

**MATILDE S. PALICTE, PETITIONER, VS. HON. JOSE O. RAMOLETE AS
PRESIDING JUDGE OF COURT OF FIRST INSTANCE OF CEBU,
BRANCH III, AND MARCELO SOTTO, ADMINISTRATOR,
RESPONDENTS.**

G.R. No. 55076. September 21, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari of the order of the then Court of First Instance of Cebu declaring the deed of redemption executed for the petitioner null and void and denying the petitioner's motion that the Registrar of Deeds of the City of Cebu be directed to transfer the Owner's Duplicate Certificates of Title to Lot Nos. 1049, 1051, and 1052 from Filemon Sotto to her and to issue a new Owner's Duplicate Certificate of Title to Lot 2179-C in her name.

On July 5, 1979, a sale at public auction was held pursuant to a writ of execution issued on February 5, 1979 by the respondent judge and to a court order dated June 4, 1979 in the case of Pilar Teves, et al. v. Marcelo Sotto, Administrator, Civil Case No. R-10027, for the satisfaction of judgment in the amount of P725,270.00.

The following properties belonging to the late Don Filemon Sotto and administered by respondent Marcelo Sotto were levied upon:

- "1. Parcel of land on Lot No. 1049, covered by TCT No. 27640 of the Banilad Friar Lands Estate, Cebu City;
2. Parcel of land on Lot No. 1052, covered by TCT No. 27642 of the Banilad Friar Lands Estate, Cebu City;
3. Parcel of land on Lot No. 1051, covered by TCT No. 27641 of the Banilad Friar Lands Estate, Cebu City;
4. Parcel of land on Lot No. 5253 of the Cebu Cadastre, Cebu City, covered by TCT No. 27639;
5. Parcel of land situated at Mantalongan, Dalaguete, Cebu, covered by TD No. 010661, with an area of .76-708; (sic)
6. Parcel of land on Lot No. 4839 of the Opon Cadastre, at Barrio Sa-ac, Mactan Island, with an area of Forty Four Thousand Six Hundred Forty Four (44,644) square meters more or less;
7. Residential House of strong materials, situated on a Government lot at Lahug, Cebu City;
8. Residential House of strong materials, situated at Central, Cebu City." (Rollo, p. 40)

Seven of the above-described properties were awarded to Pilar Teves, who alone bid for them for the amount of P217,300.00.

The residential house situated on a government lot at Lahug, Cebu City, was awarded to lone bidder Asuncion Villarante for the amount of P10,000.00.

Within the period for redemption, petitioner Matilde S. Palicte, as one of the heirs of the late Don Filemon Sotto, redeemed from purchaser Pilar Teves, four (4) lots for the sum of P60,000.00.

A deed of redemption dated July 29, 1980, executed by Deputy Provincial Sheriff Felipe V. Belandres and approved by the Clerk of Court, Esperanza Garcia as Ex-Officio Sheriff, was issued for these lots:

- "1. A parcel of land or Lot No. 2179-C-PDI-25027, Cebu Cadastre, Cebu City, bid at P20,000.00;
2. A parcel of land or Lot No. 1052, covered by TCT No. 27642, of the Banilad Friar Lands Estate, Cebu City, bid at P15,000.00;
3. A parcel of land or Lot No. 1051, covered by TCT No. 27641, of the Banilad Friar Lands Estate, Cebu City, at P5,000.00;
4. A parcel of land or Lot No. 1049, covered by TCT No. 27640, of the Banilad Friar Lands Estate, Cebu City, at P20,000.00." (Rollo, p. 42)

On July 24, 1980, petitioner Palicte filed a motion with respondent Judge Ramolete for the transfer to her name of the titles to the four (4) parcels of land covered by the deed of redemption.

This motion was opposed by the plaintiffs in Civil Case No. R-10027, entitled "Pilar Teves, et al. v. Marcelo Sotto, administrator" on several grounds, principal among which, is that movant, Palicte, is not one of those authorized to redeem under the provisions of the Rules of Court.

A hearing on the said motion, with both parties adducing evidence was held.

The lower court held that although Palicte is one of the declared heirs in Spl. Proc. No. 2706-R, she does not qualify as a successor-in-interest who may redeem the real properties sold. It ruled that the deed of redemption is null and void. The motion of Palicte was denied.

Hence, the present petition.

The petitioner raises the following assignment of errors:

A

"RESPONDENT JUDGE ERRED IN RULING THAT THE JUDGMENT DEBTOR ENTITLED TO REDEEM UNDER SECTION 29(a), RULE 39 OF THE REVISED RULES OF COURT REAL PROPERTY SOLD ON EXECUTION AGAINST THE ESTATE OF THE DECEDENT IS ONLY THE ADMINISTRATOR OF THE ESTATE, OR HIS SUCCESSOR-IN-INTEREST.

B

"RESPONDENT JUDGE ERRED IN RULING THAT PETITIONER, WHO IS A DECLARED HEIR OF THE DECEDENT, IS NOT THE JUDGMENT DEBTOR NOR DOES SHE QUALIFY AS A SUCCESSOR-IN-INTEREST OF THE ADMINISTRATOR OF THE ESTATE ENTITLED TO RIGHT OF REDEMPTION UNDER SECTION 29(a), RULE 39 OF THE RULES OF COURT.

C

"RESPONDENT JUDGE ERRED IN RULING THAT ALTHOUGH PETITIONER IS A DECLARED HEIR OF THE DECEDENT, HER RIGHT TO THE ESTATE, LIKE THAT OF REDEMPTION OF CERTAIN ESTATE PROPERTY, COULD ONLY ARISE AFTER DISTRIBUTION OF THE ESTATE AS THERE IS STILL

JUDGMENT DEBT CHARGEABLE AGAINST THE ESTATE.

D

RESPONDENT JUDGE ERRED IN RULING THAT PETITIONER'S REDEMPTION OF FOUR (4) PARCELS OF LAND OF THE ESTATE OF THE DECEDENT SOLD ON EXECUTION OF JUDGMENT AGAINST THE ESTATE IS NULL AND VOID AND INEFFECTIVE." (Rollo, pp. 17-18)

These assigned errors center on whether or not petitioner Palicte may validly exercise the right of redemption under Sec. 29, Rule 39 of the Rules of Court.

We answer in the affirmative. Sec. 29 of Rule 39 provides:

"SEC. 29. Who may redeem real property so sold. Real property sold as provided in the last preceding section, or any part thereof sold separately, may be redeemed in the manner hereinafter provided, by the following persons:

"(a) The judgment debtor, or his successor in interest in the whole or any part of the property;

"(b) A creditor having a lien by attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the judgment under which the property was sold. Such redeeming creditor is termed a redeptioner."

Under Subsection (a), property sold subject to redemption may be redeemed by the judgment debtor or his successor-in-interest in the whole or any part of the property. Does Matilde Palicte fall within the term "successor-in-interest"?

Magno v. Viola and Sotto (61 Phil. 80, 84-85) states that:

"The rule is that the term 'successor in interest' includes one to whom the debtor has transferred his statutory right of redemption. (Big Sespe Oil Co. v. Cochran, 276 Fed., 216, 223); one to whom the debtor has conveyed his interest in the property for the purpose of redemption (Southern California Lumber Co. v. McDowell, 105 Cal., 99; 38 Pac., 627; Simpson v. Castle, 52 Cal., 644; Schumacher v. Langford, 20 Cal. App., 61; 127 Pac., 1057); one who succeeds to the interest of the debtor by operation of law (XI McKinney's California Jurisprudence, 99); one or more joint debtors who were joint owners of the property sold (Emerson v. Yosemite Gold Min. etc. Co., 149 Cal., 50; 85 Pac., 122); the wife as regards her husband's homestead by reason of the fact that some portion of her husband title passes to her (Hefner v. Urton, 71 Cal., 479; 12 Pac., 486). This court has held that a surety can not redeem property of the principal sold on execution because the surety, by paying the debt of the principal, stands in the place of the creditor, not of the debtor, and consequently is not a successor in interest in the property. (G. Urrutia & Co. v. Moreno and Reyes, 28 Phil., 260, 268)." (Underscoring supplied).

In the case at bar, petitioner Palicte is the daughter of the late Don Filemon Sotto whose estate was levied upon on execution to satisfy the money judgment against it. She is one of the declared heirs in Special Proceeding No. 2706-R. As a legitimate heir, she qualifies as a successor-in-interest.

Art. 777 of the Civil Code states that:

"The rights to the succession are transmitted from the moment of the death of the decedent."

At the moment of the decedent's death, the heirs start to own the property, subject to the decedent's liabilities. In fact, they may dispose of the same even while the property is under administration. (Barretto v. Tuason, 59 Phil. 845; Jakosalem v. Rafols, 73 Phil. 628). If the heirs may dispose of their shares in the decedent's property ever while it is under administration, with more reason should the heirs be allowed to redeem redeemable properties

despite the presence of an administrator.

The respondents contend that the petitioner must positively prove that the three other co-heirs, the administrator, and the intestate court had expressly agreed to the redemption of the disputed parcels of land. We see no need for such prior approval. While it may have been desirable, it is not indispensable under the circumstances of this case. What is important is that all of that acquiesced in the act of redeeming property for the estate. The petitioner contends that the administrator and the three other heirs agreed to the redemption. There is, however, no clear proof of such approval. What is beyond dispute from the records is that they did not disapprove nor reprobate the acts of the petitioner. There is likewise nothing in the records to indicate that the redemption was not beneficial to the estate of Don Filemon Sotto.

It may be true that the interest of a specific heir is not yet fixed and determine pending the order of distribution but, nonetheless the heir's interest in the preservation of the estate and the recovery of its properties is greater than anybody else's, definitely more than the administrator's who merely holds it for the creditors, the heirs and the legatees.

The petitioner cites precedents where persons with inchoate or contingent interest were allowed to exercise the right of redemption as "successors-in-interest", e.g. *Director of Lands v. Lagniton* (103 Phil. 889, 892) where a son redeemed the property of his parents sold on execution and *Rosete v. Provincial Sheriff of Zambales* (95 Phil. 560, 564), where a wife by virtue of what the Court called "inchoate right of dower or contingent interest" redeemed a homestead as successor-in-interest of her husband.

In fact, the Court was explicit in *Lagniton* that:

"xxx The right of a son, with respect to the property of a father or mother, is also an inchoate or contingent interest, because upon the death of the father or the mother or both, he will have a right to inherit said conjugal property. If any holder of an inchoate interest is a successor in interest with right to redeem a property sold on execution, then the son is such a successor in interest, as he has an inchoate right to the property of his father."

The lower court, therefore, erred in considering the person of the administrator as the judgment debtor and as the only "successor-in-interest". The estate of the deceased is the judgment debtor and the heirs who will eventually acquire that estate should not be prohibited from doing their share in its preservation.

Although petitioner Palicte validly redeemed the properties, her motion to transfer the titles of the four (4) parcels of land covered by the Deed of Redemption from registration in the name of Filemon Sotto to her name cannot prosper at this time.

Otherwise, to allow such transfer of title would amount to a distribution of the estate.

As held in the case of *Philippine Commercial and Industrial Bank v. Escolin* (56 SCRA 267, 345-346):

"Indeed, the law on the matter is specific, categorical and unequivocal. Section 1 of Rule 90 provides:

"SECTION 1. When order for distribution of residue made. - When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

"No distribution shall be allowed until the payment of the obligations above mention has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

"These provisions cannot mean anything less than that in order that a proceeding for the settlement of the estate of a deceased may be deemed ready for final closure, (1) there should have been issued already an order of distribution or assignment of the estate of the decedent among or to those entitled thereto by will or by law, but (2) such order shall not be issued until after it is shown that the 'debts, funeral expenses, expenses of administration, allowances, taxes, etc., chargeable to the estate' have been paid, which is but logical and proper, (3) besides, such an order is usually issued upon proper and specific application for the purpose of the interested party or parties, and not of the court."

The other heirs are, therefore, given a six months period to join as co-redemptioners in the redemption made by the petitioner before the motion to transfer titles to the latter's name may be granted.

WHEREFORE, the petition is hereby GRANTED. The respondent court's orders declaring the deed of redemption null and void and denying the motion to transfer title over the redeemed properties to Matilde Palicte are REVERSED and SET ASIDE; subject to the right of the other heirs to join in the redemption as stated above.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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