

**GUADALUPE GAYOS, RESTITUTO GAYOS, JOSE GAYOS, LETICIA GAYOS, JOSEFINA GAYOS, GREGORIO GAYOS, EMELITA GAYOS, AND ZENAIDA GAYOS, PLAINTIFFS-APPELLEES, VS. SIMEONA GAYOS, VICTORIO ...***G.R. No. L-27812. September 26, 1975*

Ponente: AQUINO, J.

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The spouses, Juan Gayos and Nicasia Geneta, both died intestate on February 19, 1937 and June 20, 1958, respectively. By his first marriage, Juan Gayos had three children named Restituto, Jose and Ruperto. With his second wife, Nicasia Geneta, he begot four children named Guadalupe, Simeona, Victorio and Elpidia.

On November 10, 1958 Guadalupe, Restituto and Jose, all surnamed Gayos, and the five children of the deceased Ruperto Gayos, named Gregorio, Leticia, Josefina, Emelita and Zenaida, filed an action in the Court of First Instance of Oriental Mindoro against Simeona Gayos, Victorio Gayos and Elpidia, three of the four children of the second marriage (Guadalupe, the fourth child, joined the children of the first marriage as plaintiffs), for the partition of the conjugal assets of Juan Gayos and Nicasia Geneta consisting of eight parcels of land located at the poblacion and Barrio Estrella of Naujan, Oriental Mindoro. They prayed that a three-fourteenth pro indiviso share of the said properties be adjudicated to the three children of the first marriage and an eleven-fourteenth pro indiviso share thereof be adjudicated to the four children of the second marriage.

In their answer defendants Simeona Gayos, Victorio Gayos and Elpidia Gayos conceded that the properties of their deceased parents should be partitioned among the parties as indicated in the complaint. However, the said defendants in their counterclaim averred that, aside from the eight parcels of land described in the complaint, the Gayos spouses left conjugal homestead with an area of seventeen hectares located at Barrio Pinagsabangan No. 1, Naujan, Oriental Mindoro which the said spouses possessed and cultivated but the patent and Torrens title for that homestead were issued in the name of plaintiff Guadalupe Gayos (Exh. A) because Juan Gayos was already an applicant for other parcels of public land. The defendants further alleged that Guadalupe Gayos was not in possession of the homestead and that in an affidavit dated May 14, 1935 the twenty-five-year old Guadalupe admitted that her parents were the owners of the homestead. The admission in her affidavit is as follows:

"That a Certificate of Title No. 2042, Homestead Patent No. 31522 of the province of Mindoro, covering a parcel of land situated in Naujan, was issued in my favor. That the land described in this title does not belong to me and I hereby declare and acknowledge that said land is the conjugal property of my parents, Juan Gayos and Nicasia Geneta. That it is my father who occupies, possesses and cultivates said land and if there are improvements in it these are due to the hard and continuous labor of my father, Juan Gayos. That the capital invested or used for clearing, cultivating and improving this land belonged exclusively to my father and mother and I have nothing to do with the cultivation, possession and clearance of the aforementioned land. That the homestead application of this land was instituted in my name simply because my father Juan Gayos was already an applicant of a piece of land at the time the homestead described in the above-mentioned title was

transferred to me by one Fausto Marinas who was the former owner of the land heretofore cited." (p. 34, Record on Appeal).

The defendants prayed that the homestead be included in the partition.

The plaintiffs in their answer to the counterclaim affirmed that Guadalupe Gayos is the owner of the homestead and that her affidavit (which was characterized as a quitclaim) was void because her consent to that document was not freely given and, moreover, it was illegal because it was executed within the five-year period from the date of the issuance of the patent.

On August 3, 1960 the lower court approved the parties project of partition covering the properties listed in the complaint. The hearing on the counterclaim was set for August 8, 1960.

On that date the plaintiffs filed a motion to dismiss the counterclaim on the ground that it stated no cause of action. They reiterated that the alleged quitclaim was prohibited by sections 118 and 124 of the Public Land Law. They contended that because the patent was issued on February 14, 1935 and quitclaim was executed on May 14, 1935, that quitclaim as an alienation of the homestead was effected within the five-year period fixed in Section 118.

The defendants opposed the motion to dismiss their counterclaim. They countered that in determining whether their counterclaim contained a cause of action only the ultimate facts alleged therein and no other should be taken into account (*Paminsan vs. Costales*, 28 Phil. 487, 489). They took the that under Articles 1451, 1452 and 1453 of the Civil Code the affidavit of quitclaim was in essence an acknowledgment Guadalupe Gayos that she was the trustee for the homestead and that her parents were the beneficiaries of that trust. They argued that the quitclaim was not the "alienation" contemplated in Section 118.

The trial court dismissed the counterclaim. It reasoned out that if the patent issued to Guadalupe Gayos was void because she was not the actual occupant of the homestead, then her affidavit of quitclaim would also be void and no trust in her parents' favor would have been created. Alternatively, it sustained plaintiffs' theory that the quitclaim was an alienation within the meaning of Section 118. It observed that Juan Gayos could not have a patent for the homestead in question because he was already the patentee of another homestead. It concluded that the defendants had no cause of action with respect to the homestead registered in the name of Guadalupe Gayos.

The defendants appealed to this Court but the record was erroneously transmitted on February 11, 1961 to the Court of Appeals which, after the appeal was docketed and the briefs had been filed and after the case had been pending for six years certified the case in 1967 to this Court as falling within its appellate jurisdiction because only legal questions are involved (Resolution in CA-G.R. No. 28999-R dated April 28, 1967, per Cañizares, J., Capistrano and Yatco, JJ., concurring).

The defendants contend that the trial court should have declared the plaintiffs in default with respect to counterclaim because the latter did not answer it within ten-day period expiring on December 18, 1958 (see Sec. 7, Rule 10, old Rules of Court) and they filed their answer only on Jan 16, 1959.

That point was not raised in the lower court. It was incumbent upon the defendants, as counterclaimants, to move that the plaintiffs be declared in default and that judgment by default be rendered against the plaintiffs with respect counterclaim (See Sec. 6, Rule 35, old Rules of Court; 1 Moran's Comments on the Rules of Court, 1957 Ed., p. 184 and sec. 1, Rule 18, present Rules of Court; 1 Moran's Comments on the Rules of Court, 1970 Ed., p. 272). Not having filed such a motion, the defendants cannot fault the lower court for not declared the plaintiffs in default.

The issue is whether the trial court erred in dismissing defendants' counterclaim on the ground that it states of

action.

We hold that the trial court committed a grave injustice in dismissing the counterclaim. On its face the counterclaim discloses a clear cause of action for partition of the homestead in question against the nominal registered owner thereof, Guadalupe Gayos.

To determine for purposes of the motion to dismiss whether there was a cause of action for partitioning the homestead as a conjugal asset of the deceased spouses Juan Gayos and Nicasia Geneta, although actually registered in their daughter's name, it should be assumed that they were the real owners of the homestead. The counterclaim was predicated on that assumption.

Considering that the issues had already been joined with the filing of the answer to the counterclaim, the trial court should have held in abeyance the resolution of the motion to dismiss until after it had held trial on the merits (*Geganto vs. Katalbas*, L-17105, July 31, 1963, 8 SCRA 525).

Since the parties in their briefs and pleadings and the lower court in its order under appeal discussed the legality of whether the Gayos spouses could be regarded as the true owners of the homestead registered in their daughter's name, that issue might as well be passed upon in this appeal. For "it is a cherished rule of procedure that a court should always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation" (*Marquez vs. Marquez*, 73 Phil. 74, 78; *Keramik Industries, Inc. vs. Guerrero*, L-38866, November 29, 1974, 61 SCRA 265).

We agree with the defendants-appellants that the so-called affidavit of quitclaim executed by Guadalupe Gayos is not the "alienation" envisaged in section 118 of Commonwealth Act No. 141 which reads:

"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.

"xxx xxx xxx"

(11 Philippine Permanent and General Statutes, p. 259).

Her affidavit should be understood according to its unmistakable meaning which is that she is not the real owner of the homestead and that it was registered in her name because her father was disqualified to hold it since he was already the applicant for a homestead (presumably the twelve-hectare land located at Barrio Estrella, item [a], pp. 3-4 Record on Appeal. See sec. 19, Act No. 2874, now sec. 19, Commonwealth Act No. 141, re disqualification to apply for more than one homestead).

Inasmuch as the affidavit was not an "alienation" but simply a declaration of the affiant against her proprietary interest or a disclosure of the true owners of the homestead, section 124 of the Public Land Law (invoked by the appellees and<sup>1</sup> the lower court), which declares void any acquisition, conveyance, alienation, transfer, or other contract executed in violation of sections 118, 120, 121, 122 and 123 of the said law, has no application to this case.

Guadalupe Gayos, by admitting that she was only a dummy for her parents in the acquisition of the homestead, is, in effect, a trustee thereof. The beneficiaries or equitable owners were her parents who are now represented by their legal heirs, including Guadalupe herself. Undoubtedly, the Gayos spouses required their daughter Guadalupe about two months after the homestead was registered in her name to execute the said affidavit for their own

protection and the protection of their other children. Knowing the frailty of human nature and the temptation to which Guadalupe would be exposed, the Gayos deemed it proper to make her sign what in common parlance is called a "counter document" or a documentary proof that would offset the recitals of the patent and Torrens title and reveal the truth as to the ownership of the homestead.

Assuming arguendo that the homestead was acquired in violation of the Public Land Law and should revert to the State, the reversion would not be automatic (*Villacorta vs. Ulanday*, 73 Phil. 655; *Eugenio vs. Perdido*, 97 Phil. 41). As long as the State has not taken any action for reversion, the homestead remains as private property (See sec. 101, Public Land Law; *Ingaran vs. Ramelo*, 107 Phil. 498; *Lopez vs. Padilla*, L-27559, May 18, 1972, 45 SCRA 44; *Sumail vs. Court of First Instance of Cotabato*, 96 Phil. 946; *Dauan vs. Secretary of Agriculture and Natural Resources*, L-19547, January 31, 1967, 19 SCRA 223).

While we do not approve of any circumvention of the law governing homesteads, at the same time we cannot sanction the injustice that Guadalupe Gayos should appropriate the homestead in question for herself contrary to the intention of her parents who had labored incessantly for its acquisition for the entire family. The just solution is to partition it among all their heirs.[\*]

WHEREFORE, the trial courts order of dismissal is set aside. The case is remanded to the lower court for further proceedings in accordance with this decision. Costs against the plaintiffs-appellees.

**SO ORDERED.**

Fernando, Barredo, Antonio, and Martin, JJ., [\*\*] concur.

Concepcion Jr. J., is on leave.

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[\*] The validity of a grant of land made by the Government is a matter between the grantor and the grantee, and unless the point is raised by the Government and the grant is set aside, a third-person cannot question the legality of the concession (*Maninang vs. Consolacion*, 12 Phil. 342).

In *Perez vs. Herranz*, 7 Phil. 693, a vessel was purchased by Antonio Herranz and Manuel Perez. Out of the price of P58,000, Herranz contributed P48,000, Herranz contributed P10,000. Herranz was disqualified to own the vessel because he was a Spaniard. The vessel was in the possession of Herranz. Perez and Herranz were declared co-owners of the vessel.

[\*\*] Martin, J., was designated to sit in the Second Division.

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