Supreme Court E-Library

FIRST DIVISION

[G.R. No. L-43668-69. November 21, 1978]

POTENCIANO MENIL and wife CRISPINA NAYVE, *petitioners, vs.* **COURT OF APPEALS, AGUEDA GARAN, FRANCISCO CALANIAS, MIGUEL NAYVE, JR., and DEVELOPMENT BANK OF THE PHILIPPINES,** *respondents.*

APPEARANCES OF COUNSEL

Bernardino O. Almeda for petitioners.
Raul O. Castillo for respondent DBP.
Ismael B. Sanchez for other private respondents.

RESOLUTION

GUERRERO, *J.*:

Petitioners' first motion for reconsideration having been denied for lack of merit and its denial considered final in the court's Resolution of October 4, 1978, the motion for leave to file a second motion for reconsideration is NOTED.

We must, however, make a correction of typographical errors and a modification in the dispositive portion of Our decision in order to conform to the Court's findings of facts and to the law and jurisprudence applied thereto.

Thus, on page 5 of the Decision, line 11, the date "May 7, 1960" should read "November 3, 1955."

Since We ruled that the deed of sale executed within the 5-years prohibitory period was null and void, the vendor-homesteader (the private respondent herein) must return or reimburse the price of the sale to the vendees who are the petitioners.

Accordingly, par. (3) of the dispositive portion should read:

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(3) Ordering respondent Agueda Garan to reimburse petitioners Potenciano Menil and his wife, Crispina Nayve, the sum of ₱415.00, the price of the sale, the interest thereon being compensated by the fruits which petitioners had received during their possession of the homestead.

We also modify par. (4) of the dispositive portion to read as follows:

(4) Ordering petitioners to pay the agricultural loan obtained by them from the Development Bank of the Philippines for which the land had been mortgaged as collateral. In case the loan remains unpaid within thirty (30) days from finality of the judgment, the private respondent, instead of reimbursing ₱415.00 to the petitioners, may use the same and turn over the amount to the mortgagee to be credited as payment of the mortgage debt.

With respect to the rest of the dispositive portion, Our decision remains.

SO ORDERED.

Teehankee (Chairman), Makasiar, Muñoz Palma, and *Fernandez, JJ.*, concur.