

**JOSE S. FRANCISCO, ET AL., PLAINTIFFS AND APPELLEES, VS.
TIMOTEO CERTEZA, SR., AND CONCHITA V. CERTEZA, DEFENDANTS
AND APPELLANTS.**

G.R. No. L-16849. November 29, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal from the decision of the Court of First Instance of Rizal (in Civil Case No. 5396) ordering therein defendants Timoteo Certeza and Conchita V. Certeza to resell to plaintiffs Francisco, et al. the two parcels of land subject of the litigation, upon the latter's payment of the sum of P6,515.60.

In a complaint dated January 26, 1959, filed in the Court of First Instance of Rizal (Pasig branch), plaintiffs sought to repurchase from defendants the two parcels of land covered by Transfer Certificates of Title Nos. 37136 and 37135 in the name of said plaintiffs, as heirs of the deceased Gabriel Francisco and Maria Sumulong, based on Section 119 of Commonwealth Act 141, as amended. It was alleged that one of the aforementioned lots was acquired by Gabriel Francisco by free patent, for which he was issued Original Certificate of Title No. 16, and the other lot was obtained by Maria Sumulong under free patent No. 28984, for which Original Certificate of Title No. 1338 was issued in her name; that upon their demise, plaintiffs, as intestate heirs, adjudicated the properties unto themselves, as a consequence of which OCT Nos. 16 and 1338 were cancelled and substituted by TCT Nos. 37136 and 37135 issued in the name of the heirs of the spouses Gabriel Francisco and Maria Sumulong; that on November 26, 1954, plaintiffs sold their shares and participation in the aforesaid parcels of land to defendants Timoteo and Conchita V. Certeza, for the sum of P6,515.60; that the 5-year period within which the lots may be subject to repurchase would expire on November 26, 1959. It was prayed that defendants be ordered to resell the properties upon their (plaintiffs) payment of the sum of P6,515.60.

Defendants, in their answer, set up the defense of waiver, claiming that plaintiffs' warranty in the contract that the lots shall be "free from liens and encumbrances of whatever nature" amounted to a renunciation of their right to repurchase the same.

Thereafter, plaintiffs moved for a summary judgment, while defendants filed a motion to dismiss the complaint for lack of cause of action insofar as the lot covered by TCT 37136 (OCT No. 16) was concerned, on the ground that the same, Having been acquired under Act 926, is not subject to the right of repurchase allowed under Section 119 of Commonwealth Act 141, as amended. Both motions were denied.

After due hearing, judgment was rendered for the plaintiffs on the basis of the ruling laid down in the case of Isaac, et al. vs. Tan Chuan Leong [1], that conveyances made after the effectivity of Act 2874 shall be subject to the right of repurchase granted under said Act. Defendants were, therefore, required to resell the properties to plaintiffs upon their payment of the purchase price of P6,515.60. From this decision, defendants appealed to this Court on pure questions of law.

Section 117 of Act 2874, incorporated in Commonwealth Act 141 as Section 119 thereof, provides:

"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 conveyance."

Appellants now contend that the lot covered by TCT 37136 (OCT No. 16) having been acquired by Gabriel Francisco under Act 926 [2] on November 1, 1913 or before the effectivity of Act 2874 [3], plaintiffs can not invoke the right granted under the latter Act. In other words, the issue presented by this appeal is whether the provision on repurchase under Section 117 of Act 2874 applies to lands acquired under Act 926 or those awarded to applicants before its effectivity.

The question poised herein is not new: the same has been squarely raised and resolved in the case of Isaac vs. Tan Chuan Leong, *supra*. In said case, plaintiffs' predecessors-in-interest acquired the lot by homestead on September 13, 1917. The corresponding original certificate of title (No. 174) was issued on October 1, 1917. On September 6, 1944, plaintiffs sold the land to therein defendant. Thereafter and before 5 years had elapsed, plaintiffs sought to repurchase the property under Section 119 of Commonwealth Act 141. The lower court dismissed the complaint on the ground that Section 119 of Commonwealth Act 141, taken from Section 117 of Act 874 has no retroactive effect and that the application of said provision to the case then at bar would impair the obligations of contract. Reversing such ruling of the lower court, we held:

"In the present case, the provisions of section 117 of Article 2874 approved on November 29, 1919, which grants the widow and legal heirs of a grantee of homestead the right to repurchase every conveyance of land acquired under a free patent or homestead provisions within a period of five years from the date of the conveyance is applicable to the sale made on September 6, 1944, by the heirs of the late grantee Benito Isaac to the defendant Tan Chuan Leong. To apply such provision to the sale in question does not amount to give to it a retrospective effect, because the sale was effected on September 6, 1944, and said Section 117 of Article (Act) 2874 was approved on November 29, 1919. The fact that the homestead sold was granted to the sellers' predecessor in interest on September 13, 1917, before Section 117 of Article (Act) 2874 was approved, is immaterial, for said Section 117 far from impairing or divesting any vested right of the grantee or his successors in interest, the appellants, is beneficial to them.

"Besides, taking into consideration that homestead laws are designed to distribute disposable agricultural lands of the State to destitute citizens for their home and cultivation, and to see to it that they are not deprived of their means of livelihood and reduced to misery (*Jocson vs. Soriano*, 45 Phil.), it is evident that it was the intention of the Philippine Legislature to make said Section 117 of Article (Act) No. 2874 applicable not only to homestead to be granted in the future, but also to those already granted in so far as it would not impair the obligations of contract. Because the constitution does not in term prohibit the enactment of retrospective laws which do not impair the obligations of contract or deprive a person of property without due process of law, that is, do not divest rights of property or vested rights. The appellees will not be divested of any vested right by the application of the provisions of Section 117 of Article (Act) 2874 or Section 119 of Commonwealth Act No. 141 to the sale of the homestead lot to them in the year 1944, because at time of purchasing the land in question they ought to know the existence of that legal provision, already in force since the year 1919."

There is no cogent reason for us to deviate from this rule. The law, without qualification, subjects "every conveyance of land acquired under the free patent or homestead provisions" to the applicant's his widow or heirs' right to repurchase the same within five years. The provision comprehends, clearly, not only those acquired under said Act or any law thereafter, but all lands acquired by virtue of homestead or free patents. It is also noteworthy that the law did not refer to the acquisition but to the conveyance of land. In other words, Act 2874 applies to all alienations or conveyances of land grants (by homestead or free patent) irrespective of whether the same had been acquired under said Act or any other law.

As to appellants claim that Act No. 2874 is not applicable to the lot involved herein, the same being allegedly a private property, we find the same to be without merit.

Appellants, contention is predicated on the pronouncement of this Court in the case of *Central Capiz vs. Ramirez* [4] that "Act No. 2874 was and is to limit its application to lands of the public domain, and that lands held in private ownership are not included therein and are not affected in any manner whatsoever thereby". It may be pointed out, however, that the property involved in this *Centred Capiz* case was not a "land acquired under the free patent or homestead provision." It is true that it has been said "a valid appropriation of public lands operates as a withdrawal thereof from the body of public domain and is deemed private property," [5] and that "once a patent is registered and the corresponding certificate of title is issued, the land ceased to be part of the public domain and becomes private property" [6], such property can not be considered as the "land held in private ownership" treated in the *Central Capiz* case, for the latter refers to lands which never came under the operation of our public land laws because they were already of private ownership at the time of their effectivity. The quoted pronouncements are mere declarations of the legal effect of the administrative disposals of public lands as far as the rights and responsibilities of patentees or applicants over portions of the disposable land of the public domain are concerned. In reality, and notwithstanding the aforementioned pronouncements that lands so acquired become private property, the same still remain subject to the limitations and restrictions imposed by law [7]. Even the case of *Ramos vs. Del a Costa* [8] also cited by appellants is not material, because the issue there is the right of a patentee under Act 926 to alienate the land within 2 years, and does not involve the right of the patentee to repurchase the land provided not under Act 926 but pursuant to Act 2874.

Wherefore, the decision appealed from is hereby affirmed, with costs against appellants. So ordered.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

Padilla, J.:

I dissent for the same reasons set forth in my opinion in *Isaac vs. Tan Chuan Leong*, (89 Phil., 24).

[1] 89 Phil., 24.

[2] Act 926 contains no similar provision on the right of repurchase.

[3] Approved November 29, 1919.

[4] 40 Phil. 883.

[5] *Balboa vs. Farnales*, 51 Phil. 498.

[6] *Sumail vs. Judge of CFI*, 96 Phil., 946; 51 Off. Gaz., [5] 2413; *Republic vs. Heirs of Carle*, 105 Phil., 1231.

[7] Secs. 118, 119, 122, 123, 124, Com. Act 141, as amended.

[8] 42 Phil. 51.

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