

DOMINICO ETCUBAN, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, JESUS C. SONGALIA & GUADALUPE S. SONGALIA, RESPONDENTS.*G.R. No. L-45164. March 16, 1987*

Ponente: PARAS, J.

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Before Us is a petition to review the judgment of the respondent Court of Appeals[1] in CA-G.R. No. 53258-R reversing the decision of the court a quo in Civil Case No. BN-109, entitled *Dominico Etcuban vs. Jesus G. Songalia, et. al.*, by ruling that plaintiff-appellee (petitioner herein) failed to avail himself of the right of legal redemption within the period provided for by law.

Plaintiff inherited a piece of land with an area of approximately 14.0400 hectares together with his co-heirs from their deceased father. Said piece of land was declared in their names as heirs of Eleuterio Etcuban under Tax Declaration No. 06837 and was the subject matter in dispute in SP No. 1192-R, of the Court of First Instance of Cebu, a case for the settlement of the estate of the late Eleuterio Etcuban. In said case, petitioner Dominico Etcuban, the spouse of the deceased, Demetria Initan, and Pedro, Vicente, Felicitas, Anastacio, Froilan, Alfonso, Advincula, Anunciacion, Jesus, Aguinaldo, all surnamed Etcuban were declared as co-owners of the property in question. Thereafter the 11 co-heirs executed in favor of defendants (private respondents herein) 11 deeds of sale of their respective shares in the co-ownership for the total sum of P26,340.00. It is not disputed that the earliest of the 11 deeds of sale was made on December 9, 1963 and the last one in December 1967. (Annexes "1 - 11").

In his complaint before the trial court, plaintiff alleged that his co-owners leased and/or sold their respective shares without giving due notice to him as a co-owner notwithstanding his intimations to them that he was willing to buy all their respective shares. He further maintained that even upon inquiry from his co-heirs/co-owners, and also from the alleged buyers (defendants) he elicited nothing from them. Plaintiff discovered for the first time the existence of these 11 deeds of sale during the hearing on January 31, 1972 of Civil Case No. BN-87, entitled *Jesus C. Songalia vs. Dominico Etcuban* in the Court of First Instance of Cebu, Branch XI. When he verified the supposed sales with his co-owners only 3 of them admitted their respective sales. Hence, the filing of Civil Case No. BN-109 by petitioner for legal redemption.

Defendants (private respondents herein) in denying the material allegations of the complaint, argued by way of affirmative and special defenses that plaintiff has no cause of action against them; that the action is barred by prescription or laches; that the complaint is barred by the pendency of Civil Case No. BN-87 involving the same parties, same subject matter and same cause of action; that the provisions of the law pertaining to legal redemption have been fully complied with in respect to the sale of the disputed land to them; that plaintiff came to know of the sale of the land in question to them in August, 1968 or sometime prior thereto; that acting on this knowledge, plaintiff thru his lawyers wrote defendants on August 15, 1968 about the matter; that Jesus Songalia personally went to the office of Atty. Vicente Faelner or counsel for plaintiff to inform him of the sale of the

disputed land to them; that again another demand letter was received on May 30, 1969 by defendants from the lawyers of plaintiff but on both occasions, no action was taken by plaintiff despite the information plaintiff received from defendants thru his counsel and that consequently plaintiff lost his right to redeem under Art. 1623 of the new Civil Code because the right of redemption may be exercised only within 30 days from notice of sale and plaintiff was definitely notified of the sale years ago as shown by the records.

During the pre-trial conference, the parties failed to agree on any stipulation of facts. Judgment was rendered after due trial with the following dispositive portion:

"WHEREFORE, JUDGMENT is hereby rendered in favor of the plaintiff and against the defendants as follows:

- Allowing the plaintiff to exercise his right of redemption over the land in question;
- Ordering the defendants to accept the redemption price of P26,340.00 which plaintiff should deposit with this Court within 30 days from and after this decision becomes final and executory and thereafter to execute a deed of reconveyance in favor of the plaintiff and to surrender the possession and ownership of the property in question to the plaintiff; and
- The defendants are ordered to pay the costs."

Defendants appealed to the Court of Appeals assigning several errors but the appellate court centered its dissertation on the first assignment of error as the issue to be most decisive and, therefore confined its discussion to it.

Defendants in their first assignment of error assailed the lower court in not holding that the failure of the plaintiff-appellee to tender to the defendants-appellants the redemption price or to consign the same in court or to make a specific offer to redeem the property before filing the complaint for legal redemption has barred the appellee's right to redeem the property pursuant to the doctrine of the Supreme Court in Conejero vs. Court of Appeals (16 SCRA 775).

The appellate court in tackling this issue declared that plaintiff failed to make a valid tender of the sale price of the land paid by the defendants within the period fixed by Art. 1623 of the Civil Code which provides as follows:

"ART. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty (30) 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 adjoining owners. (1524a)"

The respondent court found that written notice was given to plaintiff-appellee in the form of an answer with counterclaim to the complaint in Civil Case No. BN-109 which appears on the records to have been filed on March 18, 1972. Said court ruled that "this notice is sufficient to inform the plaintiff about the sale and the reckoning date for the 30-day period commenced upon receipt thereof. No other notice is needed under the premises because it is the substance conveyed rather than the form embodying it, that counts."

The records reveal that on May 27, 1974, plaintiff-appellee deposited with the lower court the amount of P26,340.00 the redemption price. Since the answer with counterclaim was filed on March 18, 1972, the deposit made on May 27, 1974 was clearly outside the 30-day period of legal redemption. The period within which the right of legal redemption or preemption may be exercised is non-extendible.

Petitioner contends that vendors (his co-heirs) should be the ones to give him written notice and not the vendees (defendants or private respondent herein) citing the case of *Butte vs. Manuel Uy & Sons, Inc.* 4 SCRA 526. Such contention is of no moment. While it is true that written notice is required by the law (Art. 1623), it is equally true that the same "Art. 1623 does not prescribe any particular form of notice, nor any distinctive method for notifying the redemptioner." So long, therefore, as the latter is informed in writing of the sale and the particulars thereof, the 30 days for redemption start running, and the redemptioner has no real cause to complain. (*De Conejero et al v. Court of Appeals, et al* 16 SCRA 775). In the Conejero case, We ruled that the furnishing of a copy of the disputed deed of sale to the redemptioner, was equivalent to the giving of written notice required by law in "a more authentic manner than any other writing could have done," and that We cannot adopt a stand of having to sacrifice substance to technicality. More so in the case at bar, where the vendors or co-owners of petitioner stated under oath in the deeds of sale. (Annexes "1 to 11") that notice of sale had been given to prospective redemptioners in accordance with Art. 1623 of the Civil Code. "A sworn statement or clause in a deed of sale to the effect that a written notice of sale was given to possible redemptioners or co-owners might be used to determine whether an offer to redeem was made on or out of time, or whether there was substantial compliance with the requirement of said Art. 1623." [2]

In resume, We find that petitioner failed to substantially comply with the requirements of Art. 1623 on legal redemption and We see no reason to reverse the assailed decision of the respondent Court.

WHEREFORE, premises considered, the petition is hereby DISMISSED and the appealed decision is hereby AFFIRMED.

SO ORDERED.

Alampay, Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

Fernan, J., (Chairman), No part — acted as counsel for Guadalupe S. Songalia in other cases.

[1] Penned by Justice Godofredo P. Ramos with Justices Andres Reyes and B.S. de la Fuente concurring.

[2] Annotations on Legal Redemption in relation to the case of *Butte vs. Manuel Uy & Sons, Inc.*, 4 SCRA 964 by Judge Domingo Lucenario citing the case of *Cabacungan, et al. vs. Corrales, et al* 95 Phil. 919.

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