

## HAW PIA, PETITIONER, VS. FRANCISCO OMANA ET AL., RESPONDENTS.

*G. R. No. 45331. July 16, 1937*

Ponente: IMPERIAL, J.

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### IMPERIAL, J.:

This petition was filed by the petitioner to compel the provincial sheriff of Tayabas to issue and turn over to her the deed of sale of a parcel of land planted with coconuts, with an area of 3 hectares, 1 are and 20 centiares, situated in the barrio of Rizal, municipality of Unisan, Province of Tayabas.

In civil case No. 3705 of the Court of First Instance of Tayabas, the petitioner, as plaintiff, obtained judgment in her favor against Roman Par, the therein defendant, for the sum of P531.58, with legal interest thereon from December 20, 1934, with the costs. After the complaint had been filed, the petitioner, by means of a bond, obtained a preliminary attachment of the above-described parcel of land. The judgment having become final, a writ of execution was issued and on July 1, 1935, the provincial sheriff sold the land for the sum of p649.78 to the petitioner, having been the highest bidder, and delivered the certificate of sale to her. Inasmuch as the property had not been redeemed<sup>1</sup> after one year, the petitioner asked the sheriff to issue the deed of sale to her, but said officer refused to do so. The petitioner then filed a motion in the above-cited civil case praying the court to compel the sheriff to issue the deed of sale but the court, in an order of August 6, 1936, denied the motion on the ground that section 5, in connection with section 1, Article XII, of the Constitution of the Philippines, prohibits the petitioner, as an alien, from acquiring private agricultural lands.

Section 463 of the Code of Civil Procedure which governs the matter under discussion and sections 1 and 5 of the Constitution of the Philippines upon which the order of the court was based, read as follows:

"SEC. 463. Sale of real property and certificate thereof.— Upon a sale of real property, the purchaser shall be substituted to, and acquire all the right, interest, title, and claim of the judgment debtor thereto, subject to the right of redemption as hereinafter provided. The officer must give to the purchaser a certificate of sale containing:

"1. A particular description of the real property sold;

"2. The price paid for each distinct lot or parcel;

"3. The whole price by him paid;

"4. The date when the right of redemption expires,.

"When the judgment under which the sale has been made is made payable in a specified kind of money or currency, the certificate must also show the kind of money or currency in which such redemption must be made, which must be the same as that specified in the judgment. A duplicate of such certificate must be filed by the officer in the office of the registrar of land titles of the province."

"SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal,

petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use 'may be the measure and the limit of the grant.

\* \* \* \* \*

"SEC. 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

It will be noted that section 463 clearly provides that by virtue of the sale of real property, the purchaser is substituted to and acquires all the right, interest, title and claim of the judgment debtor thereto, subject only to the right of redemption. Under this provision, the petitioner substituted Roman Par and acquired the latter's interest, title, and claim to the land sold from the time of the sale thereof at public auction, his acquisition being subject only to the right of redemption which may be exercised in the manner established by law. On the other hand, section 5, in connection with section 1, Article XII, of the Constitution, prohibits the transfer or assignment of private agricultural lands to individuals and corporations or associations not qualified to hold lands of the public domain. The petitioner, being a citizen of the Chinese Republic, is included within the prohibition but as the transfer of the land had already been consummated when sections 1 and 5, Article XII, of the Constitution took effect on November 15, 1935, this court is of the opinion and so holds that the constitutional provisions above-cited are inapplicable to the present case and the prohibition, therefore, does not affect the petitioner.

In view of the foregoing considerations, it is ordered that the writ of mandamus applied for be issued and the respondent provincial sheriff shall issue the deed of sale sought, without special pronouncement as to costs'. So ordered.

Avancena, C. J., Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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### CONCURRING

**VILLA-REAL, J.,**

Without abandoning my position in the case of *PowelJ vs. National Bank* (54 Phil., 54), I concur in the dispositive part.

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