DECISIONS / SIGNED RESOLUTIONS · NINETEENTH DIVISION · OCTOBER 25, 2011

HERMELINA A. RAMA AND BABY R. LAURON, PLAINTIFFS-APPELLEES, VS. SPS. MEDARDO NOGRA AND PURITA NOGRA, AND RICARDO RAMA AND MARILES RAMA, DEFENDANTS-APPELLANTS.

Ponente: LOPEZ, J.

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LOPEZ, J.:

The Case

Before this Court is an appeal filed under Rule 41 of the 1997 Rules of Civil Procedure which seeks to reverse and set aside the Decision[1] of the Regional Trial Court, Branch 7 of Cebu City dated 25 October 2011, declaring that Plaintiff-Appellee Hermelina Rama is entitled to redeem the share of her co-heir, Ricardo Rama, in Lot No. 6034-C-2-H-4 which was sold to the Spouses Nogra and its Order[2] dated 20 January 2012 denying Defendants-Appellants' Motion for Reconsideration.

FACTUAL ANTECEDENTS

The present controversy concerns the right of a co-owner of a thing to redeem (legal redemption) the share of another co-owner in case the latter's share is sold to a third person pursuant to Articles 1620 and 1623 of the Civil Code.

Felix Rama is the registered owner of Lot No. 6034-C-2-H-4 with an area of 129 square meters and situated along V. Rama St., Barangay Guadalupe, Cebu City. He died intestate in October 1972. He is survived by his heirs namely: Plaintiff-Appellee Hermelina Rama (herein referred as "Hermelina"), Defendant-Appellant Ricardo Rama (herein referred as "Ricardo"), Lucena Rama Yamyamin (herein referred as "Lucena") and Victoria Rama Fajardo (herein referred as "Victoria"). The surviving heirs are the co-owners of Lot No. 6034-C-2-H-4 which remained undivided up to the present. On the other hand, Plaintiff-Appellee Baby R. Lauron is the daughter of Hermelina.

On 10 September 1992, Defendant-Appellant Ricardo sold his undivided share in the subject property on installment basis to the Spouses Nogra as evidenced by a Deed of Provisional Sale[3]. Upon full payment of the purchase price, the parties executed a Deed of Absolute Sale[4] on 13 July 2001.

Contending that she was not informed by Ricardo of the sale of the latter's undivided share in the subject property to the Spouses Nogra, Plaintiff-Appellee Hermelina took the matter to the Lupon Tagapamayapa of Barangay Guadalupe, Cebu City. The Lupon conducted its proceedings on two occasions, on 25 July 2007 and 9 September 2007. During the proceedings, Ricardo admitted, in the presence of Plaintiffs-Appellees, that he sold his share in the subject property to the Spouses Nogra. Likewise, Lucena, another co-owner, admitted that she also disposed of her share to the said spouses in the hearing of 9 September 2007. Their confrontation was properly recorded in the Minutes[5] of the said meetings.

Thereafter or on 26 September 2007, Plaintiffs-Appellees confronted Ricardo who again admitted the sale of his share to the Spouses Nogra. On the same occasion, Ricardo handed a copy of the Deed of Absolute Sale dated 13

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July 2001 to Plaintiffs-Appellees.

Subsequently, Plaintiffs-Appellees filed a Complaint[6] with the trial court for Annulment of Deed of Sale, Redemption and Other Reliefs. They alleged that they came to know of the sale of Ricardo's share in the subject property to the Spouses Nogra from another person. Ricardo allegedly did not inform Hermelina of the said sale.[7] They added that they sought the assistance of the barangay authorities to verify the information and during the proceedings, they offered to redeem the share of Ricardo from the Spouses Nogra but the latter allegedly refused.[8]

Furthermore, they contended that they confronted Ricardo regarding the said sale and allegedly, for the first time he admitted that he sold his share to the Spouses Nogra.[9] Concurrently, he handed a copy of the deed of absolute sale to Plaintiffs-Appellees. On the basis of the said document, Plaintiffs-Appellees were able to confirm the fact of sale.[10]

To bolster their claim for legal redemption, they argued that pursuant to Article 1620 of the Civil Code, Plaintiff-Appellee Hermelina is legally entitled to redeem the share of Ricardo which was sold to the Spouses Nogra.[11] Moreover, they contended that the present action for legal redemption was brought well within the period provided for under Article 1623 of the Civil Code, which is thirty (30) days from written notice of sale.[12] According to them, they were furnished with a copy of the deed of absolute sale by Ricardo on 26 September 2007 and the present complaint was filed on 16 October 2007, hence, within the aforesaid thirty (30) day period.[13]

In their Answer with Counterclaim[14], Defendants-Appellants Medardo and Purita Nogra through their attorney-in-fact, Naomi N. Duga, vehemently deny Plaintiffs-Appellees' assertion that Hermelina was not informed of the sale of Ricardo's share. They alleged that Ricardo served a written notice of sale to Hermelina sometime in August 1992 as evidenced by a postal delivery return slip.[15] Moreover, they contended that during the parties' confrontation with the Lupon, Ricardo made an open confirmation of the sale of his share to the former which was properly recorded in the minutes of the said meeting.[16] Evidently, according to Defendants-Appellants, these circumstances effectively belie Hermelina's claim that she was completely ignorant of the aforesaid sale not until 26 September 2007 when she was furnished a copy of the deed of absolute sale by Ricardo.[17]

Consequently, Hermelina's right of legal redemption is no longer available because said right was exercised way beyond the thirty (30) day period from notice in writing as prescribed under Article 1623 of the Civil Code. On the other hand, before Defendant-Appellant Ricardo could file his answer, he passed away. No proper substitution of party was made.

On 6 December 2007, Plaintiffs-Appellees filed their Reply[18]. They countered that Hermelina did not receive any written notice from Ricardo with regard to the sale of the latter's share to the Spouses Nogra.[19] They added that Hermelina's signature appearing in the registry return card was falsified.[20] Moreover, they claimed that there was no hearing conducted by the Lupon Tagapamayapa of Barangay Guadalupe and the minutes of the alleged hearing was falsified as it was prepared at the behest of Defendant-Appellant Medardo Norga.[21]

Subsequently, trial on the merits ensued. Baby R. Lauron testified for Plaintiffs-Appellees. On the other hand, Defendants-Appellants presented two witnesses namely: Naomi Duga and Julieta Aquinde.

On 25 October 2011, the trial court rendered the assailed Decision[22] declaring that Hermelina is entitled to redeem Ricardo's share in Lot No. 6034-C-2-H-4 which he sold to the Spouses Nogra. The trial court gave more credence to the claim of Plaintiffs-Appellees that it was only on 26 September 2007 that they were notified in

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writing by Ricardo of the aforementioned sale when the latter handed them a copy of the deed of absolute sale. Thus, the filing of the present complaint for legal redemption on 16 October 2007 and the consignment of the amount of thirty five thousand pesos (P35,000.00) by Plaintiffs-Appellees representing the purchase price for Ricardo's share on 26 October 2007 was well within the thirty (30) day period provided for under Article 1623 of the Civil Code.

Defendants-Appellants filed a Motion for Reconsideration[23] of the trial court's decision on 25 November 2011. In an Order[24] dated 20 January 2012, the trial court denied Defendants-Appellants' motion.

Aggrieved, Defendants-Appellants interposed the present appeal. On 5 September 2012, they filed their Appellants Brief[25] raising several assignments of error which can be summarized into one pivotal issue, to wit:

WHETHER OR NOT PLAINTIFF-APPELLEE HERMELINA MAY STILL EXERCISE HER RIGHT OF LEGAL REDEMPTION WITH RESPECT TO RICARDO'S UNDIVIDED SHARE IN LOT NO. 6034-2-C-H-4 WHICH WAS SOLD TO THE SPOUSES NOGRA.

RULING
We GRANT the present appeal.

Defendants-Appellants Medardo and Purita Nogra, through their attorney-in-fact Naomi N. Duga, maintained that Plaintiff-Appellee Hermelina had already acquired actual knowledge of the sale of Ricardo's share as early as the year 1992, the year when the aforesaid sale took place. They presented a postal delivery return slip to prove their claim that Hermelina received a written notice of the sale.

Moreover, they cite another instance wherein Hermelina allegedly acquired actual knowledge of the sale. Sometime in the past, Defendants-Appellants filed an ejectment case against Lucena, one of the co-owners of the subject property. However, Hermelina intervened and was successful in parrying the writ of execution. Subsequently, she filed an action to annul the judgment on the ejectment case which is still pending up to the present. Evidently, these circumstances would have given Hermelina sufficient information on the conveyances made by her co-owners, Ricardo and Lucena, according to Defendants-Appellants.

Finally, Defendants-Appellants added that if the above circumstances do not suffice, Ricardo's admission during the conciliation proceedings with the barangay that he sold his share in the subject property to the former is more than enough to charge Hermelina with actual knowledge of the said sale. Thus, the thirty (30) day period within which to exercise Hermelina's right of legal redemption had already lapsed.

Plaintiffs-Appellees chose not to file their Appellees Brief hence, this case was deemed submitted for decision. Upon a careful consideration of all the evidence and the testimonies of witnesses presented by both parties, this Court finds the present appeal meritorious.

Right of Legal Redemption

Legal redemption (retracto legal de comuneros) is a privilege created by law, partly by reason of public policy and partly for the benefit of the redemptioner to afford him a way out of a disagreeable or inconvenient association into which he has been thrust.[26]

With respect a co-owner's right of legal redemption in case the share of another co-owner is sold to a third person, the governing law is Article 1620 of the Civil Code which provides:

> "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 rate.

> 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."

The purpose behind Article 1620 is to provide a method for terminating the co-ownership and consolidating the dominion in one sole owner.[27]

Article 1623 of the Civil Code provides for the period within which to exercise the right of legal redemption, thus:

> "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."

We are now confronted with a question on the requirement of a written notice as expressed under the aforementioned provision. Time and again, the Supreme Court has stressed the indispensability of a written notice for purposes of the exercise of the right of legal redemption. However, in a number of cases[28], the Supreme Court has relaxed the written notice requirement particularly when the redeeming co-owner had actual knowledge of the sale. The present case, to Our mind, falls under the exception on the requirement of a written notice.

Strictly applied and interpreted, Article 1623 can lead to only one conclusion, that in view of the lack of written notice, the 30 day period for redemption had not begun to run. But as has also been aptly observed, a law is tested by its results; and likewise, by its purposes.[29] The law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent.[30]

The Supreme Court in the case of Cometa, et. al. vs. Court of Appeals[31] further expounded, thus:

> "There are laws which are generally valid but may seem arbitrary when applied in a particular sense because of its peculiar circumstances. We are not bound to apply them in servile subservience to their language. In such a situation, We are not bound, because only of our nature and functions, to apply them just the same, in slavish obedience to their language. What We do instead is find a balance between the word and the will, that justice may be done even as the law is obeyed.
>
> As judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence. "Courts are apt to err by sticking too closely to the words of the law," so we were warned, by Justice Holmes again, "where these words import a policy that goes beyond them." While we admittedly may not legislate, we nevertheless have the power to interpret the law in such a way as to reflect the will of the legislature. While we may not read into the law a purpose that is not there, we nevertheless have the right to read out of it the reason for its enactment. In doing so, we defer not to "the letter that killeth" but to the "the spirit that vivifieth," to give effect to the lawmaker's will."

In the case at bar, Plaintiff-Appellee Hermelina claimed that she was not served with a written notice by Ricardo with respect to the sale of the latter's share and that it was only on 26 September 2007 that she came to know of the said sale when Ricardo handed over a copy of the deed of absolute sale to her. Her contention lacks merit.

At the outset, We would like to clarify that the mere presentation by Defendants-Appellants of a registry return slip does not, by itself, prove the fact of receipt of the written notice of sale. It must be accompanied by the authenticating affidavit of the person or persons who had actually mailed the same. Registry return cards must be authenticated to serve as proof of receipt of letters sent through registered mail.[32] Notwithstanding the foregoing, this Court is convinced that Plaintiffs-Appellees had actual knowledge of the sale for the reasons stated below.

The records reveal that the parties had a confrontation with the Lupon Tagapamayapa of Barangay Guadalupe on two occasions. In their first encounter, Ricardo admitted in the presence of Plaintiffs-Appellees that he sold his share to the Spouses Nogra. In fact, it was Plaintiff-Appellee Hermelina, through her daughter, who sought the assistance of the Lupon because she wanted to redeem Ricardo's share as can be gleaned from their Complaint.[33] This circumstance belies her claim that she was unaware of the sale not until she was given a copy of the deed of absolute sale by Ricardo. The fact that Hermelina, herself, sought the redemption of Ricardo's share proves that she had actual knowledge thereof even before she was given a copy of the deed of absolute sale on 26 September 2007.

Moreover, there are previous instances wherein Hermelina may have acquired actual knowledge of the aforesaid sale. Sometime in the past, the Spouses Nogra filed an ejectment case against Lucena, one of the co-owners, because the latter refused to vacate despite selling her share in the property to the former. When the writ of execution was issued by the trial court, Hermelina, herein Plaintiff-Appellee, intervened and was successful in parrying the execution of the writ. Subsequently, she filed an action to annul the judgment of the trial court on the ejectment case which remained pending at present.

The fact that Hermelina was very proactive in questioning the writ of execution in the ejectment case against Lucena would indicate that she was cognizant of the conveyances made by her co-owners, which includes that of Ricardo. What bolsters this observation is the fact that the parties in this case were neighbors. In fact, Hermelina, in her Reply, admitted that she and Ricardo met almost everyday in the year 1992, the year when the sale took place.[34] It is highly improbable that she was unaware of the sale made by Ricardo which occurred right in the neighborhood.

We, however, would like to emphasize that We are not departing from the requirement of a written notice but that We are simply adopting an exception to the general rule due to the peculiar circumstances of the present case.

The Supreme Court in the case of Si vs. Court of Appeals[35] ruled that a written notice is not necessary when the redeeming co-owner had actual knowledge of the sale, thus:

> "Co-owners with actual notice of the sale are not entitled to written notice. A written notice is a formal requisite to make certain that the co-owners have actual notice of the sale to enable them to exercise their right of redemption within the limited period of thirty days. But where the co-owners had actual notice of the sale at the time thereof and/or afterwards, a written notice of a fact already known to them, would be superfluous. The statute does not demand what is unnecessary." (Emphasis supplied).

In a more recent case, the Supreme Court reiterated the aforementioned doctrine. The old rule is that a written notice of the sale by the vendor to his co-owners is indispensable for the latter to exercise their retracto legal de comuneros, however, more recently the written notice requirement had been relaxed particularly when a co-owner had actual knowledge of the sale.[36]

In the face of the established facts, We cannot accept the Hermelina's pretense that she was unaware of the sale made by Ricardo. By requiring written proof of such notice, We would be closing our eyes to the obvious truth in favor of her palpably false claim of ignorance, thus exalting the letter of the law over its purpose.[37] The purpose is clear enough: to make sure that the redemptioners are duly notified. We are satisfied that in this case Hermelina was actually informed, although not in writing, of the sale, and that such notice was sufficient.

The only question left for the Court's determination is when did the thirty (30) day period of redemption began? While the date of the execution of the deed of provisional sale on 10 September 1992 could not be deemed the starting period, however, sometime between those years and 25 July 2007, when the parties had their confrontation at the Lupon, Hermelina was actually informed of the sale and that thereafter the 30-day period

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started running and ultimately expired. Thus, when Hermelina filed her complaint on 16 October 2007, the right of redemption had already been extinguished because the period for its exercise had already expired.

It may not be amiss to add that the right of legal redemption belongs to the co-owner which in this case is Hermelina and not to her daughter, Baby Lauron. However, it appears that the latter was the one who actively participated in the trial of the case. She claimed that she was authorized by her mother, Hermelina, through a general power of attorney but such authorization was not even presented to the trial court. Hermelina could have testified in the trial court to help shed light on the present controversy as she is in a better position to know the details surrounding her claim. Nevertheless, she chose to be silent.

WHEREFORE, premises considered, the instant appeal is GRANTED. The Decision of the Regional Trial Court, Branch 7 of Cebu City dated 25 October 2011 in Civil Case No. CEB-33782 and its Order dated 20 January 2013 are hereby SET ASIDE. Plaintiffs-Appellees' Complaint is DISMISSED.

SO ORDERED.

Delos Santos, E.L., Chairperson., and Lagura-Yap, M.B., JJ., concur.

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[1] Rollo, pp. 61-64.

[2] Ibid., p. 65.

[3] Records, p. 31.

[4] Ibid., pp. 10-11.

[5] Ibid., pp. 32-35.

[6] Ibid., pp. 2-6.

[7] Plaintiffs-Appellees' Complaint, p. 2; Records, p. 3.

[8] Ibid.

[9] Ibid., p. 3; Records, p. 4.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Records, pp. 21-28.

[15] Defendants-Appellants' Answer, p. 3; Records, p. 23.

[16] Ibid., p. 4; Records, p. 24.

[17] Ibid.

[18] Records, pp. 45-51.

[19] Plaintiffs-Appellees' Reply, p. 3; Records, p. 47.

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[20] Ibid.

[21] Ibid., p. 4; Records, p. 48.

[22] supra., note 1.

[23] Records, pp. 208-215.

[24] supra., note 2.

[25] Rollo, pp. 19-30.

[26] Senen Aguilar vs. Virgilio Aguilar and Angel Aguilar, G.R. No. 141613, December 16, 2005.

[27] Ibid.

[28] Alonzo vs. IAC and Padua, G.R. No. 72873, May 28, 1987; Si vs. CA, G.R. No. 122047, October 12, 2000; Aguilar vs. Aguilar, G.R. No. 141613, December 16, 2005.

[29] Alonzo vs. Intermediate Appellate Court, G.R. No. 72873, May 28, 1987.

[30] Ibid.

[31] G.R. No. 141855, February 6, 2001.

[32] Alferez vs. People of the Philippines, G.R. No. 182301, January 31, 2011.

[33] supra., note 7.

[34] Plaintiffs-Appellees Reply, p. 3; Records, p. 47.

[35] G.R. No. 122047, October 12, 2000.

[36] Aguilar vs. Aguilar, G.R. No. 141613, December 16, 2005.

[37] supra., note 9.

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