

PABLITO Taneo, JR., JOSE Taneo, NENA T. Catubig and Husband, Cilia T. Moring and Husband, Petitioners, vs. Court of Appeals and Abdon Gilig, Respondents.

G.R. No. 108532. March 09, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The issues in this case are not novel: whether or not the conveyance made by way of the sheriff's sale pursuant to the writ of execution issued by the trial court in Civil Case No. 590 is prohibited under Sec. 118 of Commonwealth Act No. 141; and whether or not the family home is exempt from execution.

As a result of a judgment in Civil Case No. 590 (For recovery of property) in favor of private respondent, two (2) petitioner's properties were levied to satisfy the judgment amount of about P5,000.00: one was a parcel of land located in Barrio Igpit, Municipality of Opol, Misamis Oriental with an area of about five (5) hectares, and the other was the family home also located at Igpit, Opol, Misamis Oriental. The subject properties were sold at public auction on February 12, 1966 to the private respondent as the highest bidder. Consequently, after petitioners' failure to redeem the same, a final deed of conveyance was executed on February 9, 1968, definitely selling, transferring, and conveying said properties to the private respondent.

To forestall such conveyance, petitioners filed an action on November 5, 1985 (docketed as Civil Case No. 10407) to declare the deed of conveyance void and to quiet title over the land with a prayer for a writ of preliminary injunction. In their complaint, it was alleged that petitioners are the children and heirs of Pablo Taneo and Narcisa Valaceras who died on February 12, 1977 and September 12, 1984, respectively. Upon their death, they left the subject property covered by OCT No. P-12820 and Free Patent No. 548906. Considering that said property has been acquired through free patent, such property is therefore inalienable and not subject to any encumbrance for the payment of debt, pursuant to Commonwealth Act. No. 141. Petitioners further alleged that they were in continuous, open and peaceful possession of the land and that on February 9, 1968, Deputy Provincial Sheriff Jose V. Yasay issued a Sheriff's Deed of Conveyance in favor of the private respondent over the subject property including their family home which was extrajudicially constituted in accordance with law. As a result of the alleged illegal deed of conveyance, private respondent was able to obtain in his name Tax Declaration No. 851920 over the land, thus casting a cloud of doubt over the title and ownership of petitioners over said property.

Private respondent refuted petitioners' contentions alleging that he lawfully acquired the subject properties described as Lot No. 5545, Cad. 237 which was a private land, by virtue of a Sheriff's Sale on February 12, 1966. Said sale has become final as no redemption was made within one year from the registration of the Sheriff's Certificate of Sale. The validity of the sale in favor of Abdon Gilig was even confirmed by the Court of appeals in a related case (CA No. 499965-R) entitled "Arriola v. Gilig," where one Rufino Arriola also claimed ownership over the subject property.

Private respondent averred that the subject land was originally owned by Lazaro Ba-a who sold the land to Pablo Taneo on September 18, 1941, as evidenced by an Escritura de Venta. Despite it being a private land, Pablo Taneo filed an application for free patent which was made final only in 1979.

As counterclaim, private respondent alleged that since petitioners are still in possession of the subject property, he has been deprived of acts of ownership and possession and therefore, prayed for payment of rentals from February, 1968 until possession has been restored to them.

In its decision of March 27, 1989, the RTC dismissed the complaint.

The dispositive portion thereof reads as follows:

Premises considered, Judgment is hereby rendered in favor of the defendant and against the plaintiffs, ordering the dismissal of the complaint filed by the plaintiffs;

a)

Declaring OCT No P-12820 and Free Patent No. 548906 both in name of Pablo Taneo as null and void and directing the Register of Deeds to cancel the same, without prejudice however on the part of the defendant to institute legal proceedings for the transfer of the said title in the name of defendant Abdon Gilig;

b)

Declaring Abdon Gilig as the absolute and legal owner of the land covered by OCT No. P-12820, and covered by Tax Declaration No. 851920, and hence entitled to the possession of the same and as a necessary concomitant, admonishing the plaintiffs to refrain from disturbing the peaceful possession of the defendant over the land in question;

c)

Likewise declaring the defendant Abdon Gilig as the true and absolute owner of the house in question formerly declared under Tax Declaration No. 4142 in the name of Pablo Taneo and presently declared under Tax Declaration No. 851916 in the name of Abdon Gilig; ordering the plaintiffs or any of their representatives to vacate and return the possession of the same to defendant Abdon Gilig;

d)

Ordering the plaintiffs, except the nominal parties herein, to pay to defendant Abdon Gilig the amount of P500.00 a month as reasonable rental of the house in question to be reckoned from February 9, 1968 until the possession of the same is returned to the defendant.

e)

To pay to defendant the amount of P5,000.00 as attorney's fees and to pay the costs.

SO ORDERED.[1]

On appeal, the Court of Appeals affirmed in toto the decision of the RTC.

Hence, this petition.

The petition is devoid of merit.

In resolving the issues, the lower court made the following findings of fact which this Court finds no cogent reason to disturb:

- That the land in question originally belonged to Lazaro Ba-a who sold the same to the late Pablito (sic) Taneo father of the herein plaintiff on September 18, 1941, by virtue of an Escritura de Venta identified as Reg. Not. 50; pages 53, Foleo Not. V, Series of 1941 of the Notarial Register of Ernie Pelaez (Exh. 10);
- That on July 19, 1951 Abdon Gilig with his wife filed a Civil Case No. 590 for recovery of property against Pablo Taneo, et al., wherein Judgment was rendered on June 24, 1964, in favor of Abdon Gilig and against Pablo Taneo ordering the latter to pay damages in the amount of P5,000.00 (Exh. 2);
- That by virtue of said decision, a writ of Execution was issued on November 22, 1965 against the properties of Pablo Taneo and on December 1, 1965, a Notice of Levy was executed by the Clerk of Court Pedro Perez wherein the properties in question were among the properties levied by the Sheriff (Exh. 3);
- That the said properties were sold at public auction wherein the defendant Abdon Gilig came out as the highest bidder and on February 12, 1965, a Sheriff's Certificate of Sale was executed by Ex-Oficio Provincial Sheriff Pedro Perez (Exh. 1) ceding the said properties in favor of Abdon Gilig and which Certificate of Sale was registered with the Register of Deeds of March 2, 1966;
- That for failure to redeem the said property within the reglementary period, a Sheriff's final Deed of Conveyance was executed by same Provincial Sheriff Jose V. Yasay on February 1968, (Exhs. 4, 4-A) conveying the property definitely to Abdon Gilig.
- That on April 20, 1966, after his third-party claim which he filed with the Sheriff in Civil Case No. 590 was not given due course, Rufino Arriola filed Civil Case No. 2667 entitled Arriola vs. Abdon Gilig, et al., for Recovery of Property and/or annulment of Sale with Damages;
- That Judgment was rendered by the Court thru Judge Bernardo Teves dismissing the case with costs on February 21, 1969;
- That said decision was appealed to the Court of Appeals which affirmed the decision in toto on June 20, 1979; declaring the alleged Deed of Sale executed by Abdon Gilig in favor of the plaintiff as null and void for being simulated or fictitious and executed in fraud or (sic) creditors;
- That on March 7, 1964, Pablo Taneo constituted the house in question erected on the land of Plutarco Vacalares as a family home (Exh. F) but was however, notarized only on May 2, 1965 and registered with the Register of Deeds on June 24, 1966;
- That in the meanwhile, unknown to the defendant, Pablo Taneo applied for a free patent on the land in question which was approved on October 13, 1973, (Exh. B) and the Patent and Title issued on December 10, 1980 (Oct No. P-12820-Exh. 12);
- On November 3, 1985, the plaintiff filed the present action.[2]

Petitioners contend that under Section 118 of Commonwealth Act No. 141, the subject land which they inherited from their father under free patent cannot be alienated or encumbered in violation of the law. Citing in particular the cases of *Oliveros v. Porcioncola*[3] and *Gonzaga v. Court of Appeals*,[4] the execution or auction sale of the litigated land falls within the prohibited period and is, likewise, a disavowal of the rationale of the law which is to give the homesteader or patentee every chance to preserve for himself and his family the land which the State had gratuitously given to him as a reward for his labor in cleaning and cultivating it.[5]

We are not unmindful of the intent of the law. In fact, in *Republic v. Court of Appeals*,^[6] the Court elucidated, to wit:

It is well-known that the homestead laws were designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation. Pursuant to such benevolent intention the State prohibits the sale or encumbrance of the homestead (Section 116) within five years after the grant of the patent. After that five-year period the law impliedly permits alienation of the homestead; but in line with the primordial purpose to favor the homesteader and his family the statute provides that such alienation or conveyance (Section 117) shall be subject to the right of repurchase by the homesteader, his widow or heirs within five years. This Section 117 is undoubtedly a complement of Section 116. It aims to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him. It would, therefore, be in keeping with this fundamental idea to hold, as we hold, that the right to repurchase exists not only when the original homesteader makes the conveyance, but also when it is made by his widow or heirs. This construction is clearly deducible from the terms of the statute.

The intent of the law is undisputable but under the facts of the case, the prohibition invoked by the petitioners under Section 118 does not apply to them.

Section 118 of Commonwealth Act No. 141 reads:

Except in favor of the Government or any of its branches, units or institutions, or legally constituted banking corporations, 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 improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

x x x.

The prohibition against alienation of lands acquired by homestead or free patent commences on the date of the approval of the application for free patent and the five-year period is counted from the issuance of the patent. The reckoning point is actually the date of approval of the application. In *Amper v. Presiding Judge*,^[7] the Court held that:

x x x The date when the prohibition against the alienation of lands acquired by homesteads or free patents commences is "the date of the approval of the application" and the prohibition embraces the entire five-year period "from and after the date of issuance of the patent or grant." As stated in *Beniga v. Bugas*, (35 SCRA 111), the provision would make no sense if the prohibition starting "from the date of the approval of the application" would have no termination date.

The specific period of five years within which the alienation or encumbrance of a homestead is restricted starts to be computed from the date of the issuance of the patent. But the prohibition of alienation commences from the date the application is approved which comes earlier. (Underlining ours.)

Following this ruling, we agree with the respondent court that the conveyance made by way of the sheriff's sale was not violative of the law. The judgment obligation of the petitioners against Abdon Gilig arose on June 24, 1964. The properties were levied and sold at public auction with Abdon Gilig as the highest bidder on February 12, 1966. On February 9, 1968, the final deed of conveyance ceding the subject property to Abdon Gilig was issued after the petitioners failed to redeem the property after the reglementary period. Pablo Taneo's application for free patent was approved only on October 19, 1973.

The sequence of the events leads us to the inescapable conclusion that even before the application for homestead had been approved, Pablo Taneo was no longer the owner of the land. The Deed of conveyance issued on

February 9, 1968 finally transferred the property to Abdon Gilig. As of that date, Pablo Taneo did not actually have anymore rights over the land which he could have transferred to herein petitioners. The petitioners are not the owners of the land and cannot claim to be such by invoking Commonwealth Act No. 141. The prohibition does not apply since it is clear from the records that the judgment debt and the execution sale took place prior to the approval of the application for free patent. We quote with favor the respondent court's valid observation on the matter:

x x x the application of Pablo Taneo for a free patent was approved only on 19 October 1973 and Free Patent was issued on 10 December 1980. Under the aforecited provision, the subject land could not be made liable for the satisfaction of any debt contracted from the time of the application and during the 5-year period following 10 December 1980, or until 10 December 1985. However, debts contracted prior to the approval of the application for free patent, that is prior to 18 October 1973, are not covered by the prohibition. This is because they do not fall within the scope of the prohibited period. In this case, the judgment debt in favor of defendant-appellee was rendered on 24 June 1964, the writ of execution issued on 22 November 1965, notice of levy made on 1 December 1965, the execution sale held on 12 February 1966, and the certificate of sale registered on 2 March 1966, all before Pablo Taneo's application for free patent was approved on 19 October 1973. The execution, therefore, was not violative of the law.[8]

Anent the second issue, petitioners aver that the house which their father constituted as family home is exempt from execution. In a last ditch effort to save their property, petitioners invoke the benefits accorded to the family home under the Family Code.

A family home is the dwelling place of a person and his family. It is said, however, that the family home is a real right, which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated, which confers upon a particular family the right to enjoy such properties, which must remain with the person constituting it and his heirs.[9] It cannot be seized by creditors except in certain special cases.

Under the Civil Code (Articles 224 to 251), a family home may be constituted judicially and extrajudicially, the former by the filing of the petition and with the approval of the proper court, and the latter by the recording of a public instrument in the proper registry of property declaring the establishment of the family home. The operative act then which created the family home extrajudicially was the registration in the Registry of Property of the declaration prescribed by Articles 240 and 241 of the Civil Code.[10]

Under the Family Code, however, registration was no longer necessary. Article 153 of the Family Code provides that the family home is deemed constituted on a house and lot from the time it is occupied in the family residence. It reads:

The family home is deemed constituted on a house and lot from the time it is occupied as family residence. From the time of its constitution and so long as its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment, except as hereinafter provided and to the extent of the value allowed by law.

It is under the foregoing provision which petitioners seek refuge to avert execution of the family home arguing that as early as 1964, Pablo Taneo had already constituted the house in question as their family home. However, the retroactive effect of the Family Code, particularly on the provisions on the family home has been clearly laid down by the court as explained in the case of *Manacop v. Court of Appeals*[11] to wit:

Finally, the petitioner insists that the attached property is a family home, having been occupied by him and his family since 1972, and is therefore exempt from attachment.

The contention is not well-taken.

While Article 153 of the Family Code provides that the family home is deemed constituted on a house and lot from the time it is occupied as a family residence, it does not mean that said article has a retroactive effect such that all existing family residences, petitioner's included, are deemed to have been constituted as family homes at the time of their occupation prior to the effectivity of the Family Code and henceforth, are exempt from execution for the payment of obligations incurred before the effectivity of the Family Code on August 3, 1988 (*Modequillo vs. Brevia*, 185 SCRA 766). Neither does Article 162 of said Code state that the provisions of Chapter 2, Title V thereof have retroactive effect. It simply means that all existing family residences at the time of the effectivity of the Family Code are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code (*Modequillo vs. Brevia*, *supra*). Since petitioner's debt was incurred as early as November 25, 1987, it preceded the effectivity of the Family Code. His property is therefore not exempt from attachment (Annex "O," Plaintiff's Position Paper and Memorandum of Authorities, p. 78)." (pp. 5-6, Decision; pp. 64-65, Rollo) (underscoring ours)

The applicable law, therefore, in the case at bar is still the Civil Code where registration of the declaration of a family home is a prerequisite. Nonetheless, the law provides certain instances where the family home is not exempted from execution, forced sale or attachment.

Article 243 reads:

The family home extrajudicially formed shall be exempt from execution, forced sale or attachment, except:

- (1) For nonpayment of taxes;
- (2) For debts incurred before the declaration was recorded in the Registry of Property;
- (3) For debts secured by mortgages on the premises before or after such record of the declaration;
- (4) For debts due to laborers, mechanics, architects, builders, material-men and others who have rendered service or furnished material for the construction of the building.[12]

The trial court found that on March 7, 1964, Pablo Taneo constituted the house in question, erected on the land of Plutarco Vacalares, as the family home. The instrument constituting the family home was registered only on January 24, 1966. The money judgment against Pablo Taneo was rendered on January 24, 1964. Thus, at that time when the "debt" was incurred, the family home was not yet constituted or even registered. Clearly, petitioners' alleged family home, as constituted by their father is not exempt as it falls under the exception of Article 243(2).

Moreover, the constitution of the family home by Pablo Taneo is even doubtful considering that such constitution did not comply with the requirements of the law. The trial court found that the house was erected not on the land which the Taneos owned but on the land of one Plutarco Vacalares. By the very definition of the law that the "family home is the dwelling house where a person and his family resides and the land on which it is situated,"[13] it is understood that the house should be constructed on a land not belonging to another. Apparently, the constitution of a family home by Pablo Taneo in the instant case was merely an afterthought in order to escape execution of their property but to no avail.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, and Pardo, JJ., concur.

[1] Rollo, p. 19.

[2] Records, pp. 262-265.

[3] 69 Phil 305 (1940).

[4] 51 SCRA 381 (1973).

[5] See Rollo, p. 13.

[6] 281 SCRA 639, 650 (1997).

[7] 122 SCRA 327 (1983).

[8] Rollo, p. 23.

[9] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. I, p. 523.

[10] ART. 240. The family home may be extrajudicially constituted by recording in the Registry of Property a public instrument wherein a person declares that he thereby establishes a family home out of a dwelling place with the land on which it is situated.

ART. 241. The declaration setting up the family home shall be under oath and shall contain:

(1) A statement that the claimant is the owner of, and is actually residing in the premises;

(2) A description of the property;

(3) An estimate of its actual value; and

(4) The names of the claimant's spouse and the other beneficiaries mentioned in article 226.

[11] 215 SCRA 773 (1992).

[12] See also Article 155 of the Family Code.

[13] Article 223, Civil Code; Article 152, Family Code. [13] Rollo, p. 19.

[13] Records, pp. 262-265.

[13] 69 Phil 305 (1940).

[13] 51 SCRA 381 (1973).

[13] See Rollo, p. 13.

[13] 281 SCRA 639, 650 (1997).

[13] 122 SCRA 327 (1983).

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[13] Article 223, Civil Code; Article 152, Family Code.

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