

## **EUSEBIO F. RAMOS, PETITIONER, VS. SIXTO DE LA COSTA, AS REGISTER OF DEEDS OF NUEVA ECIJA, RESPONDENT.**

*G. R. No. 17349. August 09, 1921*

Ponente: JOHNSON, J.

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### **JOHNSON, J.:**

This is an original petition presented in the Supreme Court for the writ of mandamus. Its purpose is to secure an order of this court requiring the respondent to register in the registry of deeds of the Province of Nueva Ecija a deed of absolute sale of a piece or parcel of land, which deed, at the time it was presented for registry, was accompanied with the "Owner's Duplicate Certificate" No. 446 of Bonifacio Inepto. To the petition the respondent demurred.

The admitted facts as found in the petition may be stated as follows:

- (1) That on the 24th day of January, 1918, one Bonifacio Inepto obtained from the Bureau of Lands a homestead patent (No. 1391) to a certain piece or parcel of land particularly described in the petition;
- (2) Said homestead patent No. 1391 was duly registered in the office of the register of deeds for the Province of Nueva Ecija on the 19th day of February, 1919, as certificate of title No. 464;
- (3) That on the 30th day of March, 1920, the said Bonifacio Inepto sold and transferred to the petitioner herein the land in question and executed and delivered on the same date a deed of absolute sale in favor of the petitioner herein;
- (4) That on the 31st day of March, 1920, the petitioner herein presented to the respondent, in his capacity as register of deeds of the Province of Nueva Ecija, the said deed of absolute sale, and later, on the 17th day of April, 1920, filed with the respondent the "Owner's Duplicate Certificate" No. 464, and requested that said deed of absolute sale be registered in the registry of deeds in the name of the petitioner herein, and also, that the respondent herein issue in favor of the petitioner a "certificate of transfer" of said land;
- (5) That on the 5th day of May, 1920, the respondent herein unlawfully neglected and refused to register said absolute deed of sale and to issue to the petitioner the corresponding "certificate of transfer;"
- (6) That on the 11th day of May, 1920, the petitioner herein asked the respondent for a reconsideration of his decision denying to him his request as indicated in the preceding paragraph.

The demurrer of the respondent is based upon the provisions of Act No. 2874, and particularly section 116 of said Act, which provides that "lands acquired under the 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."

The argument of the respondent is that in view of said quoted section, the original patentee, Bonifacio Inepto, was prohibited, for a term of five years from the issuance of said patent, from encumbering or alienating the land in question. The respondent, however, has overlooked the fact that said Act No. 2874 applies to public lands only (Central Capiz vs. Ramirez, 40 Phil., 883), and that it was not in force at the time the Bureau of Lands issued the homestead patent in question to Bonifacio Inepto. Said patent was issued on the 24th day of January, 1918, whereas Act No. 2874 was not adopted until the 29th day of November, 1919, long after the patent in question was issued by the Government. Said Act No. 2874 has no retroactive effect or operation, and inasmuch as it applies to public lands only, it could have no effect upon private lands at the time of its adoption.

For the foregoing reasons, and with special reference to the provisions of section 194 of Act No. 2711 and the decision of this court in the case of Garcia Sanchez vs. Rosauero (40 Phil., 231), we are of the opinion and so decide that the demurrer should be and is hereby overruled, and it is hereby ordered and decreed that, unless the respondent answers within the period of five days from the notice hereof, the remedy prayed for be granted. So ordered.

Araullo, Street, Avancena, and Villamor, JJ., concur.

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