

**FLAVIA SALATANDOL, ASSISTED BY HER HUSBAND JOSE BINONDO,
MANUELA SALATANDOL, ASSISTED BY HER HUSBAND ELISEO
REPOLLO, FAUSTA SALATANDOL, ASSISTED BY HER HUSBAND
ROBERTO BACARRA, ...**

G.R. No. L-38120. June 27, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal interposed by the defendant from the decision[*] of the Court of First Instance of Negros Oriental, dated 31 May 1966, in Civil Case No. 4367, which allowed the plaintiffs, as co-owners, to exercise the right of legal pre-emption, provided for in Art. 1623 of the Civil Code, and ordered the defendant to accept the pre-emption price, plus expenses of sale, to execute the corresponding deed of conveyance or quitclaim in favor of the plaintiffs, to pay said plaintiffs the amount of P300.00 as attorney's fees, and to pay the costs of suit.

The decision is based upon facts stipulated by the parties, which are as follows:

- "1. That the parties have agreed or admitted that the late EUFEMIA OMOLE was the registered owner of one-third (1/3) share of Lot No. 513 of the Cadastral Survey of Ayuqitan as evidenced by Original Certificate of Title No. O-V 9307;
2. That plaintiffs are likewise the registered owners of one- third (1/3) share of said Lot No. 513 of the Cadastral Survey of Ayuqitan and the co-owners of said Eufemia Omole;
3. That on January 17, 1965, EUFEMIA OMOLE sold her one- third (1/3) share of said Lot No. 513 for P1 ,000.00 to defendant CATALINA RETES as evidenced by a Deed of Sale ratified by Notary Public Gumersindo B. Silorio and entered in his Notarial Register as Doc. No. 7; Page No. 49; Book No. II; Series of 1965 (Annex 'A' of the complaint);
4. That on January 18, 1965 the Register of Deeds for the Province of Negros Oriental wrote to plaintiff Flavia Salatandol which letter was received on January 21, 1965 informing her about the document presented for registration affecting the one-third (1/3) share of Lot No. 513 in favor of Defendant Catalina Salatandol to surrender the owner's Duplicate Certificate of Title (bearing No. O-V-9307) (Annex 'B');
5. That Plaintiffs were never notified by the late EUFEMIA OMOLE nor by Defendant Catalina Retes about the proposed sale;
6. That on January 30, 1965, Plaintiffs wrote to Defendant CATALINA RETES informing her of their desire to repurchase the said one-third (1/3) share of Lot No. 513 which the late Eufemia Omole sold to her and failing to get a favorable action from Defendant Catalina Retes Plaintiffs on February 5, 1965 deposited the amount of P1,000.00 with the Clerk of the Court of First Instance of Negros Oriental and who, on February 13, 1965 wrote Defendant Catalina Retes informing the latter about the deposit and of Plaintiffs1 desire to exercise their right of pre-emption as co-owners of Eufemia Omole (See Annexes 'C and 'D');

7. That when Defendant Catalina Retes failed to get the deposit with the Clerk of Court, on February 16, 1965 (plaintiffs) filed the instant action for Legal Pre-emption;
8. That on February 22, 1965 while this case was still pending, Defendant Catalina Retes resold the said one-third (1/3) share "of Lot No. 513 back to EUFEMIA OMOLE which sale is evidenced by a public instrument ratified by Notary Public Alfonso B. Arrieta and entered in his Notarial Register as Doc. No. 234; Page 60; Book No. VIII; Series of 1965;
9. That on March 11, 1965 Eufemia Omole donated the said one-third (1/3) share of Lot No. 513 to Defendant Catalina Retes as evidenced by a Deed of Donation ratified by Notary Public Alfonso B. Arrieta and entered in his Notarial Register as Doc. No. 258; Page No. 65; Book No. VIII; Series of 1965, a copy of which is hereto attached and made integral parts hereof;
10. That Plaintiffs incurred the amount of P500.00 as attorney's fees by reason of this case and other legal expenses;
11. That both the Plaintiffs and Defendant have agreed that the foregoing facts are admitted and shall require no further evidence to prove the same;
12. That Plaintiffs and Defendant have agreed that the Court shall consider the foregoing facts in addition to the facts already admitted in the pleadings; and
13. That Plaintiffs and Defendant have agreed to submit this case for the decision of this Court with the admission of the foregoing stipulation of facts."[1]

In certifying this case to the Court, the Court of Appeals, to which the appeal was originally addressed, found that the issue raised is one of law and is:

"It is the posture of the appellant that under the provisions of Art. 1623 Civil Code Lthe 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 x x x" and since it is admitted that no notice was given to the appellees or by the vendor, Eufemia Omole, no right of legal preemption accrued in favor of the appellee."[2]

The appeal is impressed with merit. In *Butte vs. Manuel Uy and Sons, Inc.*;^[3] the Court ruled that Art. 1623 of the Civil Code clearly and expressly prescribes that the thirty (30) days for making the pre-emption or redemption are to be counted from notice in writing by the vendor. The Court said:

***** The text of Article 1623 clearly and expressly prescribes that the thirty days for making the redemption are to be counted from notice in writing by the vendor. Under the old law (Civil Code of 1889, Art. 1524), it was immaterial who gave the notice; so long as the redeeming co-owner learned of the alienation in favor of the stranger, the redemption period began to run. It is thus apparent that the Philippine legislature in Article 1623 deliberately selected a particular method of giving notice, and that method must be deemed exclusive (39 Am. Jur., 237; *Payne vs. Stale*, 12 S.W. (2d) 528). As ruled in *Wampler vs. Lecompte*, 150 Atl. 458 (aff'd. in 75 Law Ed. [U.S.] 275) —

"Why these provisions were inserted in the statute we are not informed, but we may assume until the contrary is shown, that a state of facts in respect thereto existed, which warranted the legislature in so legislating

"The reasons for requiring that the notice should be given by the seller, and not by the buyer, are easily divined. The seller of an undivided interest is in the best position to know who are his co-owners that under the law must be notified of the sale. Also, the notice by the seller removes all doubts as to fact of the sale, its perfection, and its validity, the notice being a reaffirmation thereof; so that the party notified need not entertain doubt that the seller may still contest the alienation. This assurance would not exist if the notice should be given by the buyer."

In the case at bar, the plaintiffs have not been furnished any written notice of sale or a copy thereof[4] by Eufemia Omole, the vendor. Said plaintiffs' right to exercise the legal right of pre-emption or redemption, given to a co-owner when any one of the other co-owners sells his share in the thing owned in common to a third person, as provided for in Article 1623 of the Civil Code, has not yet accrued.[5]

But, even assuming *ex gratia argumenti*, that the notice from the Register of Deeds of Negros Oriental to co-plaintiff Flavia Salatandol of the document transferring the one-third (1/3) share of Eufemia Omole to defendant, was equivalent to notice from the vendor, still, it appears that, while the disputed one-third (1/3) portion of Eufemia Omole and the one-third (1/3) share of the plaintiffs, (there is no mention of the other third portion) are embraced in one certificate of title, there had been an actual partition of the land described in the certificate of title and each co-owner is in possession of his respective share. This is deduced from the order of the trial court, dated 30 July 1966, where the court restrained the parties from harvesting the nuts on the "land in question[6] referring to the one-third (1/3) share of Eufemia Omole. As expressed in Article 484 of the Civil Code, a co-ownership exists whenever the ownership of an undivided thing or right belongs to different persons. Under such concept, a co-owner cannot point to a particular portion of the property owned in common as his own, because his portion thereof is intangible rather than identifiable. Here, the portion of Eufemia Omole as well as those of the plaintiffs had been identified and localized, so that co-ownership, in its real sense, no longer exists. Hence, the right of redemption or pre-emption under Article 1620 of the Civil Code can no longer be invoked by the plaintiffs over the portion appertaining to Eufemia Omole.[7]

WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE and another one entered dismissing the complaint. Without costs.

SO ORDERED.

Yap, C. J. (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[*] Penned by Judge Macario P. Santos.

[1] Rollo, pp. 7-9.

[2] *Id.*, p. 71.

[3] 114 Phil. 443.

[4] *Conejero vs. CA*, 123 Phil. 605; See also *Cabrera vs. Villanueva*, G.R. No. 75069, April 15, 1988.

[5] Article 1623, Civil Code, provides:

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 [hereof] to all possible redemptioners.

[6] Record on Appeal, p. 42.

[7] *Umengan vs. Butucan*, 117 Phil. 325; Article 1620, Civil Code, 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 one.

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