

HEIRS OF FRANCISCO PARCO, PETITIONERS, VS. PETRA HAW PIA, RESPONDENT.

G.R. No. L-22478. May 30, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal by way of certiorari from the decision rendered by the Court of Appeals in CA-G.R. No. 27968-R, the dispositive part of which reads as follows:

"Por las razones que acabamos de exponer, entendemos que las conclusiones de derecho hechas por el Director de Terrenos e invocadas por los apelantes no son de caracter concluyente para este Tribunal. Por estas consideraciones opinamos que al procedimiento seguido por el Tribunal a quo al reabrir la vista con respecto a los dos lotes 9202 y 9203 esta de acuerdo con la ley.

POR TANTO, se confirma el fallo de que se apela, con las costas a cargo de los apelantes. ASI SE ORDENA."

The judgment of the Court of First Instance of Quezon which was affirmed by the Court of Appeals is as follows:

"PREMISED on the foregoing considerations, the petitions of Petra Haw Pia are hereby GRANTED. The proceedings having been reopened by the Court and the claimant Petra Haw Pia having satisfactorily proven her ownership of Lots 9202 and 9203, the Court hereby REJECTS the oppositions of the heirs of Francisco Parco and hereby adjudicates Lots 9202 and 9203 of the Atimonan cadastre, with the improvements thereon in favor of the claimant Petra Haw Pia. Upon this decision becoming final, let a decree of confirmation and registration be entered and there-after, upon payment of the fees required by law, let the corresponding certificate of title issue in the name of the claimant Petra Haw Pia and her husband Sergio Tan See, both of age, Filipino citizens and resident of 3114 Second Street, Sta. Mesa, Manila as their conjugal properties, free from all liens and encumbrances."

The parcels of land involved in this case are lots 9202 and 9203 of the Cadastral Survey of Atimonan, Quezon, which were declared public land in a decision rendered by the Court of First Instance of said province on January 22, 1935 in Cadastral Case No. 63, G.L.R.O. Record No. 1019, because nobody appeared as claimants thereof when they were called for hearing on that date.

It appears that on May 23, 1957 Petra Haw Pia —hereinafter referred to as respondent — filed in said cadastral proceedings two separate verified petitions under the provisions of Republic Act No. 931, praying that the proceedings be reopened; that the decision declaring Lots 9202 and 9203 public land be set aside, and that after the presentation of evidence, said lots be declared as her exclusive property. Only the heirs of Francisco Parco, petitioners herein, opposed the petitions claiming, inter alia, that said lots belonged to the public domain and could not be the subject matter of private sales; that they and their predecessors having been in possession thereof for a long period of time had a preferential right to acquire them from the Government; that said lots had been the subject of a Sales Application filed by Zosima Parco, in her behalf and in that of her coheirs, which application was opposed by respondent; that after the corresponding proceedings, the Department of Agriculture and Natural

Resources gave due course to Zosima's application; that because of said administrative proceedings the Court had no jurisdiction to entertain or consider respondent's petitions; that the conveyance of the two lots to the latter were not by way of absolute sale but only by way of mortgage; and that respondent being an alien could not own real properties in the Philippines.

After a hearing on the petitions the court declared the cadastral proceedings reopened and, on the basis of the evidence presented by both parties, rendered its decision the dispositive part of which is reproduced above.

Petitioners herein appealed to the Court of Appeals, claiming that the Court of First Instance of Quezon erred: (1) in ruling that Republic Act 931, as amended by Republic Act 2061, was applicable to respondent's petitions; (2) in not holding that respondent was a Chinese citizen on the dates of execution of the deeds of sale with right to repurchase upon which she relied; (3) in holding that the aforesaid deeds of sale with right to repurchase covering Lots 9202 and 9203 in favor of respondent and Leoncio Lim Kiam were absolute sales; and (4) in not holding that it had no jurisdiction to take cognizance of the petitions for the reopening of the case. Petitioners' appeal, however, failed, the Court of Appeals having rendered the decision now appealed from.

Antecedent facts necessary for a clear understanding of the issues to be resolved are the following:

Lot 9202 originally belonged so both lower courts found to Ignacio Reyes and Francisco Parco, while Lot 9203 originally belonged solely to Ignacio Reyes.

On May 30, 1932, Ignacio Reyes executed in favor of Leoncio Lim Kiam a deed of sale of Lot 9203, with right to repurchase but without fixing the period within which such right could be exercised. Francisco Parco, father of herein petitioners, signed the deed to express his consent to its execution and to acknowledge the fact that although Lot 9203 had been surveyed in his name its true owner was his father Ignacio Reyes — the party who was selling it to Leoncio Lim Kiam.

On June 14, 1932, Ignacio Reyes and Francisco Parco executed another deed of sale with right to repurchase covering Lot 9202 in favor of respondent, the repurchase to be made within three years from the date of execution of the deed.

On July 14, 1949, Leoncio Lim Kiam sold Lot 9203 to respondent. This transaction took place more than 17 years after the pacto retro sale executed by Ignacio Reyes in favor of Lim Kiam. As the aforesaid pacto de retro sale did not fix the period of repurchase, the Court of Appeals ruled that, pursuant to the provisions of Article 1606 of the New Civil Code, said period should be four years from the date of execution of the deed of sale, which period expired on May 30, 1936.

The Court of Appeals likewise found as a fact that during the lifetime of Francisco Parco, Leoncio Lim Kiam and respondent enjoyed possession of Lots 19203 and 9202, respectively, peacefully, continuously and openly as owners; that they declared both lots in their respective names for tax purposes and paid the corresponding taxes due thereon. The Court of Appeals also found, however, that upon the death of Francisco Parco (sometime in the year 1950) his heirs – herein petitioners – unlawfully took possession of both lots.

Petitioners' brief submits in support of their plea for reversal of the appealed decision the following four assignments of error:

"I

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE LOWER COURT DID NOT HAVE AUTHORITY AND/OR JURISDICTION TO HEAR AND DECIDE THE CASE.

II

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT CONTRACTS OF PACTO DE RETRO SALES EXECUTED BY THE PETITION-ERS' PREDECESSORS-IN-INTEREST IN FAVOR OF RESPONDENT WERE NULL AND VOID AB INITIO.

III

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT PETRA HAW PIA WAS A CHINESE CITIZEN AND IS DISQUALIFIED TO OWN OR ACQUIRE PRIVATE OR PUBLIC LANDS.

IV

THE COURT OF APPEALS ERRED IN HOLDING THAT REPUBLIC ACT NO. 931, AS AMENDED BY REPUBLIC ACT NO. 2061, APPLIES TO THE CASE OF RESPONDENT PETRA HAW PIA."

Petitioners' contention in connection with the first and fourth assignments which we now discuss jointly because they are intimately related may be summarized as follows:

That Lots 9202 and 9203 are, or had been declared public lands; that both were the subject of Sales Application No. V-1069 filed even before respondent filed her petitions for reopening on May 23, 1957; that respondent's opposition was overruled, and the Secretary of Agriculture and Natural Resources gave due course to the Sales Application aforesaid, which adjudication became final; that in view of this, neither the Court of First Instance of Quezon nor the Court of Appeals had jurisdiction to take cognizance of, much less to grant, respondent's two petitions for reopening, because for them to do so would amount to interfering with the decision of the Cadastral Court declaring Lots 9202 and 9203 as public land as well as with the decision of the Department of Agriculture and Natural Resources.

First issue demanding consideration is whether or not respondent's petitions for reopening were in accordance with the provisions of Republic Act 931.

It is not questioned that the period of five years fixed in Republic Act 931 was extended up to December 31, 1968 (Republic Act 2061). The petitions for reopening of the cadastral proceedings were, therefore, seasonably filed.

Whether or not respondent had complied with the other requirements of Republic Act 931, as amended, is a question of fact resolved affirmatively by the Court of First Instance of Quezon as well as by the Court of Appeals, and is, therefore, not now reviewable. The pertinent portion of the appealed decision reads as follows:

"* * * La solicitante contiene que ella ha cumplido con todos los requisitos de la ley y procede la confirmacion de la sentencia apelada.

Con respecto a la vista original de los lotes en el expediente catastral que tuvo lugar alla por los anos 1933-1934, las pruebas de la solicitante demuestran que los interesados en estos lotes, o sea, Petra Haw Pia, representada por su encargado Uy Pi, este acompanado por el abogado Aguilar y el mismo Leoncio Lim Kiam acompanado por el abogado Cesareo Uy y sus respectivos testigos, estuvieron en la sala del Tribunal entonces presidido por el Honorable Ricardo Summers, pero los dos lotes no fueron llamados para su vista y los interesados no pudieron presentar formalmente su reclamacion y sus pruebas.

Los derechos de catastro fueron pagados por Petra Haw Pia y por Leoncio Lim Kiam. Los otros requisitos exigidos por la ley han sido complidos por la referida solicitante."

In relation to Sales Application (No. V-1079) filed on July 19, 1948 by Zosima Parco, in her behalf and in that of the other heirs of Francisco Parco, against which respondent filed a formal opposition, it appears that the Director of Lands, on November 21, 1950, upheld the preferred right claimed by petitioners to purchase the two lots in question. This decision was reconsidered upon motion of the re-spondent, and the corresponding decision dated

December 29, 1953, upheld her opposition. On appeal, the Department of Agriculture and Natural Resources reversed this second decision of the Director of Lands, on November 15, 1954, thereby recognizing the preferred right claimed by petitioners to purchase the two lots in question. As a result their (Zosima Parco's) application was given due course. Respondent's motion for a reconsideration of this decision was denied on January 5, 1955. Although on the 14th of the same month and year the Director of Lands appears to have declared as final and executory the decision of the Secretary of Agriculture and Natural Resources, respondent asserted both in the Court of First Instance of Quezon and the Court of Appeals that she had appealed, therefrom to the Office of the President of the Philippines. While the Court of Appeals found that respondent's evidence upon this matter is not conclusive, the court of origin found that petitioners themselves admitted that such an appeal had, in fact, been interposed and that the same was still pending when the verified petitions for reopening were filed (Record on Appeal p. 59).

Be that as it may, petitioners' pivotal contention is that the two lots in question are publiclands. The Court of First Instance of Quezon as well as the Court of Appeals declared, however, that they are privateproperties. The former said in its decision (Record on Appeal p. 69) that Lot 9202 "has always been of private ownership owned by Ignacio Reyes and Francisco Parco, while as to Lot 9203 the owner * * * was Ignacio Reyes only," citing in support of this conclusion, inter alia, the statements made by them in the deed of sale with right to repurchase of June 14, 1932. This was affirmed by the Court of Appeals. The conclusion thus arrived at by both courts finds sufficient support in the evidence submitted during the hearing below showing that Ignacio Reyes had been in possession of the lots aforesaid since 1912; that upon the execution of the pacto retro sales mentioned heretofore, the vendees, Lim Kiam and respondent, entered into the possession thereof openly, continuously, adversely and as owners, and that during all that time the lands were declared for tax purposes in their names and they paid the corresponding taxes due to the government; that when the pacto retro sales already mentioned were executed, Lots 9202 and 9203 were already planted with hundreds of fruit-bearing coconut trees, and the physical appearance of the lands as well as that of the surrounding properties gave clear indication that they were all privately owned and had been under cultivation since many years before. Mention must also be made in this connection of the circumstance that although pursuant to the provisions of R.A. 931, as amended, the Solicitor General was duly served with notice of respondent's verified petitions for reopening, the Government filed no opposition thereto.

But petitioners argue that because respondent opposed Zosima Parco's Sales Application and took part in the proceedings before the Bureau of Lands and the Department of Agriculture and Natural Resources, she had no right to seek relief under the provisions of Republic Act 931. This contention is untenable. In the first place if, as held by the Court of Appeals and the Court of First Instance of Quezon; the two lots in question were privateproperty, the in-escapable conclusion is that the government had no right to dispose of them in favor of anybody, either through the Bureau of Lands or any other governmental agency. In the second place, the decision rendered by the Department of Agriculture and Natural Resources made no adjudication of ownership over the lots in question in favor of petitioners; it merely decreed that the Sales Application filed by Zosima Parco be given due course. As far as the record shows, those proceedings have not resulted in an actual sale of said lots by the government in favor of petitioners. In the third place, respondent's intervention in the aforesaid administrative proceedings does not amount to a recognition that the lands applied for belonged to the public domain, nor did it place her in estoppel to deny that. To be taken into account in this connection is the fact that said administrative proceedings were initiated or commenced by petitioners themselves, and all that respondent did was to oppose their application claiming precisely that the lots applied for were her exclusive private property. In the fourth place, neither the pendency of the administrative proceedings nor the alleged final decision of the Department of Agriculture and Natural Resources merely giving due course to the Sales Application of Zosima Parco, deprived

respondent of the right to seek relief under the provisions of Republic Act 931, as amended by Republic Act 2061. In this connection petitioners contend that the said decision of the Secretary of Agriculture and Natural Resources constituted at least a provisional disposal of the land by the Government, and hence no petition for reopening of the cadastral proceeding under Republic Act No. 931, as amended by Republic Act No 2061, could be entertained, such reopening being authorized "only with respect to such parcels of land as have not been alienated, reserved, leased, granted, or otherwise provisionally or permanently disposed of by the Government."

The phrase "otherwise provisionally or permanently disposed of by the Government" evidently refers to the forms of disposition of public lands under Section 11 of Commonwealth Act No. 141, which reads:

"Section 11. Public lands suitable for agricultural purposes can be disposed of only as follows:

- (1) For Homestead settlement;
- (2) By sale;
- (3) Lease;
- (4) By confirmation of imperfect or incomplete titles:
 - (a) By judicial legalization
 - (b) By administrative legalization (free patent)

For each of the above forms of disposition the law provides a different procedure. Referring particularly to sale, the procedure laid down is as follows:

"(1) Filing of the application with the Director of Lands;

(2) The Director of Lands makes appraisal of the land applied for and publishes a notice regard-ing the sale once a week for six consecutive weeks in the Official Gazette and in two newspapers, one in Manila and the other published in the municipality or in the province where the land lies or in the neighboring province, and the same notice shall be posted in the bulletin board of the Bureau of Lands in Manila, and in the most conspicuous place in the provincial building of the place where the land lies, and if practicable on the land itself; but if the value of the land does not exceed P240.00, the publication in the Official Gazette and newspaper may be omitted;

(3) The applicant as well as any one desiring to buy the land may submit to the Director of Lands any sealed bid, enclosing therewith an amount equivalent to ten percentum of the amount of the bid, which amount shall be retained in case the bid is accepted as part payment of the purchase price. The bid of the applicant shall be preferred of two or more equal bidders which are higher than the others. If the applicant's bid is not one of such equal and higher bids, the Director of Lands shall at once submit the land for public bidding, and to the person making the highest bid on such public auction the land shall be awarded; in any case, the applicant shall always have the option of raising his bid to equal that of the highest bidder, and in this case the land shall be awarded to him; (*Italics supplied*)

(4) The purchase price may be paid in full upon the making of the award, or may be paid in ten equal annual installments from the date of the award.

(5) The purchaser cultivates not less than one-fifth of the property within five years after the date of the award.

(6) The purchaser must show actual occupan-cy, cultivation and improvements of at least one-fifth of the land applied for until the date of final payment;

(7) The Director of Lands, satisfied that the purchaser has complied with requisites of the law, orders the

survey of the land, and when the plan thereof is finished, the sales patent is prepared and signed in the same manner as a homestead patent.

(8) Certified copy of the same is sent to the register of deeds, who issues the corresponding certificate of title to the patentee in accordance with Section 107 of the Public Land Law in relation to Section 122 of the Land Registration Law." (Chapter V, Commonwealth Act No. 141; Noblejas, Philippine Law on Natural Resources, pp. 104-105)

It will be noted that the mere fact that the sales application is given due course by the Director of Lands does not confer upon the applicant any right over the land covered by the application. However, the law gives the applicant the following privileges: (1) his bid shall be preferred of two or more equal bidders which are higher than the others; and (2) if his bid is not one of such equal and higher bids, the Director of Lands shall at once submit the land for public bidding, and to the person making the highest bid the land shall be awarded; but in any case, he shall always have the option of raising his bid to equal that of the highest bidder. (Section 26, Commonwealth Act No. 141.)

It is the award,[*] made by the Director of Lands to the applicant (if he is the highest bidder) that confers upon him a certain right over the land, namely: "to take possession of the land so that he could comply with the requirements prescribed by law." (Director of Lands vs. Court of Appeals, et al., L-17696, May 19, 1966, 17 SCRA 71, citing Visayan Realty vs. Meer, 96 Phil. 515). It is at this stage, when the award is made, that the land can be considered "disposed of by the Government," since the aforestated right of the applicant has the effect of withdrawing the land from the public domain that is "disposable" by the Director of Lands under the provisions of the Public Land Act (Commonwealth Act 141). (Director of Lands vs. Court of Appeals, supra, citing People vs. Lapasaran, 100 Phil. 40 and Diaz vs. Macalinao, 55 O.G. 1021). However, the disposition is merely provisional because the applicant has still to comply with the requirements prescribed by law before any patent is issued. Thus Section 30 of the law provides:

"Section 30. If at any time after the date of the award and before the issuance of patent, it is proved to the satisfaction of the Director of Lands, after due notice to the purchaser, that the purchaser has voluntarily abandoned the land for more than one year at any one time, or has otherwise failed to comply with the requirements of the law, then the land shall revert to the State, and all prior payments made by the purchaser and all improvements existing on the land shall be forfeited."

After the requisites of the law are complied with by the applicant to the satisfaction of the Director of Lands, the patent is issued. It is then that the land covered by the application may be considered "permanently disposed of by the Government," although Section 122 of the Land Registration Act (Act No. 496) provides that "the deed, grant, or instrument, of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate only as a contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration."

In the instant case, therefore, considering that the sales application of Zosima Parco was merely given due course by the Director of Lands and that no actual award was made to her, the lots covered by said application cannot be considered "provisionally or permanently disposed of by the Government."

Petitioners' second and third assignments of error concern respondent's alleged disqualification to acquire Lots 9202 and 9203 because she was a Chinese citizen at the time of the execution of the sales in her favor and is still an alien at present, with the result that the aforesaid sales are void.

With respect to Lot 9202 the deed of pacto deretro sale was executed in favor of respondent on June 14, 1932, and the stipulated three-year period of redemption expired on June 14, 1935, both dates being prior to the effectivity

of the Constitution which prohibited for the first time acquisition of private agricultural lands by aliens save through hereditary succession. Respondent's acquisition of this lot was therefore not affected by said prohibition.

With respect to Lot 9203, respondent acquired it from Lim Kiam on July 14, 1949. The Court of Appeals found that respondent was married to Sergio Tan See, also a Chinese citizen, before 1941, but that on November 25 of that year the latter obtained a certificate of naturalization as a Filipino citizen pursuant to a favorable decision of the Court of First Instance of Manila in the corresponding naturalization proceeding. Under our ruling in the case of *Moy Ya Lim Yao vs. Commission of Immigration*, Oct. 4, 1971, 41 SCRA 293, respondent was deemed a Filipino citizen as of the date of the naturalization of her husband, pursuant to Section 15 of the Revised Naturalization Law.[1] The objection of petitioners to her acquisition of Lot 9203 in 1949 on the ground of alienage is therefore without basis, unless it be shown in an appropriate proceeding that she was disqualified to be a citizen of the Philippines under Section 4 of the same law.

In the deed of pacto retro sale executed by Ignacio Reyes in favor of Lim Kiam on May 30, 1932, covering Lot 9203, the period of repurchase was not fixed. The Court of Appeals correctly held that in accordance with Article 1508 of the old Civil Code the right could be exercised within four years from the date of execution of the conveyance – in this case up to May 30, 1936. The fact, however, that on this date the Constitution was already in force did not affect the right acquired by Lim Kiam. We have held in a number of cases decided under the provisions of the old Civil Code that the nature of a sale with the right of repurchase is such that the ownership over the thing sold is transferred to the vendee upon execution of the contract, subject only to the resolutive condition that the vendor exercise his right of repurchase within the period agreed upon. *Manalansan vs. Manalang*, G.R. No. L-13646, July 26, 1960; *Almiranez vs. Devera*, G.R. No. L-19496, February 27, 1965; *Rosario vs. Rosario*, G.R. No. L-13018, December 29, 1960.

True, under the old law, upon expiration of the period of repurchase, the vendee retro had to file with the Register of Deeds a so-called Affidavit of Consolidation. (Under the provisions of Article 1607 of the new Civil Code, after the expiration of said period, the vendee retro has to file an action in court for the consolidation of the title in his favor.) This requirement, however, was only for the purpose of having the sale and the expiration of the period of repurchase "recorded in the Registry of Property" and did not affect at all the legal effect of the pacto retro sale (*Rosario vs. Rosario*, supra).

WHEREFORE, the decision appealed from, being in accordance with law, is hereby affirmed, with costs.

Zaldivar, Fernando, Teehankee, Barredo, and Antonio, JJ., concur.

Reyes, J. B. L., Acting C.J., concurs with the dissent of J. Makasiar.

Castro, J., took no part.

Concepcion, C.J., on leave.

[*] The situation is different in the case of acquisition of homestead settlement. Section 13 of Commonwealth Act No. 141 provides:

"Section 13. Upon the filing of the application for a homestead, the Director of Lands if he finds that the application should be approved, shall do so and authorize the applicant to take possession of the land upon the payment of five pesos, Philippine currency, as entry fee. Within six months from and after the date of the approval of the application, the applicant shall begin to work the homestead, otherwise, he shall lose his prior right to the land."

[1] " * * * Accordingly, We now hold, all previous decisions of this Court indicating otherwise notwithstanding, that under Section 15 of Commonwealth Act 473, an alien woman marrying a Filipino, native born or naturalized, becomes ipso facto a Filipina provided she is not disqualified to be a citizen of the Philippines under Section 4 of the same law. Likewise, an alien woman married to an alien who is subsequently naturalized here follows the Philippine citizenship of her husband the moment he takes his oath as Filipino citizen, provided that she does not suffer from any of the disqualifications under said Section 4."

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