

**CECILIO ORTEGA AND ADELITA V. ORTEGA,
PLAINTIFFS-APPELLANTS, VS. DOMINADOR AGRIPA TAN, HUMILIA
TAN, MIGUEL PERIDO, JR., FABIAN PERIDO, AND ESPIRITU A. VDA.
DE PERIDO, DEFENDANTS...**

G.R. No. L-44617. January 23, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking to reverse and set aside: the decision[*] of the Court of First Instance of Leyte, Tacloban City, dated January 29, 1971, in Civil Case No. 3761, entitled "Cecilio Ortega, et al. v. Dominador Agripa Tan, et al." dismissing the complaint for annulment of title in the name of defendant Dominador Agripa Tan.

An action was brought before the Court of First Instance of Leyte as above-mentioned, by Cecilio Ortega, et al. for cancellation of a transfer certificate of title issued in the name of Dominador Agripa Tan covering Homestead Lots Nos. 587 and 1017 of the Public Land Subdivision of Dagami, Leyte.

As found by the trial court the following facts are undisputed:

"From the pleadings of the parties, it appears that plaintiffs-appellants acquired Lots Nos. 587 PLS-450 and 1017 PLS-450 covered by Transfer Certificate of Title No. T-1108 in their names, issued on September 7, 1965, by the Register of Deeds of Leyte; that they acquired the lots by direct purchase from the heirs of the late Miguel Perido, Sr. who were the registered owners of the lots under Original Certificate of Title No. P-4037 by virtue of a Free Patent grant issued in their favor on September 6, 1960; that on October 14, 1965, plaintiffs-appellants discovered for the first time that on November 11, 1964, without proper surrender of the owner's duplicate copy of Original Certificate of Title No. P-4037, Transfer Certificate of Title No. T-923, covering the lots, was issued by defendant Register of Deeds in favor of his co-defendant Dominador Agripa Tan on the strength of a joint-affidavit executed by Miguel Perido, Jr., Fabian Perido and Espiritu Vda. de Perido on November 11, 1964; that sometime in 1959, defendant-appellee Dominador Agripa Tan had negotiated with the said heirs of Miguel Perido, Sr. for the sale to him by them of the lots and, in virtue of the negotiation, substantial amounts on account of the purchase price were advanced and paid by him to them; that at the initial stages of the transaction, defendant-appellee Dominador Agripa Tan never knew that the lots were the subject of a free patent application by the heirs of Miguel Perido, Sr., and it was only sometime in November, 1964, when he was informed by them that a title was issued in their favor; that by that time, defendant-appellee Dominador Agripa Tan had already paid in full the amount of the consideration; that an affidavit was executed by the heirs of Miguel Perido, Sr., which was the basis for the issuance on November 11, 1964, by defendant Register of Deeds of Transfer Certificate of Title No. T-923.

During the pre-trial conference, plaintiffs-appellants presented a Deed of Sale with Power of Repurchase, dated September 4, 1959, executed by the heirs of Miguel Perido, Sr., in favor of plaintiff-appellant Cecilio Ortega, covering a parcel of coconut land, redeemable within five (5) years and indefinitely until such time that the vendors would be able to redeem the property, as Exhibit 'A'; an agreement, dated August 7, 1962, between the

heirs of Miguel Perido, Sr., and plaintiff-appellant Cecilio Ortega, whereby the former mortgaged the two lots in favor of the latter for a period of two (2) years from the date of the instrument, as Exhibit 'B'; a document captioned 'Self-Adjudication with Deed of Absolute Sale of Real Property', dated September 7, 1965, executed by Miguel Perido, Jr., and Fabian Perido in favor of plaintiffs-appellants Cecilio Ortega and Adelita V. Ortega, covering the two parcels of land, as Exhibit 'C'; Transfer Certificate of Title No. T-1108, as Exhibit 'D'; and a joint affidavit of Miguel Perido, Jr., Fabian Perido and Espiritu A. Vda. de Perido, certifying, ratifying and confirming that the parcels of land are exclusively owned by Dominador Agripa Tan, in the concept of owner, free from any lien and encumbrances, as Exhibit 'F'.

"Defendants-appellees presented no evidence and merely relied on their answer and supplemental answer to the complaint of plaintiffs-appellants." (Rollo, pp. 83-85).

On January 29, 1971, the decision appealed from was rendered by the lower court which states:

"As the situation is, the Court is of the view that while the present action instituted by plaintiffs cannot prosper for they themselves have no rights of ownership and possession over the homestead lots involved, the Republic of the Philippines may, instead, institute an action against defendants and even plaintiffs herein for the reversion of said lots to the state:

xxx xxx xxx

"WHEREFORE, the present case is hereby dismissed, without special pronouncement as to costs.

"Let a copy of this decision be furnished to the Honorable, the Solicitor General, Manila.

"SO ORDERED." (Record on Appeal, pp. 120-121)

It is clear in said decision of the Leyte Court that neither plaintiffs nor defendants were entitled to the land, and that the State should file for itself reversion proceedings.

A notice of appeal was filed in the lower court by the plaintiffs-appellants on March 2, 1972 (Rollo, p. 5).

By the order of the trial court such notice of appeal was approved and the clerk of court was ordered to forward such records to the Court of Appeals (Rollo, p. 7).

The records of the case were forwarded to the Court of Appeals on January 24, 1973, but said court forwarded the case to the Supreme Court for no factual questions were involved.

The only issue in this case is whether or not a series of transactions involving the sale and mortgage of a parcel of land for which a patent had issued, starting within the prohibitive period but finalized thereafter, constitute a violation of Section 118 of Commonwealth Act No. 141.

After a careful study of the records of the case, the Court finds the petition devoid of merit and the answer to the above-stated issue is that the transactions are void.

The law states that: 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, Commonwealth 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 the approval of the Secretary of Agriculture and Natural Resources, which

approval shall not be denied, except on constitutional and legal grounds (Sec. 118, Commonwealth Act No. 141, as amended by Commonwealth Act No. 456).

It is admitted that the transactions made by the plaintiffs-appellants with the defendants Peridos were a series of transactions, or stated differently, are continuous transactions starting with a Deed of Sale with Right of Repurchase dated September 4, 1959 (Exhibit "A"); a mortgage on August 7, 1962 (Exhibit "B"); and a document entitled Self Adjudication with Deed of Absolute Sale of Real Property dated September 7, 1965.

It is well-settled that the conveyance of a homestead before the expiration of the five-year prohibitory period following the issuance of the homestead patent is null and void and cannot be enforced, for "it is not within the competence of any citizen to barter away what public policy by law seeks to preserve." (Puyat and Sons v. De las Ama, et al., 2 O.G. No. 2; Gauran v. Sahagun, L-4645, May 29, 1953; Pacis v. Dadulla, L-1361, July 22, 1948, 81 Phil. 277; Acierto v. De Los Santos, L-5828, Sept. 29, 1954; Eugenio Perido, L-7083, May 19, 1955; Gabon v. Amboy, CA 56 O.G. 1172; Lumacad v. Saganay, CA L-31985-R, Oct. 27, 1965).

It clearly appears from Section 118, Commonwealth Act No. 141 that a parcel of land acquired under free patent or homestead provisions cannot become liable to the satisfaction of any debt contracted prior to the expiration of five years from the date and after the issuance of the patent, except in favor of the government or any of its branches. This provision is mandatory. Its purpose is to give to the homesteader a place where to live with his family so that he may become a happy citizen and a useful member of our society (Jocson v. Mariano, 45 Phil. 375; Beach v. Pacific Commercial Co., 49 Phil. 765; Cadiz v. Nicolas, 55 O.G. 1910). In the case at bar, the properties in question were mortgaged within the prohibited period in favor of the plaintiff and therefore such mortgage is null and void.

Where it appears that the real property covered by the mortgage is covered by a homestead patent issued defendants on September 6, 1960, and that before the expiration of the five-year period from the issuance of the patent, or on August 7, 1962, defendants executed the mortgage in question in favor of the plaintiff to secure the payment of certain monetary obligations, the transactions shall become null and void (PNB v. Espinosa, 66 Phil. 716; Santos v. Roman Catholic Church of Midsayap, L-6088, February 25, 1954).

Both parties here say that the series of transactions were continuous, starting within the prohibitory period and culminating in a deed of sale after the expiration thereof. This issue has long been laid to rest in the unchanging rulings of this Court to the effect that where a debt was contracted within five years from the date of the issuance of patent but it was agreed that such debt shall be payable after five years from the date that such patent was issued, the homestead is not liable for the satisfaction of the debt (Villanueva v. Paras, 69 Phil. 384; Olivares v. Porciungcola, 69 Phil. 305; Labrador v. De los Santos, 66 Phil. 579).

As stressed by this Court, it is clear from the language of the law that the alienation of land 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 (Beniga v. Bugas, 35 SCRA 111 [1979]).

The prohibition of the law which prohibits the sale or encumbrance of the homestead within five years after the grant is mandatory. This cannot be obviated even if official approval is granted beyond the expiration of that period, because the purpose of the law is to promote a definite policy, which is "to preserve and keep in the family of the homesteader that portion of the public land which the State has gratuitously given to him." (De los Santos v. Roman Catholic Church of Midsayap, L-6088, February 25, 1954).

The legislative policy which is to conserve the land which a homesteader has acquired under the public land law, for him and his heirs, is so strong and consistent that the original period of five years from the issuance of the patent, within which period, conveyance or sale thereof, by the homesteader or his heir was prohibited (Section 116, Act No. 2874) is now extended to twenty-five years if no approval of the Secretary of Agriculture and Natural Resources is secured (Section 118, par. 2, Commonwealth Act 141, as amended by Commonwealth Act No. 456). Provisions have also been inserted authorizing the repurchase of the homestead when properly sold by the homesteader within five years from the date of the sale (Section 119, Commonwealth Act No. 141; *Tinio v. Frances*, L-7747, Nov. 29, 1955, 51 O.G. 6205).

In fact the law does not distinguish between executory and consummated sales (*Marzan v. Ocampo*, 1 SCRA 691 [1961]) so that where the sale of a homestead was perfected within the prohibitory period of five years, the fact that the formal deed of sale was executed after the expiration of the said period and that the sale was approved by the Secretary of Agriculture and Natural Resources did not and could not legalize a contract that was void from its inception. To hold valid such arrangement would be to throw the door wide open to all possible fraudulent subterfuges and schemes that persons interested in land given to a homesteader may devise to circumvent and defeat the legal provisions prohibiting their alienation within five years from the issuance of the patent (*Ibid.*).

Even taking for granted, in the case at bar, that the transactions were entered into voluntarily, still that would be considered as a violation. Voluntariness of alienation even with the approval of the Director of Lands or any administrative official is of no moment. Such acquiescence will not validate a gross violation of the law. Neither can the void contract of sale of homestead be confirmed nor ratified (*Menil v. CA*, 84 SCRA 413 [1978]; *Arsenal v. IAC*, 143 SCRA 40 [1986]).

Finally, the action to declare the contract void does not prescribe.

On the other hand, defendants-appellees insisted that in the initial stages of the transactions, they never knew that the lands in question were the subject of a free patent application by the heirs of Miguel Perido, Sr. (*Rollo*, Brief for the Defendants-Appellees, p. 4).

The five-year period is counted from the issuance itself of the patent, as verified from the government records, not from the time transferees acquire knowledge that the land had been given thru a homestead patent.

It is thus clear that the rights, if at all, of both parties here are inexistent because they were acquired during the prohibitive period.

Reversion of the homestead to the state is proper for violation of the prohibition on transfer or alienation of a homestead grant within five years from issuance of a patent (*Republic v. CFI*, 131 SCRA 415 [1984]). This is not automatic. The government has to take action to cancel the patent and the certificate of title in order that the land involved may be reverted to it. Correspondingly, any new transaction would be subject to whatever steps the government may take for the reversion to it. (*Arsenal v. IAC*, 143 SCRA 42 [1986])

PREMISES CONSIDERED, the instant petition is DISMISSED for lack of merit and the assailed decision of the trial court is AFFIRMED. Let a copy of this decision be furnished the Solicitor General and/or Director of Lands for the proper action.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Judge Jesus N. Borromeo

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