on January 9, 1919 pursuant to the provisions of Act 926 which was still in force on that date, the validity of the sale of the homestead by Francisco Lasina to Angel Bernardo should be determined in accordance with the provisions of Act 926 regarding lands acquired as homesteads, and not in accordance with the provisions of Act No. 2874 which took effect on May 1, 1919. Citing the decision of this Court in the case of Balboa vs. Farrales, 51 Phil. 504, the lower court held that the sale of the homestead by Francisco Lasina to Angel Bernardo, executed on June 12, 1923, was valid and binding and should be given force and effect, even if the sale was made at the time when Act 926 was already repealed by Act 2874 and within five years from the date of the issuance of the homestead patent.

In due time the plaintiffs perfected their appeal to this Court from the above-mentioned decision of the lower court.

The question to be resolved in the present appeal is whether, or not, the sale of the homestead by Francisco Lasina to Angel Bernardo, and later the sale by Angel Bernardo of a portion of the homestead to the defendants, were valid and effective.

Plaintiffs-appellants contend that the sale of the homestead was illegal and void because it was made within seven years from the time the homestead patent was issued to patentee Francisco Lasina, in violation of Section 35 of Act No. 926 which provides as follows:

"Section 35. Lands acquired under the provisions of this chapter shall be inalienable and shall not be subject to

incumbrance for a period of seven years from the date of the issuance of the patent therefor, and shall not be liable for the satisfaction of any debt contracted prior to the expiration of that period." [2]

The contention of plaintiffs-appellants can not be sustained. Section 35 of Act 926, which is relied upon by plaintiffs-appellants, cannot be applied in the present case. It should be noted that Act 926 is divided into chapters - each chapter containing provisions regarding the different ways of acquiring rights over lands of the public domain. Thus, Chapter I covers "homesteads on the public domain"; Chapter II covers "sales of portions of the public domain"; Chapter III covers "leases of portions of the public domain"; Chapter IV covers "free patents to native settlers"; Chapter V covers "town sites"; Chapter VI covers "unperfected titles and Spanish grants and concessions"; and Chapter VII covers "general provisions" Section 35, which is invoked by plaintiffs-appellants is included in Chapter IV which treats of free patents to native settlers, hence said section should be applied only to lands acquired under the chapter dealing on free patents and not to lands acquired under the chapter dealing on homesteads.

The provision of Act 296 which has relevance to the case at bar is Section 4, under Chapter I, which reads as follows:

"No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuance of a patent therefor."

It will be noted that what is prohibited by the aforequoted Section 4 is to subject the homestead to liability for the payment of debts contracted by the grantee of the homestead patent prior to the issuance of the patent to him. Unlike the provisions contained in Section 35, there is nothing in Section 4 which in any way enjoins the holder of the homestead patent from alienating or selling the homestead, or a portion thereof, at any time after the grant of the homestead patent. [3]

The lower Court has correctly applied the ruling of this Court in the case of *Balboa vs. Farrales*, 51 Phil. 498, 504, in deciding the case in favor of herein defendants-appellees. In the *Balboa* case, it appears that in 1913 Buenaventura Balboa applied for a homestead patent covering a tract of land, under the provisions of Act 926. In 1918 he submitted final proof of his compliance with all the requirements of Section 3 of Act 926, which final proof was approved by the Director of Lands on February 15, 1918. On July 1, 1919, Act No. 926 was repealed by Act No. 2874. On September 10, 1920, or over a year after Act 2874 had gone into effect, a homestead patent for the land was issued to Balboa; on August 11, 1924 Balboa sold the land to Cecilio L. Farrales; and on October 16, 1924 Farrales secured in his name transfer certificate of title No. 650 of said land. The sale was questioned as being in violation of Section 116 of Act 2874, it appearing that the sale took place on August 11, 1924, or before the expiration of five years after the issuance of certificate of title No. 91 which took place on September 10, 1920. This Court ruled that Balboa had complied with all the requirements of Act 926 as of February 15, 1918 and he was entitled to the issuance of the homestead patent as of that date, such that he had thereby acquired a vested right under Act 926 before it was repealed by Act 2874 on July 1, 1919. This Court further ruled that the fact that the homestead patent or certificate of title No. 91 was issued to Balboa on September 10, 1920, or after the repeal of Act 926 by Act 2874, can not prejudice the vested right acquired by Balboa under the provisions of the former Act - the issuance of the certificate of title, which is an outward symbol of his vested right, being a mere ministerial act on the part of the government. In connection with the vested right thus acquired, this Court held:

"Now, the vested right of Buenaventura Balboa to his homestead land necessarily carries with it the right to alienate and dispose of the same. The only prohibition contained in Act No. 926 against alienation of homestead acquired under said law, appears in Section 4 thereof, which reads as follows: 'No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuance of a patent therefor.' It follows, therefore, that the sale of the land in question by the

plaintiff Buenaventura Balboa to the defendant Cecilio L. Farrales does not infringe said prohibition, and consequently said sale is valid and binding, and should be given full force and effect." (Italics supplied)[4]

The ruling in the Balboa case was reaffirmed in the decision of this Court in the case of Corpus, et al., vs. Beltran, et al., (97 Phil. 772). In this latter case, this Court said:

"The Balboa case is decisive of the present, the facts involved in the two cases being similar. We therefore hold that the validity of the sales under consideration should be determined in the light of Act No. 926 and, as the latter does not contain any prohibition regarding the disposition of a land covered by a homestead patent, said sales are valid and binding and, therefore, the present action must fail for lack of merit."

In the case now at bar, it having been shown that Francisco Lasina had acquired the homestead patent covering lot No. 83 in accordance with the provisions of Act 926, under the ruling in the Balboa case, he had acquired a vested right over said lot pursuant to the provisions of Act 926. Inasmuch as Act 926 does not prohibit the grantee of a homestead patent from selling the land covered by the homestead patent, the sale of Lot No. 83, subject of the homestead patent, by Francisco Lasina to Angel Bernardo was valid and legally effective. It follows that the sale of the 10-hectare portion of the homestead lot by Angel Bernardo to herein defendants-appellees, was also valid and legally effective. The lower court, therefore, did not err when it dismissed the complaint of the plaintiffs-appellants.

WHEREFORE, the decision appealed from is affirmed, with costs against the plaintiffs-appellants.

IT IS SO ORDERED.

Reyes, J.B.L.. Acting C.J., Dizon, Makalinlal, Ruiz-Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Concepcion, CJ., is on official leave.

[1] As quoted from plaintiffs' amended complaint, page 19, Record on Appeal.

[2] Italics supplied. Counsel for appellants does not invoke the provisions of Act 2874 in attacking the validity of the sale. (See page 8 of Appellants' brief)

[3] Neither may Section 116 of Act 2874, which provides that lands acquired under the homestead provisions shall not be subject to incumbrance or alienation from the date of the approval of the application and for a period of five years from and after the issuance of the patent, be applied (See also Sec. 118 of Com. Act 141).

[4] Both Acts 926 and 2874 provide for methods of acquiring right over lands in the public domain. Both laws contain several chapters, each chapter dealing with different subject matters. Their distinction, however, lies in the fact that while the provisions of Sections 4 and 35 in Act 926 are embodied in Chapters I and IV, which deal with homesteads and free patents respectively, the prohibition to alienate under Act 2874 does not appear in the respective chapters regarding homesteads and free patents but in the chapter on General Provisions (Sections 116 and 117), providing with clarity that lands acquired under the free patent or homestead provisions shall not be subject to encumbrance or alienation within five years after the issuance of the patent or grant. Since the enactment of Act 2874 on My 1,1919 Act 926 ceased to be enforced. However, Act 2874 has also been superseded by Commonwealth Act 141 which was enacted on November 7, 1936. Section 118, Chapter XIV, Title VI (General Provisions) of Com. Act 141 contains prohibitions regarding the encumbrance oralienation of

lands acquired under the free patent and homestead provisions of said Act.

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