



The Family Home: Its Concept, Philosophy and Registration

By Commissioner ANTONIO NOBLEJAS

I have chosen for my subject matter this afternoon a rather rare subject — the subject of the Family Home. Aside from the fact that the provisions governing family home in our Civil Code are entirely new, it has been observed that very, very few people are aware of said provisions, and that still less people have ever taken advantage of them. Now, this is a pity, because the provision in the Civil Code for a Family Home is one of the most beneficial safeguards that our laws have so far afforded for the protection, security and happiness of our people. Furthermore, the means provided in the law for availing of the advantages of said provisions are so relatively easy, and cheap, that the bother they entail to secure said advantages need not be a deterrent at all for those who may desire to avail themselves of it. I have deemed it therefore, my duty and privilege to acquaint you now with this valuable innovation in our laws, and to entice you as far as possible to take advantage of it for the sake of yourselves and your families, by giving you full information about this new subject of the Family Home and how to secure the privileges of its protection.

The concept of the family home, prior to the enactment of the new Civil Code, was little known in Philippine jurisprudence. As had been aptly observed by the Code Commission, the Philippines is far behind other countries on this subject and it is high time that our local legislation kept pace with the modern trend along this line. Indeed, if one were to scan over the pages of our volumes of legal jurisprudence, one would invariably note the dearth of statutes and local authoritative treatises on the matter. Due to the paucity of adequate legislation on family home, it was not uncommon in our country to witness the sad plight of a poor family constrained to leave its cherished ancestral home, the scene of countless happy and unforgettable memories, just because the same had been the object of a forced sale, attachment, or execution. It is utterly heart-rending to see a man and his family, with tears streaming down their cheeks, taking a last anguished glance at the abode and the land that had once been their own and where they had spent

* Speech delivered over the radio, on September 12, 1963.

the best years of their lives, simply because there was no law which could afford them adequate protection against the violent winds and stormy gales of life unleashed by unscrupulous money-lenders and shrewd judgment creditors.

True, there was in existence prior to the innovation in the new Civil Code, Section 12, paragraph (a), Rule 39 of the Rules of Court, which exempts from execution a debtor's homestead and the land used necessarily in connection therewith, both not exceeding in value three hundred pesos; but such solitary provision of law, and the obvious inadequacy of the value allowed, did not suffice to eliminate from the Philippine scene such touching episodes which inescapably depict the instability and insecurity of family home life. Hence the Code Commission, desirous of providing a permanent abode for a family where it may reside and enjoy the comforts of a home free from the anxiety and fear that it may be taken away against the family's will by its creditors, saw it fit and proper to incorporate in the new Civil Code a novel chapter entitled "The Family Home", whose humane and benign provisions were patterned after the laws on the same matter in Switzerland, Mexico, and most particularly, of California. In the Code Commission's report on the proposed Civil Code, it stated that the family home needs and is deserving of the protection of the law; that the home is the seat and symbol of family affection; and that it should not be liable to seizure for debts except in certain special cases.

A family home, known as "homestead" in California and in Switzerland, while it is termed as "family patrimony" in Mexico, is the dwelling house where a person and his family reside and the land on which it is situated. Similarly, under Article 223 of our new Civil Code, "the family home is the dwelling house where a person and his family reside, and the family home is constituted as provided in the succeeding articles of the same Civil Code, said family home shall be exempt from execution, forced sale or attachment, except in special cases as provided in the same chapter of the Code.

With respect to its constitution, under the new Civil Code, there are two ways of constituting a family home, namely, judicially and extra-judicially. A family home may be judicially constituted by means of a verified petition filed with the Court of First Instance by the owner of the property, to be approved by the Court. The petition shall contain a description of the property, an estimate of its actual value, the encumbrances thereon, a statement that the petitioner is actually residing in the premises, and the names of all creditors of the petitioner as well as that of the beneficiaries of the family home. If the court finds, after due publication of the pe-

tion and notice to all creditors and mortgagees, that the actual value of the proposed family home does not exceed twenty thousand pesos, or thirty thousand pesos in cases of chartered cities, and that no third person is prejudiced thereby, the petition shall be approved. The judicial order approving the establishment of the family home shall be recorded in the Registry of Property. (Arts. 223, 227, 230, 231, and 233, New Civil Code.)

Extrajudicial constitution of a family home may be made by recording in the Registry of Property a public instrument stating that the owner establishes a family home out of a dwelling place together with the land on which it is situated. The declaration setting up the family home shall be under oath and shall contain a statement that the claimant is the owner of, and is actually residing in the premises, a description of the property involved, an estimate of its actual value which should not exceed twenty thousand pesos, or thirty thousand pesos in chartered cities, and the names of the claimant's spouse and other beneficiaries. The recording in the Registry of Property of such declaration is the operative act which creates the family home. (Arts. 240, 241 and 242, New Civil Code.)

It is significant to note that in the creation of a family home, whether by judicial or extrajudicial means, the law specifically requires that registration of the instruments relative to the formation thereof be effected in the Registry of Property. In cases of judicial constitution, the order of the court approving the establishment of the family home should be presented for inscription in the Registry of Property, while the public instrument whereby a person declares that he established a family home out of his dwelling with the land on which it is situated, should be submitted for registration in cases of extrajudicial creation of a family home.

In the establishment of a family home, complications arise, not so much in obtaining a court order for its creation or in executing the necessary document for its formation, as in their registration which is the operative act of giving birth and legal existence to the family home. One important legal poser in the matter of registration of a family home is "what fees should be charged or applied in recording an instrument creating a family home in the Registry of Property?"

The constitution of a family home does not involve a transaction or conveyance. It simply involves an order of the court creating a certain house and lot as a family home, or a public instrument declaring a house and the land on which it stands as such.

In effect, it partakes of the nature of an instrument declaring a right of interest affecting property previously registered. For this reason, it seems more tenable to maintain, just as the Land Registration Commissioner has consistently maintained, that registration of a family home should fall under Paragraph C-6 of Section 11 of Act No. 496, otherwise known as the Land Registration Law, as amended by Republic Act No. 928, pertaining to "Annotation of an Order of the Court", No. 2 of which reads: "To register a document or any right or interest, for each certificate of title. . . ₱2.00 registration fee". An instrument constituting a family home extrajudicially may logically be placed in the same category as the Order of the court, inasmuch as the law gives the former the same result and effect as the latter. This was ruled by the Land Registration Commissioner in its 3rd Indorsement to the Register of Deeds of Cagayan de Oro City dated December 6, 1954, and has consistently maintained the same rule ever since.

Article 223 of the New Civil Code which defines a family home as the dwelling house where a person and his family reside, and the land on which it is situated, gives rise to the question whether or not a house alone may be constituted as a family home and registered as such. In a case that was elevated on appeal to the Land Registration Commissioner involving the issue of whether an abode excluding the lot on which it stands may be registered as a family home, the Commission, relying on the jurisprudence of the country from which our law had been modelled, emphatically and in lucid language ruled:

"The provisions on family home incorporated in the New Civil Code are more particularly intended to afford protection to those who are less favored in life. It is axiomatic that one who can afford only a house is much poorer than one who can afford both a house and a land. Consequently, if the owner of the house together with the land on which it is erected is granted certain privileges by the law, it stands to reason that the same, if not more, privileges should be conferred upon one who owns only the house; otherwise, the benefits of the law will be placed beyond the reach of those who need them most, contrary to the evident intention of its authors.

"Article 1237 of the Civil Code of California, after which Art 223 of our Civil Code was patterned, provides as follows:

"Article 1237. The Homestead consists of the dwelling house in which the claimant resides, together with out-buildings and the land on which the same are situated, selected as in this title provided."

"A comparison of Art 223 of our Civil Code and Article 1237 of the California Civil Code will readily show that the former is practically a reproduction of the latter. The only difference is that our Civil Code uses the more suitable term "family home" instead of "homestead", which, under our laws, has grown to connote a different meaning in view of the provisions of our Public Land Law, Significant, too, is the fact that the phrase "and the land" is likewise found in Art. 1237 of the California Civil Code. In the absence of local authoritative treatises on the matter, therefore, resort may be had to the jurisprudence of California on the matter. In that jurisdiction, it has been squarely and definitely decided that the statute secures the homestead (meaning, family home), to a person *owning and occupying a house on land not his own.* (McKee v. Wilcos, 83 Am. Decisions 743).

"Incidentally, it may not be amiss to state here that the Civil Code of California does not require a person who desires to make a declaration of a homestead (family home) to have a fee (meaning absolute ownership) in the land, or any particular title thereto. This was the decision in the case of Alexander v. Jackson, 92 Cal. 123, or 155 Pac. 625; were possession under a contract of sale give the vendee an equitable title to land sufficient to support a homestead. (As decided in Perry v. Ross, 104 Cal. 15, 43 Am. St. Rep. 66, 37 Pac. 757). A debtor need not be the absolute owner in fee in order to establish a homestead right to land; the debtor's estate may be equitable only and not legal and yet he will be entitled to the benefit of the Homestead Law (meaning, law on Family Home), (Thompson on Homestead, Secs. 165 and 170.)"

The foregoing pronouncements made by the Land Registration Commissioner in its Resolution to L.R.C. Consulta No. 33 dated March 8, 1955, are believed to be in keeping with the reason, spirit, and policy of the law on family home, which is to save the debtor from being deprived by his creditors of the shelter of his homestead, for upon principle, there really seems to be no plausible or valid reason why ownership of a home without land should not give a person the right to claim it as a family home against his creditors. If his right in the home alone is of sufficient value to the object of desire by his penurious creditors, it would certainly be of significant value to that person to have it protected under the law.

If an instrument extrajudicially creating as family home a house excluding the lot on which it stands may be accepted for registration, no other question which would inevitably arise is: "Under what law may such instrument be recorded?" The ruling of the Land

Registration Commission on this very point as embodied in the Resolution I have mentioned before, is as follows; and I quote:

"The one last question which, though not touched upon the Register of Deeds, should nevertheless be decided, is whether the instrument of extrajudicial declaration of a family home covering a house may be registered under Act No. 3344. Does Act No. 3344 allow the recording of instruments affecting a building alone? This question had been answered in the affirmative in the case of San Juan del Monte vs. Hernandez, et al. (G. R. No. 34883, promulgated by the Supreme Court on Oct. 28, 1931) where it was held as valid a mortgage recorded under Act 3344 involving a camarin only without including the land on which it stands."

A judicial order establishing a family home out of an abode, being more or less on the same footing as an instrument extrajudicially forming the same, may, in the light of the aforementioned ruling, likewise be inscribed under Act No. 3344.

After registration, a family home, whether constituted judicially or extrajudicially, becomes exempt from execution, forced sale, or attachment, except for a non-payment of taxes and foreclosure of mortgage, if judicially formed. If extrajudicially established, a family home becomes liable only for the two aforesaid liabilities, and for debts incurred prior to the extrajudicial creation and those due to labor and materialmen.

As thus seen in the foregoing discussion, the law on family home has deep paternalistic concern and solicitude for the members of society as a whole by seeking to protect their homes from unjust and unwarranted claims of creditors and loan sharks. With the law on family home constantly on guard against attachment, forced sale or execution of a family home, except as authorized by law, the same becomes a true family haven, safe, secure, and impregnable as the Rock of Ages, which can no longer be moved nor shattered by the greed, rapacity, whims, and caprices of ravenous creditors or other ill-willed mercenaries.

In conclusion therefore, I hereby counsel every owner of a home or dwelling, to secure for himself and his family the blessings of this law affording to each and all of us who may be sufficiently concerned, the haven of a decent home and the security of a family life free from the harassment of unscrupulous men who may be covetous enough to strip us of the last vestige of our decency in living and our dignity as human beings.

I thank you.