

**ANDRES DE LA MERCED, LAND AUTHORITY, AND LAND BANK,
PLAINTIFFS-APPELLANTS, VS. TEODORO DE GUZMAN,
DEFENDANT-APPELLEE.**

G.R. No. L-36626. April 15, 1988

Ponente: GRINO-AQUINO. J.

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GRINO-AQUINO. J.

On September 28, 1983, this Court issued a resolution requiring the parties:

" xxx within ten (10) days from notice xxx to INFORM this Court whether Andres de la Merced is still in possession of the disputed land from 1971 to date or whether this case had already become MOOT AND ACADEMIC."

Copy of the resolution was sent to each of the following counsel:

Atty. Mateo J. Lorenzo (reg.)
Baliuag, Bulacan

Atty. Nfcantor Sincioco (reg.)
Malolos, Bulacan

The Solicitor General (x)
Makati. Metro Manila

Atty. Jose T. Nery (x)
Room 312 S. Medalla Bldg.
Corner 1 Gen. MacArthur Avenue &
595 E. de los Santos Ave.
Cubao. Quezon City

Lavides Law Offices (x)
Room 205 Trinity Bldg.
T.M. Kalaw Street,
Ermita, Manila

Attys. Bausa, Ampil & Suarez (x)
Rms. 501-505 Madrigal Bldg.
Escolta, Manila

Bureau of Agrarian Legal Assistance
Department of Agrarian Reforms
PTA Bldg., Diliman. Quezon City

Atty. Arturo F. Goce (x)
202 Banas Bldg.. Rizal Avenue

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A notation at the bottom of the resolution dated September 28, 1983 (pp. 143 & 145, Rollo) states that Atty. Jose T. Nery and Attys. Bausa, Ampil & Suarez were not served with copies of the aforesaid resolution because they were no longer holding office at their given addresses and that according to the IBP, Atty. Nery died on October 23, 1975. The envelope addressed to Atty. Mateo J. Lorenzo was likewise returned to the Supreme Court with a note that the addressee is already dead.

Attorney Nicanor C. Sincioco filed a "Manifestation with Motion for Withdrawal of Appearance" stating that he had never acted nor appeared as counsel for any of the parties in the case and does not know them personally, for which reason he prayed that he be relieved of the obligation to inform the Court as to whether Andres de la Merced is still in possession of the land in question for he is not in a position to give the desired information.

There is no proof as to whether the other parties were duly served with the aforesaid resolution as no proof of service to them is attached to the records.

This case was elevated by the Court of Appeals to the Supreme Court on February 16, 1973.

Plaintiff-appellant Andres de la Merced is the agricultural lessee of a three-hectare riceland in Piel, Baliuag, Bulacan, owned by the defendant-appellee Teodoro de Guzman.

In a letter dated June 22, 1970, the appellee-landowner offered to sell to De la Merced the portion he had been cultivating and gave him 90 days to exercise the option. De la Merced received the letter on July 3, 1970. He informed the defendant that he would buy and/or pre-empt the land at a reasonable and just price with the assistance of the Land Authority and the Land Bank.

At De la Merced's request, the Office of the Agrarian Counsel called the parties to a conference on August 12, 1970, for the purpose of getting them to agree on the purchase price and manner of paying the same, but the parties were unable to agree.

On September 17, 1970, the plaintiff-agricultural lessee filed a complaint for pre-emption in the Court of Agrarian Relations at Baliuag, Bulacan. He was joined by the Land Authority and the Land Bank as co-plaintiffs.

On November 12, 1970, defendant De Guzman filed a motion to dismiss the complaint for lack of a cause of action. By order dated March 31, 1971, the lower court dismissed the complaint on the following grounds:

(1)

It failed to allege that plaintiff De la Merced had tendered and consigned in court the reasonable price of the landholding within the 90-day period fixed in Section 11 of Republic Act No. 3844; and.

(2)

That the 90-day period for exercising the Agricultural lessee's right of pre-emption was not interrupted by the filing of the complaint.

Upon the denial of their motions for reconsideration of that order, De la Merced, the Land Authority, and the Land Bank elevated the case to the Court of Appeals for review.

The Court of Appeals referred the case to this Court because the appellant's assignment of errors raises purely legal questions. We agree with the appellate court's perception.

Section 11 of Republic Act No. 3844 provides:

"Lessee's Right of Pre-emption. — In case the agricultural lessor decides to sell the landholding, the agricultural lessee shall have the preferential right to buy the same under reasonable terms and conditions: Provided, that the entire landholding offered for sale must be pre-empted by the Land Authority if the landowner so desires, unless the majority of the lessees object to such acquisitions. Provided, further, that where there are two or more agricultural lessess, each shall be entitled to said preferential right only to the extent of the area actually cultivated by him. The right of pre-emption under this section may be exercised within 90 days from notice in writing which shall be served by the owner on all lessees affected."

The plaintiff's complaint failed to allege that the agricultural lessee had tendered to the landowner or deposited in court the purchase price of his landholding within the 90-day period fixed in Section 11 of Republic Act No. 3844. De la Merced alleged simply that the Land Authority and Land Bank were ready, able, and willing to extend him legal and financial assistance, and to deposit the amount which the court may deem reasonable for the pre-emption of the land.

In order that the court may render a valid judgment upon the complaint in accordance with the prayer therein, the complaint must state a cause of action. In this case, it must allege that the offer to buy was made within the prescribed period of 90 days from written notice of the owner's offer to sell. Failure to do so warrants the dismissal of the complaint for being fatally-defective for lack of a cause of action (*Falcasantos vs. How Suy Ching*, 91 Phil. 456).

There is no legal provision suspending or interrupting the 90-day period for exercising the lessee's right of pre-emption. Pre-emption and/or redemption is not a matter of intent, but of making the proper payment or tender of the price within the specified period. How the pre-emptioner will raise the money for that purpose is immaterial. Timeliness of the payment or tender is what matters (*Basbas vs. Entena*, 28 SCRA 665).

To exercise the right of pre-emption, plaintiff De la Merced, or the Land bank, or Land Authority, in his behalf and for his benefit, should have tendered to the owner payment of the reasonable price of the land within 90 days, as provided in Section 11 of the Republic Act No. 3844. It did not suffice that the Land Authority or the Land Bank expressed their willingness to finance the acquisition of the land by De la Merced. That point was explained in *Basbas vs. Entena*, supra, as follows:

"Unless tender or consignment is made requisite to the valid exercise of the tenant's right to pre-empt, everytime a pre-emption is attempted, a case must be filed in court to ascertain the reasonable price. On the other hand, a prior tender by the agricultural lessee of the price that he considers reasonable, affords an opportunity to avoid litigation, for the landowner may well decide to accept a really reasonable offer; considering that he would thereby save the attorney's fees and the expenses of protracted litigation."

Section 11, Republic Act No. 3844 gives no special consideration to the Land Authority or the Land Bank as pre-emptioner on behalf of the agricultural lessee. If a private individual may not ask for an extension or suspension of the period of pre-emption, much less may the period be relaxed to favor a financial institution like the Land Bank. The proposition is unthinkable. The 90-day limitation period applies to all pre-emptioners equally. The law makes no distinction, neither should we (*Isabel Velasco vs. Francisco Lopez*, 1 Phil. 720-726).

WHEREFORE, finding no error in the order of the trial court dismissing the complaint, We affirm it in toto, with costs against the appellant Andres De la Merced.

SO ORDERED.

Narvasa, Cruz, and Gancayco, JJ., concur.
Teehankee (C.J.), did not take part in deliberations.

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