

GLORIA F. BERIN AND TEODOREDO P. BERIN, PETITIONERS, VS. HON. COURT OF APPEALS AND SIMEON F. ESTURAS, RESPONDENTS.

G.R. No. 57490. February 27, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition seeks the reversal of the decision of the Court of Appeals in CA-G.R. No. 59857-R entitled, "Simeon Esturas, Plaintiff-Appellee v. Gloria F. Berin, Teodoro F. Berin, Mariano H. C. Cervo and Bartolome Matanguihan, Defendants-Appellants., Bartolome Matanguihan, Cross-Claimant--Appellant, Mariano R.C. Cervo, Cross-Defendant," affirming the decision of then Court of First Instance of Camarines Norte, Branch I.

The facts as gathered from the records are as follows:

Private respondent Simeon Esturas was a grantee of Homestead Patent No. 47317 dated March 28, 1938, covering a parcel of land described as follows:

"A parcel of coconut land, together with improvements thereon, containing an area of 16.6863 hectares, more or less, situated at Camagsaan, Capalonga, Camarines Norte; bounded on the North by Pedro Base; on the North East by Manuel Esturas; on the East by Marcelo Oliva and Marciano Parale; on the South East by Jorge Murillo; on the South West by J. Murillo; on the North West by Tumba Creek, Marcelino Olit, Cerila Diozmo and Gonzalo Aler; on the South by Tumba Creek and Marcelino Olit x x x." (p. 48, Rollo).

The land was registered with the Register of Deeds of Camarines Norte and covered by Original Certificate of Title No. 961. On May 11, 1967, Esturas sold the property to Gloria F. Berin for Seven Thousand (P7,000.00) Pesos. The transaction was embodied in a Deed of Absolute Sale with a right to repurchase within a period of thirty (30) days from the date of sale. Gloria Berin claims that the period within which the land may be repurchased was only for ten (10) days.

On May 24, 1967, Gloria Berin, with the consent of her husband Teodoro sold the same property to Mariano Cervo for Ten Thousand (P10,000.00) Pesos. Cervo in turn, sold the property to Bartolome Matanguihan for fifteen thousand (P15,000.00) Pesos on October 10, 1967.

Meanwhile, on May 27, 1967 and June 5, 1967, Esturas offered to repurchase the property from Gloria Berin in two telegrams sent to the latter. He received no response from Gloria. Esturas then deposited the money to repurchase the property with the Clerk of Court of then Court of First Instance of Camarines Norte.

On January 26, 1968, Esturas filed an action to repurchase against Gloria Berin, Teodoro Berin, Mariano Cervo and Bartolome Matanguihan. The property was then already registered in the name of Matanguihan. The defendants filed their respective answers. On January 28, 1969, Bartolome Matanguihan filed a cross-claim against his co-defendants, Gloria and Teodoro Berin and Mariano Cervo.

Mariano Cervo was declared in default for failure to answer the cross-claim of Matanguihan and for failure to appear at the pre-trial.

In their answers, the defendants raised two defenses: (1) that Esturas' right to redeem already expired before he manifested his offer to redeem; and (2) that defendants were purchasers in good faith and for value.

After trial, judgment was rendered in favor of Esturas, the dispositive portion of which states:

"WHEREFORE, judgment is rendered:

"a) annulling the sale made by defendant Gloria F. Berin and Teodoro P. Berin of the property subject matter of the present litigation to and in favor of defendant Mariano H. C. Cervo, as well as the entry of said sale in the records of the Register of Deeds of Camarines Norte; and likewise, annulling the sale of the same property made by the defendant Mariano H. C. Cervo to Bartolome Matanguihan, as well as the entry of said sale in the records of the Register of Deeds of Camarines Norte;

"b) Ordering defendants Gloria F. Berin and Teodoro P. Berin to allow plaintiff Simeon Esturas to repurchase the property aforementioned for the amount corresponding to the original selling price of P7,000.00 with legal interest starting from the time of the execution of the Deed of Sale on May 11, 1967 up to and including the period of actual redemption, within thirty (30) days after the finality of this decision.

"c) Insofar as defendant Mariano H. C. Cervo, who was declared in default is concerned, sentencing Gloria F. Berin and Teodoro P. Berin to return to said defendant the purchase price of the land in question in the amount of P10,000.00, with legal rate of interest from the time of the execution of the sale on May 24, 1967 up to and including the time of the return of the said purchase price;

"d) Insofar as cross-claimant Bartolome Matanguihan is concerned, sentencing Mariano H. C. Cervo to return to the said cross-claimant the purchase price of the land in question in the amount of P15,000.00, with legal interest from the time of the execution of the sale on October 10, 1967 up to and including the time of the return of the said purchase price.

"No findings as to further damages and attorney's fees; and costs to be paid in equal parts by all the defendants."

"SO ORDERED." (pp. 354-355, Record on Appeal)

Defendants Gloria and Teodora Berin and defendant Matanguihan filed separate motions for reconsideration which the trial court denied on November 6, 1975 (p. 382, Record on Appeal). The defendants filed their respective appeals to the Court of Appeals.

On April 28, 1981, the Court of Appeals promulgated its decision affirming in toto the decision of the trial court (pp. 46-54, Rollo). The motion for reconsideration filed by the appellants were denied on July 6, 1981 (p. 74, Rollo).

In this petition, the petitioners raised the following arguments:

- 1) The Court of Appeals gravely erred in totally disregarding evidence clearly showing that Simeon F. Esturas wanted to recover the land in question (a homestead) only to dispose of it for greater profit;
- 2) The Court of Appeals gravely erred in not finding that in view of aforementioned intention of respondent Esturas, his right to repurchase the property under the Public Land Act should not be upheld and enforced.

It is noted that the herein petitioners' defenses before the trial court focused on the validity of the deed of absolute sale between Gloria Berin and private respondent Esturas and the lapse of the ten (10) day period to repurchase agreed upon by them. This is the core of their appeal before the respondent Court of Appeals which concluded that:

"Whether or not the deed of sale (Exhibit A) executed by and between the appellee and the appellant Gloria

Berin is valid and binding is beside the point. The same is not in issue as its validity was never questioned by appellee. What is material in the instant case is whether the appellee, or his widow or legal heirs of the case may be, can still exercise the right to repurchase even as to the transfer of property took place outside of the prohibited five-year period and by means of an absolute deed of sale (sic)." (p. 51, Rollo)

None of them, as the defendants in the trial court, raised the defense that private respondent is not entitled to repurchase the property because he had no intention to preserve and keep it for himself and his family.

This court in several decisions has repeatedly adhered to the principle that points of law, theories, issues of fact and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be considered by a reviewing court, as they cannot be raised for the first time on appeal (*Santos v. IAC*, No. 74243, November 14, 1986, 145 SCRA 592).

But, even if the matter was raised before the lower court, dealing as it is with findings of facts, it is beyond the jurisdiction of this Court to review in the absence of any compelling reason to do so. The petitioners allege that private respondent indeed had intentions to sell the property for a profit. However, the appellate court found no valid proof to support the allegation, thus:

"The record is also devoid of any evidence to support the contention of appellants Berins that appellee had no intention of preserving the land for himself and his family. The fact that appellee merely mortgaged the property with the bank and redeem (sic) it with (sic) the five-year period from conveyance, and the fact also that appellee tried to exercise his right of redemption in less than one year from sale to appellant Gloria Berin are enough to show that appellee has no intention of finally disposing his property. Furthermore, sustaining appellants-spouses' argument (with no valid and strong supporting proof) would run contrary to the aim of the law. The right was granted precisely "as part public policy to provide home and decent living for destitutes, aimed at promoting a class of independent small landholders, which, needless to say, is the bulwark of peace and order" (*Gramos vs. Garcia*, supra). It is intended to give the homesteader every chance to preserve and keep for himself and his family the land that the State had gratuitously granted him as reward for his labor in clearing and cultivating it (*Pascua vs. Talens*, 80 Phil. 972)" (p. 52, Rollo).

The property was sold on May 11, 1967. With or without the provision in the Deed of Absolute Sale, giving Esturas the right to repurchase the property, he is entitled to repurchase by provision of law. Section 119 of CA 141 provides:

"Sec. 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance."

ACCORDINGLY, the petition is DISMISSED. The assailed decision of the appellate court is AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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