

ANDREA C. DECOLONGON, ET AL., PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, AND FELICIDAD CUENCA, ET AL., RESPONDENTS.

G.R. No. L-46495. June 24, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari of the decision of the respondent Court of Appeals, now Intermediate Appellate Court, reversing the decision of the Court of First Instance of Negros Occidental, 12th Judicial District, Branch I. The dispositive portion of the decision after appeal reads:

"IN VIEW WHEREOF, sustaining Error 4, this Court is constrained to reverse as it now reverses, judgment appealed from, the validity of Exhibit 'D' in favor of plaintiff is sustained, defendants' title is ordered set aside and she is condemned to reconvey without prejudice to final action by Secretary of Agriculture so far as plaintiffs' title to be issued is concerned, costs against defendants. (Decision of Court of Appeals, p. 10, Rollo, p. 52).

The background facts of the action for reconveyance and damages are found in the decision of the Court of Appeals as follows:

". . . Gregorio Cuenca was applicant for homestead of land in Barrio Guimbalaon, Silay City, Negros Occidental of 23, 892 sq. m. On 10 October, 1951, order for issuance of Patent, Exh. E; but it was 20 years later, on 12 October, 1971, that Patent was issued by the President, and it was registered and OCT No. P-41 was issued in his name, married to Aurelia de Cuenca, Exh. A; the trouble is that he had already died on 3 January, 1971 and Aurelia, on 14 April, 1971; therefore, on 24 January, 1972, one Andrea Cuenca, herein defendant, married to Federico Decolongon, executed declaration of Heirship in her own favor, Exh. B, stating there that she was the only child and legal heir of said spouses, and in view of that, title was cancelled and placed in her name, Exh. C on 15 May, 1972.—

"And this litigation came to arise, for the reason that it resulted that Gregorio Cuenca had left brothers and sisters, named Felicidad, Bonifacio, Amado, Alfredo and Leonor,— and also Natividad, all surnamed Cuenca, and all these with the exception of Natividad, disputed the paternity and filiation of Andrea, and as well Felicidad contended that on 16 May, 1966, as shown in Exh. D, Gregorio Cuenca had already in a notarial deed, relinquished and transferred, all his rights to the homestead unto her in consideration of P1,000.00 by her paid unto him, so that Gregorio had thus transferred all his rights therein in her favor, but only that,

"this sale is subject to the approval of the Secretary of Agriculture and Natural Resources,' Exh. D,"

and so plaintiffs filed this case to secure a reconveyance,— which Andrea has resisted, persisting that she was the true child and only heir of Gregorio and the latter's wife, Aurelia, and that the deed of relinquishment was void,— now after the parties had presented their evidence, trial Judge ruled for Andrea, it is because of this that plaintiffs have come here and contend that the trial court erred. . ." (Decision of the Court of Appeals, pp. 2-3, Rollo, pp. 44-45.)

On August 23, 1972, private respondents filed Civil Case No. 553 entitled "Felicidad Cuenca, Bonifacio Cuenca, Amado Cuenca, Alfredo Cuenca, and Leonor Cuenca, plaintiffs vs. Andrea Decolongon, sued herein with her husband Federico Decolongon, defendants," for reconveyance and damages.

On March 22, 1973, the Court of First Instance of Negros Occidental, decided the case in favor of Andrea C. Decolongon (Rollo, pp. 18-22). As earlier stated, the respondent Court of Appeals, decided the appeal in favor of private respondents in its decision in CA-G.R. No. 53838-R (Rollo, pp. 43-52).

Not satisfied with the decision of the Court of Appeals, petitioner Andrea Cuenca filed a motion for reconsideration on March 21, 1977 (Rollo, pp. 53-58), and when the motion was denied (Rollo, p. 63) filed the instant petition.

The main issue centers on the application to the facts of this case of Sec. 118 of Commonwealth Act No. 141 as amended by Commonwealth Act No. 456, which states:

"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 improvement or crops on the land may be mortgaged or pledged to qualified persons, associations or corporations. (Sec. 118, Com. Act No. 141).

"No alienation, transfer, or conveyance of any homestead after five years and before twenty five years after issuance of title shall be valid without approval of the Secretary of Agriculture and Natural Resources, which approval shall not be denied, except on Constitutional and legal grounds" (Sec. 118, Com. Act No. 141, as amended by Com. Act No. 456).

Petitioners contend that before a patent is issued on public lands, the ownership of the same remains with the government, and homestead applicants occupying the public lands are considered mere caretakers. And since the ownership of the public land in this case was still with the government, the alienation or transfer made by the applicant to third persons was void.

There is no merit in this contention. Resolving a similar issue in *Pineda v. Court of First Instance of Davao*, (1 SCRA 1020), this Court ruled:

"Where a homestead application was approved by the Director of Lands, who later, ordered the issuance of the corresponding patent in favor of the applicant, thus indicating that the latter had submitted final proof of compliance with the requirements of the laws for the issuance of such patent, said appellant acquired a vested property right in said land as well as the equitable ownership thereof, which may be conveyed or inherited, unaffected by the fact that the paramount title thereto was still in the hands of the government."

The ruling in *Pineda* was subsequently reiterated. In *Minlay v. Sandoval*, (53 SCRA 1), this Court said:

"The moment the plaintiff had received a certificate from the government and had done all that was necessary under the law to secure his patent, his right had become vested before the patent was issued. (*Balboa v. Farrales*, 51 Phil, 498). From which no other conclusion would logically and legally follow except the full recognition of his undisputed property right."

Petitioners argue that the deed of relinquishment which conveyed the land to the private respondents was executed within the prohibited five-year period.

The argument has no merit. The latest rulings of the Court emphasize that the patent is considered issued once the order for its issuance is promulgated and, therefore, the five-year period is computed from this date.

It is true that in *Oliveros v. Porciongcola*, (69 Phil. 305), this Court ruled that "the sale of a homestead made by a grantee before the issuance of a patent shall be deemed null and void." However, the issue in the case now before us is the date when the patent is deemed issued.

There are actually various dates from which the commencement of the prohibited five year period may be counted depending on the particular circumstances of each case.

In *Arojo de Dumelod, et al. v. Vilaray* (92 Phil. 967) this Court stated:

.....

"The same question as herein raised was squarely presented in the case of *Register of Deeds of Nueva Ecija vs. Director of Lands* (40 Off. Gaz., 954), decided on June 13, 1941. In that case the court held that the starting point of the computation was the date of the homestead patent or grant and not the date of the certificate of title, which was issued by the register of deeds in accordance with section 122 of Act No. 496. And this opinion was reaffirmed in *Villacorta vs. Ulanday* (41 Off. Gaz., No. 12, pp. 870-872), decided in December, 1942, 'as a correct interpretation of the law.' In that case, the court expressly overruled the decision of the Court of Appeals before mentioned.

"Upon the facts of the case at bar, the present appeal must be sustained. Here, the patent was issued to the plaintiffs' predecessor in interest on November 15, 1933, the patent was recorded and certificate of title was issued on March 21, 1934, and the patentee, plaintiffs' grandfather, sold the land to the defendant on November 16, 1938. Thus, the sale was effected within five years from the date of the registration of the patent but outside of five years if this period is to be reckoned, as it should be, from November 15, 1933, the date of the grant."

In *Beniga v. Bugas* (35 SCRA 111), we had this further explanation of the prohibition against alienation:

"It is clear from the language of the law that the alienation of lands acquired by homestead or free patent grants is forbidden 'from the date of approval of the application' up to and including the fifth year 'from and after the date of the issuance of the patent or grant.' Otherwise, the provision makes no sense, for the prohibition starting from the date of approval of the application would have no terminal date. Since the 1965 donation in favor of defendant-appellant was clearly within the period of prohibited alienation, whether the same be deemed to end five years counted from the issuance of the patent or grant, or five years counted from its registration or recording with the Register of Deeds, said donation is plainly void.

"Anyway, it has been repeatedly held that the period is not computed from the date of registration with the Register of Deeds or from the date of the certificate of title. (*Register of Deeds v. Director of Lands*, Re Consulta No. 1370, 72 Phil. 313; *Arojo de Dumelod, et al. v. Vilaray*, 92 Phil. 967; *Crisanto v. Tajon*, 93 Phil. 1111, unrep., L-4455, 22 May 1953.)"

This rule was reiterated only recently in *Amper v. Hon. Presiding Judge, et al.* (G.R. No. L-35595, May 17, 1983). The facts of the instant case, however, fall more squarely under the ruling in *Enervida vs. De la Torre* (55 SCRA 339) where we stated:

". . . In this connection, *Recido v. Refaso* (L-16641, June 24, 1965, 14 SCRA 443, 445) is pertinent. This Court speaking through then Chief Justice Bengzon in said case said:

"A sale by Petra: There is no question that on June 14, 1948, the Refasos bought her one-half share in the homestead. Nevertheless, she now attacks the validity of her conveyance, pointing out to the legal prohibition against sales of homesteads 'from the date of application and for a term of five years from and after the date of issuance of the patent.' To Petra, the law prohibits the sale of the homestead not only during the period between application and issuance of the patent but also during the five years after such issuance. And, she argues, my sale was void because it was made in 1948 before the issuance of the patent in 1949.

"Agreeing to her first legal proposition or major premise, the Court of Appeals held, contrary to her contention, that issuance of the patent took place in 1941. And as the sale had been made in 1948—seven years afterwards—it was valid. Said Court explained that the issuance of the patent in this case occurred in 1941, when the Director of Lands signed the order for the issuance of the patent. This opinion, Petra challenged, insisting that the patent had been issued in 1949 not 1941.

"Her contention must be overruled in the light of our decision in *Tinio v. Frances*, 51 Off. Gaz., 6205, wherein construing this identical prohibition, we ruled that the patent is deemed issued upon promulgation of the order of the Director of Lands for the issuance thereof—in this case 1941.'

"For the purpose of computing the five-year prohibition against alienation of homesteads, it is to be reiterated and emphasized that the patent is deemed issued upon promulgation of the order for issuance thereof by the Director of Lands. . . ."

In the instant case, the order of the Director of Lands for the issuance of the patent was dated October 10, 1951, but the patent itself was issued only twenty (20) years later on October 12, 1971, while the Deed of Relinquishment in favor of private respondents was executed on May 16, 1966. Clearly, the Deed of Relinquishment was executed more than five (5) years from the order for the issuance of patent. In fact, fourteen (14) years, seven (7) months, and six (6) days had already elapsed from the order for the issuance of patent. Under the facts of this case and the rule applicable to those facts the material date is the promulgation of the order. Whoever was at fault for the twenty years delay, the same is not material under the *Enervida vs. de la Torre* ruling.

Petitioners also argue that since the transfer or the date of conveyance was executed without the previous approval of the Secretary of Agriculture and Natural Resources, the same is null and void. Petitioners submit that the previous approval of the Secretary of Agriculture and Natural Resources is absolutely necessary.

The fact that the deed of relinquishment may not have been approved by the Secretary of Agriculture and Natural Resources is not fatal. We have already held in several cases that it is only directory. In *Raffiñan v. Abel*, 4 SCRA 1260, we held that:

"The requirement for the approval of the Secretary of Agriculture and Natural Resources prescribed in Sec. 118 of Com. Act. No. 141 (Public Lands Law), is merely directory, and its absence does not invalidate any alienation, transfer or conveyance of the homestead after five (5) years and before twenty five (25) years from the issuance of title."

WHEREFORE, the petition for review is DENIED. The decision of the respondent Court of Appeals is AFFIRMED.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Relova, JJ., concur.

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