

IN THE MATTER OF THE ESTATE OF THE DECEASED JESUS MENDOZA. CATALINA SANTOS VIUDA DE MENDOZA, ADMINISTRATRIX AND APPELLEE, VS. ARSENIO V. MENDOZA, OPPONENT AND APPELLANT.

G.R. No. 46520. November 09, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In the case of the summary distribution of the property of the deceased Jesus Mendoza, the Court of First Instance of Bulacan issued an order on March 25, 1938, authorizing the administratrix to sell the parcel of land described in Transfer Certificate of Title No. 14881, belonging to said deceased, to pay other obligations left by the latter and the expenses of administration; and to sell likewise another parcel of land described in Transfer Certificate of Title No. 14882, which belonged to the same deceased, to Natalia G. Cruz and Canuto Luciano, who had consolidated their ownership over the land in view of the fact that the deceased had, in life, sold it to them with the right to repurchase. On June 27, 1938 Arsenio V. Mendoza, one of the heirs, being a son of the deceased by his first marriage, made his appearance in the case and filed a motion wherein he prayed the court to give him preference in the purchase of the lands described in the two certificates of title. The administratrix opposed the motion, alleging that the authorized sales had already been carried out and that she had executed the corresponding deeds which she submitted to the court for its approval. By order of July 29, 1938, the court denied the motion of Arsenio V. Mendoza as to the land described in Transfer Certificate of Title No. 14882, for the reason that Natalia G. Cruz and Canuto Luciano had already consolidated their ownership thereof by virtue of the sale with the right to repurchase made by the deceased, the consolidation taking place because the property was not redeemed within the period of four years; and as to the land described in Transfer Certificate of Title No. 14881, because Arsenio V. Mendoza only offered P1,500 therefor, which is less than the P1,600 offered by Mariano Luciano and others. The order, however, disapproved the deed which the administratrix had executed for the land described in Transfer Certificate of Title No. 14881 because the administratrix accepted the payment of the price on installments, a form of payment not previously authorized. The court approved by said order the transfer of the other parcel of land to Natalia G. Cruz and Canuto Luciano. On August 29, 1938 the court issued another order approving the sale of the land described in Transfer Certificate of Title No. 14881 to Angel Luciano, Encarnacion Luciano and Juana Luciano for the sum of P1,600 in cash. As his motion for reconsideration of the order of July 29, 1938 was denied and after he excepted to the other order of August 29, of the same year, Arsenio V. Mendoza took the instant appeal.

In his sole assignment of error the appellant contends that the court disregarded article 1067 of the Civil Code in not granting to him his alleged preferential right to purchase the lands. Said article provides:

"ART. 1067. If either of the heirs should sell his hereditary rights to a stranger before the partition, any or all of his co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the purchase price, provided it be done within the period of one month, to be counted from the time they were informed thereof."

The article relied upon refers to the sale of a hereditary right made by an heir before the partition. The sales under discussion do not relate to an hereditary right but to real property belonging to the estate left by a deceased person; and the court authorized and approved them to complete the sale with right to repurchase, which the deceased had made during his lifetime, and to obtain funds to pay his obligations and the expenses of administration. But assuming that the article were applicable, the appellant would not at all events, have the preferential right which he invokes because the price he offered for the land described in Transfer Certificate of Title No. 14881 was less than what the administratrix obtained.

The orders of July 29 and August 89, 1938 are affirmed, with the costs in this instance against the appellant. So ordered.

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

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