

**GONZALO PUYAT & SONS, INC., PETITIONER AND APPELLANT,
VS PANTALEON DE LAS AMA AND GRACIANO ALIÑO OPPOSITORS
AND APPELLEES.***G.R. No. 48188. October 23, 1942*

Ponente: OZAETA, J.

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Who of two purchasers of land granted in homestead has acquired a valid title thereto, is the gist of this case.

The homesteader was Pantaleon de las Ama, to whom was issued a homestead patent over a 16-hectare parcel of land situated in Talavera, Nueva Ecija, on January 17, 1929. On June 30, 1933, he incurred an obligation with Gonzalo Puyat & Sons, Inc., in the amount of P930. That obligation having subsequently been reduced to judgment, Puyat levied execution on the homestead of his debtor and caused it to be sold at public auction on September 24, 1934, by the provincial sheriff of Nueva Ecija, who adjudicated the land to Puyat as the highest bidder in the sum of P569.61. After the lapse of one year a final deed of sale was executed by the sheriff in favor of Puyat. Both the levy and the sale were annotated on the back of the corresponding certificate of title.

On March 2, 1935, Pantaleon de las Ama sold and conveyed the land in question to Graciano Aliño in consideration of the sum of P2,400, subject to a mortgage in the amount of P417.76 in favor of the Philippine National Bank which Aliño assumed and subsequently paid. On June 8, 1939, Aliño registered the deed of sale in his favor and obtained from the register of deeds transfer certificate of title No. 15118 in his name, with the annotations of the levy and sale in favor of Puyat as an encumbrance.

In an amended motion filed on October 19, 1939, in the corresponding cadastral case, Puyat demanded the cancellation of the certificate of title in the name of Graciano Aliño and the issuance of another in the name of Gonzalo Puyat & Sons, Inc. Aliño in a countermotion on his part demanded the cancellation of the annotations on the back of his certificate of title concerning the levy and sale on execution of the land in question in favor of Puyat. After due hearing Judge Potenciano Pecson denied Puyat's motion and granted Aliño's countermotion, ordering the register of deeds, to cancel the encumbrances on transfer certificate of title No. 15118 upon payment of the corresponding fees. From that order Puyat appealed.

First. Under section 116 of Act No. 2874, as amended by Act No. 3517, lands acquired under the free patent or homestead provisions of said Act shall not become liable to the satisfaction of any debt contracted prior to the expiration of five years from and after the date of the issuance of the patent or grant. Since the homestead patent on the land in question was issued on January 17, 1929, and the debt of the homesteader Pantaleon de las Ama to Gonzalo Puyat & Sons, Inc., was contracted within five years thereafter, to wit, on June 30, 1933, it is obvious that the attempt of Puyat to subject the land in question to the satisfaction of said debt through levy on execution, being in contravention of the law, was void ab initio. (*Beach vs. Pacific Commercial Company and Sheriff of Nueva Ecija*, 49 Phil., 365; *Francisco vs. Parsons Hardware Company*, G. R. No. 45246.)

Appellant argues that the homesteader Pantaleon de las Ama waived the benefit of exemption granted him by law

by selling his right, interest, and participation in the land in question to Graciano Aliño and by failing to claim such exemption when the sheriff levied execution on the homestead at appellant's behest. Such contention, in our opinion, is not valid for these reasons: The statutory provision involved is predicated on public policy. Its violation gives rise to the cancellation of the grant and the reversion of the land and its improvements to the Government at the instance of the latter. (See section 122, Act No. 2874.) It is not within the competence of any citizen to barter away what Public Policy by law seeks to Preserve.

Hence appellant's motion was correctly denied by the trial court.

Second. Appellant attacks the validity of appellee Graciano Aliño's title on the ground that the sale to him in reality took place within five years. He bases that contention on the fact that since February 25, 1932, Aliño, at the request of Pantaleon de las Ama, began paying for the latter's mortgage on the land in question to the Philippine National Bank, But such contention of appellant is of no avail to it. In the first place, not having acquired any interest in the land in question, appellant has no personality to impugn the voluntary transfer of said land by the homesteader; it is the Government on which it is incumbent to do that. In the second place, the finding of the trial court, supported by the documentary evidence Exhibit 2 and accepted by the appellant as correct, is that the sale by de las Ama to Aliño took place on March 2, 1935, after the lapse of five years. The mere fact that prior to that date Aliño advanced money to de las Ama on account of the mortgage due on the land in question, does not warrant the conclusion that the sale took place from the moment such advance was made, in the absence of any evidence to that effect and in the face of the deed of sale itself, which was executed on March 2, 1935, before a notary public.

It results, therefore, that the appeal is without merit. The order appealed from is affirmed, with costs. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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