

FLORENTINA UMENGAN, PLAINTIFF AND APPELLANT, VS. ATTY. REMIGIO BUTUCAN, RESPONDENT AND APPELLEE, MANUEL G. MANZANO, ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. 16036. February 28, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Plaintiff Florentina Umengan and defendant Angeles Umengan were sisters of the half-blood. Their common father, Severino Umengan, applied for two homesteads in his lifetime. One parcel was finally adjudicated after his death and the corresponding original, certificate of title (No. 1047) was issued to the "Heirs of Severino Umengan." The other parcel was adjudicated to him personally and original certificate of title No. 265 was issued in his name. Subsequently Angeles Umengan filed an action for partition against Florentina in the Court of First Instance of Cagayan (Civil Case No. 389-A). Judgment was rendered there and later affirmed by the Court of Appeals, dividing the two parcels between the sisters thus: 3.8014 hectares of the first and 0.75 hectares of the second for Angeles; and 3.8014 hectares of the first and 2.25 hectares of the second for Florentina. In the same judgment Florentina, who had had exclusive possession of the properties, was adjudged to pay to Angeles the sum of P1,600.00 as damages.

The said amount not having been paid, a writ of execution was issued. The shares and interests of Florentina were levied upon and sold at public auction on February 22, 1958, wherein Angeles was the sole bidder. On June 3, 1958, Angeles in turn sold those shares and interests acquired by her to Ramona S. Pablo for the sum of P2,800.00. Florentina's right to redeem on or before February 22, 1959 was expressly reserved in the document of sale.

On June 11, 1958 Angeles likewise sold her own shares in the two homestead properties to Mario S. Pablo for the sum of P4,500.00.

On February 21, 1959 Florentina Umengan commenced the present action in the Court of First Instance of Cagayan against the provincial sheriff, to enjoin him from issuing a final deed of sale of the properties subject of the auction; Attorney Manuel Manzano as attorney-in-fact of Angeles Umengan, who was then in the United States; Ramona S. Pablo as vendee of Florentina's acquired by Angeles; and Mario S. Pablo as vendee of the shares of Angeles herself. The prayer in the complaint against these last two defendants was "that an order be issued declaring the right of the herein petitioner (plaintiff) as legal heir of Severino Umengan to repurchase within five years, from June 3, 1958 and June 11, 1958 (or from February 22, 1958), whichever property is affected the properties (sic) sold by Angeles Umengan her half-sister to the vendee—respondents (defendants), the period to redeem the auction sale against her, also within a period of five years, as provided for under Section 119 of Commonwealth Act 141."

On April 15, 1959 the court a quo rendered judgment:

- (a) Ordering the defendant Ramona S. Pablo to resell the two portions of land in question which were sold at public auction in Civil Case No. 389 for P2,800.00;

(b) Dismissing the complaint with respect to the defendant Attys. Remigio Bulacan and Manuel G. Manzano and Dr. Mario Pablo; and

(c) Without pronouncement as to costs.

In the event that the defendant Ramona S. Pablo fails to execute the deed of resale within the period of 20 days from the time this decision becomes final, the Clerk of Court is hereby directed to execute it pursuant to the provisions of Section 10 of Rule 39 of the Rules of Court.

So ordered.

The case is now before us on appeal by plaintiff and by defendants Manuel Manzano and Ramona S. Pablo. The first question is whether, with respect to the shares of Florentina Umengan in the two parcels of land which were sold at public auction to Angeles Umengan on February 22, 1958 and in turn sold by the latter to Ramona S. Pablo on the following June 3, the period of redemption is one year pursuant to section, 26 of Rule 39, or five years under section 119 of Commonwealth Act No. 141. Defendant Ramona S. Pablo contends that the cited provision of the Public Land Act does not apply despite the fact that the lands in question were originally acquired as homesteads, because the right of redemption within five years given to the homesteader himself, his widow or legal heirs, refers exclusively to voluntary conveyances and not to involuntary ones, such as the sale on execution of Florentina's shares to satisfy the judgment against her. The contention is without merit. The law does not distinguish between the two kinds of conveyances. The reason for allowing redemption within five years, which cannot even be waived by the party entitled thereto, obtains with equal force in both. Those who are permitted to acquire public lands by working them as homesteads, being hardly in a position to become property-owners otherwise, are afforded the additional protection that in case their acquisition are sold they or their heirs shall have enough time to effectuate the repurchase. A question more or less similar to that here presented was decided by us in case of *Cassion vs. Philippine National Bank*, 89 Phil., 560. The plaintiffs there mortgaged two parcels of homestead land to the bank to secure a promissory note. Upon default; the mortgage was foreclosed; the bank bought the lands at public auction and later on sold them to the other defendants. Applying the provisions of Public Land Act, we held that the plaintiffs had a right to repurchase within five years.

The foregoing considerations lead us to the next point at issue. It will be noted that in her complaint the plaintiff does not seek to enforce her right to repurchase, but rather to obtain a declaration from the court that she has a right to do so within five years under section 119 of Commonwealth Act 141. What is prayed for is in the nature of declaratory relief under Rule 66. Whether the remedy is proper or not in the light of facts of this case is not among the issues raised by the parties, But as pointed out by plaintiff in her brief, the trial court erred in ordering defendant Ramona S. Pablo to resell to her the properties (which were sold at public auctions on February 22, 1958) within a period of twenty (20) days from the time the judgment becomes final, in effect reducing the five-year period granted by the Public Land Act. While the relief thus granted is not really in accordance with the relief asked for, it should not be noted that the five-year period is due to expire very shortly (February 22, 1963), which may possibly be even before this decision is promulgated, and consequently no such, reduction of the five year period will actually result by reserving to plaintiff her right of redemption within twenty (20) days from the time judgment becomes final. This, it should be repeated, concerns the plaintiff's shares in the two parcels of land in question which were sold at public auction to Angeles Umengan.

With respect to the shares of Angeles herself in the same properties, which she sold absolutely to defendant Mario S. Pablo on June 11, 1958, the trial court did not err in dismissing the complaint. Such sale does not come, within the purview of section 119 of the Public Land Act. Angeles Umengan is still living and consequently it is she and, not Florentina Umengan who has the right of repurchase. Florentina cannot claim that right as an heir of her deceased father, Severino Umengan, because the properties had already been partitioned between the two sisters

and it "was Angeles—not Severino—who executed the sale. Plaintiff invokes Articles 1088 and 1620 of the Civil Code regarding the right of redemption given to a co-heir or co-owner in case any one of the other co-heirs or co-owners sells his share to a third person. In the first place, as already noted, the properties here involved had already been partitioned when Angeles Umengan sold her shares; and secondly, even assuming that they were still common properties, the right of redemption may be exercised only within a period of thirty days.

Insofar as the judgment appealed from orders defendant Ramona S. Pablo to execute a deed of resale in favor of plaintiff within a period of twenty (20) days from the time the decision becomes final, the said judgment is hereby affirmed, with the modification that such deed of resale shall be executed upon payment by the plaintiff of the redemption price. The judgment is also affirmed in all other respects, without pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes J. B. L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

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