

MAGDALENA AGUILOR, ET AL., PLAINTIFFS AND APPELLANTS, VS. FLORENCIO BALATICO AND GREGORIO AGUILOR, DEFENDANTS AND APPELLEES.*G.R. No. 14937. May 23, 1961*

Ponente: CONCEPCION, J.

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Appeal by plaintiffs from a decision of the Court of First Instance of Cagayan dismissing the complaint, without costs.

The case is before us, plaintiffs having stated in their notice of appeal that they interposed the same to the Supreme Court because they would raise on appeal "purely a question of law". The right to assail the findings of fact in the decision appealed from having been thereby waived by plaintiffs, we quote the pertinent portions of said decision:

"Hilario Aguilor was the registered owner of a parcel, of land with an area of 36,772 square meters located in the barrio of Calaoagan Bassit, Gattaran, Cagayan. In his lifetime he married Fausta Unday with whom he begot a daughter named Magdaleha Aguilor. After the death of Fausta Unday, Hilario lived with Beatriz Asuncion but the evidence is not clear whether he married Beatriz. Beatriz Asuncion had a child with another man named Inocencio Melchor. Inocencio died in 1945 leaving the following children, Juan, Pantaleon, Avelina, Ventura, Felisa, Leonora and Benigno, surnamed Ga. Claiming to be the heirs of the land involved in this case, plaintiffs brought this action seeking to repurchase the land in question alleging that it was only mortgaged by Hilario Aguilor to the defendants. Plaintiffs tried also to show that the land was cleared while Hilario Aguilor lived with his wife Fausta Unday although the portion cleared is small. When Hilario took Beatriz and lived with her maritally, the biggest portion of the land was cleared.

"Upon the other hand, defendants contend that on April 20, 1949, the land was sold by Hilario Aguilor to them for P1,000 (Exhibit 1). Out of the consideration of P1,000.00, the sum of P500.00 was paid to Juan Ga and Pantaleon Ga who, according to the defendant Florencio Balatico, were authorized by their co-heirs to receive said sum from Hilario Aguilor. Subsequent to the sale the defendants possessed the land and declared it in their names (Exhibit 3) and paid the corresponding taxes of the land from 1950 to 1958 (Exhibit 5). Defendants also claim that the plaintiffs have knowledge of the previous sale such that they have instituted before another case against the defendants wherein it is alleged in the complaint that the property was sold by Hilario Aguilor but the complaint was dismissed by this Court without prejudice (Exhibit 4).

"In rebuttal, the plaintiffs tried to show that Domingo Aguilor did not thumbmark Exhibit 1, which is the deed of sale that was executed by Hilario Aguilor in favor of the defendants. To support their claim, they presented a written statement (Exhibit B) which has been identified by Juan Ga who said that the thumbmark appearing in the statement is the genuine thumbmark of Domingo Aguilor. Furthermore, Juan Ga denied the claim of the defendants that he received the sum of P500.00 jointly with Pantaleon Ga from the defendant Florencio Balatico.

"To counteract the contention of plaintiffs that Domingo Aguilor did not thumbmark Exhibit 1, the defendants

have put on the witness stand Atty. Joaquin R. Andres who testified that he was one who prepared and notarized Exhibit 1; that at the time Exhibit 1 was prepared Domingo Aguilor was present; that Hilario Aguilor and Domingo Aguilor thumbmarked Exhibit 1 in his presence; that when Hilario Aguilor and Domingo Aguilor thumbmarked Exhibit 1, they used two different fountain pens; that Domingo Aguilor told Atty. Andres that he was misled by Juan Ga when he was asked to sign Exhibit B; and that he advised Domingo Aguilor to make a denial or explain the circumstances surrounding the execution of Exhibit B before a Notary Public or any other authority.

"On the basis of the foregoing facts, there are two issues that the court is called upon to pass, to wit: (1) whether Hilario Aguilor sold or mortgaged the land to the defendants; and (2) whether Hilario Aguilor was the sole and exclusive owner of the land at the time he sold it.

"On the issue as to whether Hilario Aguilor only mortgaged the property, no evidence has been presented by the plaintiffs to prove their claim. Considering that Exhibit 1 is a public document, the presumption is that it has been executed in accordance with the terms and stipulations agreed upon by the parties. Furthermore, on January 5, 1951, the plaintiffs with the exception of Magdalena Aguilor, filed a complaint before this Court seeking to recover the property and to annul a deed of sale on the same property that was executed by Hilario Aguilor in favor of the defendants (Exhibit 4). In paragraph 7 of the complaint, the plaintiffs said that the property was sold to the defendants. Their contention now that Hilario Aguilor only mortgaged the property contradicts their claim when they filed the complaint in Civil Case No. 415-A (Exhibit 4) such that it is hard to believe that the property was only mortgaged by Hilario Aguilor to the defendants.

"The plaintiffs further argue that, assuming that the property was really sold by Hilario Aguilor to the defendants, still Hilario Aguilor cannot sell the entire property as it belongs to the conjugal partnership of Hilario Aguilor and his wife Fausta Unday and that the property was totally cleared while Hilario Aguilor lived maritally with Beatriz Asuncion. But the documentary evidence presented by the plaintiffs (Exhibit A) shows that at the time the title was issued, Hilario Aguilor was a widower such that the property belonged exclusively to him.

'Occupation and cultivation of a public land gives rise to a right to apply for a free patent. But in order that that right may ripen into a free patent title, it is necessary, among other things that an application be actually filed. In the case at bar, the occupation and cultivation of the land in question began during the first marriage of the entryman but title thereto was applied for and granted during his second marriage. The land should belong to the second conjugal partnership.' (Naval et al. vs. Jonsay, et al., 95 Phil., 939; 50 Off. Gaz., 4792.)

Being the absolute owner of the property, Hilario Aguilor can sell it without the necessity of securing the conformity of the herein plaintiffs."

The main contention of plaintiffs is that "the lower court erred in declaring that the land subject of the action belong exclusively to Hilario Aguilor and being the absolute owner of the property, Hilario Aguilor can sell it without the necessity of securing the conformity of the herein plaintiffs".

The question whether the property in dispute belongs exclusively to Hilario Aguilor or not is one of fact and, hence, the finding of the lower court thereon cannot be questioned by plaintiffs herein. At any rate, it appears that said property originally formed part of a homestead in the name of Juan Aguilor, in whose favor Homestead Patent No. 6126 and Original Certificate of Title No. 133 were issued on May 5 and June 16, 1924, respectively. Fifteen (15) years latter, said homestead was subdivided in Cadastral Case No. 43, G.L.R.O. Cadastral Record No. 1910, into seven (7) lots, one of which is the property in dispute herein. On September 30, 1939, the Court of First Instance of Cagayan issued, in said cadastral proceeding, an order directing the cancellation of said Original Certificate of Title No. 133 and the issuance, for each one of the aforementioned lots, of a transfer certificate of title in favor of specified persons, one of whom was Hilario Aguilor, from whom plaintiffs herein claim to derive

their title. In pursuance of said order, which referred to Hilario Aguilor as a widower, Transfer Certificate of Title No. T-565, was issued in his name, as such widower, on January 19, 1949. Soon thereafter, or on April 25, 1949, Hilario Aguilor executed, in favor of defendants Florencio Balatico and Gregorio Aguilor, the questioned deed of sale Exhibit 1, which, was filed with the office of the Register of Deeds of Cagayan on February 24, 1950. Transfer Certificate of Title No. T-565 was then cancelled, and, in lieu thereof, Transfer Certificate of Title No. T-803, in the name of said defendants, was issued.

It is clear from the foregoing that the property in dispute could not have belonged to the conjugal partnership of Hilario Aguilor and his wife, Fausta Unday, for the latter died, according to plaintiffs' complaint, in 1918. Said conjugal partnership was, therefore, dissolved six (6) years before the issuance of Homestead Patent No. 6126 and Original Certificate of Title No. 133 in the name of Juan Aguilor, twenty-one (21) years before the Court of First Instance of Cagayan had ordered the cancellation of said Original Certificate of Title No. 133, and the issuance, in lieu thereof, of, inter alia, a transfer certificate of title in favor of Hilario Aguilor, covering one of the seven (7) lots into which the homestead of Juan Aguilor had been subdivided, which lot is the one involved in this case, and forty-one (41) years before the issuance of said transfer certificate of title in the name of Hilario Aguilor.

It is, likewise, apparent that, although Hilario Aguilor and Beatriz Asuncion had, after the death of Fausta Unday, lived together as husband and wife, they did so without the benefit of marriage, for, otherwise, neither the aforementioned order of the Court of First Instance of Cagayan of September 30, 1939, nor the deed, Exhibit 1, executed by Hilario Aguilor on April 25, 1949, would have described him as a widower. Again, considering that Juan Aguilor's homestead patent and certificate of title were issued in 1924, that the land in question must have been cleared, therefore, before that year, and that Hilario Aguilor did not acquire an interest thereon until 1939, when the Cadastral Court ordered the issuance of a transfer certificate of title in his favor, after the cancellation of the original certificate of title of Juan Aguilor, plaintiffs' evidence to the effect that Hilario Aguilor had began clearing a small portion of said land before the death of Fausta Unday in 1918, and that he thereafter cleared the rest and major portion of the land when Beatriz Asuncion and he were living maritally, cannot possibly be true. In short, neither Beatriz Asuncion, nor her daughter by another man, Inocencia Melchor, nor the latter's children, plaintiffs Juan, Pantaleon, Ventura, Felisa and Leonora Ga, may claim an interest in said property.

It is next urged, that, under the Public Land Act, the sale to appellees herein is null and void, it having been effected three months after the issuance of the title in favor of Hilario Aguilor. The provision alluded to is evidently section 118 of said Act, which prohibits the encumbrance or alienation of lands acquired under free patent or homestead "from the date of the approval of the application and for a term of five (5) years from and after the date of issuance of the patent". The patent to the land in question was issued, however, on May 5, 1924, or over twenty-five (25) years before the sale to defendants herein, which is, therefore, beyond the range of said prohibition.

Wherefore, the decision appealed from is hereby affirmed, with costs against plaintiffs-appellants. It is so ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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