

**MARCELA FIGURACION AND JOSE C. TOLENTINO, PETITIONERS, VS. JUSTO CORTEZ, RESPONDENT.***G.R. NO. L-27146. February 28, 1974*

Ponente: MAKALINTAL, C.J.

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Appeal by certiorari from a decision of the Court of Appeals.

In Civil Case No. II-257 of the Court of First Instance of Isabela entitled "Justo Cortez vs. Marcela Figuracion and Jose Tolentino," judgment was rendered requiring each of the defendants therein to pay the plaintiff damages in the sum of P668.00, or the total amount of P1,336.00. Because of the defendants' failure to pay, the winning plaintiff Justo Cortez obtained a writ of execution by virtue of which the Provincial Sheriff of Isabela, on March 15, 1960, levied upon the separate landholdings of the losing defendants, consisting of about 42 hectares of ricelands, which were covered by homestead applications in their respective names, i.e., Marcela Figuracion (24 hectares) and Jose Tolentino (18.3257 hectares). Thereafter, conformably with the applicable provisions of the Rules of Court the Provincial Sheriff caused to be published and posted the corresponding notice of sale on execution. The judgment debtors were admittedly notified personally of the impending execution sale.

The public auction sale took place on April 29, 1960. Justo Cortez, the judgment creditor and sole bidder, purchased the properties levied upon, as a consequence of which a Sheriff's certificate of sale was executed in his favor. Again copies of this Sheriff's certificate of sale were furnished the judgment debtors. The properties were not redeemed within the one-year reglementary period; so the Sheriff, on May 2, 1961, executed a final deed of sale in favor of the aforesaid Justo Cortez, which final deed of sale was duly registered in the office of the Register of Deeds of Isabela. The judgment debtors were again furnished copies of the Sheriff's final deed of sale.

On August 8, 1961 the Sheriff placed Justo Cortez in possession of the 24-hectare portion pertaining to Marcela Figuracion, who however refused to surrender possession of the immediate area where the family's residential house was located. "With regard to the property of Jose Tolentino the plaintiff and judicial purchaser was not placed in possession because of third parties claiming rights adverse to the judgment debtor." Thereafter, Justo Cortez declared both properties in his name for taxation purposes under tax declaration Nos. 6880 and 6881, respectively, and paid all the real estate taxes due and payable thereon. About 5 months later, or on January 19, 1962, Justo Cortez sold 8 hectares of the Jose Tolentino homestead to one Dominador Zamora. Less than a week later, or on January 23, 1962, Justo Cortez again sold the remaining portion of the same property to Catalino Pascua, together with 9.0773 hectares of Marcela Figuracion's previous landholding. Due to the continuous refusal of the latter to surrender possession of the premises where her family was residing, Justo Cortez applied to the lower court on July 7, 1962 for a writ of demolition. The writ was granted on August 8, 1962, but was returned unsatisfied. Justo Cortez applied for a second writ of demolition on November 12, 1962, but resolution thereof dragged until October 23, 1964, when the lower court finally denied the same.

During the intervening period between the filing of the second motion for a writ of demolition on November 12,

1962 and its denial on October 23, 1964, several related developments transpired. On November 19, 1962 Justo Cortez sold the remaining portion of Marcela Figuracion's landholding to Catalino Pascua, the same buyer of the respective one-half portions of the Jose Tolentino and Marcela Figuracion properties. On April 26, 1963 Marcela Figuracion and Jose Tolentino, mainly on the claim that their homesteads were exempt from execution and that the Sheriff's final deed of sale was a nullity in view of the omission to register with the proper Register of Deeds the notice of levy and the auction sale conducted prior to the execution of the questioned Sheriff's final deed of sale, commenced suit against Justo Cortez in the Court of First Instance of Isabela, Branch III, docketed as Civil Case No. 1575, assailing the validity of the Sheriff's final deed of sale dated May 2, 1961, together with a plea for the recovery of possession and damages. On February 14, 1964 — even before Branch II of the court a quo resolved the pending second motion for a writ of demolition — the lower court (Branch III) rendered a decision in the said Civil Case No. 1575 in favor of the plaintiffs, declaring " \* \* \* that the parcels of land subject matter of the Notice of Levy and Auction Sale are exempt from execution and therefore the Notice of Levy and Auction Sale is ineffective and improper \* \* \* (so that) (T)he Sheriff's Final Deed of Sale \* \* \* is hereby declared null and void from the beginning and without legal force and effect." Consequently, aside from awarding the sum of P10,000.00 to the plaintiffs by way of indemnification — less the amount of P310.00 corresponding to the real estate taxes paid by Justo Cortez for the years 1959-1961 — the court a quo ordered the defendant Justo Cortez and/or the subsequent assignees to surrender the possession of the parcels of land subject-matter of the Sheriff's final deed of sale to the plaintiffs. The Court said: "(A)ny action in \* \* \* assigning, conveying and transferring to third parties the parcels of land subject matter of the Sheriff's Final Deed of Sale are hereby declared null and void and without legal force and effect; the assignees, vendees and transferees being subrogated to the rights and actions of the vendor and therefore have acquired no better rights and actions than that of the defendant, the vendor thereof."

On appeal taken by Justo Cortez, the Court of Appeals reversed, and ordered the dismissal of the complaint. Hence the present recourse.

The main questions for determination in this case are: (1) whether or not landholdings covered by homestead applications, with the corresponding patents yet to be issued, are exempt from execution; and (2) whether or not the Sheriff's final deed of sale (of lands sold in an execution sale) is null and void owing to the failure to register with the office of the register of deeds the notice of levy of said lands as well as the auction sale itself conducted prior to the execution of the questioned Sheriff's final deed of sale. On the first question the trial court ruled in the affirmative, relying on section 118 of Commonwealth Act No. 141 in relation to section 12(a), Rule 39 of the Rules of Court. Section 118 (Public Land Act) provides:

"Sec. 118. Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, 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 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."

Section 12(a) of Rule 39 exempts the homestead in which the debtor resides from execution, and the trial court, in applying this provision here, erroneously equated the term "homestead"[1] therein with the term "homestead" in C.A. No. 141. In declaring that the Sheriff's final deed of sale was null and void, the trial court proceeded on the premise that the properties levied upon were indeed exempt from execution, rather than on the alleged procedural deficiency, namely, the non-registration of the notice of levy and the auction sale itself.

Upon the other hand the Court of Appeals reached the opposite conclusion, on the ground that "(T)here having

been no approval of the homestead application yet, much less issuance of patent in the case at bar, (it follows that) the provision on the prohibition of alienation (or encumbrance) does not apply." The said Court also relied on the case of Valenzuela vs. Aguilar, L-18083-84, May 31, 1963,[2] wherein it was held that despite the non-filing of a notice of levy with the register of deeds, the subsequent auction sale is not necessarily void where there are no third parties involved and the debtor's failure to contest the legality of the buyer's possession for about five (5) years after the auction sale amounted to laches, so that the subsequent registration of the certificate of absolute sale amounted to the filing of the notice of levy with the office of the register of deeds.

There is one fact on which both the trial court and the Court of Appeals are in agreement, namely: that the lands levied upon and subsequently sold on execution were public lands covered by homestead applications of plaintiffs-appellees. Upon this fact the trial court held that said lands were exempt from execution, citing section 12(a), Rule 39, which speaks of exemption of the "homestead" in which the debtor resides, considering, albeit erroneously, that the term "homestead" in the Rules is synonymous with the homestead contemplated in the Public Land Act. For its part, the Court of Appeals held that section 118 of the Public Land Act was inapplicable in this case because the exemption refers to the period "from the date of the approval of the application" up to and including the fifth year "from and after date of the issuance of the patent or grant."

Judgment must go to the petitioners. In the first place, lands covered by unapproved homestead applications are exempt from execution, not by virtue of section 12(a), Rule 39, as the trial court ruled, but because previous to the approval of the homestead applications in favor of qualified applicants, the lands remain part of the public domain and must necessarily be exempt from execution. In fact, it is only upon approval of the homestead application, not before, that an applicant may be permitted by the Director of Lands, subject to certain other formal requirements, to convey or transfer his rights to another person.

Section 20 of C.A. No. 141 partly reads:

"Sec. 20. If at any time after the approval of the application and before the patent is issued, the applicant shall prove to the satisfaction of the Director of Lands that he has complied with all the requirements of the law, but cannot continue with his homestead, through no fault of his own, and there is bona fide purchaser for the rights and improvements of the applicant on the land, and that the conveyance is not made for purposes of speculation, then the applicant, with the previous approval of the Director of Lands, may transfer his rights to the land and the improvements to any person legally qualified to apply for a homestead, x x x."

Section 118 of the Public Land Act speaks of a five-year prohibition against alienation or encumbrance "from the date of the approval of the application" for the very logical reason that before the application is approved there is nothing that the applicant may alienate or encumber. In any event, if the applicant is entitled to the protection of his rights from and after approval of his application he should be entitled to similar protection to whatever rights he may have prior to such approval. For as stated by this Court in *Artates vs. Urbi, et al.*, Jan. 30, 1971, 37 SCRA 395, "The salutary purpose of the provision cannot be denied: it is to preserve and keep for the homesteader or his family the land given to him gratuitously by the State, so that being a property owner, he may become and remain a contented and useful member of our society."

With particular reference to Marcela Figuracion's application, it appears that the same was approved on August 2, 1950, and so the property was squarely covered by the prohibition in section 118, no patent having yet been issued when it was levied upon and sold at public auction.

WHEREFORE, the judgment of the Court of Appeals is set aside and that of the Court of First Instance of Isabela affirmed insofar as it declared that the parcels of land in question were exempt from execution and that the plaintiffs below, Marcela Figuracion and Jose Tolentino, are entitled to the return and possession of the same as

against defendant Justo Cortez and/or his assignees, and modified by eliminating the award of P10,000.00 in favor of the plaintiffs, without prejudice to the reimbursement to Justo Cortez of the sum of P310.00 he paid for the real estate taxes for 1959-61 as well as his right to recover from the plaintiffs the amount of the judgment in his favor in Civil Case No. II-257 of the Court of First Instance of Isabela. No pronouncement as to costs.

Ruiz Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

Teehankee, J., concurs in a separate opinion.

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[1] The "homestead" under section 12(a) of Rule 39, which is declared exempt from execution, means nothing else than the house in which the judgment-debtor resides and not the homestead contemplated by the Public Land Act (C.A. No. 141). See: *Young vs. Olivares*, 41 Phil. 391.

## **[2] 8 SCRA 212.**

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### **SEPARATE OPINION**

#### **TEEHANKEE J.:**

I concur with the main opinion of the Chief Justice upholding the judgment of the Isabela court of first instance as against that of the Court of Appeals declaring that petitioners' homesteads were exempt from execution for satisfaction of their judgment debt in favor of respondent creditor under section 118 of the Public Land Act.

The said Act expressly prohibits as a matter of public policy the alienation of homesteads "for a term of five years from and after the date of issuance of the patent or grant" (except in favor of the Government or legally constituted banking corporations) and exempts them from liability or execution for the satisfaction of "any debt contracted prior to the expiration of said period."

Since the homesteads were levied upon and sold at public auction to respondent creditor for satisfaction of a debt contracted by petitioners prior to the expiration of the five-year prohibitory period and the homesteads were therefore exempt from execution, the court of first instance correctly declared the sheriff's final deed of sale as null and void ab initio.

As stated in the undersigned's separate opinion in *Artates vs. Urbi*,<sup>[1]</sup> "(U)nder the cited provision, all sales and alienations of the homestead property made by the homesteader within the 5-year prohibition are null and void. Similarly, the homestead is held not liable to the satisfaction of any debt contracted by the homesteader within the said period, even though it be contracted that the indebtedness shall mature after the prohibited period. The law's purpose is clear and salutary: to preserve and keep for the homesteader the land given to him gratuitously by the State and to protect him from his own weakness and improvidence."

The corollary question that arises is whether in the action for recovery of possession brought in the lower court by petitioners solely against respondent as defendant without including the latter's vendee and assignee (*Catalino Pascua*), the lower court could properly render judgment in favor of petitioners holding that "(A)ny action in . . . assigning, conveying and transferring to third parties the parcels of land subject matter of the Sheriff's Final Deed of Sale are hereby declared null and void and without legal force and effect; the assignees, vendees and transferees being subrogated to the rights and actions of the vendor and therefore have acquired no better rights and actions than that of the defendant, the vendor thereof."

Since the cited provision prohibiting the levy and execution of the homesteads for satisfaction of a debt contracted

by petitioners prior to the expiration of the five-year prohibitory period is admittedly grounded on public policy, the sheriff's final deed of sale in favor of respondent creditor was manifestly a nullity.

Any purported transfer thereof is likewise expressly decreed under Article 1409 of our Civil Code to be "inexistent and void from the beginning." As held in the analogous case of *Rubias vs. Batiller*, [2]our Civil Code through the cited Article 1409 declares the absolute nullity of contracts whose cause, object, or purpose is contrary to law, morals, good customs, public order or public policy or which are expressly prohibited or declared void by law and declares such contracts inexistent and void from the beginning.

Respondent therefore acquired no right whatsoever to the homesteads under the void sheriff's final deed of sale and the lower court correctly held, as now affirmed by the Court, that as a necessary consequence he transferred no right whatsoever to his vendee and assignee, since the purported transfer was likewise an absolute nullity.

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[1] 37 SCRA 395 (Jan. 30, 1971).

[2] 51 SCRA 120 (May 29, 1973).

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