

FIDELA C. LEGASPI, PETITIONER, VS. COURT OF APPEALS, ROMANA YAP VDA. DE AGUILAR, SUBSTITUTED BY HER HEIRS, NAMELY: DOMINADOR JR., FELICIANO, EVANGELINA, ADORACION, TERESITA, OFE...

G.R. No. L-39877. February 20, 1976

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition for review on certiorari of the decision of the Court of Appeals in its C.A.-G.R. No. 52907-R, reversing the judgment of the Court of First Instance of Cavite, Branch III.

The factual background of the case is as follows:

On December 14, 1971, petitioner instituted a civil suit against the private respondents herein, for legal redemption and damages, alleging among others the following:

"2. That plaintiff is the owner in fee simple of NINETY SEVEN (97) SQUARE METERS, Western portion, of Lot No. 267 of the Cadastral Survey of Kawit, located at Binakayan, Kawit, Cavite, which parcel of land is bounded as follows, to wit:

Northeast - Lot No. 266

Southeast - Lot No. 266 and an alley

Southwest - Lots Nos. 272, 271 and 268

"3. That the aforesaid portion owned by the plaintiff abuts Lot No. 268 of the Cadastral Survey of Kawit, Cavite, with an area of FIFTY-NINE (59) SQUARE METERS;

"4. That the quondam owner of the aforesaid Lot No. 268 was the late Lucia Daplas, and in virtue of successional rights defendants Claro, Maria and Antonio, all surnamed Pestejo, became the owners thereof;

"5. That a portion of the ancestral house of plaintiff is erected on a portion of Lot No. 268, remodeled in 1969, because it was believed that the same belonged to the parents of plaintiff, until it was found out that it belonged to defendants Claro, Maria and Antonio, all surnamed Pestejo;

"6. That upon agreement, defendants Claro, Maria and Antonio, all surnamed Pestejo, allowed plaintiff to let a portion of her house remain in a part of the aforesaid Lot No. 268, with the knowledge of defendant Romana Yap Vda. de Aguilar;

"7. That sometime in 1963, plaintiff made representation with defendants Claro, Maria and Antonio, all surnamed Pestejo, for her to exercise the right of pre-emption by offering to buy Lot No. 268 in the event that they would sell it;

"8. That albeit there was an agreement for plaintiff to buy and for defendants, Claro, Maria and Antonio, all surnamed Pestejo, to sell, yet the projected sale was not pushed through because the consideration asked for was the staggering sum of NINE THOUSAND PESOS (P9,000.00), Philippine Currency, for Lot No. 268, situated in the interior and with an area of 59 sq. m. only;

"9. That very recently, sans notice to plaintiff, she learned that the aforesaid Lot was sold and vended to defendant Romana Yap Vda. de Aguilar for the sum of P1,500.00 only;

"10. That plaintiff, availing herself of the right of redemption, demanded from defendants that she be subrogated to the rights of defendant Romana Yap Vda. de Aguilar over Lot No. 268 by reimbursing the consideration paid by her, but they dishonored her demand and still refuse to honor it;

"11. That plaintiff has a better use of the aforesaid Lot No. 268 inasmuch as a portion of her house is erected thereat than defendant Romana Yap Vda. de Aguilar;

"12. That in bringing this suit plaintiff would have to spend the sum of FIVE HUNDRED PESOS (P500.00), Philippine Currency, for legal fees and incidental expenses, and the further sum of ONE THOUSAND FIVE HUNDRED PESOS (P1,500.00), Philippine Currency, as agreed attorney's fees."

On January 3, 1972, respondents moved to dismiss the civil complaint for alleged lack of cause of action. Petitioner opposed the said motion to dismiss on January 11, 1972, averring therein that petitioner, having been denied her right of pre-emption, is resorting to legal redemption under Article 1622 of the New Civil Code, claiming that she has a "better use and utility" of Lot No. 268 as her house occupies a portion thereof. The trial court issued an order dated January 11, 1972, postponing the resolution of the motion to dismiss until after the evidence of the parties shall have been actually presented, which order reads as follows:

"* * * * *"

"The real question here now is who among the adjoining owners has a better right to buy this small piece of land measuring 59 square meters, where by admission of parties part of the house of the plaintiff is standing. Should it be the plaintiff who has part of her house standing on the same lot or the other three adjoining owners including the buyer now co-defendant, Romana Yap Vda. de Aguilar, who has no improvement standing on the lot? This being the case it is clear that it is evidentiary in nature rather than argumentative that should control the validity of the motion to dismiss. The Court is of the opinion and so holds that the resolution of this motion to dismiss should be postponed up to the time when enough evidence shall have been presented to have the Court decide as to the real issues involved, factual and legal.

"WHEREFORE, the motion to dismiss not being indubitable, the resolution thereto is hereby postponed after the evidence of parties shall have been actually presented; and upon petition of the movant, defendants are given 10 days from today to file the corresponding pleadings."

Respondents thereafter filed their Answer With Counterclaim denying the material allegations of the complaint and alleging that notice to adjacent owners of the sale is not necessary; that by reason of the frivolous and unfounded action by the plaintiff, they stand to suffer actual damages and the amount of P1,000.00 as attorney's fees. In answer to the counterclaim, petitioner denies the same and avers that her suit is supported by law and anchored on equity.

Issues having been joined, trial of the case ensued, and on February 2, 1973, the Court of First Instance of Cavite, Branch III, rendered judgment for the petitioner, the dispositive portion of which reads as follows:

"WHEREFORE, in view of all the foregoing considerations the Court is of the opinion and so holds that the evidence is overwhelmingly in favor of the plaintiff, and for which reason, the defendant Romana Yap Vda. de

Aguilar, and upon her death her forced heirs, are hereby ordered to execute a deed of reconveyance in favor of the plaintiff Fidela C. Legaspi of the 59 square meters covered by TCT No. T-55612 in her name in favor of Fidela C. Legaspi, after the plaintiff shall have reimbursed to her or her forced heirs the amount of P1,500.00 she paid to her co-defendants, the Pestejos, by way of redemption; the defendants to pay to the plaintiff P500.00 by way of expenses of litigation; the amount of P1,000.00 by way of attorney's fees; and, the costs of proceedings."

Not satisfied with the judgment of the trial court, respondents appealed to the respondent Court of Appeals which rendered judgment on November 11, 1974, for the respondents, the dispositive portion of which reads as follows:

"IN VIEW WHEREOF, this Court is constrained to reverse, as it now reverses, case is dismissed, no more pronouncement as to costs."

Motion for reconsideration having been denied, petitioner interposed the instant petition for review and reversal of the decision of the Court of Appeals dated November 11, 1974.

There is no dispute that both petitioner and respondent Romana Yap Vda. de Aguilar (substituted by her heirs and hereinafter referred to as respondent Aguilar), are adjoining owners of Lot No. 268; that lot 268 was sold by the Pestejos to respondent Aguilar; that prior to the sale of lot 268, petitioner tried to exercise her right of pre-emption over the said lot, as early as 1963, from respondents Pestejos as a portion of her ancestral home occupies a part of the same, but she failed as the price demanded was exorbitant and was fixed at P9,000.00; that sometime in July 1971, respondent Aguilar bought lot 268 from her co-respondents, the Pestejos, for only P1,500.00; that immediately upon learning of the sale of lot 268, petitioner sought the redemption of the property in her favor from the private respondents but it was flatly denied.

From the foregoing uncontroverted facts of the case, arises the issue as to –

Who between the contending adjoining lot owners has the better right over the 59-square meter piece of land under litigation.

Considering that in the case at bar the findings of the Court of Appeals are contrary to those of the trial court, a minute scrutiny by this Court is in order, and resort to duly proven evidence becomes necessary. (Tolentino vs. De Jesus, et al., L-32797, March 27, 1974, 56 SCRA 167)

It may not be amiss to state that the trial court found the weight of the evidence heavily in favor of the petitioner. In its decision under date of February 2, 1973, the trial court said:

"It is proven that when in 1969 after the defendant Pestejos discovered that a portion of the house of the plaintiff is standing on a portion of Lot 268 they tolerated her possession thereof; and, later in 1969 when she decided to make improvements on the said house by way of reconstruction they allowed her to do so unconditionally. It is further proven that in order to exercise her right of pre-emption, the herein plaintiff offered to buy the said Lot 268 for P3,000.00 but that the Pestejos deliberately refused the same and exacted thereof the staggering amount of P9,000.00. But much later about July of 1971 defendant Pestejos upon maneuvers of their co-defendant Romana Yap Vda. de Aguilar finally sold to the latter the same lot 268 for P1,500.00; and that by reason thereof on November 16, 1971, defendant Romana Yap Vda. de Aguilar was able to secure Transfer Certificate of Title No. T-55612 in her name from the Register of Deeds even without complying with the legal provision to the effect that in connection with the said issuance of the aforementioned Transfer Certificate of Title No. T-55612 there should have been filed with the office of the Register of Deeds the corresponding affidavit to the effect that before allowing said Romana Yap Vda. de Aguilar the right of pre-emption that they have notified in writing the abutting land owners, particularly, Fidela C. Legaspi, the herein plaintiff, of their decision to sell said Lot 268 in favor of Romana Yap Vda. de Aguilar who has lesser right to pre-emption than the herein plaintiff. This further shows bad faith on the part of defendants in securing

this latest Transfer Certificate of Title covering Lot 268. Inasmuch as the said Transfer Certificate of Title was already issued in the name of Romana Yap Vda. de Aguilar and she having already died, the duty of executing the corresponding Deed of Reconveyance in favor of the plaintiff must necessarily fall on her forced heirs."

There is no denying that the parcels of land involved in the case at bar are all urban land. Not only are the lots concerned situated in a thickly populated area in Binakayan, Kawit, Cavite, but also they are actually used for residential purposes. That it is urban land has been decided by this Court in numerous similar cases. To this situation, the provision of law governing the parties is Article 1622 of the New Civil Code, a new provision introduced in our present Civil Code covering specifically the rights of pre-emption and redemption of adjoining owners of urban land, more specially the third paragraph thereof which provides as follows:

"ART. 1622. Whenever a piece of urban land * * * * *

* * * * *

When two or more owners of adjoining lands wish to exercise the right of pre-emption or redemption, the owner whose intended use of the land in question appears best justified shall be preferred."

We take judicious note of the finding of the trial court that "in 1969 after the defendant Pestejos (co-respondents herein) discovered that a portion of the house of the plaintiff (now petitioner) is standing on a portion of Lot 268 they tolerated her possession thereof; and, later in 1969 when she decided to make improvements on the said house by way of reconstruction they allowed her to do so unconditionally. It is further proven that in order to exercise her right of pre-emption, the herein plaintiff (petitioner) offered to buy the said Lot 268 for P3,000.00 but that the Pestejos deliberately refused the same and exacted thereof the staggering amount of P9,000.00". Clearly, therefore, years before the sale of the lot in question to respondent Yap, petitioner availed herself of her right of pre-emption, not only because she is an adjoining owner but also because a portion of her ancestral home occupies, without any fault on her part, a portion of Lot 268 with the knowledge and consent of the Pestejos. Such is not the situation in *Ortega vs. Orcine*, 38 SCRA 276, cited by the private respondents. Besides, the piece of urban land subject of litigation in the aforesaid *Ortega* case is rather big, consisting of 4,452 square meters in area, whereas the lot in question in the case at bar is quite too small, only 59 square meters of residential lot. Considering further that Lot 268 was inherited by the Pestejos, to require petitioner, as what the respondent appellate court would want her to do, to prove that said lot was acquired for speculation by the Pestejos would be exacting compliance with the impossible and inequitable (*City of Butuan vs. Ortiz, et al.*, 3 SCRA 659; *Philippine Engineering Corporation vs. CIR, et al.*, 41 SCRA 89).

Respondent Aguilar, to whom Lot 268 was sold, being likewise an adjoining owner, the determinative factor should be that provided for in paragraph 3 of Article 1622 of the Civil Code - the intended use that appears best justified - and not whether the said lot was acquired for speculative purposes. And this brings Us back to the primordial issue as to who has the preferential right of pre-emption or redemption among the contending adjoining owners in regard to their intended use of the land in question.

It is Our considered opinion that under the facts and circumstances of the instant case the petitioner has the preferential right of pre-emption and/or redemption over Lot 268 as against private respondent Aguilar. Were We to uphold the dismissal of the instant case under the circumstances above set forth by sustaining the respondent court's decision, We would be sanctioning something iniquitous to the petitioner.

Wherefore, the decision of the Court of Appeals in its CA-G.R. No. 52907-R, dated November 11, 1974, is hereby reversed and set aside and that judgment of the Court of First Instance of Cavite dated February 2, 1973, is hereby reinstated and affirmed. The heirs or successors in interest of the deceased, Romana Yap Vda. de Aguilar, shall deliver Transfer Certificate of Title No. T-55612 or any subsequent Transfer Certificate of Title issued

therefor to the Clerk of the Court of First Instance of Cavite within thirty (30) days after the finality of this decision for said Clerk of Court to execute the corresponding deed of redemption for Lot No. 268 in favor of petitioner Fidela Legaspi who shall in turn within said period of thirty (30) days deposit with the Clerk of Court the sum of P1,500.00 as redemption price for said lot to be delivered by the latter to the heirs or successors in interest of Romana Yap Vda. de Aguilar; it being understood that said Certificate of Title shall be deemed cancelled if not so delivered to the Clerk of Court within the thirty-day period herein provided.

No special pronouncement as to costs. So Ordered.

Teehankee, Makasiar, Muñoz Palma, and Martin, JJ., concur.

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