JESUS SAN AGUSTIN, PETITIONER, VS. HON. COURT OF APPEALS AND MAXIMO MENEZ, JR., RESPONDENTS.

G.R. No. 121940. December 04, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari seeks the reversal of the decision[1] of the Court of Appeals dated May 19, 1995, affirming that of the Regional Trial Court in LRC Case No. R-4659.

The relevant facts, as summarized by the CA, are as follows:

On February 11, 1974, the Government Service Insurance System (GSIS) sold to a certain Macaria Vda. de Caiquep, a parcel of residential land with an area of 168 square meters located in Rosario, Pasig City and denominated as Lot 13, Block 7, Pcs-5816 of the Government Service and Insurance System Low Cost Housing Project (GSIS-LCHP). The sale is evidenced by a Deed of Absolute Sale.[2] On February 19, 1974, the Register of Deeds of Rizal issued in the name of Macaria Vda. de Caiquep, Transfer Certificate of Title (TCT) No. 436465 with the following encumbrance annotated at the back of the title:

> This Deed of Absolute Sale is subject to the conditions enumerated below which shall be permanent encumbrances on the property, the violation of any of which shall entitle the vendor to cancel x x x this Deed of Absolute Sale and reenter the property;
>
> The purpose of the sale be to aid the vendee in acquiring a lot for himself/themselves and not to provide him/them with a means for speculation or profit by a future assignment of his/their right herein acquired or the resale of the lot through rent, lease or subletting to others of the lot and subject of this deed, and therefore, the vendee shall not sell, convey, lease or sublease, or otherwise encumber the property in favor of any other party within five (5) years from the date final and absolute ownership thereof becomes vested in the vendee, except in cases of hereditary succession or resale in favor of the vendor;
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> x x x (Underscoring supplied).[3]

A day after the issuance of TCT No. 436465, or on February 20, 1974, Macaria Vda. de Caiquep sold the subject lot to private respondent, Maximo Menez, Jr., as evidenced by a Deed of Absolute Sale (Exhibit "D").[4] This deed was notarized but was not registered immediately upon its execution in 1974 because GSIS prohibited him from registering the same in view of the five-year prohibition to sell during the period ending in 1979.

Sometime in 1979, for being suspected as a subversive, an Arrest, Search and Seizure Order (ASSO) was issued against private respondent. Military men ransacked his house in Cainta, Rizal. Upon learning that he was wanted by the military, he voluntarily surrendered and was detained for two (2) years. When released, another order for his re-arrest was issued so he hid in Mindanao for another four (4) years or until March 1984. In December of 1990, he discovered that the subject TCT was missing. He consulted a lawyer but the latter did not act immediately on the matter. Upon consulting a new counsel, an Affidavit of Loss[5] was filed with the Register of Deeds of Pasig and a certified copy[6] of TCT No. 436465 was issued. Private respondent also declared the

property for tax purposes and obtained a certification thereof from the Assessor's Office.[7]

Private respondent sent notices to the registered owner at her address appearing in the title and in the Deed of Sale. And, with his counsel, he searched for the registered owner in Metro Manila and Rizal and as far as Samar, Leyte, Calbayog City, Tacloban City, and in Eastern and Northern Samar. However, their search proved futile.

On July 8, 1992, private respondent filed a petition docketed as LRC Case No. R-4659 with the RTC, Branch 154, Pasig, Metro Manila for the issuance of owner's duplicate copy of TCT No. 436465 to replace the lost one. To show he was the owner of the contested lot, he showed the Deed of Absolute Sale, Exhibit "D". The petition was set for hearing and the court's order dated July 10, 1992 was published once in Malaya, a nationally circulated newspaper in the Philippines.[8]

During the hearing on September 3, 1992, only Menez and his counsel appeared. The Register of Deeds who was not served notice, and the Office of the Solicitor General and the Provincial Prosecutor who were notified did not attend.

On September 18, 1992, there being no opposition, Menez presented his evidence ex-parte. The trial court granted his petition in its decision[9] dated September 30, 1992, the dispositive portion of which reads:

> WHEREFORE, the petition is hereby GRANTED and the Registry of Deeds of Pasig, Metro Manila, is hereby directed to issue a new Owner's Duplicate Copy of Transfer Certificate of Title No. 436465 based on the original thereon filed in his office which shall contain the memorandum of encumbrance and an additional memorandum of the fact that it was issued in place of the lost duplicate and which shall, in all respect, be entitled to like faith and credit as the original duplicate, for all legal intents and purposes.
>
> Issuance of new owner's duplicate copy shall be made only after this decision shall have become final and executory. The said lost owner's duplicate is hereby declared null and void.
>
> Petitioner shall pay all legal fees in connection with the issuance of the new owner's copy.
>
> Let copies of this Order be furnished the petitioner; the registered owner of his given address in the title, in the deed of sale, and in the tax declaration; the Registry of Deeds of Pasig; the Office of the Solicitor General; and the Provincial Fiscal of Pasig, Metro Manila.
>
> SO ORDERED.[10]

On October 13, 1992, herein petitioner, Jesus San Agustin, received a copy of the abovecited decision. He claimed this was the first time he became aware of the case of her aunt, Macaria Vda. de Caiquep who, according to him, died sometime in 1974. Claiming that he was the present occupant of the property and the heir of Macaria, he filed his "Motion to Reopen Reconstitution Proceedings"[11] on October 27, 1992. On December 3, 1992, RTC issued an order denying said motion.[12]

Petitioner filed an appeal with the Court of Appeals which, as earlier stated, was denied in its decision of May 19, 1995. Petitioner moved for a reconsideration, but it was denied in a resolution dated September 11, 1995.[13]

Thus, the present petition, attributing the following errors to the court a quo:

> A.
>
> THE RESPONDENT COURT GRAVELY ERRED IN HOLDING THAT LRC CASE NO. R-4659 BEING ONLY A PETITION FOR THE ISSUANCE OF A NEW OWNER'S DUPLICATE OF TITLE, THERE IS NO NEED OF PERSONAL NOTICE TO THE PETITIONER, THE ACTUAL POSSESSOR [WHO HAS] AND ACTUALLY BEEN PAYING THE REAL ESTATE TAX, DESPITE PRIVATE RESPONDENT'S KNOWLEDGE OF ACTUAL POSSESSION OF AND INTEREST OVER THE PROPERTY COVERED BY

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> TCT NO. 436465.[14]
>
> B.
>
> RESPONDENT COURT GRAVELY ERRED IN HOLDING THAT THE SALE BETWEEN THE PRIVATE RESPONDENT AND MACARIA VDA. DE CAIQUEP IS NOT NULL AND VOID AND UNDER ARTICLE 1409 OF THE CIVIL CODE SPECIFICALLY PARAGRAPH (7) THEREOF WHICH REFERS TO CONTRACTS EXPRESSLY PROHIBITED OR DECLARED VOID BY LAW.[15]

Considering the above assignment of errors, let us resolve the corresponding issues raised by petitioner.

The first issue involves private respondent's alleged failure to send notice to petitioner who is the actual possessor of the disputed lot. Stated briefly, is petitioner entitled to notice? Our finding is in the negative.

Presidential Decree No. 1529, otherwise known as the "Property Registration Decree" is decisive. It provides:

> Sec. 109. Notice and replacement of lost duplicate certificate.-In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.
>
> Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

In Office of Court Administrator vs. Matas, A.M. No. RTJ-92-836, 247 SCRA 9, 16-17 (1995), we held:

> In the case at bar, the respective certificate of title of the properties in question on file with the Register of Deeds are existing, and it is the owner's copy of the certificate of title that was alleged to have been lost or destroyed. Thus, it is Section 109 of P.D. 1529 which was approved on June 11, 1978 that becomes effective and is applicable, a reading of which shows that it is practically the same as Section 109 of Act No. 496, governing reconstitution of a duplicate certificate of title lost or destroyed. Consequently, it is sufficient that the notice under Section 109 is sent to the Register of Deeds and to those persons who are known to have, or appear to have, an interest in the property as shown in the Memorandum of encumbrances at the back of the original or transfer certificate of title on file in the office of the Register of Deeds. From a legal standpoint, there are no other interested parties who should be notified, except those abovementioned since they are the only ones who may be deemed to have a claim to the property involved. A person dealing with registered property is not charged with notice of encumbrances not annotated on the back of the title.(Italics supplied.)

Here, petitioner does not appear to have an interest in the property based on the memorandum of encumbrances annotated at the back of the title. His claim that he is an heir (nephew) of the original owner of the lot covered by the disputed lot and the present occupant thereof is not annotated in the said memorandum of encumbrances. Neither was his claim entered on the Certificate of Titles in the name of their original/former owners on file with the Register of Deeds at the time of the filing or pendency of LRC Case No. R-4659. Clearly, petitioner is not entitled to notice.

Noteworthy is the fact that there was compliance by private respondent of the RTC's order of publication of the petition in a newspaper of general circulation. This is sufficient notice of the petition to the public at large.

Petitioner contends that as possessor or actual occupant of the lot in controversy, he is entitled under the law to be notified. He relies on Alabang Development Corporation vs. Valenzuela, G.R. No. L-54094, 116 SCRA 261, 277

(1982), which held that in reconstitution proceedings, courts must make sure that indispensable parties, i.e., the actual owners and possessors of the lands involved, are duly served with actual and personal notice of the petition. As pointed out by the appellate court, his reliance on Alabang is misplaced because the cause of action in that case is based on Republic Act No. 26, entitled "An Act Providing A Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed," while the present case is based on Section 109 of P.D. 1529 as above explained.

Under Republic Act No. 26, reconstitution is validly made only in case the original copy of the certificate of title with the Register of Deeds is lost or destroyed. And if no notice of the date of hearing of a reconstitution case is served on a possessor or one having interest in the property involved, he is deprived of his day in court and the order of reconstitution is null and void.[16] The case at bar is not for reconstitution, but merely for replacement of lost duplicate certificate.

On the second assigned error, petitioner contends that Exhibit "D" is null and void under Article 1409 of the Civil Code, specifically paragraph (7),[17] because the deed of sale was executed within the five-year prohibitory period under Commonwealth Act No. 141, as amended, otherwise known as "The Public Land Act."[18]

We find petitioner's contention less than meritorious. We agree with respondent court that the proscription under Com. Act No. 141 on sale within the 5-year restrictive period refers to homestead lands only. Here the lot in dispute is not a homestead land, as found by the trial and appellate courts. Said lot is owned by GSIS, under TCT No. 10028 in its proprietary capacity.

Moreover, as far as the violation of the 5-year restrictive condition imposed by GSIS in its contract with petitioner's predecessor-in-interest is concerned, it is the GSIS and not petitioner who had a cause of action against private respondent. Vide the instructive case of Sarmiento vs. Salud:

> The condition that the appellees Sarmiento spouses could not resell the property except to the People's Homesite and Housing Corporation (PHHC for short) within the next 25 years after appellees' purchasing the lot is manifestly a condition in favor of the PHHC, and not one in favor of the Sarmiento spouses. The condition conferred no actionable right on appellees herein, since it operated as a restriction upon their jus disponendi of the property they bought, and thus limited their right of ownership. It follows that on the assumption that the mortgage to appellee Salud and the foreclosure sale violated the condition in the Sarmiento contract, only the PHHC was entitled to invoke the condition aforementioned, and not the Sarmientos. The validity or invalidity of the sheriff's foreclosure sale to appellant Salud thus depended exclusively on the PHHC; the latter could attack the sale as violative of its right of exclusive reacquisition; but it (PHHC) also could waive the condition and treat the sale as good, in which event, the sale can not be assailed for breach of the condition aforestated.[19]

In this case, the GSIS has not filed any action for the annulment of Exhibit "D", nor for the forfeiture of the lot in question. In our view, the contract of sale remains valid between the parties, unless and until annulled in the proper suit filed by the rightful party, the GSIS. For now, the said contract of sale is binding upon the heirs of Macaria Vda. de Caiquep, including petitioner who alleges to be one of her heirs, in line with the rule that heirs are bound by contracts entered into by their predecessors-in-interest.[20]

We are not unmindful of the social justice policy of R.A. 8291 otherwise known as "Government Service Insurance Act of 1997" in granting housing assistance to the less-privileged GSIS members and their dependents payable at an affordable payment scheme.[21] This is the same policy which the 5-year restrictive clause in the contract seeks to implement by stating in the encumbrance itself annotated at the back of TCT No. 436465 that, "The purpose of the sale is to aid the vendee in acquiring a lot for himself/themselves and not to provide him/them with a means for speculation or profit by a future assignment of his/their right herein acquired or the resale of the

lot through rent, lease or subletting to others of the lot and subject of this deed, xxx within five (5) years from the date final and absolute ownership thereof becomes vested in the vendee, except in cases of hereditary succession or resale in favor of the vendor."[22] However, absent the proper action taken by the GSIS as the original vendor referred to, the contract between petitioner's predecessor-in-interest and private respondent deserves to be upheld. For as pointed out by said private respondent, it is protected by the Constitution under Section 10, Article III, of the Bill of Rights stating that, "No law impairing the obligation of contracts shall be passed." Much as we would like to see a salutary policy triumph, that provision of the Constitution duly calls for compliance.

More in point, however, is the fact that, following Sarmiento v. Salud,[23] "Even if the transaction between the original awardee and herein petitioner were wrongful, still, as between themselves, the purchaser and the seller were both in pari delicto, being participes criminis as it were." As in Sarmiento, in this case both were aware of the existence of the stipulated condition in favor of the original seller, GSIS, yet both entered into an agreement violating said condition and nullifying its effects. Similarly, as Acting Chief Justice JBL Reyes concluded in Sarmiento, "Both parties being equally guilty, neither is entitled to complain against the other. Having entered into the transaction with open eyes, and having benefited from it, said parties should be held in estoppel to assail and annul their own deliberate acts."

WHEREFORE, the appeal is DENIED, and the decision of the respondent court is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Buena, J., on official leave.

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[1] CA Rollo, pp. 52-66.

[2] RTC Records, pp. 40-41.

[3] Id., Annex "B", at 5.

[4] Id. at 12. Also referred to as Annex "A", Id. at 3.

[5] Id., Annex "C", at 6.

[6] Id., Annex "B" or Exh. "E", at 14-15.

[7] Id., Exh. "F", at 16.

[8] Id., Exh. "C-1", at 10.

[9] CA Rollo, pp. 24-27.

[10] Id. at 26-27.

[11] RTC Records, pp. 29-33.

[12] Id. at 47-49.

[13] Rollo, p. 39.

[14] Id. at 15.

[15] Id. at 18.

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[16] Manila Railroad Company vs. Hon. Jose M. Moya, et al., No. L-17913, 14 SCRA 358, 363 (1965).

[17] Art. 1409. The following contracts are inexistent and void from the beginning:

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Those expressly prohibited or declared void by law.

xxx.

[18] Sec. 118. 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.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, (now Secretary of Agriculture) which approval shall not be denied except on constitutional and legal grounds. (As amended by Com. Act No. 456, approved June 8, 1939)."

Sec. 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, x x x of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State (underscoring supplied).

[19] G.R. No. L-25221, 45 SCRA 213, 215-216 (1972).

[20] Art. 1311, New Civil Code; DKC Holdings Corporation vs. CA, G.R. No. 118248, 329 SCRA 666, 674 (2000).

[21] SEC. 36. Investment of funds.-The funds of the GSIS which are not needed to meet the current obligations may be invested under such terms and conditions and rules and regulations as may be prescribed by the Board: Provided, ... That the GSIS shall submit an annual report on all investments made to both Houses of Congress of the Philippines, to wit:

xxx

(c) In direct housing loans to members and group housing projects secured by first mortgage, giving priority to the low income groups and in short and medium-term loans to members such as salary, policy, educational, emergency, stock purchase plan and other similar loans xxx.

[22] RTC Records, Annex "B", at p. 5.

[23] G.R. No. L-25221, 45 SCRA 213, 216 (1972), citing Civil Code, Articles 1411, 1412; Philippine Scrappers, Inc., et al., vs. Auditor General, 96 Phil. 454, 456-457 (1955).

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