

LUZ CARO, PETITIONER, VS. HONORABLE COURT OF APPEALS AND BASILIA LAHORRA VDA. DE BENITO, AS ADMINISTRATRIX OF THE INTESTATE ESTATE OF MARIO BENITO, RESPONDENTS.

G.R. No. L-46001. March 25, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for certiorari under Rule 45 of the Revised Rules of Court seeking a review of the decision of the Court of Appeals,[1] promulgated on February 11, 1977, in CA-G.R. No. 52570-R entitled "Basilialahorra Vda. de Benito, as Administratrix of the Intestate Estate of Mario Benito vs. Luz Caro", as well as the resolution of the respondent Court, dated May 13, 1977, denying petitioner's Motion for Reconsideration.

The facts of the case are as follows:

Alfredo Benito, Mario Benito and Benjamin Benito were the original co-owners of two parcels of land covered by Transfer Certificates of Title Nos. T-609 and T-610 of the Registry of Deeds of Sorsogon. Mario died sometime in January, 1957. His surviving wife, Basilia Lahorra and his father, Saturnino Benito, were subsequently appointed in Special Proceeding No. 508 of the Court of First Instance of Sorsogon as joint administrators of Mario's estate.

On August 26, 1959, one of the co-owners, Benjamin Benito, executed a deed of absolute sale of his one-third undivided portion over said parcels of land in favor of herein petitioner, Luz Caro, for the sum of P10,000.00. This was registered on September 29, 1959. Subsequently, with the consent of Saturnino Benito and Alfredo Benito as shown in their affidavits both dated September 15, 1960, Exhibits G and F respectively, a subdivision title was issued to petitioner Luz Caro over Lot I-C, under T.C.T. No. T-4978.

Sometime in the month of May, 1966, private respondent Basilia Lahorra Vda. de Benito learned from an allegation in a pleading presented by petitioner in Special Proceeding No. 508 that the latter acquired by purchase from Benjamin Benito the aforesaid one-third undivided share in each of the two parcels of land. After further verification, she sent to petitioner thru her counsel, a written offer to redeem the said one-third undivided share dated August 25, 1966. Inasmuch as petitioner ignored said offer, private respondent sought to intervene in Civil Case No. 2105 entitled "Rosa Amador vda. de Benito vs. Luz Caro" for annulment of sale and mortgage and cancellation of the annotation of the sale and mortgage involving the same parcels of land, but did not succeed as the principal case was dismissed on a technicality, that is, for failure to prosecute and the proposed intervenor failed to pay the docketing fees. Private respondent, thus, filed the present case as an independent one and in the trial sought to prove that as a joint administrator of the estate of Mario Benito, she had not been notified of the sale as required by Article 1620 in connection with Article 1623 of the New Civil Code.

On the other hand, petitioner presented during the hearing of the case secondary evidence of the service of written notice of the intended sale to possible redemptioners in as much as the best evidence thereof, the written notices itself sent to Alfredo and Saturnino Benito, could not be presented for the reason that said notices were sent to

persons who were already dead when the complaint for legal redemption was brought. Instead, the affidavit of Benjamin Benito, executed ante litem motam, attesting to the fact that the possible redemptioners were formally notified in writing of his intention to sell his undivided share, was presented in evidence. The deposition of Saturnino's widow was likewise taken and introduced in evidence, wherein she testified that she received and gave to her husband the written notice of the intended sale but that the latter expressed disinterest in buying the property.

After hearing the evidence, the trial judge dismissed the complaint on the grounds that: (a) private respondent, as administratrix of the intestate estate of Mario Benito, does not have the power to exercise the right of legal redemption, and (b) Benjamin Benito substantially complied with his obligation of furnishing written notice of the sale of his one-third undivided portion to possible redemptioners.

Private respondent's Motion for Reconsideration of the trial court's decision having been denied, she appealed to the respondent Court of Appeals contending that the trial Judge erred in

"I... not inhibiting himself from trying and deciding the case because his son is an associate or member of the law office of Atty. Rodolfo A. Madrid, the attorney of record of defendant-appellee in the instant case;

II.. contending that Benjamin Benito complied with the provisions of Article 1623 of the Revised Civil Code that before a co-owner could sell his share of the property owned in common with the other co-heirs, he must first give written notice of his desire to his co-heirs; (p. 49, R.A.)

III. concluding that the fact that one of the administrators who was actively managing the estate was furnished a written notice by the co-owner of his desire to sell his share was enough compliance of the provisions of Article 1623 of the Civil Code for the reason that the intention of the law is only to give a chance to the new co-owner to buy the share intended to be sold if he desires to buy the same; (p. 50, R.A.)

IV.. refusing to allow plaintiff to redeem the subject property upon authority of *Butte vs. Manuel Uy & Sons*, L-15499, Feb. 28, 1962 (p. 51, R.A.) and in consequently dismissing the complaint (p. 52, R.A.)."

In disposing of the aforesaid errors, the Court of Appeals finding for plaintiff (herein private respondent) held:

1. That it is not clear that Atty. Arcangel, son of the trial Judge, was legally associated as practitioner with counsel for Luz Caro; that it is not shown at any rate that plaintiff had asked for Judge Arcangel's disqualification and that at any rate also, in such factual situation, an optional ground for disqualification is addressed to his sound discretion with which it would not be correct for appellate court to interfere or overrule.
2. That since the right of the co-owner to redeem in case his share be sold to a stranger arose after the death of Mario Benito, such right did not form part of the hereditary estate of Mario but instead was the personal right of the heirs, one of whom is Mario's widow. Thus, it behooved either the vendor, Benjamin, or his vendee, Luz Caro, to have made a written notice of the intended or consummated sale under Article 1620 of the Civil Code.
3. That the recital in the deed of sale that the vendor notified his co-owners of his desire to dispose of his share, who all declined to buy, was but a unilateral statement and could not be proof of the notice required by the law.
4. That the registration of the deed of sale did not erase that right.
5. That the affidavit of notice executed on January 20, 1960 of Benjamin Benito declaring that written notices of the sale as required by law were duly sent to Alfredo Benito and Saturnino Benito, the latter in his capacity as administrator of the estate of Mario Benito, as well as the sworn statement of Saturnino Benito's widow dated November 18, 1968 confirming that her husband received the written notice of the sale referred to in Benjamin Benito's affidavit of notice would not satisfy that there was clear notice in writing of the specific term of the intended sale. Worse, Saturnino was only a co-administrator and hence, his unilateral act could not bind the principal because there was no less than a renunciation of a right pertaining to the heirs, under

Article 1818, NCC, apart from the fact that the right of redemption is not within their administration.

6. That the further claim of defendant that offer to redeem was filed out of time and that there was no actual tender loses all importance, there being no date from which to count the 30-day period to redeem because there was no notice given.

The dispositive part of the decision of the Court of Appeals reads as follows:

"IN VIEW THEREOF, this Court is constrained to reverse, as it now reverses, judgment appealed from, upon payment by plain-tiff or deposit in Court, within 30 days after this judgment should have become final, of the sum of P10,000.00, defendant is ordered to execute a deed of redemption over the one-third share of BENJAMIN BENITO in favor of plaintiff for herself and as re-presentative of the children of Mario Benito and therefrom, to deliver said one-third share of BENJAMIN BENITO, costs against defendant-appellee.

SO ORDERED."

Upon denial of the motion for reconsideration, petitioner brought this petition for review raising the following errors:

1. Respondent Court erred in allowing the exercise of the right of legal redemption with respect to the lots in question.
2. Respondent Court erred when it made the finding that there was notice in law from which to count the tolling of the period of redemption and that the sale was not made known at all to private respondent.

The alleged first error of respondent Court is premised on the fact that the lot in question sought to be redeemed is no longer owned in common. Petitioner contends that the right sought to be exercised by private respondent in the case assumes that the land in question is under co-ownership, the action being based on Article 1620 of the New Civil Code which provides:

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

"Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common."

However, the fact is that as early as 1960, co-ownership of the parcels of land covered by Transfer Certificates of Title Nos. T-609 and T-610 was terminated when Alfredo Benito, Luz Caro and the Intestate Estate of Mario Benito, represented by administrators Saturnino Benito, as trustee and representative of the heirs of Mario Benito, agreed to subdivide the property.

"An agreement of partition, though oral, is valid and consequently binding upon the parties." (Hernandez vs. Andal, et al., 78 Phil. 196)

A petition for subdivision was then filed for the purpose. This was accompanied by the affidavits of Alfredo Benito and Saturnino Benito, both dated September 15, 1960 to the effect that they agree to the segregation of the land formerly owned in common by Mario Benito, Alfredo Benito and Benjamin Benito. A subdivision plan was made and by common agreement, Lot I-C thereof, with an area of 163 hectares, more or less, was ceded to petitioner. Thereafter, the co-owners took actual and exclusive possession of the specific portions respectively assigned to them. A subdivision title was subsequently issued on the lot assigned to petitioner, to wit, Transfer Certificate of Title No. T-4978.

In *Caram, et al. vs. Court of Appeals, et al.*, 101 Phil. 315, a case squarely in point, this Court held:

"Inasmuch as the purpose of the law in establishing the right of legal redemption between co-owners is to reduce the number of participants until the community is done away with (*Viola vs. 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."

Although the foregoing pronouncement has reference to the sale made after partition, this Court therein saw no difference with respect to a conveyance which took place before the partition agreement and approval by the court. Thus, it held:

"Nevertheless, the result is the same, because We held in *Saturnino vs. Paulino*, 97 Phil. 50, 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."

In refutation, private respondent argues that petitioner Luz Caro acted in bad faith and in fraud of the rights of the heirs of the deceased Mario Benito in obtaining a subdivision title over the one-third portion of the land in question which she brought from Benjamin Benito, and for this reason, she is deemed to hold said property in trust for said heirs. The rule, however, is that fraud in securing the registration of titles to the land should be supported by clear and convincing evidence. (*Jaramil vs. Court of Appeals*, 78 SCRA 420). As private respondent has not shown and proved the circumstances constituting fraud, it cannot be held to exist in this case.

As aforesaid, a subdivision title has been issued in the name of petitioner on the lot ceded to her. Upon the expiration of the term of one year from the date of the entry of the subdivision title, the Certificate of Title shall be incontrovertible (Section 38, Act 496). Since the title of petitioner is now indefeasible, private respondent cannot, by means of the present action, indirectly attack the validity thereof.

Even on the assumption that there still is co-ownership here and that therefore, the right of legal redemption exists, private respondent as administratrix, has no personality to exercise said right for and in behalf of the intestate estate of Mario Benito. She is on the same footing as co-administrator Saturnino Benito. Hence, if Saturnino's consent to the sale of the one-third portion to petitioner cannot bind the intestate estate of Mario Benito on the ground that the right of redemption was not within the powers of administration, in the same manner, the private respondent as co-administrator has no power to exercise the right of redemption the very power which the Court of Appeals ruled to be not within the powers of administration.

"While under Sec. 3, Rule 85, Rules of Court, the administrator has the right to the possession of the real and personal estate of the deceased, so far as needed for the payment of the expenses of administration, and the administrator may bring and defend action for the recovery or protection of the property or right of the deceased (Sec. 2, Rule 88), such right of possession and administration do not include the right of legal redemption of the undivided share sold to a stranger by one of the co-owners after the death of another, because in such case, the right of legal redemption only came into existence when the sale to the stranger was perfected and formed no part of the estate of the deceased co-owner; hence, that right cannot be transmitted to the heir of the deceased co-owner." (*Butte vs. Manuel Uy and Sons, Inc.*, 4 SCRA 526).

Private respondent cannot be considered to have brought this action in her behalf and in behalf of the heirs of Mario Benito because the jurisdictional allegations of the complaint specifically stated that she brought the action in her capacity as administratrix of the intestate estate of Mario Benito.

It is petitioner's contention that, assuming that private respondent may exercise the right of redemption, there was no compliance with the conditions precedent for the valid exercise thereof.

In Conejero, et al. vs. Court of Appeals, et al., 16 SCRA 775, this Court explained the nature of the right of redemption in this wise:

"While the co-owner's right of legal redemption is a substantive right, it is exceptional in nature, limited in its duration and subject to strict compliance with the legal requirements. One of these is that the redemptioner should tender payment of the redemption money within thirty (30) days from written notice of the sale by the co-owner."

It has been held that this thirty-day period is peremptory because the policy of the law is not to leave the purchaser's title in uncertainty beyond the established 30-day period. (Butte vs. Manuel Uy and Sons, Inc., 4 SCRA 526). It is not a prescriptive period but is more a requisite or condition precedent to the exercise of the right of legal redemption.

In the case at bar, private respondent alleged in her complaint that she learned of the sale sometime in May, 1966 upon receipt of a pleading in Special Proceeding No. 508 of the Court of First Instance of Sorsogon. She likewise alleged that she gave a letter informing petitioner of her desire to redeem the land on August 25, 1966. Clearly, three months have elapsed since the notice of the sale. Hence, petitioner claims that the thirty-day period of redemption has already expired. In addition, petitioner makes capital out of the admission of private respondent that she already knew of the said transaction even before receipt of the said pleading (t.s.n., p. 16) as well as of the evidence presented that Saturnino Benito, the admittedly active administrator until 1966, duly received a written notice of the intended sale of Benjamin Benito's share. Said evidence consists of the affidavit of the vendor stating that the required notice had been duly given to possible redemptioners, the statement in the deed of sale itself and the deposition of Saturnino Benito's widow with respect to her receipt of the written notice. Finally, petitioner points to the records which disclose that private respondent knew of the subdivision (t.s.n., p. 25) and hence, rationalized that private respondent should have known also of the previous sale.

Since We have ruled that the right of legal redemption does not exist nor apply in this case because admittedly a subdivision title (T.C.T. No. T-4978) has already been issued in the name of the petitioner on Lot I-C sold to her, it becomes moot and academic, if not unnecessary to decide whether private respondent complied with the notice requirements for the exercise of the right of legal redemption under Article 1623 of the New Civil Code.

WHEREFORE, IN VIEW OF THE FOREGOING, the decision of the Court of Appeals is hereby REVERSED and SET ASIDE, and judgment is hereby rendered DISMISSING the complaint.

SO ORDERED.

Makasiar, Fernandez, and Melencio-Herrera, JJ., concur. Plana, J., in the result. Teehankee, J., (Chairman), no part.

[1] First Division, Gatmaitan, Acting Pres. J., ponente; with Reyes and Domondon, JJ., concurring.

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