

**BRITTA B. QUISUMBING AND NORBERTO B. QUISUMBING, JR.,
PETITIONERS, VS. HONORABLE COURT OF APPEALS, AND SAGRADO
C. OCAYA, AS RE-PRESENTED BY HIS ATTORNEY-IN-FACT TIMOTEO
C. OCAYA...**

G.R. No. 60364. June 23, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

On January 12, 1955, private respondent Sagrado C. Ocaya was granted Homestead Patent No. V-42874 over a parcel of land with an area of 23 hectares, 50 ares and 63 centares located in Malaybalay, Bukidnon. By virtue thereof, Original Certificate of Title No. P-719 was issued in his name on May 5, 1955.

Sometime in June 1957, or within the 5-year prohibited period against alienation of homesteads, he sold the said parcel of land to herein petitioners for the sum of P1,750.00. The petitioners have been in possession of the land since then and up to the present.

On June 3, 1975, private respondent Sagrado C. Ocaya, represented by his brother Timoteo C. Ocaya as attorney-in-fact, filed an action in the Court of First Instance of Bukidnon for the recovery of the said parcel of land, depositing with the Clerk of Court the sum of P1,750.00 as the repurchase price.

The petitioners filed their answer to the complaint and subsequently moved for the admission of an amended answer. Although initially denied admission, the amended answer was eventually allowed by the trial court with the qualification that paragraph 12 thereof shall be considered stricken off. The said paragraph alleges the defenses that the private respondent was guilty of laches and that the cause of action is barred by prescription.

The record does not show if a pre-trial of the case was ever conducted or that the trial had already commenced. It appears, however, that on September 2, 1976, the parties, assisted by their respective counsels, submitted a partial stipulation of facts reading as follows:

"1. That the plaintiff in this case is represented by his brother Timoteo C. Ocaya as his attorney-in-fact per Special Power of Attorney, otherwise known as Doc. No. 96, Page No. 51, Book No. III, Series of 1974, acknowledged before Notary Public Generoso B. Toking at Zamboanga del Norte on November 8, 1974;

2. That the defendants are being represented by Engr. Eduardo Lauta by virtue of Special Power of Attorney, otherwise known as Doc. No. 448, Page No. 90, Book No. II, Series of 1975, acknowledged before Notary Public Virgilio Ma Toribio on March 22, 1975 at Cebu City;

3. That the plaintiff and the defendants admit the identity of the land in question as covered by OCT No. P-719 by virtue of Homestead Patent No. V-42874 issued on January 12, 1955, a certified true copy of which is hereto attached as Annex 'A' of this Partial Stipulation of Facts;

4. That the plaintiff and the defendants admit that sometime in June, 1957 the above-mentioned parcel of land has been sold to the defendants by virtue of a deed of absolute sale, a copy of the same is hereto attached as

Annexes 'B' and 'B-1' of this Partial Stipulation of Facts;

5. That the parties admit that the plaintiff executed Special Power of Attorney in favor of Timoteo C. Ocaya in June, 1957 authorizing Timoteo C. Ocaya to sell the land in question in favor of the defendants, a copy of which is hereto attached as Annexes 'C' and 'C-1';

6. That the plaintiff admits the existence of an affidavit which he has executed in June 1957, a copy of the same is hereto attached as Annex 'D';

7. That the defendants admit the deposit of One Thousand Seven Hundred Fifty (P1,750.00) Pesos in connection with this case as shown by Official Receipt No. 5132359-0 dated January 3, 1975 but not as to its purpose for which the same is deposited, which is hereto attached as Annex 'E';

8. That the plaintiff admits that the defendants thru their caretaker have been in possession of the land in question from 1957 up to the present;

9. That the parties reserved their rights to present other evidence in connection with this case.

WHEREFORE, it is most respectfully prayed that this Partial Stipulation of Facts be approved.

Malaybalay, Bukidnon, December 2, 1976." (pp. 31-33, Record on Appeal.)

Private respondent rested his case on the basis of the above-quoted partial stipulation of facts and the documentary evidences attached to the same. The petitioners were not able to present any evidence in their behalf because during the hearing set on October 14, 1977 for the petitioners to present their evidence, the petitioners and their counsel did not appear, they having earlier filed a motion for postponement of said hearing on the ground of illness of petitioner Britta Quisimbing which was attested to by a medical certificate attached to the motion. The trial court denied the motion for postponement, declared the trial terminated and the case submitted for decision.

On November 16, 1977, the trial court rendered its decision in favor of the private respondent, ordering the herein petitioners to immediately reconvey the land and its improvements to him. The appeal taken by the petitioners to the former Court of Appeals resulted in an affirmance of the lower court's decision. The instant proceeding is a petition for review on certiorari of the decision of the Court of Appeals.

In their appeal to the Court of Appeals, the herein petitioners assigned nine errors both on procedural points and on the merits of the case. They assail the striking out of paragraph 12 of their amended answer; the denial of their motion for the postponement of the hearing scheduled on October 14, 1977; and the failure to conduct a pre-trial. They further contended that the trial court erred in not holding that the private respondent is not entitled to the privileges of a homestead patentee and had violated provisions of the Homestead Law; in not holding that the private respondent's purpose to recover the land was merely for speculation and for profit; and that the private respondent is guilty of laches, estoppel and prescription. None of said assignments of errors received favorable consideration in the Court of Appeals.

In the instant recourse before this Court, the petitioners assail the decision appealed from on a single issue, to wit: The private respondent is not entitled to repurchase the land in question, his purpose in doing so being merely for speculation and profit and not to preserve the homestead for himself and his family. Petitioners submit that, as held in the case of *Vargas vs. Court of Appeals*, 91 SCRA 195, where a homesteader is repurchasing the land not for the purpose of preserving it for himself and his family but for speculation and profit, said repurchase should not be allowed, it not being in accordance with the underlying principle of Section 119 of Commonwealth Act No. 141, "to give the homesteader or patentee every chance to preserve for himself and his family the land that the State had gratuitously given to him as a reward for his labor in cleaning and cultivating it (*Simeon vs. Peña*, 36

SCRA 617)."

Petitioners point out several alleged factors which would show that the private respondent is repurchasing the homestead in question not to preserve the same for himself and his family but purely for speculation and profit.

Controverting said contention, private respondent maintains that the claim of the petitioners that the private respondent is repurchasing the land merely for speculation and profit is a factual issue which may not be considered in this instance, there having been no evidence to prove the same presented in the trial court. Private respondent further argues that the burden of proving such an allegation is on the petitioners who are the ones asserting the same.

We agree with the private respondent that the contention of the petitioners that the repurchase of the land was for speculation and profit is for the petitioners to prove. It will be noted, however, that the trial court deprived the petitioners of the chance to present evidence in their behalf by denying their motion to postpone the hearing in which they were scheduled to prove their defenses. Such denial appears to be less than justified, considering the fact that the ground for the postponement was not exactly frivolous and that the petitioners have set up a number of defenses which, if established, would adequately defeat the private respondent's cause of action.

Among the defenses raised by the petitioners in their amended answer was that the repurchase is "pure and simple speculation." (Paragraph 15, Amended Answer, Record on Appeal, pp. 17-18.) They reiterated this contention in connection with their appeal in the Court of Appeals (Error No. VIII, Record on Appeal, p. 2). As aforesaid, they limited their present appeal to this single issue.

It may rightly be said that to fully ventilate the question as to whether or not the private respondent was repurchasing the land not to preserve the same for himself and his family but for speculation and profit, the natural course of action to take would be to remand this case to the trial court for it to conduct further proceedings in order to enable the petitioners to present evidence to sustain their aforesaid contention. A close examination of the records of this case, however, convinced Us that such a time-consuming procedure may be properly dispensed with for being unnecessary to resolve the issue at hand. We encounter several facts of record, none of which is denied by the private respondent, which, by themselves, sufficiently support the allegation of the petitioners that the private respondent is repurchasing the land in question merely for speculative and profit purposes and not to uphold the policy of the State regarding the grant of homesteads.

The record reveals the following:

Private respondent Sagrado C. Ocaya is not a resident of Malaybalay, Bukidnon, where the land in question is situated. This is shown by his complaint in this case wherein he alleges that he is "a resident of Labason, Zamboanga del Norte" (Paragraph 1, Complaint, Record on Appeal, p. 1). His Residence Certificate for 1957 was issued at Aloran, Misamis Occidental. (Special Power of Attorney, Annex C; and Affidavit, Annex D, to the Partial Stipulation of Facts, Record on Appeal, pp. 40 and 44). His non-residence in the place where the homestead, which is supposed to be cultivating personally is located, is further deduced from the circumstance that in all his actuations regarding the same, he had to act thru an attorney-in-fact in the person of his brother, Timoteo C. Ocaya, who is a resident of Malaybalay. If the private respondent was a resident of Malaybalay, there would be no necessity for him to appoint an attorney-in-fact to attend to the said property and to prosecute his action to recover the same filed in the Court of First Instance of Bukidnon.

A glaring admission on the part of the private respondent that he is neither the owner nor the possessor of the land in question is his affidavit executed in June 1957 marked as Annex D to the Partial Stipulation of Facts (Record on Appeal, pp. 43-44) wherein he stated the following:

"A F F I D A V I T

I, SAGRADO C. OCAYA, Filipino, of lawful age, single and a resident of Malaybalay, Bukidnon, Philippines after being duly sworn in accordance with law, do hereby depose and say:

That I appear as owner of a certain parcel of land situated in the Barrio of Kalasungay, Municipality of Malaybalay, Bukidnon, Philippines, together with all improvements thereon, containing an area of two hundred thirty five thousand and sixty three (235,063) square meters, more or less, covered by Original Certificate of Title No. P-SEVEN HUNDRED NINETEEN (P-719) issued by the Register of Deeds of Malaybalay, Bukidnon, Philippines;

That I affirm that the true and real owner of said parcel of land described in the Original Certificate of Title No. P-SEVEN HUNDRED NINETEEN (P-719) issued by the Register of Deeds of Malaybalay, Bukidnon, Philippines is TIMOTEO OCAYA but however, for certain reasons known between said Timoteo Ocaya and myself, the torrens title mentioned was registered in my name;

That since TIMOTEO OCAYA is the true and real owner of the parcel of land above-mentioned covered by Original Certificate of Title No. P-SEVEN HUNDRED NINETEEN (P-719) although registered in my name, and since said TIMOTEO OCAYA desires to sell and dispose of said property, I have executed in his favor an irrevocable special power of attorney;

That I warrant to defend the right and title of TIMOTEO OCAYA over the property above-mentioned in the event that the same shall be sold, I further warrant to defend the sale of the same to the vendee, his heirs and assigns against any claims of third persons whomsoever and that the same is free from any lien or encumbrance of whatever nature and kind;

IN WITNESS WHEREOF, I have hereunto affixed my signature this ____ day of June, 1957, in Malaybalay, Bukidnon, Philippines.

(SGD) SAGRADO C. OCAYA

Affiant

SUBSCRIBED AND SWORN to before me this ____ day of June, 1957, in the Municipality of Malaybalay, Province of Bukidnon, Philippines, affiant exhibiting to me his Residence Tax Certificate No. A-0760582, issued at Aloran, Misamis Occidental, on May 27th, 1957." (Annex D, Record on Appeal, pp. 43-44.)

The execution of this affidavit by the private respondent has been admitted by him in paragraph 6 of the Partial Stipulation of Facts which reads as follows:

"6. That the plaintiff (herein private respondent) admits the existence of an affidavit which he has executed in June 1957, a copy of the same is hereto attached as Annex 'D'; (Record on Appeal, p. 32.)"

Then, too, private respondent sought to repurchase the land only after the lapse of seventeen years from the time he had sold the same to the petitioners. During that period of time, the petitioners had possessed the property and had introduced valuable improvements thereon. The value of the property, even without considering the improvements introduced on the land, had conceivably increased during that span of time.

We are accordingly convinced that even on the basis alone of the facts already appearing on the record, there could be little doubt that the desire of the private respondent to regain ownership of the property in question was profit-motivated. Private respondent makes no pretense that he intends to cultivate the land for himself or his family. He could not possibly make such claim inasmuch as he resides hundreds of kilometers away from the site of the land. He even admits that the land does not belong to him, but was merely registered in his name for "certain reasons known between his brother Timoteo and himself." Private respondent is not acting in consonance

with the philosophy of the law for allowing the repurchase of a homestead which had been sold by the original patentee to another. To allow the redemption of the land by the private respondent would not only be repugnant to the policy of the State regarding the grant of public lands to bona fide possessors thereof, but would also be grossly unfair to the petitioners who have already invested a considerable amount of time and efforts on the property which they had been possessing in the concept of owner for the last twenty-six years.

WHEREFORE, the decisions of the former Court of Appeals in CA-G.R. No. 64791-R and that of the Court of First Instance of Bukidnon in Civil Case No. 714, entitled "Sagrado C. Ocaya vs. Britta Bartolome Quisumbing" are hereby REVERSED. The complaint in Civil Case No. 714 shall be deemed dismissed, with costs against the herein private respondent.

SO ORDERED.

Melencio-Herrera, Plana and Escolin,[*] JJ., concur.
Teehankee (Chairman), J., in the result.

[*] designated to sit in the First Division in lieu of Relova and Gutierrez, Jr., JJ. who disqualified themselves.

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