

SEVERINO GAYAPANAO, TEODORO GAYAPANAO, LAURO GAYAPANAO, SALVADOR GAYAPANAO, RAYMUNDA GAYAPANAO-RAMOS, HEIRS OF ELEUTERIO GAYAPANAO AND HEIRS OF ROBERTO GAYAPANAO, PETITIONERS, V...

G.R. No. 68109. July 17, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

In this Petition for Review on Certiorari, petitioners Severino Gayapanao and his siblings question the decision of the then Intermediate Appellate Court (IAC)[1] in AC-G.R. No. CV-59589, entitled "Severino Gayapanao, et al. vs. Simeona Gayapanao-Novenario" upholding the validity of the sale of two (2) hectares of the ten-hectare homestead land by their father in favor of their sister Simeona Gayapanao-Novenario.

Briefly, the facts of the case as found by the Appellate Court are as follows:[2]

"xxx xxx xxx the 2-hectare land subject of this case is part and parcel of a homestead lot registered in the name of Constantino Gayapanao under Original Certificate of Title No. 3625 (Exhibits B and 2, Plaintiffs' Folder of Exhibits, p. 2). The homestead application of the late Constantino Gayapanao over the said lot was approved on September 7, 1931 (Exhibit C, Ibid., p. 5) and the final order of the Director of Lands for the issuance of patent was issued on December 10, 1937, (Exhibit A, Ibid., p. 1). On July 13, 1939, the Homestead Patent Title was issued in the name of Constantino Gayapanao married to Aurelia Maamo (Exhibit D, Ibid., p. 2). On November 15, 1938, the late Constantino Gayapanao executed a private deed entitled "Kasulatan ng Bilihan" in favor of Serafin Novenario and his wife, Simeona Gayapanao over 20,000 square meters of the homestead land (Exhibit 4, Defendants' Folder of Exhibits, p. 8).

"Constantino Gayapanao and his wife Aurelia Maamo died intestate on December 22, 1942 and September 29, 1966, respectively (Record on Appeal, p. 70). x x x"

On January 2, 1974, Severino, Teodoro, Roberto, Salvador, and Lauro, all surnamed Gayapanao, Raymunda Gayapanao-Ramos and the heirs of Eleuterio Gayapanao filed before the then Court of First Instance of Oriental Mindoro Civil Case No. R-317, a Complaint for Partition and Accounting with Prayer for Appointment of Receiver against their sisters Gloria Gayapanao--Saet and Simeona Gayapanao-Novenario (private respondent herein) who were then occupying the subject homestead lot. Both defendants filed their Answer to the complaint.

On March 11, 1975, the court a quo rendered a decision,[3] declaring as null and void Exhibit 4, the contract of sale between Simeona Gayapanao-Novenario and her father Constantino Gayapanao for having been executed within the five-year prohibitory period provided under Section 118 of the Public Land Law,[4] and at the same time declaring as valid Exhibit 5, the deed of sale executed by Teodoro Gayapanao in favor of his sister Gloria Gayapanao-Saet covering the former's hereditary share in the homestead lot. Accordingly, the lower court ruled as follows:[5]

"WHEREFORE, in view of the above findings, judgment is hereby rendered as follows:

"A. Adjudicating unto plaintiffs SEVERINO, ROBERTO, SALVADOR, LAURO, RAYMUNDA and the heirs of ELEUTERIO, all surnamed Gayapanao and Simeona Gayapanao-Novenario - one ninth 1/9 each of the intestate estate of the deceased Constantino and Aurelia Maamo covered in and embraced by Original Certificate of Title No. 3625 and the remaining two-ninths (2/9) to Gloria Gayapanao-Saet, she having purchased the one-ninth (1/9) hereditary share of plaintiff Teodoro Gayapanao;

"B. Authorizing the herein parties to agree among themselves to cause the relocated survey of the entire land in question covered by Original Certificate of Title No. 3625 so that their respective shares may be properly delineated;

"C. Ordering the parties to submit the necessary project of partition after the relocation survey has been executed not later than three (3) months after entry of this judgment in order to terminate this proceeding;

"D. Declaring as null and void document marked Exhibit "4", the same having been executed one year prior to the issuance of the patent, but Exhibit "5" is confirmed and declared valid.

"WITHOUT special findings as to costs.

"IT IS SO ORDERED."

Simeona Gayapanao-Novenario moved to reconsider, but failed. She then sought relief before the IAC which, finding the sale in her favor to be perfectly valid, set aside the decision of the lower court and entered a new one dismissing the complaint against her.[6]

Hence, this appeal filed by Severino Gayapanao, et al. after their motion for reconsideration was denied[7] by the respondent appellate court.

In upholding the sale of a portion of the homestead lot by Constantino Gayapanao to his daughter, herein private respondent Simeona Gayapanao-Novenario, the respondent court interpreted the prohibition against the alienation or encumbrance of the homestead land under Section 118 of the Public Land Law as referring to an alienation or encumbrance in favor of a third person outside the family circle of the original homesteader. Since, according to the appellate court, the conveyance involved herein was made in favor of Simeona Gayapanao-Novenario, who is one of the nine (9) children of the original homesteader and who is the "continuity of the personality of her father for all legal intents and purposes," such sale is "not in contravention of the avowed policy of the State, which is to preserve and keep to the homesteader and his family the land granted to him by the State." [8]

We rule otherwise. The pertinent portion of Section 118 of the Public Land Law provides:[9]

"Except in favor of the government or any of its branches, units or institutions land acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations or corporations.

The provision of law which prohibits the sale or encumbrance of the homestead within five years after the grant is mandatory. From the date of the approval of the application and for a term of five (5) years from and after the date of issuance of the patent or grant, lands acquired under free patent or homestead provisions cannot be subject to encumbrance or alienation, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period. The only exception mentioned by the law is the sale or encumbrance in favor of the government or any of its branches, units or institutions.

In a number of cases, we have consistently ruled that a sale of homestead within the five (5) year prohibitive

period is void ab initio and the same cannot be ratified nor can it acquire validity through the passage of time.

In the case of *Arsenal vs. IAC*,^[10] we said:

"The above provisions of law are clear and explicit. A contract which purports to alienate, transfer, convey or encumber any homestead within the prohibitory period of five (5) years from the date of issuance of the patent is void from its execution. In a number of cases, this Court has held that such provision is mandatory (*De los Santos vs. Roman Catholic Church of Midsayap*, 94 Phil. 405)."

It is dangerous precedent to allow the sale of a homestead during the five-year prohibition to anyone, even to the homesteader's own son or daughter. As aptly put by the petitioners, a clever homesteader who wants to circumvent the ban may simply sell the lot to his descendant and the latter after registering the same in his name would sell it to a third person. This way, public policy would not be subserved.

Moreover, the sale to a descendant is not one of the exceptions contemplated by law. Only the government or any of its branches, units or institutions is given the right to acquire homestead by purchase at any time and even during the five-year prohibitory period. To hold valid the sale at bar would be to throw the door open to schemes and subterfuges which would defeat the law prohibiting the alienation of homestead within five (5) years from the issuance of the patent.

The respondent Court cited the case of *Lasud v. Lasud*,^[11] in support of its decision. Said case is not applicable to the case at bar, considering that the plaintiff, Sigbe Lasud sold the inherited homestead to his brother Santay Lasud and the latter's wife twenty-one (21) years after the patent was issued to his father the homesteader. On the other hand, the questioned conveyance in the case at bar was done within the five year prohibitory period. Furthermore, what was involved in the *Lasud* case is the right of therein plaintiff under Section 119 of the Public Land Law to redeem the portion sold. In contrast, the case at bar centers on Section 118 of the same law.

WHEREFORE, the assailed decision of the then Intermediate Appellate Court, now Court of Appeals, is REVERSED and SET ASIDE. The decision in Civil Case No. R-317 of the then Court of First Instance of Oriental Mindoro is REINSTATED. Costs against private respondent.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Penned by Justice Crisolito Pascual and concurred in by Justices Edgardo L. Paras and Serafin E. Camilon.

[2] Decision, Annex "A", Petition, pp. 20-21, Rollo, emphasis supplied.

[3] Penned by Judge Ildefonso M. Bleza.

[4] Commonwealth Act No. 141.

[5] Record on Appeal, pp. 77-78, Annex "C", Petition, p. 25, Rollo.

[6] p. 23, Rollo.

[7] Per resolution dated March 20, 1984.

[8] Decision, p. 22, Rollo.

[9] Emphasis supplied.

[10] 143 SCRA 49.

[11] 10 SCRA 425

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