101 Phil. 315

[G. R. No. L-7820. April 30, 1957]

MIGUEL CARAM AND FERMIN G. CARAM, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND ROSARIO MONTILLA,, RESPONDENTS.

D E C I S I O N

BENGZON, J.:

Miguel Caram and Fermin G. Caram filed this action in the Negros Occidental court of first instance to repurchase from Eosario Montilla the portions of the Hacienda Montelibano which had been sold to the latter by their sisters Elena and Salud. They invoked article 1067 of the Civil Code providing that if any of the heirs should sell his hereditary rights to a .stranger before the partition any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale etc.

After hearing the parties Hon. Eduardo D. Enriquez, Judge, absolved the defendant inasmuch as the complaint and the offer to repurchase had been made after December 9, 1949, date when the Caram co-heirs executed the *convenio de partieion* Exhibit E-l.

When the decision was taken to the Court of Appeals it was affirmed. Hence this petition for review, which was given due course to consider the allegations and arguments hereinafter to be mentioned. The material facts are these:

In April 1939 Juan Caram died. In September of the same year his widow Maria Gacibe also died. During their lifetime the spouses owned the "Hacienda Montelibano" in the Municipality of Isabela, Negros Occidental. They left, as legitimate heirs, two sons and three daughters named Miguel and Fermin, Magdalena, Elena and Salud.

On May 25, 1949, Salud Caram sold to Rosario Montilla by the document Exhibit P a ten-hectare portion of her share of the Hacienda Montelibano.

On September 19, 1949, Salud Caram executed another deeument (Exhibit Q) whereby she

conveyed to Rosario Montilla her whole share of the Hacienda Montelibano at the rate of P1,000.00 per hectare.

On October 19, 1949, by means of Exhibit M, Elena Caram sold to Rosario Montilla ten hectares of her share in the same "Hacienda Montelibano".

On December 9, 1949, the above-mentioned five Caram heirs executed the document Exhibit E-l entitled "con-venio", which was a partition agreement, wherein among other stipulations they agreed to subdivide the said Hacienda Montelibano into five equal lots to be distributed among them by lot. And a few days thereafter, in the court and case wherein intestate proceedings had been instituted to settle their parents' estate, they asked for the court's approval of said partition agreement, at the same time requesting that they be declared the sole heirs of the late spouses.

Dated December 15, 1949, the probate court issued an order in accordance with the above prayers, saying in part:

> "EN SU VIRTUD, quedan declarados herederos do los finados esposos D. Juan Caram y Doña Maria Gacibe de Caram a sus cinco (5) hijos legitimos a saber; Elena Caram Vda. de Robles, Miguel Caram, Fermin G. Caram, Magdalena Caram Vda. de Saad y Salud Caram de Garcia, y se ordena la distribucion y adjudication a cada uno dc los mismos de bus rcspectivas hijuclas en los bienes de-jados por los referidos finados esposos, segun y de aeuerdo con los terminos del convenio anexo 'A' a la moeion de declaration de herederos.
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> SE ORDENA al eseribano que transmita copia certificada de la motion de declaraci6n de herederos y del convenio Anexo 'A' a dicha motion al Registrador de Titulos de la Provincia de Negros Occidental para todos los efectos legales.
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> Tan pronto como los impuestos de caudal hereditario y de herencia (estate and inheritance taxes) hayan sido pagados y vmidos a este expediente los recibos officiates correspondientes, asi como el comprobante de haber los herederos recibido sus respectivas participaciones en]a heroncia, se da por terminado y cerrado esta expediente, relevando al administrador de toda responsibilidad. Transmitase copia de esta orden al agente de Rentas Internas en la Ciudad de Baeolod." (Exhibit B)

On December 19, 1949, by the document Exhibit N Salud Caram and Rosario Montilla annulled the two previous documents Exhibits P and Q, and agreed on a Sale by the former to Rosario Montilla of her share of the "Hacienda Montelibano" at the rate of P1,000 per hectare.

In accordance with the above "convenio" and the court's approval thereof, a surveyor's plan was drafted subdividing the Hacienda, into five equal portions, and after it was approved by the proper authorities, a lottery was held in January 26, 1950 in the presence of the clerk of court with the result that Miguel Caram got the lot numbered 1334-A; Fermin G. Caram lots Nos. 355 and 354; Magdalena Caram lots Nos. 361 and 354-C; Elena Caram lot No. 354-B; and Salud Caram lota Nos. 354-D, 1334-B and 100. The drawing of the lots was conducted in the presence also of lawyers representing the above five legitimate heirs.

On February 15, 1950, Miguel Caram and Fermin Caram addressed a telegram to Rosario Montilla stating they had just heard rumors their sisters Salud and Elena had sold to her (Rosario) their respective shares in the Hacienda Montelibano and notifying her (Rosario) they had resolved to repurchase or redeem as co-heirs. Rosario Montilla replied that everybody know about the sales, and that she was unwilling to resell.

Wherefore this litigation was started on February 23, 1950.

It will be observed that as to Salud Caram the only conveyance to be considered is that of December 19, 1949, Exhibit N. The two previous sales Exhibits P and, Q have been annulled by the parties themselves. Now, such conveyance Exhibit N. took place *after* Decembr 15, 1949, date when the Court approved the partition agreement Exhibit E-1 between the Caram heirs. Therefore such conveyance or sale does not come within the purview of article 1067, invoked by plaintiffs, which speaks of sales by a coheir *before the partition.*

In their third assignment of error, however, plaintiffs-appellants contend that Exhibits P and Q could not be annulled legally by Salud and Rosario, because after their execution herein plaintiffs acquired the right to repurchase, which would thereby be affected. The argument must be overruled however because their right to repurchase never arose, for the reason that they never knew of the sales and they asserted no right within the time prescribed by law. The seller undoubtedly could, with the consent of the purchaser, annul the sale for any reason satisfactory to both, for instance, non-payment of the price, or non-delivery of the crops, or any misunderstanding concerning the same.

To repeat then, inasmuch as the sale by Salud took place *after* the partition, Exhibit E-1, the

plaintiffs have no right under article 1067.

Again, they argue that the partition was null and void because they had affixed their signature thereto without having been previously informed of the executed sales contracts by their co-heir Salud. It is doubtful whether that would be sufficient ground for annulment: Salud might not have informed them because the contracts were anyway null or have not been carried out for reasons we do not know. But it is clear that annulment of the partition can not be decreed unless the other heirs, namely Magdalena, Elena and Salud Caram *are made parties defendant* herein—which they are not.

That the "convenio" Exhibit E-l and the approval by the Court thereof constituted a partition for the purpose of article 1067 can not be denied.[1]

In fact appellants make no serious effort to question the idea. But they argue that such partition automatically converted the "co-heirs" into "co-owners" and therefore, as such co-owners they could assert the right to repurchases under artiele 1524 of the Civil Code. Correct indeed is their view as to the resultant co-ownership. (Alcala vs. Pabalan, 19 Phil. 52; Castro vs. Castro, 97 Phil., 705, 51 Off. Gaz. 5612). Yet the co-ownership having terminated after the actual subdivision of the Hacienda into lots, and the raffle thereof on January 26, 1950, it was too late for these plaintiffs to claim legal redemption on February 15, 1950 of the portion assigned to their sisters, because at that time the co-ownership had ceased to exist, there were no co-owners who could rightfully redeem. The legal redemption among co.-owners presupposes the existence of a co-ownership. (10 Manresa 322.) Indeed Inasmuch as "the purpose of the law in establishing the right of legal redemption between co-owners is to reduce the number of the participants *until the community is done away with*," (Viola vs. Teeson, 49′ Phil. 808), once the property is subdivided and distributed among the co-owners, the community has terminated and there is no reason to sustain any right of legal redemption. As the trial judge said, *sublata causa, tollitur effectus*. (Cf. Saturnino vs. Paulino, 97 Phil., 50).

The foregoing remarks, needless to repeat, have reference to the sale made by Salud Caram to Rosario Montilla *after the partition*.

The conveyance by Elena Caram to defendant Montilla took place on October 19, 1949 *before the partition* agreement and approval by the court in December 1949. Nevertheless the result is the same, because we held in Saturnino vs. Paulino supra "that the right of redemption under article 1067 may be exercised only *before partition*". In this case the right

was asserted not only after partition but after the property inherited had actually *been subdivided* into several parcels which were assigned by lot to the several heirs. Be it said in this connection that the division was effective without the need of further court approval, because it was made in accordance with the "convenio" which the court had previously approved by an order which neither expressly nor impliedly contemplated further court action in the premises.

The alleged secret maneuvers of herein defendant to hide from plaintiffs the existence of the conveyances are immaterial even if true they were not so found by the Court of Appeals because there was no law expressly imposing on her the duty to notify the other heirs. Moreover if we were to apply the New Civil Code as indicative of the probable legislative intent or the proper juridical conduct, that duty devolved upon the vendor (Art. 1088). not on the purchaser, the herein defendant.

The last argument of the appellants is this: Inasmuch as the Hacienda Montelibano is registered under the Torrens system and Montilla's acquisition has. not been registered in the Register's Office, the sales made by Salud and Elena can not affect these appellants who were not parties thereto.

The answer is simple: if as to appellants there was no sale by their sisters, then they have no right to repurchase; because if nothing had been sold, nothing could be repurchased.

In view of the foregoing considerations, we find no error in the dismissal of the complaint by the two lower courts. Judgment affirmed with costs. So ordered.

Padilla, Reyes, A., Labrador, Concepdon and *Felix JJ.*, concur.

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[1] Alcala vs. Pabalan, 19 Phil. 520; De Jesus vs. Daza, 77 Phil., 162, 48 Off. Gaz. 2055; Do Jesus its. Manlapus, 81 Phil., 144, 45 Off. Gaz. 5443.

DISSENTING OPINION

PARAS, C. ,J.,

This case, reduced to its bare essentials, is comparatively easy and fundamental.

Even granting that there was a partition of the inherited common property by virtue of the order of. the Court of First Instance dated December 15, 1949—still in view of the fact that the "partition" consisted in giving aliquot indeterminate portions to the co-heirs, the specific distribution of which was to be conducted only after a raffle held for the purpose—it is undisputable (even the respondents admit this—Respondents' Brief, pp. 45 and 57) that after the co-heirship vanished, a co-ownership began. Stated differently, while the right to redeem as co-heirs ended the right to redeem as co-owners began to exist, and could indeed, in proper cases be allowed. (Saturnino vs. Paulino, et als., 97 Phil., 50, cited by respondents.) This ruling has been reiterated in the case of Castro, et al. vs. Castro, 97 Phil., 705, 51 Off. Gaz., 5612, penned by Mr. Justice Bengzon as follows:

'With reference to tile adjudication, which the Court of Appeals seemingly considers essential to the enjoyment of the right of redemption among co-heirs, it should be noted that a property may he adjudicated either to one heir only or to several heirs pro-indiviso. In the first case, the adjudication partakes, at the same time of the nature of a partition. Hence, if the ~ property, is sold by the heir to whom it was adjudicated, the other heirs are not entitled to redeem the property, for as regards the same, they are neither co-heirs nor co-owners. In the second case, the heirs to whom the property was adjudicated pro-indiviso are, thereafter, *no longer co-heirs, but merely co-owners*. Consequently, neither may assert the right of redemption conferred to co-heirs, *although, in proper canes, they may redeem as co-owers*, under Arts. 1522 of the Civil Code of Spain. (Article 1620, Civil Code of the Philippines.)"

Now, then, in the instant case, could redemption as co-owners be effected? Obviously, the answer is the affirmative inasmuch as the action to enforce redemption was brought on February 23, 1950—clearly within the legal period of nine (9) days provided for under Article 1522 of the old Civil Code—because knowledge of the sale was had by the petitioner only on February 17, 1950.

It is not material that the raffle itself took place on January 26, 1950, and that the co-ownership may be said to have ended on that same day. Because for the purpose of legally redeeming a share sold PRIOR to the partition, the co-ownership should still be deemed to exist, at least until after the expiration of the nine-day period for redemption, counted from the date of notification to or knowledge by the would-be redemptioners. A contrary doctrine— that is, a doctrine that would prevent redemption simply because from one angle there is no longer any co-ownership nor any co-owner—would indubitably be absured—since this would render nugatory, in many instances, the right of a co-owner to redeem.

That such a right could indeed be nullified by a contrary doctrine is evident in a case when partition (or the extinguishment of co-ownership) is made, say on the day next following the sale of a share. It must be borne in mind that the right of legal redemption granted to a co-owner exists not only to reduce the number of co-owners but also to grant preference to those who are already interested, sentimentally, financially, or otherwise in the property.

It is not true that by consenting to the project of partition hereinabove referred to that the petitioners waived their right to redeem. For one can waive only what he knows to be his right. In the instant case, knowledge of the sale was had only on February 17, 1950.

Inasmuch as redemption was sought to be effected six days later, from knowledge, it follows that, very clearly said right should be granted.

Bautista Angelo, J., concurs.

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