

**VICTOR CASTRO, ROSARIO VIÑA, CONCEPCION VIÑA, PACITA VIÑA
AND CARLOS VIÑA, PLAINTIFFS AND APPELLANTS, VS. JUAN
ORPIANO AND SEGUNDINA RIVERA, DEFENDANTS AND APPELLEES.**

G.R. No. L-4094. November 29, 1951

Ponente: TUASON, J.

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TUASON, J.:

This action, here on appeal from the Court of First Instance of Davao, presents the questions as to the legal effects of the sale of a homestead within five years after the patent was issued, and particularly as to the standing of the plaintiffs, brothers and sisters of the sellers, now deceased, in the premises. The cause was submitted upon an agreed statement of facts.

Briefly, it was stipulated that on December 6, 1936, Jose Castro, described as married to Fidela Viña, obtained the above-mentioned-patent, which embraces a parcel of public land with an area of 23 hectares 4, On December 18, 1939, Castro and his wife conveyed this property to the defendant in consideration of P2,710, P500 of which was paid on the execution of the deed and the balance payable at the rate of P50 a month until the whole amount was satisfied. The deed of conveyance was not registered in the office of the register of deeds, much less was a new certificate of title issued in the name of the vendee.

During the Japanese occupation, Castro, his wife, and all their children were slain. Surviving the couple as the statutory next of kin were Castro's brother and Mrs. Castro's brothers and sisters; it is these who brought the present action, the purpose of which is to recover the land plus damages and costs of suit, on the ground that the conveyance to the defendant was invalid.

Upon trial the suit was dismissed with costs against the plaintiffs. The court ruled that —

"The sale and transfer of the rights and interest of the property in question for valuable consideration in favor of the defendant Segundina Rivera has been perfected and consummated as between the parties. Consequently, the defendants are entitled to the posrsession and ownership of the land in question."

"The approval of transfer by the Secretary of Agriculture and Natural Resources is a prerequisite to the registration of the instrument with the Register of Deeds for the issuance of its title which has not yet been presented for approval to the Secretary of Agriculture and Natural Resources, but same will not Invalidate the agreement entered into between the parties as embodied in Exh. "A", (the deed of conveyance).

"If the transfer (Exh. "A") of the property in question was executed in violation of Commonwealth Act No. 141 it shall produce the effect of annulling and cancelling the patent and causing the reversion of the property and its improvements to the Government and will become again a part of the public domain."

That the sale in question, having been effected less than five years after the patent was granted, was void and of no effect, there can hardly be any disagreement. In an analogous case, *Labrador & Canonizado vs. De los Santos, et al.*, 66 Phil. 579, This Court has said: "The alienation by Santiagorde los Santos of his land in favor of the

plaintiffs Antonio LaBrador and Felipa Canonizado was made in violation of the provision of section 116 of Act No. 2874 as amended by section 23 of Act No. 3517, which prohibits the encumbering or alienation of a land acquired as a homestead within five years from the issuance of the homestead patent, wherefore, it is illegal and void. As the declaration of nullity of a contract void ab initio operates to restore things in the state and condition in which they were found before the execution thereof, the land in question was returned to the ownership of Santiago de los Santos, in his lifetime, and that of his children, after his death, with the obligation on the part of said Santiago de los Santos to return to the purchasers, the plaintiffs, the price of the sale, with Interest (Art. 1303, Civil Code). Santiago de los Santos being the vendor, had the declaration of nullity taken place while he was living, he would have to return said price to the purchasers; but having died before the declaration of nullity, the plaintiffs should have presented their claim for the return of the price in the testate or intestate proceedings of the deceased, and they cannot go against the children of the latter inasmuch as the said children inherit with the benefit of inventory and only that remaining of the inheritance after paying the indebtedness of the testate or intestate. While it is true that the defendants inherited the land in question, the price of the sale cannot be charged thereon, because the said section 116 of Act No. 2874, as amended by section 23 of Act No. 3517, prohibits, the subjection of such land to the payment of said obligation which was contracted within five years from the issuance of the homestead patent, as above stated. In any event, the plaintiffs may Institute the Intestate proceedings of Santiago de los Santos and file their claim before the committee on claims and appraisal to be named therein."

The only perceptible difference between that decision and the case at bar is in the relations of the heirs to the sellers. In one case, the heirs were the patentee's children and in the other they were the vendors' brothers and sisters. Does this difference alter the result?

In the absence of descendants or ascendants the brothers and sisters succeed to the entire estate of the decedent to the exclusion of the latter's more remote relatives, except where the right of representation exists. (Arts. 913-921, Civil Code of Spain.)

But the defendant maintains that if the sale was null and void, the Government and not the plaintiff has cause of action. It is inferred from the tone of the last paragraph of the quoted portion of the appealed decision that the trial court shares this view.

Whether as the result of the void sale the land reverted to the State is a point which we do not have, and do not propose, to decide. That is a matter between the State and the grantee of the homestead or his heirs. Note, however, that Labrador and Canonizado vs. De los Santos, supra, does not seem to sustain the defendant's and the lower court's theory of forfeiture. In any event, the plaintiff's right to the possession and use of the property can hardly be disputed while the Government does not take steps to assert its title to the homestead. Possession as well as ownership is a property right transmitted by operation of law to the distributees, whoever they may be, of decedent's estate, and the heirs' right to the possession is unquestionably superior to any of the purchaser's in the void sale. Upon the annulment of the sale, the purchaser's claim is reduced to the purchase price and its interest. As against the vendor or his heirs, the purchaser is no more entitled to keep the land than any intruder.

The conclusion then is that the plaintiff has a good ground of action which the Government alone could contest, granting for the sake of argument that, as a matter of law, the property was forfeited to the original grantor.

As to the defendant's recourse for the recovery of the purchase price and its interest, the decision above cited says that the purchaser "may file a claim in the testate or intestate proceedings of the deceased" which the purchaser as creditor can Institute. This the defendant will have to do. However, this suggestion is not to be understood as an expression of opinion on the liability of the property in question to attachment, levy, or sale without the approval

of the Secretary of Agriculture and Commerce (Commonwealth Act No. 456 amending Sec. 118 of Commonwealth Act No. 141) in case of inability of the administrator to pay the said price and Interest from other sources.

Wherefore, the appealed judgment is reversed and another In line with this decision will be entered, with costs against the defendant and appellant.

Paras, C.J., Feria, Pablo, Bengzon, Padilla, Reyes, Jugo and Bautista Angelo, JJ., concur.

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