

LAUREANO OLIVA, PLAINTIFF-APPELLANT, VS. NICOLAS V. LAMADRID AND ROSA L. VILLALUZ, DEFENDANTS-APPELLEES.*G.R. No. 23196. October 31, 1967*

Ponente: CONCEPCION, C.J.

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Appeal by the plaintiff from a decision of the Court of First Instance of Camarines Norte dismissing the complaint herein.

Plaintiff Laureano Oliva was the owner of a parcel of land of about 3,5258 hectares, located in the sitio of Pinagdamhan, barrio of Lalawigan, municipality of Daet, province of Camarines Norte. The property was covered by Homestead Patent No. 18863 and Original Certificate of Title No. 363 of the Office of the Register of Deeds for said province, issued, in his name on May 8, 1932. On October 2, 1958, he mortgaged the property to the Rural Bank of Daet, Camarines Norte, as security for the payment of a loan in the sum of P250.00. He having sub-sequently defaulted in the payment of this obligation, the mortgage was extrajudicially foreclosed and the property sold, by the provincial sheriff, at public auction, to the Bank, as the individual bidder, on February 4, 1961, for the aggregate sum of P188.00, representing P160.00, as unpaid balance of the loan, plus P12.00 as interest, and P16.00 as attorney's fees. The certificate of sale, issued by the sheriff, on February 6, 1961, stated that the property could be redeemed "within x x x two (2) years from and after the date of the sale, or until February 4, 1963."

No redemption having been made within said period, the corresponding deed of sale was executed in favor of the Bank, on February 27, 1963, on which date said Original Certificate of Title No. 363 was cancelled and Transfer Certificate of Title No. T-3968 issued in the name of the Bank. On March 2, 1963, the latter sold the property to Nicolas V. Lamadrid for the sum of P350.00, and, accordingly, Transfer Certificate of Title No. T-3968 was cancelled and Transfer Certificate of Title No. 3978 issued to Lamadrid.

Prior to May 31, 1963, plaintiff offered to repurchase the property for said sum of P350.00, but the offer was turned down. Hence, on said date, he instituted the present action against Lamadrid and his wife, Rosa L. Villaluz, to compel them to reconvey the property to him, for said sum of P350.00, which he deposited with the Clerk of Court, and to recover damages, attorney's fees and costs. He claimed that, as holder of a free patent and a torrens title, he is entitled to redeem the property within five (5) years from February 4, 1961, the date of the auc-tion sale, pursuant to Section 119 of Commonwealth Act No. 141. Upon the other hand, defendants alleged in their answer that the right of redemption expired on February 4, 1963, under the provisions of Section 6 of Republic Act No. 720, as amended by Republic Act No. 2670, which, they maintain, is controlling.

After appropriate proceedings, the lower court rendered judgment for the defendants. Hence, this appeal, taken by the plaintiff, directly to the Supreme Court, on questions pure-ly of law. The main issue is whether the period of redemption is governed by Section 119 of Commonwealth Act No. 141, as asserted by the plaintiff, or by Section 5 of Republic Act No. 720, as amended, as contended by the defendants and held in the decision appealed from,

upon the theory that Section 119 of Commonwealth Act No. 141 refers only to voluntary conveyances and that the foreclosure sale had been made under Republic Act No. 720.

As early as July 30, 1951[1] it has been settled, however, that Section 119 of Commonwealth Act No. 141 is applicable to foreclosure sales of lands covered by a homestead or free patent. Besides, on February 28, 1963[2] this Court explicitly rejected the theory that said provision "refers exclusively to voluntary conveyances and not to involuntary ones", upon the ground that "the law does not distinguish between the two kinds of conveyances."

Upon the other hand, Section 5 of Republic Act No. 720, as amended, provides:

"Loans and advances extended by Rural Banks, organized and operated under this Act, shall be primarily for the purpose of meeting the normal credit needs of any small farmer or farm family owning or cultivating, in the aggregate, not more than fifty hectares of land dedicated to agricultural production, as well as the normal credit needs of cooperatives and small merchants. For the purposes of this Act, a small merchant shall be one whose capital investment does not exceed twenty-five thousand pesos. In the granting of loans, the Rural Bank shall give preference to the application of farmers whose cash requirements are small.

"Loans maybe granted by rural banks on the security of lands without torrens titles where the owner of private property can show five years or more of peaceful, continuous and uninterrupted possession in the concept of an owner or of homesteads or free patent lands pending the issuance of titles but already approved, the provisions of any law or regulations to the contrary notwithstanding: Provided, That when the corresponding titles are issued the same shall be delivered to the register of deeds of the province where such lands are situated for the annotation of the encumbrance: Provided, further, That in the case of lands pending homestead or free patent titles, copies of notices for the presentation of the final proof shall also be furnished the creditor rural bank and, if the borrower applicants fail to present the final proof within thirty (30) days from date of notice, the creditor rural bank may do so for them at their expense: And provided, finally, That the applicant for homestead or free patent has already made improvements on the land and the loan applied for is to be used for further development of the same for other productive economic activities.

"The foreclosure of mortgages covering loans granted by rural banks shall be exempt from the publication in newspapers now required by law where the total amount of the loan, including interests due and unpaid, does not exceed two thousand pesos (P2,000.00). It shall be sufficient publication in such cases if the notices of foreclosure are posted in at least three of the most conspicuous public places in the municipality where the land mortgaged is situated during the period of sixty days immediately preceding the public auction. Proof of publication as required herein shall be accomplished by the foreclosure sale and shall be attached with the records of the case: Provided, That when a land not covered by a Torrens Title, a homestead or free patent land is foreclosed, the homesteader or free patent holder, as well as their heirs shall have the right to redeem the same within two years from the date of foreclosure: Provided, finally, That in case of borrowers who are mere tenants the produce corresponding to their share could be accepted as security."

It should be noted that the period of two (2) years granted for the redemption of property foreclosed under Section 5 of Republic Act No. 720, as amended by Republic Act No. 2670, refers to lands "not covered by a Torrens Title, a homestead or free patent," or to owners of lands "without torrens titles," who can "show five years or more of peaceful, continuous and uninterrupted possession thereof in the concept of an owner, or of homesteads or free patent lands pending the issuance of titles but already approved," or "of lands pending homestead or free patent titles." Plaintiff, however, had, on the land in question, a free patent and a Torrens title, which were issued over 26 years prior to the mortgage constituted in favor of the Bank. Accordingly, there is no conflict between section 119 of Commonwealth Act No. 141 and section 5 of Republic Act No. 720, as amended, and the period of two (2) years prescribed in the latter is not applicable to him.

Moreover, the legislative history of the bills[3] which later became said Republic Act No. 2670, amending

Republic Act No. 720, shows that the original proposal was to give home-steaders or free patent holders a period of ten (10) years within which to redeem their property foreclosed by rural banks; that this proposal was eventually found to be unwise, because its effect would have been to dissuade rural banks from granting loans to homesteaders or free patent holders — which were sought to be liberalized — said period of redemption being too long, from the viewpoint of said banks; and that, consequently, the proposal was given up, with the specific intent and under-standing that homesteaders or holders of free patent would retain the right to redeem within five (5) years from the conveyance of their properties, as provided in the general law, that is to say the Public Land Act, or Commonwealth Act No. 141.[4]

It is, therefore, our considered view that plaintiff herein has the right to repurchase the property in question within five (5) years from the date of the conveyance or foreclosure sale, or up to February 4, 1966, and that having exercised such right and tendered payment long before the date last mentioned, defendants herein are bound to said property to him.

Although plaintiff had offered to redeem it for the sum of P350.00 paid by Lamadrid and the former has actually deposited this amount in the lower court, as redemption price, plaintiff now alleges that he is bound to pay no more than P188.00, this being the sum for which the property had been foreclosed by the Bank. Independently of the amount due under section 119 of Commonwealth Act. No. 141, we can not entertain this pretense entailing as it does a substantial change of the theory under which plaintiff had litigated in the lower court, which is not permissible on appeal.[5]

WHEREFORE, the decision appealed from is here-by reversed, and another one shall be entered declaring that, upon the judicial consignment of the sum of P350.00 by plaintiff herein, the property in litigation had been redeemed by him, and, accordingly, directing the defendants to execute the corresponding deed of reconveyance in his favor, and that, thereafter, said sum of P350.00 be turned over by the Clerk of Court to the defendants, with costs against the latter. Said deed of reconveyance shall be executed by the Clerk of the lower court, in the event of failure of the defendants to comply with this decision, within 30 days from the date on which it shall have become final and executory.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Cassion v. Philippine National Bank, L-3540.

[2] Umengan vs. Butacan, L-16036.

[3] Senate Bill No. 172 and House Bill No. 1725.

[4] See proceedings in the Senate on March 15, 1960.

[5] Hautea vs. Magallon, etc., et al., L-20345, November 28, 1964; Northern Motors, Inc. vs. Prince Line, et al., L-13884, February 29, 1960; Agoncillo vs. Javier, 48 Phil., 424; Molina vs. Somes, 24 Phil., 49.

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