

PEDRO DIMASACAT AND ERNESTO ROBLES, PETITIONERS, VS. THE COURT OF APPEALS, PHILIPPINE NATIONAL BANK AND RAFAEL O. LAGDAMEO, RESPONDENTS.*G.R. No. L-26575. February 27, 1969*

Ponente: CONCEPCION, C.J.

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Petition for review of a decision of the Court of Appeals reversing that of the Court of First Instance of Quezon.

Rafael O. Lagdameo was the registered owner of four (4) contiguous parcels of land, with an aggregate area of about 7, 236 sq. m., situated in the poblacion of Tagkawayan, Quezon, and covered by TCT No. 17011 of the Office of the Register of Deeds of said province. On June 24, 1946, he mortgaged said land, for P3, 500, to the Philippine National Bank, subject to the latter's right of extrajudicial fore-closure should he default in the payment of said amount. The corresponding deed of mortgage was duly registered and annotated on said TCT No. 17011. A little over a year later, or on September 12, 1947, Lagdameo sold to petitioner Ernesto Robles, a portion of about 260 sq. m. of the aforementioned land, for the sum of P1,040. Still later, or on March 6, 1948, Lagdameo sold to Pedro Dimasacat, the other petitioner herein, another portion, of about 381.44 sq. m., of the same land, for the sum of P1,100. The notarial deeds attesting to these sales were not registered. Owing to non-payment of the debt to the Bank, the mortgage was, on April 1, 1955, foreclosed extra-judicially and sold at public auction, by the Provincial Sheriff of Quezon, to the Bank for the amount of said indebtedness. On June 11, 1956, or after the lapse of the statutory period of one-year for the redemption of the property, the Sheriff executed the corresponding deed of absolute sale to the Bank, in favor of which TCT No. 24761 was issued, upon registration of said deed of absolute sale and the cancellation of TCT No. 17011.

Prior to the expiration of said period of redemption, or some-time before November, 1955, Robles and Dimasacat urged Lagdameo to repurchase the land to prevent it, particularly the portions sold to them, from becoming property of the Bank, but Lagdameo told them that he would effect the redemption at any time he had money therefor. Thereupon, Robles and Dimasacat offered to repurchase the property from the Bank, which rejected the offer. Thereupon, or on December 5, 1955, Dimasacat and Robles - hereinafter referred to as the plaintiffs - commenced Civil Case No. 33-G of the Court of First Instance of Quezon, against Lagdameo and the Bank, for the purpose of enforcing their alleged right to repurchase said property. On December 7, 1955, plaintiffs, likewise, caused a notice of lis pendens to be registered and annotated on the back of TCT No. 17011. Lagdameo and the Bank were summoned on March 23 and 27, 1956, respectively, or before the expiration of the aforementioned period of redemption. TCT No. 24761, subsequently issued in the name of the Bank, carried the notice of lis pendens annotated on TCT No. 17011.

After appropriate proceedings, said Court of First Instance rendered a decision, dated April 1, 1960, dismissing plaintiffs' complaint and declaring them "without right to repurchase the properties they allegedly acquired from x x x Lagdameo, x x x but reserving to them x x x the right to file suit against" him "to compel performance of

their agreement," should he eventually reacquire said properties.

On appeal, taken by plaintiffs, this decision was "reversed" by the Court of Appeals, which held them "to have the right to redeem their respective portions from the Bank," although "the question as to who should be entitled to repurchase the totality of the lots from the Bank" was "reserved for future litigation, if need be, between all the parties." Plaintiffs now seek a review by certiorari of this decision of the Court of Appeals, and pray that said decision be "re-versed x x x by allowing" them "to redeem x x x all the parcels of land" covered by the certificates of title aforementioned, "for the sum of P3,500 x x x plus interest of 1% a month from April 1, 1955 to the filing of the present complaint on December 5, 1955."

Plaintiffs maintain that, having been held by the Court of Appeals to be "successors in interest of the mortgage debtor, in part of the property and x x x therefore qualified to redeem," said Court should have declared them entitled to repurchase the entirety of said property, in line with *Magno v. Viola*[1], instead of limiting their right of redemption to the portions sold by Lagdameo to each of them.

Such was not, however, the issue decided in the *Magno* case, although it was declared therein that a lawyer who, by reason of his contract of retainer with a former client, had an interest in a land belonging to the latter, may be considered his successor in interest in said land, within the purview of Section 464 of our former Code of Civil Procedure[2], which is substantially identical to Section 29 of Rule 39 of the Rules of Court[3].

It is true that our decision in said case made reference to some American cases in which it was held that "one who owns a separate part of the land sold" at public auction "or has some interest therein," or "successors in part" of said land "could not redeem at all, except by redeeming the whole," but this was not the question adjudicated in that case. On the contrary, it was held therein that said lawyer or his assignee, "had no right to redeem the shares of his former clients" in the land in question, the buyer of said shares being "a part owner" of said land.

Moreover, the decision in the *Magno* case, likewise, pointed out that, although a "cotenant may redeem the entire joint estate x x x in so doing he will be deemed to have acted for the benefit of all the cotenants." This point is particularly relevant to the case at bar, for plaintiffs had bought merely small portions of the land of Lagdameo and had, at best, a personal right to demand from him a status of co-ownership over said property, because the deeds of sale in their favor had not been registered, and the portions covered by said deeds had not been surveyed, so that the precise boundaries thereof had not been delimited by metes and bounds, much less segregated from the mass of Lagdameo's property covered by TCT No. 17011 and then by TCT No. 24761. Hence, even if plaintiffs had succeeded in redeeming the whole land, Lagdameo could have, under said dictum in the *Magno* case, asserted the right to repurchase from them so much of the land as was not included in said deeds of sale in their favor. Indeed, this was reckoned in plaintiffs' complaint, for they prayed therein that, should they be "able to repurchase the parcels of land covered by TCT No. 17011," judgment be rendered "declaring them co-owners of the portions that remain, after deducting the portions" covered by said deeds of sale "subject to the right of defendant Rafael O. Lagdameo or his successor in interest as redemptioner."

In this connection, it appears that, by virtue of another deed of sale, dated July 22, 1962 - or while this case was pending in the Court of Appeals - Lagdameo had repurchased the land from the Bank, for P7, 044.74, subject to the conditions set forth in said instrument, particularly the notice of *lis pendens* annotated on the back, first of TCT No. 17011, and later of TCT No. 24761. Inasmuch as, even if plaintiffs had managed to redeem the whole property, so much thereof as exceeded the portions sold to them by Lagdameo could have been re-purchased from them by Lagdameo and the title to said property, has meanwhile reverted fully to the latter, it follows that petitioners are now entitled to no more than the consummation of the sales made by him in their favor.

WHEREFORE, the decision of the Court of Appeals should be, as it is hereby modified, in the sense that

plaintiffs herein are here-by declared co-owners of the land in question to the extent of the in-terest conveyed to them by defendant Rafael O. Lagdameo, subject to their right to partition said property and determine the precise boun-daries of the share or portion belonging to each, without pronounce-ment as to costs.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] 61 Phil. 80, 85.

[2] Act No. 190.

[3] "Who may redeem real property so sold. - Real property sold as provided in the last preceding section, or any part thereof sold se-parately, may be redeemed in the manner hereinafter provided, by the following persons:

“(a) The judgment debtor, or his successor in interest in the whole or any part of the property;

“(b) A creditor having a lien by attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the judg-ment under which the property was sold. Such redeeming creditor is termed a redemptioner.”

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