

POTENCIANO MENIL AND WIFE CRISPINA NAYVE, PETITIONERS, VS. COURT OF APPEALS, AGUEDA GARAN, FRANCISCO CALANIAS, MIGUEL NAYVE, JR., AND DEVELOPMENT BANK OF THE PHILIPPINES, RESPON...

G.R. Nos. L-43668-69. July 31, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

Appeal by certiorari from the Resolution of the Court of Appeals[1] dated September 3, 1975 and from the Resolution of the same Court[2] dated January 16, 1976, resolving petitioners' motion for reconsideration of its Joint Decision, dated April 18, 1975, in CA-G.R. No. 51242-R entitled "Potenciano Menil and Wife Crispina Naye, Plaintiffs-Appellees, versus Francisco Calanias, et al., Defendants-Appellants," and CA-G.R. No. 51243-R entitled "Agueda Garan, Plaintiff-Appellant, versus Potenciano Menil, et al., Defendants-Appellees, Francisco Calanias, et al., Intervenor-Appellants," and which this Court had resolved to treat as a special civil action per Resolution dated May 14, 1976.

The Resolution of January 16, 1976 sufficiently states the antecedent facts of the case:

"On November 3, 1955, Agueda Garan obtained a homestead patent over the land in question.

On February 4, 1956, Original Certificate of Title No. 220 was issued by the Register of Deeds of Surigao in her name pursuant to the homestead patent.

On May 7, 1960, within the prohibitive 5-year period, Agueda Garan sold the land to movant Potenciano Menil for P415.00, as evidenced by a deed of sale bearing the same date. But, for reasons not revealed in the records, the contracting parties did not register the deed of sale in the Registry Of Deeds of Surigao. Original Certificate of Title No. 220 was not cancelled and the land remained registered in the name of Agueda Garan.

On March 3, 1964, Agueda Garan executed another deed of sale over the same parcel of land in favor of the same vendee, Potenciano Menil, and for the same price of P415.00.

On August 30, 1965, the contracting parties registered the second deed of sale in the Registry of Deeds of Surigao. Original Certificate of Title No. 220 was cancelled, and Transfer Certificate of Title No. T-60, in lieu thereof, was issued in the name of Potenciano Menil.

On February 28, 1966, Potenciano Menil mortgaged the land to the Development Bank of the Philippines to secure an agricultural loan which the former obtained from the latter.

"xxx in the 1st Indorsement, dated May 26, 1965, of the Actg. Chief, Land Management Division of the Bureau of Lands to the Secretary of Agriculture and Natural Resources, (that) the former recommended to the latter the approval of the sale dated March 3, 1964; and the Officer-in-Charge, for and in the absence of the Undersecretary for Natural Resources, in his 2nd Indorsement, dated June 23, 1965, approved the same. Movant Potenciano Menil was notified on July 12, 1965 of the approval of the sale to him of the tract of land covered by OCT No. 220."

Petitioners were in possession of the land in question until sometime in 1967 when private respondents Agueda Garan, Francisco Calanias, Miguel Nayve, Jr., Rufo Nayve, and Lucio Calanias forcibly took possession of the said land, and filed against petitioners Civil Case No. 1692 for "Quieting of Title" before Branch II of the Court of First Instance of Surigao del Norte. The said court dismissed the complaint, awarded damages to the petitioners, and granted the writ of execution prayed for by the latter.

However, upon the claim that the above decision was silent on the issue of who are entitled to the possession of the land under litigation, the private respondents refused to vacate the land, thus, forcing petitioners to file on July 8, 1968 Civil Case No. 1810 for "Recovery of Possession" of the said land before Branch I of the same Court of First Instance of Surigao del Norte. On the other hand, during the pendency of Civil Case No. 1810, private respondents filed against the petitioners Civil Case No. 1816 for the reconveyance of the land litigated in Civil Case No. 1692 and Civil Case No. 1810 before the same court.

By agreement of the parties, Civil Case No. 1810 and Civil Case No. 1816 were jointly heard by the Court of First Instance of Surigao del Norte, Branch I. A joint judgment dated June 13, 1970 was rendered declaring that the decision in Civil Case No. 1692 clearly stated that the spouses Menil were legally entitled to the possession of the land, ordering private respondents to restore possession of the land in litigation to petitioners, and is missing Civil Case No. 1816 for insufficiency of evidence. On a motion for reconsideration filed by the private respondents, the lower court ordered the reopening of the two cases, after the rehearing of which, the said court affirmed the joint judgment dated June 13, 1970, but dismissed Civil Case No. 1816 insofar as the Development Bank of the Philippines was concerned.

Private respondents appealed to the Court of Appeals. The appellate court in its Decision dated April 18, 1975 dismissed the appeal and affirmed the decision of the lower court, with a declaration that the decision in Civil Case No. 1692 was res judicata to Civil Case No. 1810 and Civil Case No. 1816. On a motion for reconsideration filed by private respondents, the appellate court set aside its Decision and rendered the Resolution dated September 3, 1975 which declared the sale of the homestead in question to petitioners as null and void, ordered the cancellation of Transfer Certificate of Title No. T-60 and the mortgage in favor of the Development Bank of the Philippines, the reissuance of Original Certificate of Title No. 220 in favor of homesteader Agueda Garan, and ordered Garan to reimburse Menil the sum of P415.00, the price of the sale, the interest thereon being declared compensated by the fruits Menil received from their possession of the properties. Petitioners and the Development Bank of the Philippines respectively moved to reconsider the said Resolution. Acting on said Motion for Reconsideration, the appellate court in its Resolution dated January 16, 1976 affirmed the Resolution dated September 3, 1975, denied petitioners' motion for reconsideration, but granted that of the Development Bank of the Philippines by declaring the mortgage executed by petitioners over the land in favor of said bank as valid.

Petitioners now filed this appeal by way of certiorari seeking that the Resolutions of the Court of Appeals dated September 3, 1975 and January 16, 1976 be set aside and that the Decision of the same court dated April 18, 1975

be revived.

In the Resolution of September 3, 1975 which petitioners seek to set aside, the Court of Appeals said:

"In Our above-said decision We expressed the view that the decision in Civil Case No. 1692 was on the merits because it was rendered after trial on the merits and therefore res judicata to the subsequent herein cases. After a thorough reading and review of the said decision in Civil Case No. 1692, however, We have voted to revise that view. The discussion in the latter decision is replete with unequivocal (sic) and contradictory opinions that it is quite difficult to comprehend what the trial judge's conclusion is. The main part of the dispositive portion, however, provides:

'WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the defendant, Potenciano Menil, and against the herein plaintiffs dismissing the latter's complaint.'

To paraphrase, what was dismissed in said judgment was plaintiffs' complaint, not the action itself, as according to the discussion, the action was not the proper one availed of. From this, it may be inferred that the intention of said trial judge was just to dismiss the complaint without prejudice to the filing of the proper action.

We agree with the appellate court that the decision rendered in Civil Case No. 1692 was not res judicata to the subsequent cases, Civil Case No. 1810 and Civil Case No. 1816. The issue of the validity of the sale of the homestead land within the 5-year prohibitory period under Section 118 of the Public Land Act was not squarely raised and decided in said Civil Case No. 1692 which was brought only for "Quieting of Title."

The more fundamental issue presented for Our resolution is: Who are entitled to the land under litigation?

It is not disputed by the parties that the contract of sale executed on May 7, 1960, having been executed less than 5 years from May 7, 1960, the date the homestead patent was awarded to private respondent Agueda Garan, is null and void for being violative of Section 118 of C.A. 141 [Public Land Act] which provides:

"Sec. 118. Except in favor of the government or any of its branches, units, or institutions, lands acquired under 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."

Petitioners contend, however, that the subsequent approval thereof by the Secretary of Agriculture and Natural Resources, and the execution of the confirmatory deed of sale on August 10, 1965, cured any defect that the first sale may have suffered.

In finding such contention without merit, the appellate court in its Resolution dated September 3, 1975, which was substantially affirmed by its Resolution dated January 16, 1975, declared:

"This case is almost identical with *Manzano vs. Ocampo* (1 SCRA 691) where it was held:

"We therefore, hold that the sale in question is illegal and void for having been made within five years from the date of Manzano's patent, in violation of Section 118 of the Public Land Law. Being void from its inception the approval thereof by the Undersecretary of Agriculture and Natural Resources after the lapse of five years from Manzano's patent did not legalize the sale (Santander v. Villanueva, G.R. No L-6184, Feb. 28, 1958; Cadiz v. Nicolas, G.R. No. L-9198, Feb. 13, 1958). The result is that the homestead in question must be returned to Manzano's heirs, petitioners herein, who are, in turn, bound to restore appellee Ocampo the sum of P3,000.00 received by Manzano as the price thereof. (Medel v. Eliazo, G.R. No. L-12617, Aug. 27, 1959; Santander v. Villanueva, supra; Felices v. Iriola, G.R. No. L-11269, Feb. 28, 1958). The fruits of the land should equitable compensate the interest on the price."

As to the execution of the confirmatory deed of sale, by proper analogy, the Supreme Court in the said case said:

"The law prohibiting any transfer or alienation of homestead land within five years from the issuance of the patent does not distinguish between executory and consummated sales; and it would hardly be in keeping with the primordial aim of this prohibition to preserve and keep in the family of the homesteader the piece of land that the state had gratuitously given to them, to hold valid a homestead sale actually perfected during the period of prohibition but with the execution of the formal deed of conveyance and the delivery of possession of the land sold to the buyer deferred until after the expiration of the prohibitory period, purposely to circumvent the very law that prohibits and declares invalid such transaction to protect the homesteader and his family. To hold valid such arrangements would be to throw the door wide open to all possible fraudulent subterfuges and schemes that persons interested in land given to homesteaders may devise to circumvent and defeat the legal provision prohibiting their alienation within five years from the issuance of the homestead's patent."

We are fully in accord with the conclusion of the appellate court that the issue presented in the case at bar is squarely resolved by the doctrine enunciated in the aforecited case of Manzano v. Ocampo, supra. Indeed, We cannot discern in the case at bar any new element or matter which may possibly bar the application of the ruling in Manzano v. Ocampo as contended by the petitioners.

It cannot be claimed that there are two contracts: one which is undisputably null and void, and another, having been executed after the lapse of the 5-year prohibitory period, which is valid. The second contract of sale executed on March 3, 1964 is admittedly a confirmatory deed of sale. Even the petitioners concede this point.[3] Inasmuch as the contract of sale executed on May 7, 1960 is void for it is expressly prohibited or declared void by law [CA 141, Section 118], it therefore cannot be confirmed nor ratified. Article 1409 of the New Civil Code states:

"Art. 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose cause, object, or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived."

Further, noteworthy is the fact that the second contract of sale over the said homestead in favor of the same vendee, petitioner Potenciano Menil, is for the same price of P415.00. Clearly, the unvarying term of the said contract is ample manifestation that the same is simulated and that no object or consideration passed between the parties to the contract. It is evident from the whole record of the case that the homestead had long been in the possession of the vendees upon the execution of the first contract of sale on May 7, 1960; likewise, the amount of P415.00 had long been paid to Agueda Garan on that same occasion. We find no evidence to the contrary.

With respect to the Resolution of January 16, 1976 of the respondent appellate court, likewise assailed by petitioners, which granted the motion for reconsideration of the Development Bank of the Philippines and declared the mortgage executed by Potenciano Menil over the land in favor of said Bank to be valid, We hold that petitioners are liable for the payment of the agricultural loan obtained by them from the Bank for which the land was mortgaged by them as security.

IN VIEW OF THE FOREGOING, the Resolution of September 3, 1975 as modified by the Resolution of January 16, 1976 is affirmed. Judgment is hereby rendered:

(1) Declaring null and void the sale of the homestead under litigation to petitioners Potenciano Menil and wife, Crispina Nayve;

(2) Ordering the Register of Deeds of Surigao del Norte to cancel Transfer Certificate of Title No. T-60, and to reissue Original Certificate of Title No. 220 in the name of private respondent Agueda Garan, subject to the mortgage executed by petitioner Potenciano Menil in favor of private respondent Development Bank of the Philippines which is hereby declared valid, and ordered to be annotated on said Original Certificate of Title by the said Register of Deeds;

(3) Ordering petitioners Potenciano Menil and wife, Crispina Nayve, to reimburse respondent Agueda Garan the sum of P415.00, the price of the sale, the interest thereon being compensated by the fruits petitioners Potenciano Menil and wife, Crispina Nayve, received from their possession of the homestead;

(4) Ordering petitioners to pay the agricultural loan obtained by them from the Development Bank of the Philippines for which the land had been mortgaged as collateral.

This judgment is without prejudice to any appropriate action the Government may take against private respondent Agueda Garan pursuant to Section 124 of C. A. 141.

No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Fernandez, JJ., concur.

[1] Fourth Division: Tantuico J., J., ponente; Reyes, J. and Lim, J., concurring.

[2] Special Fourth Division: Reyes, J., ponente; Lim, J., concurring, and Herrera, J., with a separate concurring opinion.

[3] Record on Appeal, pp. 55-56.

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