

SOLEDAD BACALZO, ET AL., PETITIONERS, VS. MARTINA PACADA, RESPONDENT.

G.R. No. 10915. March 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is a petition to review on certiorari a decision of the Court of Appeals.

The pertinent facts of the case are not disputed and are stated in the decision of the appellate court as follows:

"On March 8, 1917, Carmiano Bacalzo, who was then married to petitioners' mother, Carmelina Padillo, entered into a contract (Contract No. 7009) with the Government of the Philippines represented by the Director of Lands, (or the purchase by him of Lot No. 1790 of the Talisay-Minglanilla Estate, originally, forming part of the Friar Lands, for the stipulated price of P200.00, payable on installments. The sale certificate stated the area of Lot No. 1790 as 22 ares and 70 centares, or 2270 square meters. The certificate of sale also stipulated that upon complete payment of the stipulated price, the Director of Lands would issue a filial deed of sale to the purchaser, Carmiano Bacalzo. (Exhibit A for petitioner, Exhibit 2 for respondents; and testimony of Friar Lands Agent Jose V. Sison.) Carmelina Padillo died sometime in 1922, survived by her husband, Carmiano Bacalzo, and her children with the latter, the herein petitioners. In 1924, Carmiano Bacalzo contracted a second marriage with the respondent Martina Pacada. Carmiano Bacalzo died on November 5, 1948 (Petitioners' Exhibit C).

"Carmiano Bacalzo made payments on account of Lot No. 1790 during his union with Carmelina Padillo and the respondent, although the main bulk of such payments was made during his union with the latter (Petitioners' Exhibit B; Respondent's Exhibits 4, 5, 5-a, 5-b, 5-d, and 5-e). According to Mr. Sison Lot No. 1790 was fully paid for on June 17, 1947, although a payment for shortage of interest was also made on August 12, 1948 (Petitioners' Exhibit B).

"Mr. Sison also testified that upon full payment of the lot, he recommended to the Director of Lands that the final deed of conveyance be executed to Carmiano Bacalzo, deceased, married to Martina Pacada, subject to the claim of heirs, and that petitioners as well as respondent had filed claims to the lot in question (Petitioners' Exhibits B and E). Although Mr. Sison stated on direct examination that Lot No. 1790 was fully paid for on June 17, 1947, he, however, admitted on cross-examination that on February 16, 1953 he required respondent to pay the additional amount of P0.45 representing an increase of five square meters in the area of Lot No. 1790 after it had been found upon resurvey by the Bureau of Lands that the true and correct area of said Lot No. 1790 is 2,275 square meters and not 2,270 square meters, as originally stated in Sale Certificate No. 7009 (Respondent's Exhibit 6). Said amount of P0.45 was paid by respondent on March 4, 1953. (Respondent's Exhibit 1).

"On October 29, 1953, the Director of Lands forwarded to the Register of Deeds for the City and Province of Cebu the final deed of sale for the issuance of the necessary transfer certificate of title to the legal heirs of Carmiano Bacalzo, represented by Martina Pacada. (Respondent's Exhibits 6-a and 6-b). Pursuant to the Director's communication, Exhibit 6-b, the Register of Deeds, for the City and Province of Cebu, on November

11, 1958, issued Transfer Certificate of Title No. 2898 for Lot No. 1790 in the name of 'THE LEGAL HEIRS OF CARMIANO BACALZO, represented by Martina Pacada of Tabunoc, Talisay, Cebu, as owners thereof in fee simple, subject to such of the incumbrances mentioned in Article 39 of said Act as may be subsisting and other provisions of Section 19 of Act 1120 as amended, subject to the rights of any legal heirs other than Martina Pacada should there be any within two years from November 11, 1953 * * *.' Upon payment by respondent of the corresponding legal fees (Respondent's Exhibit 7), the transfer certificate of title was delivered to her by the Register of Deeds. By motion of herein petitioners filed on January 7, 1964, in G. L. R. O. Record No. 3732, the Honorable Edmundo S. Piccio, on February 15, 1964, required respondent herein to deposit with the Clerk of this Court (CFI of Cebu) the said transfer certificate of title until such time as the declaration of the legal heirs of the deceased Carmiano Bacalzo shall have been determined by this Court."

On February 24, 1954, herein petitioners, Soledad, Ildefonso and Felicidad, all surnamed Bacalzo, the children of the deceased Carmiano Bacalzo by his first marriage with Carmelina Padillo, filed in the Court of First Instance of Cebu a special action for declaratory relief for a determination of their rights to the lot in question as against Martina Pacada, surviving widow of their deceased father. The action, however, was treated by the parties in their pleadings as one for positive relief. Treating the case in the same manner, the trial court on July 30, 1954, after hearing, rendered a decision, the dispositive part of which reads:

"Wherefore, judgment is hereby rendered declaring respondent to be the legal and absolute owner of Lot No. 1790 of the Talisay Minglanilla Estate; ordering the Clerk of Court to deliver Transfer Certificate of Title No. 2898 to the said respondent; and ordering the Register of Deeds for the Province and City of Cebu to cancel the said Transfer Certificate of Title No. 2898 and to issue in lieu thereof another transfer certificate of title in the name of the herein respondent, with the parties bearing their own costs."

The above decision was predicated on the theory that the deceased Carmiano Bacalzo, prior to and until his death was a mere holder of a certificate which is only an agreement to sell, and that the purchase price of the lot was not fully paid until March 4, 1953, when respondent Martina Pacada, paid the amount of 45 centavos (P0.45) for the additional 5 square meters discovered upon resurvey of the lot. According to the court, respondent Martina Pacada, under section 16 of the Friar Lands Act (Act No. 1120), succeeded in the right of her deceased husband. On appeal to the Court of Appeals, the court affirmed the decision; hence, the present petition for review.

Petitioners' contention is that their deceased father Carmiano Bacalzo became the actual owner of the lot in question upon full payment during his lifetime of the purchase price thereof, and as his legal heirs, they succeeded him in the ownership of said lot. We find merit in the contention. It is not disputed that the original purchase price of P200.00 for the lot in question was fully paid on June 17, 1947, with a payment of shortage of interest on August 12, 1948, or before the death of the purchaser Carmiano Bacalzo on November 5, 1948. All the requirements of the law for the purchase of the lot having been complied with by said Carmiano Bacalzo on August 12, 1948, the Government on that date was legally bound to issue to him "the proper instrument of conveyance" by reason of section 12 of the Friar Lands Act, providing that—

"* * * Upon the payment of the final installment together with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance in the manner provided in section 122 of the Land Registration Act. * * *."

The fact that the Government failed to do so cannot, in our opinion, preclude the now deceased purchaser from acquiring during his lifetime ownership over the lot in question. It is not the issuance of the deed of conveyance that vests ownership in the purchaser under the Friar Lands Act. Thus, in the case of *Director of Lands, et al. vs. Rizal et al.* 87 Phil., 806, this Court speaking of the final deed of conveyance, is considered by law as the actual owner of the lot purchased under the obligation to pay in full the purchase price, the role or position of the Government being that of a mere lien holder or mortgagee.

Of course, under section 16 of the same Act No. 1120, in the event of the death of the purchaser or holder of certificate, the widow shall be entitled to receive the deed of the land upon showing that she has complied with the requirements of the law for the purchase of the same, that is to say, she succeeds in the parcels of land to be sold by the Government. The section referred to, however, cannot be applied to the present case. That section contemplates a situation where the purchaser-applicant dies before completing payment of the purchase price.

In the case at bar, it is true that herein respondent, upon demand made by the Friar Lands Agent, paid 45 centavos (P0.45) after discovering, upon a resurvey of the lot in question, that the actual area thereof is 5 square meters more than that stated in the sale certificate. We do not, however, think that respondent, by virtue of such payment, is entitled to receive the deed of the land in question, specially since said payment was made more than 4 years after the original purchase price had been paid in full. The friar lands—as was said by this Court in the case of *Director of Lands et al. vs. Rizal, et al.* supra—"are surveyed before they are sold. The purchaser buys a definite parcel with fixed boundaries, at an agreed price, not a parcel yet to be surveyed when he pays the final installment and whose price is to be ascertained and fixed according to the area then found by the survey. In other words, the purchaser buys the land as it was at the time he applied for the purchase, with definite boundaries and a fixed price." Since the lots are not sold at the rate of specified price for each unit measure, but rather on lump sum basis with definite boundaries, there can be no increase or decrease of the price although there be a greater or less area than that stated in the contract. (See Art. 1471, old Civil Code; article 1542 of the new.) The purchaser, therefore, under the Friar Lands Act, has the right to insist that all the area inside the fixed boundaries as stated in the sale certificate be considered included in the sale.

It being clear that the deceased purchaser Carmiano Bacalzo was the legal owner of the lot in controversy and there being no dispute that he is survived only by the children of his first marriage, herein petitioners, and his second wife, herein respondent, the question that arises is, who between them should have the right to succeed him as owner thereof. As provided in section 16 of the Friar Lands Act, the interest of the, purchaser who dies before the giving of the deed of the land, "shall descend and deed shall issue to the persons who under the laws of the Philippine Islands would have taken had the title been perfected before the death of the holder of the certificate * * *." Under Article 834 of the old Civil Code—which is the law applicable—the surviving spouse received a share in usufruct equal to the share of a legitimate child. It was only upon the enactment of the new Civil Code that the legitime of the surviving spouse has been changed from usufruct to full ownership. (See Art. 892, new Civil Code; Civil Code by Tolentino, Vol. Ill, 1955 ed., p. 275; Report of the Code Commission, p. 23.) Applying the law, the deed of conveyance and title to the controverted lot in the present case must be issued to and in the name of herein petitioners, without prejudice to the right of the respondent to the portion in usufruct equal to that corresponding by way of legitime to each if the three petitioners. (Article 834, old Civil Code.)

In view of the foregoing, the decision of the Court of Appeals under review is reversed. The petitioners are hereby declared to be the legal and absolute owners of the lot in controversy, and the Register of Deeds for the Province and City of Cebu is ordered to cancel Transfer Certificate of Title No. 2898 covering the lot in question and to issue in lieu thereof another transfer certificate of title in the name of herein petitioners, subject to right of respondent Martina Pacada to the portion in usufruct equal to that which pertains as legitime to each of the three petitioners. Without costs.

Paras, C. J., Bengzon, Montemayor, Bautista, Angelo, Labrador, Reyes, J. B. L., and Barrera, JJ., concur.

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