

**FE RECIDO, PETRA RECIDO AND SIMON MERCADO, PETITIONERS,
VS. ALFONSO T. REFASO, GERONIMA MANLUGON AND COURT OF
APPEALS, RESPONDENTS.***G.R. No. L-16641. June 24, 1965*

Ponente: BENGZON, C.J.

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This review of a Court of Appeals' decision deals with a five-year prohibition against alienation of homesteads and the sale of realty by emancipated minors.

According to Mr. Justice Paredes[1] of that Court, "On December 27, 1927, Jose Recido filed with the Bureau of Lands an application for Homestead (N. A. No. 150270 [E-59119]) over a piece of land situated in the barrio of Patnanuñgan, Burdeos, Quezon. The application was approved on August 15, 1929 and the 'Order for Issuance of Patent' was handed down on March 27, 1941. The Patent was, however, not issued until June 10, 1949, when the original applicant Jose Recido was already dead. Before the issuance of the patent but after the death of Jose Recido, the property passed to Petra Recido and Fe Recido who were his only children and legal heirs. On June 14, 1948, Petra Recido, for P600.00, transferred and/or conveyed by sale one-half undivided share of the property to the spouses Alfonso Refaso and Geronima Manlugon, by a public document (Exhibit A). On January 26, 1949, the spouses Alfonso Refaso and Geronima Manliugnagain bought the remaining one-half of the property from Simon Mercado, who acquired the same from Fe Recido (Exhibit "B"). From the time the spouses acquired the ownership of the property, they had been in possession of the same and planted coconut trees. On June 10, 1949, after Petra and Fe Recido had conveyed their respective rights and interests over the homestead of their deceased father, Homestead Patent No. V2862 was issued, but still in the name of the deceased Jose Recido. Pursuant to said patent OCT No. P-522 was issued, also in the name of Jose Recido, on July 21, 1949. Both patent and certificate of title were issued after said Jose Recido had died.

"On April 4, 1955, the sisters (Petra and Fe) executed an extra-judicial partition, wherein Petra renounce all her rights, participation and interest over the land in controversy in favor of Fe. After the extra-judicial partition, the OCT in the name of Jose Recido was cancelled and in lieu thereof TCT No. T-21394 was issued in the name of Fe Recido, * * *."

Naturally, conflicting titles provoked disputes, which resulted in this suit by the Refasos against the Recidos and Simon Mercado.

Invalid sale, Petra pleaded. Not sales, but mere mortgages, said defendants Fe and Mercado. Fe added that her sale, if any, was void because she was a minor; and because it was a prohibited homestead conveyance.

The Court of First Instance of Tayabas declared valid the sale by Petra; but it annulled the sale by Fe, because she was a minor, even as it avoided the transfer by Mercado to the Refasos.

On appeal, the Court of Appeals awarded the whole land to the plaintiffs, holding that Petra had validly

transferred her portion to them; and that Fe had sold, not merely mortgaged her share to Mercado; consequently, the latter could have sold, and actually sold, Fe's one-half to the Refasos.

So the Recidos, with Mercado, filed this petition for review.

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 sale 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 patent. This opinion, Petra challenges, insisting that the patent had been issued in 1949 not 1941.

Her contention must be overruled in the light of our decision in *Tinio vs. Frances*, 98 Phil., 32; 31 Off. Gaz., 6205 [2], 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.

B. Sale by Fe to Mercado: transfer by the latter to the Refasos.—Executed in January 1949 by Fe Recido, the document Exh. B conveys by way of sale to Simon Mercado, her half interest in the homestead. She asserted this was no sale, but a mere mortgage. The Court of Appeals found it was a sale. Mercado also averred that his "sale" to the Refasos was a mere mortgage. Another sale, declared the same court.

Normally, controversies on whether a document of sale actually represents a mere mortgage raise factual questions; wherefore, we have repeatedly declined to interfere with the appellate court's findings thereon. So, on the basis that these were sales, we may proceed to pass on the other disputed matters.

Fe would nullify her conveyance on the ground of minority. She was admittedly a minor, and the appellate court so found; but it upheld the transaction just the same for two reasons; (a) the contract was not void, but voidable and she had not filed a suit to nullify it; (b) she was married, and therefore an emancipated minor capable of contracting with the consent of her father or guardian; consent, which in the absence of proof to the contrary may be assumed, since transactions are deemed to be fair and regular.

Assigning error to the Court's view, Fe's attorney contends that a separate action to annul was unnecessary, because the issue was already presented in her answer; and a different suit would multiply litigations. And as to the parents' consent to her contract, Fe maintains it was the Refasos' duty to prove such consent, because it was their part to sustain their title.

If Fe Recido had sued Mercado to annul her sale to him, Mercado perhaps could have proved, to sustain the sale, that she got parental permission. Having taken no part in that sale, the Refasos are not in a position to establish the point. Hence, it is more than equitable to require her to sue Mercado first.[3] She contracted with him. And on the duty to prove consent or the lack thereof, the situation may be simplified by remembering that Fe alleged the contract was void because she was incapable of consenting for being a minor; that Refasos replied she could consent because she was an emancipated minor (married); that Fe countered alleging she did not have the consent of her parents. Thus stated, it was Fe's duty to prove her allegation of non-consent. To the argument that it was the Refasos' duty to prove their title and, therefore, the validity of Fe's sale, it may be answered, they sustained

this burden by presenting the documents of sale. Their execution being undeniable, it was the duty of those who denied their validity to show or vindicate their defense.

Returning to the necessity of affirmative action to annul; may Fe's position in this proceeding be equated to such action? It must be observed that she has not contracted with the Refasos; so she could have no action against them. She contracted with Mercado; yet she is not now demanding any relief against him. Indeed, she has not included in her answer, a cross claim against him (Sec. 7, Rule 6) to demand annulment of her contract with him. Had she done so, perhaps Mercado could have proven parental consent, or some other defense, for instance that Fe pretended to be of age [4] or maybe ratification. As it is, her action against Mercado is now barred.[5]

And then, granted that her answer was equivalent to an action to annul, then it was her duty to prove her affirmative allegation of lack of parental consent. This burden of proof she did not carry. Instead, she relies on the theory that having a certificate of title, it was the Refasos' obligation to adduce proofs to overcome it. Indeed, the Refasos complied with their part by proving execution of the documents of sale. After the presentation of the documents, the burden of proof shifted to her; she had to show nullity of the documents, by proving she was a minor, who had not obtained the consent of her parents to sell.

In this connection, we may note that this sale according to the law was "binding unless" it is "annulled by a proper action in court" (Art. 1390, New Civil Code). Very clear.

By the way, does this also mean that until the action is brought and the contract annulled, the buyer in this case (Mercado) got a good title which he could pass on to the Refasos? An affirmative answer would be in line with Art. 1506 of the same Code which provides that "where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided * * *, he acted in good faith etc." On this point, we need not express any opinion now.

Suffice it to say that because Fe has filed no action, her sale must be accorded force and effect, considering it was made in 1949, beyond the five-year limitation, like that of Petra.

So, Mercado must be declared to have acquired title to the homestead. And as she has transferred it to the Refasos (before or without any action to annul his title), the latter should be declared the owners not only of Petra's portion but also of that inherited by Fe.

In view of the foregoing reasons, we are constrained to affirm and hereby affirm, the judgment of the Court of Appeals upholding such ownership and ordering the cancellation of Fe Recido's TCT No. T-21394 and the issuance of another certificate in the name of the Refaso spouses. Without costs.

Concepción, Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

Decision affirmed.

[1] Now a member of this Court.

[2] See also *Balios vs. Farrales*, 51 Phil. 498.

[3] *Sec Hacer vs. Nuñez*, 12 Phil. 528.

[4] It would be a good defense.

[5] Sec. 4, Rule 9.

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