

**SPOUSES BENJAMIN TUPAS AND LEONOR BALDONADO,
PLAINTIFFS-APPELLEES, VS. SPOUSES DANIEL DAMASCO AND
JUANITA BULAONG, SPOUSES EUSEBIO BULAONG AND CONSUELO
SABILE BULAONG, ZACARIAS ...**

G.R. No. L-34654. October 23, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

This appeal, interposed by defendant-spouses Eusebio Bulaong and Consuelo Sabile Bulaong and the Philippine National Bank, from the decision of the defunct Court of First Instance of Southern Cotabato in its Civil Case No. 597, entitled "Spouses Benjamin Tupas and Leonor Baldonado versus Spouses Daniel Damasco and Juanita Bulaong, Spouses Eusebio Bulaong and Consuelo Sabile Bulaong, Zacarias Antonio, in his capacity as Register of Deeds of Cotabato, the Philippine National Bank, Cotabato Branch and Juanito Mapalo" was originally filed with the defunct Court of Appeals (now the Intermediate Appellate Court) and docketed therein as CA-G.R. No. 45713-R. It was how-ever, elevated to this Court on motion of the parties since purely questions of law are involved.

The subject matter of this case is a parcel of land, known as Lot No. 895, Pls-209-D, with an area of 128,409 square meters, situated in the City of General Santos in South Cotabato. The aforesaid par-cel was acquired by spouses Benjamin Tupas and Leonor Baldonado (now plaintiffs-appellees) under the homestead provisions of the Public Land Act pursuant to their Homestead Application No. 520 (NLSA) G-V-228.

On March 8, 1951, Homestead Patent No. V-240 was issued to the said spouses and on July 8, 1952, Original Certificate of Title No. V-1042 of the Office of the Register of Deeds of Cotabato was issued in their names.[1]

On November 30, 1951, plaintiffs-spouses sold the said land for P3,000.00 to Juanita Bulaong, then still a minor being only eleven (11) years old, but was represented by her father Eusebio Bulaong, now one of the defendants-appellants.[2]

Since the said Deed of Sale was executed with-in the prohibited five-year period from the issuance of the Homestead Patent,[3] another Deed of Sale for the same consideration of P3,000.00 was executed on May 1, 1957 by plaintiffs-appellees in favor of Juanita Bulaong[4] and on the basis thereof, Trans-fer Certificate of Title No. T-5281 was issued in Juanita Bulaong's name on December 16, 1957. Since 1951 to the present, Juanita Bulaong and her father, defendant-appellant Eusebio Bulaong, have been actu-ally occupying the said parcel and later caused the construction of a residential building thereon valued at P35,000.00, more or less.

Meanwhile, Benjamin Tupas had obtained a spe-cial crop loan from the Philippine National Bank. For failure to pay the said loan, the Philippine National Bank, Cotabato Branch, instituted Civil Case No. 770 for "Sum of Money" before the then Court of First Ins-tance of Cotabato, against Benjamin Tupas. A writ of preliminary attachment was issued in the said case which was duly annotated on August 23, 1954 at the back of the original

copy of TCT No. V-1642, of the spouses Benjamin Tupas and Leonor Baldonado. The attachment was further re-entered by the Register of Deeds on the Transfer Certificate of Title No. T-5281 later issued to Juanita Bulaong pursuant to that Deed of Sale executed on May 1, 1957 in her favor by plain-tiffs-appellees.[5]

On April 4, 1959, pursuant to a writ of execution issued by the Court of First Instance of Cotabato in said Civil Case No. 770, (PNB vs. Tupas, et al) the Provincial Sheriff of Cotabato sold the land in question at public auction to the Philippine National Bank for P6,400.00 being the sole bidder. By reason of said execution sale, the Provincial Sheriff executed in favor of the Philippine National Bank a certificate of sale dated April 6, 1959 specifying therein that the one-year period of redemption shall expire on April 4, 1960. The certificate of sale was registered in the Office of the Register of Deeds of Cotabato on August 26, 1959.[6]

On March 26, 1960, Juanita Bulaong, then already married to Daniel Damasco, instituted before the same court an action against the Philippine National Bank for "Recovery of Ownership" of the same parcel of land. The complaint which was docketed as Civil Case No. 264 was later amended on April 9, 1962 and made as an action for "Quieting of Title", and joining as additional defendants, the Register of Deeds of Cotabato and the Provincial Sheriff.[7] Judgment was rendered in the said case in favor of the Philippine National Bank, nullifying the sale executed on May 1, 1957 by spouses Tupas in favor of Juanita Bulaong. Appeal was taken to the then Court of Appeals as CA-G.R. No. 3287-R but was finally withdrawn on April 3, 1964 after spouses Juanita Bulaong and Daniel Damasco had entered into a compromise agreement agreeing to purchase the land in question from the Philippine National Bank.

In the meantime, however, and more specifically on June 4, 1964, spouses Juanita Bulaong Damasco and Daniel Damasco executed a Deed of Absolute Sale, transferring, selling and conveying in favor of Eusebio Bulaong, married to Consuelo Sabile Bulaong, the land in question for One (P1.00) Peso. The deed further stated that "the consideration is the nominal amount of One (P1.00) Peso because all expenses incurred in the acquisition of the same were advanced and defrayed by Eusebio Bulaong".[8]

On September 23, 1964, pursuant to the agreement arrived at in CA-G.R. No. 3387-R for the purchase of the land in question, the Philippine National Bank executed a Deed of Sale in favor of the spouses Daniel Damasco and Juanita Bulaong for and in consideration of P10,089.35.[9]

On March 2, 1965, title over the land in question was consolidated in the name of Philippine National Bank pursuant to an affidavit of consolidation. And on March 17, 1965, following registration of said affidavit of consolidation with the Office of the Register of Deeds, Transfer Certificate of Title No. T-13103 was issued in the name of the Philippine National Bank. Thereafter, the Deed of Sale dated September 23, 1964, which was executed by the Philippine National Bank in favor of the spouses Juanita Bulaong and Daniel Damasco, was presented for registration and Transfer Certificate of Title No. 13104 was issued, this time, in the name of the said spouses.[10]

On April 26, 1965, appellant Eusebio Bulaong filed Civil Case No. 585 before the Court of First Instance of Cotabato-Branch II, against spouses Daniel Damasco and Juanita Bulaong for "Recovery of Real Property".[11] Judgment was subsequently rendered in the said case holding that the land in question (which is the same land subject of this case on appeal) was actually purchased from the Philippine National Bank by Eusebio Bulaong for a consideration of P10,089.35 on September 23, 1964 and not by the spouses Daniel Damasco and Juanita Bulaong. The spouses Daniel Damasco and Juanita Bulaong were then ordered to convey the land to Eusebio Bulaong. No appeal having been interposed therefrom, the said decision became final.

On June 10, 1965, spouses Benjamin Tupas and Leonor Baldonado, filed against spouses Daniel Damasco and Juanita Bulaong Damasco, Zacarias Antonio as Register of Deeds of Cotabato and the Philippine National Bank,

an action for the "Repurchase of Land Under Section 119 of Commonwealth Act 141" which was docketed as Civil Case No. 597 now subject of the present appeal.

On July 28, 1965, plaintiffs-spouses filed an Amended Complaint and denominated the same as "An Act-ion to Declare a Document and Title a Nullity and Repurchase of Land Under Section 119 of Commonwealth Act 141, as amended and/or Recovery of Real Property", and joining as additional defendants, spouses Eusebio Bulaong and Consuelo Sabile Bulaong.

Again on August 27, 1966, plaintiffs-spouses filed a Second Amended Complaint which was styled as "An Action to Declare a Levy and Execution and Public Auction Sale and a Document as Patent Nullity and Recovery of a Parcel of Land". This was admitted by the trial court in its Order dated October 17, 1966.

On March 28, 1968, plaintiffs-spouses filed a Motion to Admit and to Treat First Amended Complaint as Second Amended Complaint and Vice Versa. This was, however, denied by the lower court in its Order dated April 3, 1968 for being "improper and illogical".[12]

On May 24, 1968, plaintiffs-spouses again filed a Motion for Leave to Admit Second Amended Complaint and attached thereto their Second Amended Complaint as further Amended. No order was however issued by the lower court either granting or denying the said motion.

Pursuant to the Order of the lower court dated July 26, 1968, the parties submitted their proposals and counter-proposals for stipulations of facts. There-after, the parties submitted their case for decision based on the pleadings on record.

On October 12, 1968, the lower court thru Judge Abelardo Aportadero rendered judgment dismissing the complaint, the pertinent portion of which reads as follows -

"As it will be recalled, plaintiff Benjamin Tupas sold the land in question to Juanita Bulaong on May 1, 1957. And on April 4, 1959, the Philippine National Bank purchased the land at public auction and on April 4, 1960, the property vested in the bank, after one-year period of redemption. The original complaint having been filed on June 10, 1965, in either case, whether counted from May 1, 1957 or from April 4, 1960, the 5-year period to exercise the right to repurchase under Section 119 of the Public Land Act has already expired."

Plaintiffs-spouses moved to reconsider the afore-said judgment and on January 8, 1969, the lower court, this time thru Judge Samson C. Animas, reversed the de-cision previously rendered with the following disposi-tion:

"ACCORDINGLY, the judgment of this Court dated November 11, 1968, is hereby reconsidered and set aside and judgment is hereby rendered:

(a) Annulling the sale made by the defendant Philippine National Bank of the property subject matter of the present litigation to and in favor of spouses Daniel Damasco and Juanita Bulaong-Damasco which was actually bought by defendants-spouses Eusebio Bulaong and Consuelo Sabile as decided in Civil Case No. 585 of this Court, as well as the entry of said sale in the records of the Register of Deeds of Cotabato, now South Cotabato;

(b) Ordering the defendant Philippine National Bank to allow plaintiff to repurchase the property aforesaid for the amount of P6,400.00 and the accumulated interest up to and including the time of the actual repurchase; and

(c) Ordering the defendant Philippine National Bank to re-turn to said spouses Eusebio Bulaong and Consuelo Sabile the purchase price of the land in question including all expenses incidental thereto. Without pronouncement as to costs".

Rationalizing its aforesaid ruling allowing re-purchase of the land in question, the lower court stated -

"Applying said authority to the case at bar, the period to repurchase at least expired on August 20, 1965, five years after August 25, 1960 when the period of redemption expired, and at most, five years after March 17, 1965 when the affi-davit of consolidation of ownership executed by the bank on March 2, 1965, was registered with the Office of the Register of Deeds and title in its favor issued over the property in question. In either case, the complaint filed on June 10, 1965 was well within the five-year period contemplated in Section 119 of Commonwealth Act 141. Though not relevant, this Court however is of the opinion that the five-year period should be counted from the date of the consolidation of the ownership and the issuance of the transfer certificate of title in the name of the purchaser at public auction not only because under Act 496 the act of registration of the deed is the operative act which binds the land and vests title in the transferee and from such time is the land deemed conveyed, within the meaning of Section 119, but also because of the far more important reason for public policy conceived in this right to repurchase - to enable the family of the applicant or grantee to keep that homestead (*Lastade vs. Pinol, et al.*, G.R. No. L-10825, September 27, 1957)... thus, the law must be liberally construed in order to carry out the purpose. (*Rivera vs. Curamen*, G.R. No. L-25245, July 31, 1968)"

After the lower court denied their motion to reconsider and/or for new trial, defendants Philippine National Bank and spouses Eusebio Bulaong and Consuelo S. Bulaong perfected their respective appeal to the de-funct Court of Appeals[13] which subsequently certified the appeal to this Court on motion of the parties on the ground that the issues raised present pure question of law and that is - from what time should the five-year period mentioned in Section 119 of the Public Land Law within which to exercise the right to repurchase, be counted.

Section 119 of the Public Land Law (Commonwealth Act 141, as amended) provides -

"Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow or legal heirs, within a period of five years from the date of the conveyance." (*Italics supplied.*)

It is not disputed that the land subject matter of this case was acquired by appellees, spouses Benjamin Tupas and Leonor Baldonado, under the homestead provisions of the Public Land Law and the patent was issued to the said appellees on March 8, 1951. On April 4, 1959 the homestead was sold by the sheriff in an execution sale to satisfy the judgment in favor of the Philippine National Bank in Civil Case No. 770 and in which execution sale the Philippine National Bank was the highest bidder. The certificate of sale in favor of the Philippine National Bank was executed on April 6, 1959 specifying therein that the one-year period of redemption shall expire on April 4, 1960. The said certificate of sale was registered in the Office of the Register of Deeds of Cotabato on August 26, 1959. The instant complaint for repurchase was filed on June 10, 1965.

The lower court in its now assailed decision held that the five-year period should be counted from August 26, 1960. Apparently, the lower court was of the view that the one-year period of redemption granted to appellees as judgment debtors, expired on August 26, 1960 because the sheriff's certificate of sale was registered on August 26, 1959, and that it is only from the expiration of this one-year period of redemption that the five-year period to repurchase under Section 119 of Commonwealth Act 141 as amended begins to run.

The case in point is *Oliva vs. Lamadrid*.^[14] This case involves a parcel of land also covered by a homestead patent. The said homestead was mortgaged with the bank as security for a loan obtained by the owner. Having defaulted in the payment of the obligation, the mortgage was extrajudicially foreclosed and the property was sold at public auction on February 4, 1961. The certificate of sale issued by the sheriff on February 6, 1961. Stated that the property could be redeemed within a period of two (2)^[15] years from and after the date of the sale or until February 4, 1963. One of the questions therein raised was whether or not the five-year period granted under Sec.

119 of Commonwealth Act 141 should be counted from the date of the foreclosure sale or from the expiration of the period of redemption of property foreclosed under Ra public Act 720 as amended. And it was therein held –

"It is therefore our considered view that plaintiff herein has the right to repurchase the property in question within five (5) years from the date of the conveyance or fore-closure sale or up to February 4, 1966, and that having exercised such right and tendered payment long be-fore the date last mentioned, defend-ants herein are bound to reconvey the property to him." (Italics supplied)

Applying the aforesaid doctrine to the case at bar, appellees could only exercise the right to repur-chase his former homestead within five years from April 4, 1959, the date of the execution sale or up to April 4, 1964. Since this action to repurchase was filed on June 10, 1965, the same was filed out of time. At any rate, even if we have to compute the five-year period from the expiration of the right to redeem gran-ted to a judgment debtor, still this case was filed beyond five years, because the one-year period of re-demption in this case expired on April 4, 1960, and the five-year period from April 4, 1960 is April 4,1965.

The other reason given by the lower court in allowing repurchase - that homestead law should be in-terpreted in favor of the homesteader and that the underlying purpose of said Section 119 is to give the home-steader every chance to preserve for himself and his family the land that the State had gratuitously given him - no longer applies in the case at bar. As held in the case of Vargas vs. Court of Appeals,[16] the sale by appellees of their homestead even before the expiration of the five-year prohibited period indicates lack of in-tent on the part of the homesteader to preserve the homestead for himself and his family.

WHEREFORE, the decision appealed from is hereby REVERSED and another one entered dismissing the complaint. No pronouncement as to costs.

SO ORDERED.

Guerrero, Relova, and Gutierrez, Jr., JJ., concur.

Aquino, J., see concurring opinion.

Makasiar (Chairman), Concepcion, Jr., Abad Santos, and Escolin, JJ., no part.

[1] Pars. 3 & 4, Second Amended Complaint.

[2] No. 4, Stipulation of Facts Proposed by Appellees, Record on Appeal, Page 205.

[3] Section 118, Commonwealth Act 141, As Amended.

[4] No. 6, Stipulation of Facts Proposed by Appellees, Record on Appeal, Page 206.

[5] No. 5, Stipulation of Facts Proposed by Appellees, Record on Appeal, Page 205.

[6] No. 8, Stipulation of Facts Proposed by Appellees, Record on Appeal, Pages 206-207.

[7] Annexes "A" & "B" to Appellees Opposition to Motion to Dismiss, Record on Appeal, Pp. 43-67.

[8] Record on Appeal, pages 34-42.

[9] Record on Appeal, Pages 75-101.

[10] Record on Appeal, Page 40.

[11] Record on Appeal, Pages 32-42.

[12] Record on Appeal, Page 169.

[13] CA-G.R. No. 45713-R

[14] 21 SCRA 739.

[15] The period of two years granted for the redemption of property foreclosed under Section 5 of RA 720, as amended by Rep. Act No. 2670, refers to lands "not covered by a Torrens title, or homestead or free patent", or to owners of lands "without Torrens titles", who can "show five years or more of peaceful, continuous and uninterrupted possession there-of in the concept of an owner, or of homesteads or free patent lands pending the issuance of titles but already approved", or "of lands pending homesteads or free patent titles". RA 720 covers to mortgages in favor of Rural Banks.

[16] 91 SCRA 195

CONCURRING OPINION

AQUINO, J.:

I concur. The spouses Benjamin Tupas and Leonor Baldonado sold their 12-hectare homestead on May 1, 1957 to Juanita Bulaong but her title contains an annotation that the homestead was attached by the Philippine National Bank in connection with a collection suit filed by the bank against the Tupases.

Later, the bank bought the homestead for P6,400 on April 4, 1959 at an execution sale. The period of redemption would expire on April 4, 1960. Before the expiration of that period, or on March 26, 1960, Juanita and her husband sued the bank for the recovery of the homestead. The case was settled amicably on April 3, 1964 when Juanita agreed to repurchase the homestead from the bank.

On June 4, 1964, Juanita and her husband sold to Eusebio Bulaong for one peso all their rights to the homestead. The bank sold the homestead to the spouses Juanita Bulaong and Daniel Damasco on September 23, 1964 for P10,089.35. Title was issued to the Damascos in 1965. They were sued by Eusebio Bulaong. Judgment was rendered in favor of Eusebio in 1965.

On June 10, 1965, the homesteaders, the Tupases, sued the Damascos and the bank for the repurchase of the homestead. Later, Eusebio Bulaong and his wife were joined in the suit. The trial court ruled that the action for repurchase had prescribed. On motion for reconsideration, another trial judge held that the Tupases could repurchase the homestead for P6,400 plus interest. The bank and Eusebio Bulaong appealed.

Since the repurchase under section 119 of the Public Land Law should be made within five years from the sale, the action of the Tupases had already prescribed. The five-year period should be computed from April 4, 1960 when the bank was entitled to a final deed of sale. The action of the Tupases was filed on June 10, 1965 or beyond the five-year period. (Paras vs. Court of Appeals, 91 Phil. 389; Monge vs. Angeles, 101 Phil. 563.)

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