

## **MAXIMA NIETO DE COMILANG, PETITIONER AND APPELLANT, VS. ABDON DELENELA, GUILLERMO PEREZ, ET AL., RESPONDENTS AND APPELLEES.**

*G.R. No. 18897. March 31, 1964*

Ponente: LABRADOR, J.

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### **LABRADOR, J.:**

This is an appeal from a decision of the Court of First Instance of Baguio, Hon. Jesus de Veyra, presiding, denying a petition of petitioner herein Maxima Nieto de Comilang to annul an order of the Municipal Judge of Baguio City dated August 12, 1959 directing the sheriff of Mountain Province to place Guillermo Perez and Abdon Delenela in possession of the property described as follows:

"A parcel of residential land, situated at Turing, Bengnet, Province, containing an area of about one and a half (1-1/2) hectares, together with the residential house constructed thereon, made of strong materials, as well as all other improvements existing thereon, assessed as P10,000.00 under Tax Declaration No. 4771 in the name of Marcos B. Comilang."

The facts giving rise to the petition for certiorari filed in the lower court, as stated by the court below, are as follows:

"The roots of this case go back as far as 1908 when Nicolas Conrlang occupied the land as a mineral claim and staked out what is now known as the Bua Mineral Claim. Surface rights over this claim were the subject of litigation resulting in a final decision by the Court of Appeals, holding that Marcos Comilang only had the right to 1-1/2 hectares of this surface (See Decision, Exhibit 'F'). Later on March 3, 1958 the ownership of the Bua Mineral Claim became the subject of litigation, resulting in a settlement whereby Marcos Comilang was awarded a one-half undivided share in this claim (See Exhibit 'D'). However, on June 1, 1957, by virtue of a Certificate of Sale, whatever right, title interest and claim, Marcos Comilang might have over the land of 1-1/2 hectares declared for taxation in his name under Tax Declaration No. 4771, was sold at public auction to the Coloma spouses (Exhibit 'E') and in turn, defendants Delenela and Perez, with the knowledge and conformity of Marcos Comilang, and in the exercise of their right of redemption Sp as co-owners, bought from the Coioma spouses whatever rights, title, interest and claim they had obtained by virtue of the Certificate of Sale, Exhibit 'E' (See Exhibit '5') This redemption sale took place on June 11, 1958. On February 9, 1959, the Director of Mines recommended the issuance of a lode patent over the Bua Mineral Claim in favor of Marcos Comilang and Delenela, et al. in undivided shares as a result of the amicable settlement in the decision, Exhibit 'D' (See Exhibit 'C'). On August 12, 1959, Respondent Municipal Judge issued a writ of possession in favor of Delcnela and Perez directing the sheriff to evict the Comilang Spouses from the 1-1/2 hectares. A motion for reconsideration having been denied, Maxima Nieto de Comilang, wife of Marcos Comilang;, has come to this Court in this present action for cer tiolari and injuncion on two grounds—that as wife, conjugal property is being levied upon and her share of the same is affected, and secondly that there can be no severance of surface rights over a mineral claim located under the Philippine Bill of 1902 - so that the sheriff could not have sold surface rights in his certificate of sale, Exhibit 'E-1' x x x"

The ownership of Marcos Comilang of 1-1/2 hectares of agricultural land was declared in the decision of the Court of Appeals promulgated October 29, 1955 (Exhibit "F"). On the other hand, the ownership of Marcos Comilang of the undivided 1/2 share of the Bua Mineral Claim was declared in a decision of the Court of First Instance of the City of Baguio, which approved an amicable settlement in Civil Case No. 735 of said court entitled "Marcelina Comilang, et al vs. Marcos Comilang" dated March 3, 1958 (Annex "B"). The certificate of sale dated June 1, 1957, Exhibit "E", describes the property sold in compliance with an execution issued by the municipal court of Baguio on December 21, as follows:

"A parcel of residential land, situated at Tuding, Itogon, Benguet, Mountain Province, containing an area of about one and one-half (1-1/2 ha.) hectares, together with the residential house constructed thereon, made of strong materials, as well as all other improvements existing thereon, assessed at P10,000.00 under Tax Declaration No. 4771 in the name of Marcos B. Comilang:" (Exhibit "E-1")

On August 12, 1957 the judge of the municipal court of Baguio City issued a writ of possession commanding the sheriff of Mountain Province to place Guillermo Perez and Abdon Delenela in possession of the residential land already described above, containing 1-1/2 hectares, together with a residential house constructed thereon, etc.

As stated by the lower court in its decision, the petitioner herein Maxima Nieto de Comilang claims that the property (residential land and house) sought to be placed in the possession of respondents Belenela and Perez is conjugal property of herself (Maxima Nieto de Comilang) and Marcos Comilang, and said conjugal property may not be taken from her, or her share therein can not be taken away without her consent.

The court below in its judgment made a finding of fact that the judgment "in favor of the Coloma spouse (by reason of which the writ of execution upon the property was issued) was a conjugal debt so that conjugal property must answer for the same—more so as this was conjugal property acquired prior to the effectivity of the New Civil Code." This finding of fact made in the decision of the court below can not be reviewed by Us as the decision was appealed directly to this Court, so that all findings of fact made by the trial court are deemed to have been admitted by the appellant and only questions of law may be raised. (Jacinto v. Jacinto, L-12313, July 31, 1959)

The judge further hold that since the property executed was acquired prior to the effectivity of the New Civil Code, the wife, petitioner herein, cannot object to the disposal of the property by the husband, or the execution of the property in question by reason of the payment of a debt by the husband. (Art. 106, Civil Code of the Philippines.)

We therefore find that the court's order overruling the objection of petitioner that as the property was conjugal property, the taking away thereof by execution and sale on execution, is well founded and the request for a review of this ruling of the court below is hereby denied.

We next come to the effect of the sale on execution of the residential land over the mining claim of Marcos Comilang. In its decision the court below held as follows:

"x x x Marcos Comilang, having submitted to the jurisdiction of our courts as to the surface rights over this mineral claim and by final judgment having been awarded 1-1/2 hectares of these surface rights, is now barred by res judicata. Marcos Comilang, in consenting to the redemption by Delenela and Perez from the Coloma spouses (Exhibit '4') is in estoppel by deed to raise up the question of severability of surface rights. But from the way this Court looks at the matter Marcos Comilang is in an even worse condition. By virtue of the amicable settlement in the decision, Exhibit 'D', on March 3, 1958, Marcos Comilang became pro indiviso owner of the Bua Mineral Claim to the extent of one-half. When the Sheriff sold all his right, title and interest over the 1-1/2 hectares of land, this pro indiviso share was deemed to be part of that 'right, title and interest' sold - so that Marcos Comilang, by virtue of that auction sale lost all his right, title and interest to his pro

indiviso share in the Bua Mineral Claim. Having lost this right following his own theory, he also loses all rights to the surface. From all angles of equity and law therefore, Marcos Comilang has lost all right over the mineral claim as well as its surface."

We find the above ruling objectionable on two grounds: (1) that the certificate of the sale on execution, as well as the order of the court for a writ of possession, expressly included a residential land alone and not the mineral claim known as the Bua Mineral Claim of nine hectares covered in part by the 1-1/2 hectares residential lot; and (2) there is no express or implied taking away of the said mineral rights or the mineral claim by virtue of the execution, nor is there any express act of Marcos Comilang supposedly consenting to the redemption by Delenela and Perez of the ownership of the mineral claim.

With respect to the first objection above mentioned, it is to be noted that while the attachment included both the residential land as well as the mining claim in the said parcel of land (see Exhibit "E"), the only property actually sold at public auction as described in the certificate of sale, Exhibit "E", is the residential land containing an area of 1-1/2 hectares, together with the improvements existing thereon, without including the Bua Mineral Claim or the undivided one-half right thereto of Marcos Comilang (see Exhibit "E-1"). The mineral claim under the said residential land was therefore excluded from the certificate of sale and such mineral claim was excluded also by the order of the justice of the peace for the issuance of a writ of possession. No amount of reasoning can lead to the belief, therefore, that the express sale of the 1-1/2 hectare residential land could have included the 1/2 share of Marcos Comilang in the nine hectare mineral claim.

As to the second objection, the court found that Marcos Comilang, or his wife, petitioner herein, is barred from questioning that the mining claim was included because Comilang consented to the redemption of the land and its sale thereafter to the respondents herein. There was no actual or implied inclusion of the mining claim. The consent of Marcos Comilang to the repurchase did not extend to the mineral claim as may be shown by Exhibit "4". Said exhibit refers to an act of redemption and repurchase, and what could be redeemed was what was sold at public auction in execution and thereafter covered by the certificate of sale (Exhibit "2" and Exhibit "3"), both of which, including Exhibit "4" do not include the mining rights.

Aside from the fact that the mineral claim was not sold in execution, the provisions of the Mining Law expressly declare that the ownership of land for other purposes does not include the minerals, and that mineral rights are not included in agricultural land patents.

"Sec. 4. The ownership and the right to the use of land for agricultural, industrial, commercial, residential, or for any purpose other than mining does not include the ownership of, nor the right to extract or utilize, the minerals which may be found on or under the surface.

"Sec. 5. The ownership of, and the right to extract and utilize, the mineral included within all areas for which public agricultural land patents are granted and excluded and excepted from all such patents." (Com. Act 137)

Pursuant to the above provisions, the ownership over the Bua Mineral Claim by Marcos Comilang of 1/2 undivided share thereof was never included in the sale on execution or in the redemption of the land authorized by Marcos Comilang in Exhibit "4".

For the foregoing considerations the judgment appealed from is hereby affirmed insofar as it denies the petition of Maxima Nieto de Comilang to exclude from the sale, or annul the sale on execution of the residential lot formerly owned by her husband, of 1-1/2 hectares, covered in the final certificate of sale; but that part of the appealed decision holding that such sale at public auction included the 1/2 undivided share, of Marcos Comilang to the Bua Mineral Claim, is hereby set aside and said mineral rights of Marcos Comilang are hereby declared free from the execution, or the sale on execution. Without costs.

**SO ORDERED.**

Padilla, Bautista Angelo, Concepcion, Reyes J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.  
Bengzon, C.J., took no part.

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