

**BUENAVENTURA FELISILDA AND IRENEA FELISILDA, PETITIONERS,
VS. JUDGE NAPOLEON D. VILLANUEVA, JUDGE OF THE CITY COURT,
BRANCH I OF BUTUAN CITY; CASIANO A. ANGCHANGCO, JR., AS
DEPU...**

G.R. No. 60372. October 29, 1985

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the validity of an execution sale of two small residential lots for lack of sufficient publication and for being allegedly in violation of Republic Act No. 730.

The city court of Butuan City in its decision of February 17, 1979 ordered the Felisilda spouses to vacate Lot No. 662-C covered by OCT No. P-1877 in the name of Dr. Vicente C. Galeon, to pay him P300 a month as compensation for the use of the land from January, 1971 until the said land is vacated, P7,000 as moral and exemplary damages and P3,000 as attorney's fees and litigation expenses (Civil Case No. 846).

That judgment became final and executory. To satisfy it, the sheriff levied upon two lots with areas of 149 and 126 square meters covered by TCT No. T-1762 and OCT No. P-2016 in the name of the Felisilda spouses. He sold the same to Galeon at a public auction. There was no redemption within the one-year period. The sheriff issued to Galeon a final deed of sale dated August 4, 1981. The sale was registered and new titles were issued to Galeon on August 12, 1981.

Notwithstanding that fact and as an indication of overzealousness, the city court in its orders of December 17 and 29, 1981 ordered the register of deeds to issue new titles to Galeon and to require the Felisilda spouses to surrender the owner's duplicate of their titles for the two lots.

The city court in its order of December 17, 1981 (over the opposition of the Republic of the Philippines) also directed the sheriff to place Galeon in possession of the said lots and directed the Felisilda spouses to demolish their building on the disputed lot. The city court denied the motion for the reconsideration of said orders in its order of April 17, 1982.

The said orders were assailed in the instant petition for certiorari filed on May 3, 1982 on the grounds that the auction sale was void because it was a violation of Republic Act No. 730 and that the notice of sale was published in the newspaper for fourteen days only and not for at least twenty days.[*]

There is no merit in petitioners' contention that the sale was void because the notice of sale was not published for at least twenty days in the Mindanao Journal as required in section 18, Rule 39 of the Rules of Court.

The notice of sale was published in the issues of June 22 and 29 and July 6, 1980. The sale took place on July 15, 1980 or 23 days after the first publication. We hold that there was compliance with section 18.

The other contention of the petitioners involves Republic Act No. 730 which provides:

"SEC. 2. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under the provisions of this Act shall not be subject to encumbrance or alienation before the patent is issued and for a term of ten years from the date of the issuance of such patent, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period. No transfer or alienation made after the said period of ten years and within fifteen years from the issuance of such patent except those made by virtue of the right of succession shall be valid unless when duly authorized by the Secretary of Agriculture and Natural Resources and the transferee or vendee is a Filipino citizen. Every conveyance made shall be subject to repurchase by the original purchaser or his legal heirs within a period of five years from the date of conveyance.

"Any contract or agreement made or executed in violation of this section shall be void ab initio."

One of the two lots sold to Galeon, Lot 114, with an area of 126 square meters, was acquired by Irene E. Felisilda on January 2, 1975 as evidenced by a miscellaneous sales patent issued on January 31, 1975 (Annex F).

The sheriff levied on that lot on April 27, 1980 pursuant to the judgment in favor of Galeon. It was sold to Galeon on July 15, 1980. The final deed of sale in his favor is dated August 4, 1981. He obtained TCT No. T-3241 on August 12, 1981 (Annex H), or within the ten-year period fixed in Republic Act No. 730.

The prohibition found in Republic Act No. 730 is similar to that found in section 118 of the Public Land Law. It was held under section 118 that the alienation prohibited therein may be made by the sheriff under an execution sale (*Cadiz vs. Nicolas*, 102 Phil. 1032; *Francisco vs. Parsons Hardware Co., Inc.*, 67 Phil. 234). Hence, the sale of Lot 114 to Galeon is void.

The other lot, Lot 115, with an area of 149 square meters, was originally acquired by Joel E. Olaguer as patentee on January 31, 1975 and OCT No. P-2018 was issued in his name on March 24, 1975 (Annex 1). But it should be noted that previous to the issuance of his patent, or on November 19, 1974, Olaguer had transferred all his rights to Buenaventura Felisilda (pp. 156-7; 184-5, Rollo). This transfer was annotated on OCT No. P-2018.

OCT No. P-2018 was cancelled and TCT No. T-1762 was issued to Felisilda on April 23, 1975 (Annex E). Without ruling on the legality of the transfer of Lot 115 by Olaguer to Felisilda, it is unquestionable that Lot 115 was invalidly sold by the sheriff to Galeon in 1980 because it was made within 10 years from the issuance of the patent.

In passing, it is relevant to state that the city court's adjudication of P7,000 moral and exemplary damages in Galeon's favor in the ejectment suit was manifestly erroneous. Trial judges have a reprehensible propensity to adjudge moral and exemplary damages without any justification. Mere vexation or mental anguish is not sufficient to warrant moral damages. The case must come within the terms of articles 2217 to 2220 of the Civil Code.

The only damages that can be recovered in an ejectment suit are the fair rental value or the reasonable compensation for the use and occupation of the real property (*Sparrevohn vs. Fisher*, 2 Phil. 676; *Castueras vs. Bayona*, 106 Phil. 340; 3 *Moran's Comments on the Rules of Court*, 1980 Ed., p. 327). Other damages must be claimed in an ordinary action.

WHEREFORE, the petition is granted. The execution sale of the two lots in question is set aside. Costs against respondent Galeon.

SO ORDERED.

Escolin, Cuevas, and Alampay, JJ., concur.

Patajo, J., was designated to sit in the Second Division.

Concepcion, Jr., J., on leave.

Abad Santos, J., no part.

[*] Parenthetically, it should be noted that on May 11, 1977, or before the decision in the ejectment suit was rendered, the Felisilda spouses sued Galeon in the Court of First Instance for the annulment of his patent and title to the lot involved in the ejectment suit (Civil Case No. 1944).

That action was dismissed by the Court of First Instance in its order of September 28, 1979 because of the city court's final and executory decision in the ejectment suit, Civil Case No. 846, finding that Galeon is the owner of the said lot.

That order of dismissal and the city court's decision were attacked in this Court by the Felisilda spouses on July 8, 1980 by means of a petition for certiorari and mandamus. The petition was dismissed in a minute resolution dated June 17, 1981 (Felisilda vs. Judge Vailoces, G. R. No. 54207, First Division).

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