

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. JOSE T. ESPINOSA, DEFENDANT AND APPELLEE.*G.R. No. 46294. December 13, 1938*

Ponente: CONCEPCION, J.

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In a civil case against defendant a writ of execution was issued to satisfy a deficiency judgment. By virtue thereof a parcel of land belonging to "him was sold at public auction to the plaintiff Philippine National Bank which was the highest bidder. Said land had been acquired by defendant under a homestead title issued on October 26, 1923 and recorded in the registry of property of the Province of Tarlac, where the land lies, on November 11, of the same year. The attachment was made on February 26, 1936 and the sale at public auction took place on May 21, following. The period of five years within which the Public Land Act prohibits the alienation of a homestead not yet having expired, said defendant alleged that the attachment of the land was void inasmuch as he had not encumbered the same through any voluntary act on his part and asked the court to set the attachment aside and order the register of deeds to cancel the annotation, if any had been made, of said encumbrance. Notwithstanding the opposition of the plaintiff Philippine National Bank, the Court of First Instance of Tarlac, by order of October 15, 1937, declared null and void the attachment and sale at public auction of the land aforesaid. Upon denial of its motion for reconsideration of this order, plaintiff duly excepted.

Appellant, in its brief, contends that the court erred in not declaring itself without jurisdiction to resolve defendant's motion which led to the issuance of the order appealed from and that it likewise erred in not finding that plaintiff and appellant' is one of those excepted from the operation of the legal prohibition against the alienation and encumbrance of lands forming part of a homestead grant.

The first assignment of error is based on the theory that when defendant's motion praying for the annulment of the attachment and sale at public auction of the land in question was filed on August 23, 1937, one year, five months and twenty-six days had already elapsed and that the remedy left to the defendant under the law was an action to recover the land and not a mere motion as has been attempted to be done in the instant case, (Sections 113 and 513 of the Code of Civil Procedure; *Banco Español-Filipino vs. Palanca*, 37 Phil., 921.)

Although we are of the opinion that there is merit in appellant's contention, nevertheless, in order to avoid multiplicity of suits and the necessity on the part of the defendant and appellee of commencing another action having the same object as that sought by him in his motion of August 23, 1937, we shall pass over the question raised by appellant relative to the lack of jurisdiction of the court if we can decide on its merits in this appeal the contention of the appellee in his said motion as we believe we can.

As has been stated, defendant and appellee's motion was based on the fact that the law prohibits the sale, encumbrance and alienation of a public land granted a homestead applicant within the period of five years following the issuance of the title to the homestead. Section 23 of Act No. 3517, which was approved on January 30, 1929 and took effect on February 4, 1929, has, however, amended section 116 of Act No. 2874, which now

reads as follows:

"Sec. 116. Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, 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."

From the section above-quoted, it may be seen that alienations or encumbrances made in favor of the Government or of any of its branches or legally constituted banking corporations are excepted from the prohibition that the land granted under a homestead title cannot be encumbered or alienated within the period of five years from the date of the issuance of the title. The Philippine National Bank is a Government-controlled banking corporation, the due incorporation of which has not been questioned either by defendant and appellee or by any one else. The execution of the judgment in favor of the Philippine National Bank against appellee on the latter's homestead was, therefore, valid and legal.

The contention of the appellee that the encumbrance or attachment of the land granted him under a homestead title had not been contracted through any voluntary act of his, does not in the least alter the essence of the question.

Wherefore, the order appealed from is reversed and the attachment and sale at public auction of the land referred to in this decision are hereby declared valid and legal. Costs shall be assessed against appellee. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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