

44 Phil. 624

[ G.R. No. 19742. March 16, 1923 ]

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIONER; PASTOR SAUSE, PAZ SAUSE, ENCARNACION SAUSE, AND MANUEL SAUSE, PETITIONERS AND APPELLEES, VS. MATEO PAYVA, ADMINISTRATOR AND APPELLANT.**

**D E C I S I O N**

**OSTRAND, J.:**

This case is now before the court upon a motion to dismiss the appeal. The order appealed from recites all the material facts and reads as follows:

“This matter is before the court upon a motion dated October 6, 1920, filed by Pastor, Encarnacion, Paz, and Manuel, all surnamed Sause, as heirs of Julio Sause, praying that in conformity with the provisions of section 72 of Act No. 496, the administrator of the intestate estate of Clara Amarmas be ordered to exhibit the duplicate of certificate of title No. 681 of lot 1298 of this cadastral record issued in the name of Clara Amarmas. It is alleged in the motion that during the lifetime of Clara Amarmas she sold ten hectares of this lot 1298 to Julio Sause, also deceased, with right of repurchase, and that the period of redemption having elapsed without the repurchase having been made, the heirs of the purchaser Julio Sause, deceased, wish to have such sale with right of repurchase noted on the said certificate of title, but the administrator of the deceased Clara Amarmas refuses to present the same.

“This motion was opposed by Mateo Payva, administrator of the estate of Clara Amarmas, deceased, on the ground that the heirs of the said deceased Julio Sause had presented to the committee on claims their claim for the debt of the deceased Clara Amarmas, which debt, it is alleged, was evidenced by a document

in the form of a sale with right of repurchase, and on account of which the administrator has already paid the sum of P315; and that by the mere fact of the heirs of the said Julio Sause, deceased, having presented their claim, they have waived their right and elected to be included among the ordinary creditors and to participate in the general assets of the inheritance. In support thereof he cites the doctrine laid down in the case of *Osorio vs. San Agustin* (11 Off. Gaz., November 5, 1913, p. 1862).

“The said motion was overruled by the court on November 1, 1920, on the ground that the heirs of Julio Sause have by waiver already lost the right claimed by them.

“The heirs of Julio Sause on December 11, 1920, petitioned the court that under the provisions of section 113 of the Code of Civil Procedure they be relieved from the effects of the order entered by this court on November 1, 1920, and given an opportunity to present evidence showing that the claim before said committee in the proceeding for the settlement of the testate estate of Clara Amarmas had to do with another transaction and not with the contract of sale with right of repurchase, copy of which is attached to their motion of October 6, 1920.

“And after the filing of various pleadings of the administrator opposing this motion, of a reply of the heirs of Julio Sause, and answer of the administrator to said reply, the court on January 24, 1921, entered an order, setting aside the order dated November 1, 1920, in accordance with the provisions of section 113 of the Code of Civil Procedure, and providing that the motion of the heirs of Julio Sause dated October 6, 1920, be set for hearing to give them an opportunity to prove the facts alleged in the said motion; and the matter having been set down for hearing in pursuance to this order on March 30, 1922, for the introduction of evidence, the following facts were established:

“That on July 8, 1916, Clara Amarmas executed a document of which Exhibit AA is a certified copy, whereby she sold with right of repurchase to Julio Sause, now deceased, his heirs and successors in interest, a parcel of land containing 10 hectares, which forms a part of lot 1298 and is described in the said document, it having been stipulated that the redemption of the said land was to

be made within 3 years from the said date, that is, July 8, 1919, by repaying the sum of P200, which was the purchase price, plus the expenses of the contract; that the heirs of Julio Sause presented to the committee on claims in the proceeding for the settlement of the estate of the deceased Clara Amarmas a claim for the sum of P200, based on this same deed of sale with right of repurchase; that no amount was paid from the estate of Clara Amarmas for the repurchase of the land mentioned in the deed, nor does it appear that any action was ever brought to effect such repurchase.

“The contention of the administrator now is that the heirs of Julio Sause having presented to the committee on claims a claim for the sum of P200 based on this deed of sale with right of repurchase, which sum of P200 is mentioned therein as the purchase price, such an act implies a waiver on the part of the said heirs of Julio Sause of their right under the sale with right of repurchase, and that thereby they became mere ordinary creditors of the estate of Clara Amarmas in the sum of P200. In support thereof the doctrine laid down in the case of *Osorio vs. San Agustin*, *supra*, is cited.

“In deciding this question, it should be noted in the first place that there is not, in the opinion of the court, any similarity between the present case and that cited by the administrator of the estate. In that case, the correct title of which is *Osorio vs. Hernandez* (11 Off. Gaz., November 5, 1913, p. 1862) there was involved a mortgage debt which was first presented by the mortgage creditor to the committee on claims as such creditor and having failed to obtain payment of his credit, he later brought an ordinary action for the foreclosure of the mortgage. The Supreme Court held that having first presented his claim to the committee on claims, he has waived his right as a mortgage creditor, thus converting his credit into an ordinary one; whereas in the present case it is alleged that the claim was presented by one of the heirs of Julio Sause, deceased, so as to render the sale with right of repurchase made by the deceased Clara Amarmas in favor of Julio Sause, also deceased, more effective.

“It is proven that the period of redemption stipulated by and between the deceased Clara Amarmas, as seller, and the deceased Julio Sause, as purchaser, expired on July 8, 1919, approximately 15 months before the filing by the heirs

of Julio Sause of the motion under consideration.

“And by virtue of the conclusive provision of the law, and of the precise terms of the deed of sale executed by the seller to the effect that ‘if said period elapses without the right of redemption being exercised, this sale will become absolute and irrevocable’ (verbatim), the expiration of the said period without the seller having exercised the right of redemption which she had reserved to herself operated the consolidation of the ownership of the buyer, Julio Sause, and, therefore, of his heirs over the property sold. And this property being the subject of a Torrens title, the movants are justified in asking for the relief prayed for in their motion, the provisions of section 72 of Act No. 496 invoked by them.

“For the foregoing the motion is granted and it is ordered that the administrator of the estate of the deceased Clara Amarmas surrender the certificate of title of lot 1298 issued in favor of the deceased Clara Amarmas to the Registrar of Deeds of this Province of Occidental Negros for the purposes applied for in the motion in question.

“So ordered.”

The administrator of the estate of Clara Amarmas filed a motion for a new trial, the motion was denied, and exception to ruling of the court noted, whereupon the appellant presented his bill of exceptions. Thereafter, the appellees filed a motion setting forth that the order in question was not appealable and asking that the appeal be denied and the bill of exceptions disapproved. This motion was denied by the court below, to which ruling the appellees excepted.

The appellees now renew in this court their motion for the dismissal of the appeal and maintain that the order appealed from having been issued upon a motion presented under section 72 of the Land Registration Act, it is not subject to appeal. The section referred to reads as follows:

“In every case where an attachment or other lien or adverse claim of any description is registered, and the duplicate certificate is not presented at the

time of registration to the register of deeds, he shall within twenty-four hours thereafter send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce the duplicate certificate in order that a memorandum of the attachment or other lien or adverse claim shall be made thereon. If the owner neglects or refuses to comply within a reasonable time, the register of deeds shall suggest the fact to the court, and the court, after notice, shall enter an order to the owner to produce his certificate at a time and place to be named therein, and may enforce the order by suitable process.”

There is some merit in the appellee’s contention that orders requiring the holder of a duplicate certificate to surrender the same for the annotation of an attachment or other lien or adverse claim under the section quoted is not appealable, and if the order here in question were merely a routine order of that character, we might well agree with him. But the order in this instance goes much farther; it resolves important questions as to the respective rights of the parties, questions not definitely adjudicated previously to its issuance, and requires the surrender of the certificate of title for an operation which will carry with it, as a necessary consequence, the eventual cancellation of the surrendered certificate and the issuance of a new one in favor of a different owner. That an appeal may be taken to this court from such an order admits of no doubt.

The motion is therefore denied.

*Araullo, C.J., Street, Malcolm,  
Avanceña, Johns, and Romualdez, JJ., concur.*