

PERLA HERNANDEZ, PETITIONER, VS. HON. PEDRO C. QUITAIN AND ERNESTA M. VALDEMORO, RESPONDENTS.

G.R. No. L-48457. November 29, 1988

Ponente: CORTES, J.

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CORTES, J.:

This petition for review on certiorari interposed by defendant Perla Hernandez seeks the reversal of the decision rendered by the Court of First Instance of Masbate, Branch II in Civil Case No. 464-II which allowed plaintiff, Ernesta Manlapaz-Valdemoro, as co-owner, to exercise the right of legal redemption pursuant to Articles 1620 and 1623 of the Civil Code.

The antecedent facts are as follows:

Petitioner Perla Hernandez bought a parcel of land covering an area of 46.40 square meters from Sancho Manlapaz, for P3,000.00. The lot, located in the poblacion of Baleno, Masbate, was originally part of a larger parcel of land which belonged to the spouses Crispulo Manlapaz and Antonia Villanueva. After their death, their children, Zosima, Jose, Sulpicio, Iluminada, Damaso, Sancho and Ernesta (private respondent here,) extrajudicially partitioned the land, on 30 December 1974. By virtue of the partition, each child received his respective portion. Sancho then sold the lot adjudicated to him to petitioner on 8 March 1975, while Jose, whose portion was adjacent to that of Sancho's sold the same to Ernesta on 8 April 1975 [Rollo, p. 99.]

On 29 April 1975, private respondent filed a complaint seeking the redemption of the lot bought by petitioner, claiming that she was not informed by Sancho of the sale of the lot to petitioner, and depositing with the trial court, P3,000.00 as the redemption price. Petitioner filed her answer disputing plaintiff's right to redeem. She claimed that since there was already an extra-judicial partition of the land executed by the heirs, plaintiff could no longer exercise any right of redemption.

At the pre-trial conference, the parties agreed upon a partial stipulation of facts as follows:

- that the property involved in this litigation was inherited by the plaintiff and others from their deceased parents;
- that the co-heirs of the plaintiff and the plaintiff have previously executed a deed of partition, among which involved is the property in question;
- that the property in question was adjudicated in favor of Sancho Manlapaz who in turn sold the same to the defendant Perla Hernandez; and
- that the property in litigation is two (2) lots distance [sic] from the property of the plaintiff. [Record on Appeal, p. 10; Rollo, pp. 45-46.]

In a decision rendered 15 December 1975, the trial court, finding that private respondent was a co-owner, allowed her to redeem the property. The dispositive portion of the decision reads as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendant:

- a) declaring the plaintiff entitled to enforce her right to the redemption of the property herein litigated; and
- b) ordering the defendant to re-sell the property in question to the plaintiff through an appropriate registrable document for and in consideration of the sum of THREE THOUSAND (P3,000.00) PESOS, Philippine Currency.

The Court awards NO litigation expenses and attorney's fees and costs. [Rollo, p. 32.]

On 12 January 1976, petitioner filed a motion for reconsideration but the same was denied. Hence, this petition for review.

In finding that plaintiff was entitled to redeem the property, the trial court applied Art. 1620 and Art. 1623 of the Civil Code which provide:

Art. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

Art. 1623. The right of legal pre?emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor as the case may be. The Deed of Sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of the adjoining owners.

In this petition, petitioner Perla Hernandez assails the application by the trial court of the above provisions to the present case, reiterating her argument that since there has already been an extrajudicial partition of the property among the heirs prior to her purchase of the lot from Sancho Manlapaz, the co-ownership over the lot was already extinguished and private respondent can no longer claim any right of legal redemption as this right is available only while the co-ownership still exists.

The Court finds merit in the petition.

The basis and origin of the right of legal redemption granted under Article 1620 of the Civil Code, and relied upon by the trial court, is the existence of a co-ownership as defined under Article 484 of the Civil Code.

Article 484 of the Civil Code provides that "There is co-ownership whenever the ownership of an undivided thing or right belongs to different persons." The Court through Justice J.B.L. Reyes, said in *De la Cruz v. Cruz* [G.R. No. L-27759, April 17, 1970, 32 SCRA 307] that for co-ownership to exist, the co-owner must have a "spiritual part of a thing" which is not physically divided (citing *3 Sanchez Roman 162.*) The Court further emphasized that if the party seeking to redeem is the owner of a portion which has been concretely determined and identifiable, he cannot be considered a co-owner, and thus not entitled to the right of redemption granted under Article 1620. Thus, the Court said:

. . . The portions of appellant-plaintiff and the defendant spouses are concretely determined and identifiable, for to the former belongs the northern half, and to the latter belongs the remaining southern half of the land. That their respective portions are not technically described, or that said portions are still embraced in one and the same certificate of title, does not make said portions less determinable or identifiable, or distinguishable, one from the other, nor that dominion over each portion less exclusive, in their respective owners. Hence, no right of redemption among co-owners exists. [*Dela Cruz v. Cruz*, G.R. No. L-27759, April 17, 1970, 32 SCRA 307, p. 311.]

The purpose and limitation of the right under Article 1620 is likewise explained in *Caro v. Court of Appeals*, [G.R. No. L-46001, March 25, 1982, 113 SCRA 10] where the Court, citing *Caram v. Court of Appeals*, [101 Phil. 315 (1957)] said:

. . . 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 v. Tecson*, 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. [at p. 319.]

This doctrine has been applied in a host of cases [*Saturnino v. Paulino*, 97 Phil. 50 (1955); *Umengan v. Butacan, et al.* G.R. No. L-16036, Feb. 28, 1963, 7 SCRA 311; *Estoque v. Pajimula*, G.R. No. L-24419, July 15, 1968, 24 SCRA 59, *Seechung Federis v. Sunga*, G.R. No. L-34803, January 17, 1985, 134 SCRA 16, and most recently in *Salatandol v. Retes*, G.R. No. L-38120, June 28, 1988.]

In *Umengan*, correctly cited by petitioner, the Court said that the right of legal redemption under Article 1620, given to a co-owner in case any one of the other co-heirs or co-owners sells his share to a third person, cannot be invoked where the property had already been partitioned judicially or extrajudicially. And in *Salatandol*, the Court held that where the portion belonging to the parties has been identified and localized, so that co-ownership, in its real sense, no longer exists, legal redemption will no longer lie.

The present case likewise calls for the application of the doctrine enunciated in the above rulings. The parties here have stipulated that the property inherited has been partitioned, and the lot in question was adjudicated in favor of the vendor *Sancho Manlapaz* [Rollo, p. 46.] Annex "B" attached to the Comment [Rollo, p. 100] likewise shows that the inherited property had been subdivided and the heirs had taken possession of their respective portions. With the subdivision of the inherited property, the co-ownership among the heirs had thus ceased to exist and hence, private respondent can no longer assert any right of legal redemption of the lot now owned by petitioner.

Private respondent in her Comment [Rollo, p. 92,] changes her theory, averring that granting *arguendo* that Articles 1620 and 1623 are inapplicable to the case at bar, under Art. 1622 of the Civil Code, she can still redeem the property as an adjoining owner, having bought the lot of her brother *Jose*, which abutted the lot adjudicated to *Sancho*.

Article 1622 reads as follows:

Art. 1622. Whenever a piece of urban land which is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation, is about to be resold, the owner of any adjoining land has a right of preemption at a reasonable price.

If the re-sale has been perfected, the owner whose intended use of the land in question appears best justified shall be preferred.

In support of her theory, private respondent maintains that she alleged in her complaint the elements necessary for the application of Article 1622 to wit: (1) that the piece of land is urban land, being situated in the poblacion of *Baleno, Masbate*; (2) that since the lot is only 46.40 square meters, its area is so small that a major portion thereof cannot be used for any practical purpose within a reasonable time; and (3) that it was bought merely for speculation.

The Court cannot sustain the theory of private respondent. She failed to allege or prove a fourth element necessary to bring into operation Article 1622 --- that the land is about to be resold, or that its resale has been perfected. The Court ruled in *Soriente v. Court of Appeals*, [G.R. No. L-17343, August 31, 1963, 8 SCRA 750] reiterated in *De Santos v. City of Manila*, [G.R. No. L-21677, June 29, 1972, 45 SCRA 409] that before a party may avail of the

right of pre-emption under Article 1622, it is necessary that it be proved or alleged in the complaint that the land sought to be redeemed is about to be resold or that its resale has been perfected.

But even if this fatal flaw is disregarded, still private respondent's reliance on said provision is futile since she likewise failed to prove the concurrence of the other elements she alleged in her complaint (the case was submitted for decision on the pleadings.)

Finally, private respondent claims that the late filing of the record on appeal, as required under the old Rules of Court is fatal to the appeal. She maintains that although the record on appeal was approved by the lower court on 3 August 1976, it was received by the Supreme Court only on 18 April 1978 or after about one year and eight months after its approval. She submits that the undue delay should result in the dismissal of the appeal since Section 3 of Rule 46 states that if the record on appeal is not received by the Court within thirty days after the approval thereof, the appellee may upon notice to the appellant move the court to grant an order directing the Clerk of Court forthwith to transmit the record on appeal or to declare the same abandoned for failure to prosecute.

This contention is without merit. The said provision relied upon is merely directory [Fagtanac v. Court of Appeals, G.R. Nos. L-26922-23, March 21, 1968, 22 SCRA 1227, citing Guevara v. Guevara, 98 Phil. 249 (1956)] and besides, private respondent raised this ground only in her Comment here when she could have filed a motion to dismiss the appeal earlier if she were more vigilant. The invocation of said rule is clearly an afterthought. Furthermore, in a fairly recent decision, this Court emphasized its policy that technical rules should accede to the demands of substantial justice, thus:

. . . Because there is no vested right in technicalities, in meritorious cases, a liberal, not literal, interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the intent and purpose of the rules which is the proper and just determination of a litigation. Litigations, should as much as possible, be decided on their merits and not on technicality. Dismissal of appeals purely on technical grounds is frowned upon, and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very aims. As has been the constant rulings of this Court, every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, free from the constraints of technicalities. . . . [Fonseca v. Court of Appeals, G.R. No. L-36035, August 30, 1988 citing A-One Feeds, Inc. v. Court of Appeals, G.R. No. L-35560, October 30, 1980, 100 SCRA 593.]

WHEREFORE, in view of the foregoing, the Petition is hereby GRANTED and the decision of the court a quo holding that the private respondent as a co-owner had a right to redeem the property is REVERSED.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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