

SALVADOR SAPUGAY, PETITIONER, VS. NATIVIDAD CAPUS BOBIS, RODOLFO BOBIS, NICANOR BOBIS, EDEN BOBIS, MARILYN BOBIS, PABLO BOBIS, ESTELA BELGINO, SALVACION SILO, RENATO BARRAMEDA A...

G.R. No. 59981. November 28, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Claiming that the respondent judge committed grave abuse of discretion in deciding a civil case^[1] based on an issue beyond that agreed upon by the parties, the petitioner, plaintiff below, filed the instant petition for certiorari.

The following factual backdrop precedes the present controversy.

On March 25, 1980, shortly after he attained the age of majority, the petitioner filed a complaint in the respondent trial court against the private respondent Natividad Capus Bobis. In his complaint, the petitioner alleged that while he was still a minor, his parents sold to the private respondent and the latter's spouse, Sixto Bobis (already deceased at the time of the filing of the complaint), a parcel of land acquired by free patent in violation of Section 124 of the Public Land Act (Commonwealth Act No. 141) thus rendering the said sale void ab initio. The petitioner then prayed that: (1) the sale of the subject property be nullified or, in the alternative, he be allowed to redeem the same; (2) the private respondent be ordered to vacate the contested parcel of land and deliver possession over it to the petitioner; (3) the private respondent be ordered to pay the petitioner as damages an amount equivalent to one hundred cavans of palay annually until she vacates the property; and (4) the private respondent be ordered to pay the petitioner litigation expenses including attorney's fees, plus the costs of the suit. In her answer, private respondent Natividad Capus Bobis stated that she and her deceased husband bought the land on August 24, 1964; that the complaint failed to state a sufficient cause of action; that the purchase by her and her husband of the subject land was in accordance with law; that the petitioner is not the proper party in interest; that the petitioner has no right to repurchase the land, the sale being absolute, nor does he possess the right of redemption he not being a legal redemptioner; that the claimed right of the petitioner has no basis in fact and in law and even if he succeeds in establishing his right to recover the same has already prescribed; and finally, that the private respondent's title over the property in controversy has already become indefeasible.

On February 3, 1981, with leave of court, and before hearing on the merits, the petitioner filed an amended complaint impleading as additional defendants the rest of the herein private respondents who are the heirs (other children) of the late Sixto Bobis. The amended complaint, which raised the same issues as the original complaint, was admitted on February 18, 1981. The case was again set for pre-trial on May 26, 1981 and also on July 14, 1981. On the latter date, however, the scheduled pre-trial was cancelled and the parties were instead granted a fifteen-day period within which to submit written memorandum in support or in opposition of the affirmative defenses alleged in the answer to the complaint. The parties were likewise required to attach to their respective memoranda the pertinent copies of documentary evidence in support of their contentions. After the parties

complied, the respondent trial court judge rendered on October 8, 1981 the now questioned decision dismissing the case on the ground "that there was no violation of the provisions of either Section 118 or 119 of the Public Land Law, committed by herein defendant, because even assuming that the sale sought to be nullified was made earlier than August 24, 1964, as claimed by plaintiff, still the same was made well beyond the 5-year period provided by Section 118 of Commonwealth Act 141, as amended." [2] Ironically, the respondent judge in dismissing the case found that while the petitioner had a cause of action that had not yet prescribed at that time, there was nonetheless no violation of Sections 118 and 119 of the Public Land Act committed. The petitioner moved for a reconsideration of the decision but his motion was denied. Hence, this petition.

As stated at the outset, the petitioner assails the respondent trial court judge as having acted with grave abuse of discretion for deciding the case based on an issue outside of that agreed upon by the parties to be litigated. According to him, as per agreement by the parties during the pre-trial conference, the only issues to be litigated should have been (1) whether or not the plaintiff (now petitioner) had a cause of action and (2) whether or not the same had already prescribed. This agreement, the petitioner now argues, is even contained in the trial court's pre-trial order dated July 14, 1981 which reads:

When this case was called for pre--trial today, the parties, assisted by their respective counsels appeared. Among the agreements or stipulations had in the course of this second pre-trial it was noted that the parties thereof and their respective counsels agreed to forego further pre-trial and in lieu of the same have a preliminary hearing on the special and affirmative defenses contained in defendant's answer, particularly paragraph 6 of the said answer which state (sic) that the complaint states no sufficient cause of action against defendants. It was also stated that the parties through their respective counsels have agreed to forego presentation of evidence and in lieu of the same, defendants to file within fifteen days from today a written memorandum containing all the arguments in support of the special and affirmative defenses, attaching to the said memorandum all the pertinent and necessary copies of documents and/or documentary evidence relied upon by them in support of their contention that plaintiff's cause of action has already prescribed under Public Land Act No. 141, copies furnished upon counsel for plaintiff who is similarly granted a period of fifteen days from receipt to file his reply memorandum attaching thereto all the pertinent and relevant documents and exhibits to prove the arguments contained in the said memorandum as well as the allegations contained in the amended complaint. Also noted as part of this (sic) pre-trial stipulations that parties have agreed to forego the portion of right to damages. Upon the submission of the aforementioned memoranda of the aforementioned parties, this case shall be considered submitted for decision.

SO ORDERED.[3]

We find the petition without merit.

The petitioner's submission that the issues of the case had been limited to only two is gratuitous. A mere cursory reading of the very order of the trial court cited by the petitioner reveals the contrary. As stated in the order, "the parties (thereof) and their respective counsels agreed to forego further pre-trial and in lieu of the same to have a preliminary hearing on the special and affirmative defenses contained in the defendant's answer, particularly paragraph 6 of the said answer which avers "(T)hat the complaint fails to state a sufficient cause of action against the defendants." Emphasis was merely placed on the issue of whether or not the petitioner had a cause of action but certainly no limitation on the issues to be resolved was ever agreed upon by the parties or by the trial court. Moreover, in a preliminary hearing, as in this case, the trial court has the power to resolve "(a)ny of the grounds for dismissal provided for in this rule (Rule 16), except improper venue, (may be) pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed." [4] So on this basis, the petition must fail.

Be that as it may, although we concur with the trial court's dismissal of the case, and we find that the petitioner erred in claiming that the issues of the case had been limited to only two, the assailed decision, particularly its finding that the petition has a cause of action which has not prescribed, is not correct. We are, therefore, constrained to clarify.

While it is true that under Section 119 of the Public Land Act the petitioner is granted the right to repurchase the property sold by his parents, that right has already prescribed. For the period to repurchase is limited to only five years from date of conveyance.

Section 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 conveyance.

The subject property was sold by the petitioner's parents on August 24, 1964 and the petitioner tried to redeem the same only in December, 1979, which is more than fifteen years from the date of conveyance or ten years more than the five-year period allowed by law.

The petitioner's minority at the time the subject property was sold (which is capitalized upon) likewise affords no excuse for his late action. Section 42 of the old Code of Civil Procedure which provides:

Section 42. If a person entitled to bring the action mentioned in the preceding section of this chapter is, at the time the cause of action accrues, within the age of minority of unsound mind or in prison, such person may, after the expiration of ten years from the time the cause of action accrues, bring such action within three years after such disability is removed.

and on which the petitioner justifies his belated action is inapplicable in his case. That provision of law has been modified by Article 1108, par. 1, of the New Civil Code, the law already in force at the time of the conveyance of the contested property, in 1964, and at the commencement of the present suit, in 1980.

These provisions of Act No. 190 have been modified by the present article of the Civil Code. Where the minors or incapacitated persons have parents, guardians, or other legal representatives, prescription runs against them; hence, the saving provisions of Act No. 190 do not apply to them. But when such minors, insane persons, or persons in prison, do not have such parents, guardians, or legal representatives, then the saving provisions will apply to them, and they may bring their actions within three or two years, as the case may be, after their disability has been removed.[5]

Article 1108 of the Civil Code on the other hand states that:

Article 1108. Prescription, both acquisitive and extinctive, runs against:

(1) Minors and other incapacitated persons who have parents, guardians or other legal representatives:

xxx xxx xxx

And in this instance, there is no proof to show that during the petitioner's minority he had neither parents nor guardians nor other legal representatives. Indeed, there is no proof that during that minority he had already been orphaned of both his parents - father and mother. On the contrary, he himself, in his amended complaint in the court a quo, admitted that his mother is still very much alive. He averred that she "is presently residing in La Trinidad, Iriga City." [6] Clearly, paragraph 1 of Article 1108 of the New Civil Code applies. Consequently, the petitioner's action had prescribed due to his failure to redeem the subject property within the five-year period provided in Section 119 of the Public Land Act.

WHEREFORE, with the above modification, the Petition is DISMISSED for lack of merit, and the Decision of

the Court of First Instance of Camarines Sur dated October 8, 1981 is hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Melencio-Herrera, (Chairperson), Paras, Padilla, and Regalado, JJ., concur.

[1] Civil Case No. I.R.-831, entitled "Salvador Sapugay vs. Natividad Capus Bobis, et al.", Court of First Instance of Camarines Sur.

[2] Decision, rollo, 29.

[3] Rollo, 19.

[4] Sec. 5, Rule 16. The Revised Rules of Court in the Philippines.

[5] 4 A.M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 5 (1973).

[6] Amended Complaint, par. 8; Rollo, 12.

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