

**EULOGIO DEL ROSARIO, AURELIO DEL ROSARIO, BENITO DEL ROSARIO, BERNARDO DEL ROSARIO, ISIDRA DEL ROSARIO, DOMINGA DEL ROSARIO AND CONCEPCION BORROMEIO, PLAINTIFFS AND APPELLEES, VS...**

*G. R. No. L-10881. September 30, 1958*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b345c4bfaa43/>

---

**PADILLA, J.:**

Appeal from a judgment rendered by the Court of First Instance of Nueva Ecija in civil case No. 1084.

The facts are undisputed, the parties having entered into an agreed statement thereof, the pertinent and materials part of which are: The plaintiffs are the children and heirs of the late Tiburcio del Rosario. On 12 December 1936, the Secretary of Agriculture and Commerce, by authority of the President of the Commonwealth of the Philippines, issued under the provisions of the Public Land Act (Act No. 2874) homestead patent No. 40596 to Tiburcio del Rosario. The homestead with an area of 9 hectares, 43 ares and 14 centares is situate in barrio San Mauricio, municipality of San Jose, province of Nueva Ecija. On 11 February 1937, the Registrar of Deeds in and for the province of Nueva Ecija issued original certificate of title No. 4820 in the name of the homesteader (Annex A, stipulation of facts, pp. 25-30, Rec. on App.). On 24 February 1937, Tiburcio del Rosario obtained a loan from Primitivo Abad in the sum of P2,000 with interest at the rate of 12 % per annum, payable on 31 December 1941. As security for the payment thereof he mortgaged the improvements of the parcel of land in favor of the creditor (Annex B, complaint, pp. 10-13, Rec. on App.). On the same day, 24 February, the mortgagor executed an "irrevocable special power of attorney coupled with interest" in favor of the mortgagee, authorizing him, among others, to sell and convey the parcel of land (Annex A, complaint, pp. 7-9, Rec. on App.). Thereafter the mortgagor and his family moved to Santiago, Isabela, and there established a new residence. Sometime in December 1945 the mortgagor died leaving the mortgage debt unpaid. On 9 June 1947, Primitivo Abad, acting as attorney-in-fact of Tiburcio del Rosario, sold the parcel of land to his son Teodorico Abad for and in consideration of the token sum of P1.00 and the payment by the vendee of the mortgage debt of Tiburcio del Rosario to Primitivo Abad (Annex C, complaint, pp. 13-16, Rec. on App.). The vendee took possession of the parcel of land. Upon the filing and registration of the last deed of sale, the Registrar of Deeds in and for the province of Nueva Ecija cancelled original certificate of title No. 4820 in the name of Tiburcio del Rosario and in lieu thereof issued transfer certificate of title No. 1882 in favor of the vendee Teodorico Abad.

On 29 December 1952 the plaintiffs brought suit against the defendants to recover possession and ownership of the parcel of land, damages, attorney's fees and costs. The defendants answered the complaint and prayed for the dismissal thereof, damages, attorney's fees and costs.

On 25 October 1954, after the parties had submitted the case upon a stipulation of facts, the Court rendered judgment, the dispositive part of which is:

WHEREFORE, the deed of sale executed by Primitivo Abad in favor of Teodorico Abad, Annex C, is hereby

declared null and void; and Teodorico Abad is hereby ordered to execute a deed of reconveyance of the land, originally with OCT No. 4820, now covered by Transfer Certificate of Title No. 1880, in favor of the plaintiffs. No pronouncement as to costs.

The defendants appealed to the Court of Appeals, which certified the case to this Court as no question of fact is involved.

Section 116 of the Public Land Act (Act No. 2874), under which the homestead was granted to the appellees' father, provides :

Lands acquired under the free patent or homestead provisions shall not be subject to encumbrance or alienation 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, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

The encumbrance or alienation of lands acquired by free patent or homestead in violation of this section is null and void.[1]

There is no question that the mortgage on the improvements of the parcel of land executed by Tiburcio del Rosario in favor of Primitivo Abad (Annex B, complaint, pp. 10-13, Rec. on App.) is valid.

The power of attorney executed by Tiburcio del Rosario in favor of Primitivo Abad (Annex A, complaint, pp. 7-9, Rec. on App.) providing, among others, that is coupled with an interest in the subject matter thereof in favor of the said attorney and are therefore irrevocable, and \* \* \* conferring upon my said attorney full and ample power and authority to do and perform all things reasonably necessary and proper for the due carrying out of the said powers according to the true tenor and purport of the same, \* \* \* " does not create an agency coupled with an interest nor does it clothe the agency with an irrevocable character. A mere statement in the power of attorney that it is coupled with an interest is not enough. In what does such interest consist must be stated in the power of attorney. The fact that Tiburcio del Rosario, the principal, had mortgaged the improvements of the parcel of land to Primitivo Abad, the agent, (Annex B, complaint, pp. 10-13, Rec. on App.) is not such an interest as could render irrevocable the power of attorney executed by the principal in favor of the agent. In fact no mention of it is made in the power of attorney. The mortgage on the improvements of the parcel of land has nothing to do with the power of attorney and may be foreclosed by the mortgagee upon failure of the mortgagor to comply with his obligation. As the agency was not coupled with an interest, it was terminated upon the death of Tiburcio del Rosario, the principal, sometime in December 1945, and Primitivo Abad, the agent, could no longer validly convey the parcel of land to Teodorico Abad on 9 June 1947. The sale, therefore, to the latter was null and void. But granting that the irrevocable power of attorney was lawful and valid it would subject the parcel of land to an encumbrance. As the homestead patent was issued on 12 December 1936 and the power of attorney was executed on 24 February 1937, it was in violation of the law that prohibits the alienation or encumbrance of lands acquired by homestead from the date of the approval of the application and for a term of five years from and after the issuance of the patent or grant. Appellants contend that the power of attorney was to be availed of by the agent after the lapse of the prohibition period of five years, and that in fact Primitivo Abad sold the parcel of land on 9 June 1947, after the lapse of such period. Nothing to that effect is found in the power of attorney.

Appellants claim that the trial court should have directed the appellees to reimburse Teodorico Abad for what he had paid to Primitivo Abad to discharge the mortgage in the latter's favor as part of the consideration of the sale. As the sale to Teodorico Abad is null and void, the appellees can not be compelled to reimburse Teodorico Abad for what he had paid to Primitivo Abad. The former's right of action is against the latter, without prejudice to the right of Primitivo Abad to foreclose the mortgage on the improvements of the parcel of land if the mortgage debt

is not paid by the appellees, as heirs and successors-in-interest of the mortgagor.

The judgment appealed from is affirmed, with costs against the appellants.

Paras, C. J., Bengzon, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

---

[1]Section 122, Public Land Act (Act No. 2874).

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.