

**EUFROCINA HIDALGO CABACUNGAN, AURELIA HIDALGO ROLDAN,
AND TERESA HIDALGO IGLESIAS, PLAINTIFFS AND APPELLANTS, VS.
QUINTIN CORRALES AND CATALINA V. CORRALES, DEFENDANTS
AND APPEL...**

G.R. No. L-6629. September 30, 1954

Ponente: REYES, A., J.

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REYES, A., J.:

This is an appeal from an order of the Court of First Instance of Ilocos Sur dismissing appellants' complaint.

The complaint sets up three causes of action, but for allegedly not pleading facts sufficient to support any of them, the court ordered it dismissed on defendants' motion before answer.

- For its first cause of action, the complaint alleges in effect that plaintiffs, now appellants, are sisters and, together with three other sisters, "co-heirs and co-owners" of a piece of land therein described; that having been notified on September 6, 1952, that two of their sisters, co-heirs and co-owners — Sofia Hidalgo Soria and Carmen Soria Abad — had sold their undivided shares in said land to defendant Quintin Corrales, an outsider, and wishing to be subrogated to the rights of the buyer in accordance with article 1088 of the New Civil Code, plaintiffs, on the 10th of the same month, approached the said Quintin Corrales and his wife and co-defendant Catalina V. Corrales and tendered them P600 for that purpose, but the tender was refused. Plaintiffs, therefore, pray that defendants be ordered to allow them to exercise their right of legal redemption. Considering the case to be one of redemption among co-owners under article 1620 in connection with article 1623 of the New Civil Code and not that of redemption among co-heirs under article 1088 thereof, the lower court held the complaint insufficient for not containing "any allegation respecting the existence of any notice in writing by the vendor or vendee of the date of such notice if any" and "any allegation to show if the deeds of sale in favor of the defendants were registered in the Registry of Property and if there were any affidavit of the vendor or vendors to the effect that such vendor or vendors have given written notice of the sale or purchase to all possible redemptioners or in this case to the plaintiffs." We note, however, that the complaint does allege that plaintiffs were, on September 6, 1952, notified of the sale and that on the 10th of that month they made their offer to redeem. If information was desired whether the notice was in writing or that the sale was recorded in the registry of property and there was an affidavit of the vendors that written notice of the sale had been given to plaintiffs, the complaint could have been ordered amended to include those particulars.

Defendants have, indeed, annexed to their motion to dismiss an affidavit to the effect that written notice of the sale was given to the other co-owners on February 25, 1952, which, if true, might, in the absence of other circumstances, make plaintiffs' offer to redeem on February 6 out of time. But whether the notice of the sale was given on February 25, as stated in the affidavit, or on September 6, as stated in the complaint, was a question of fact which could best be determined after trial on the merits or in a motion for summary judgment and not in a mere motion to dismiss, as this hypothetically admits the allegations of the complaint. Moreover, the affidavit

mentioned refers only to the share of Sofia Hidalgo Soria and says nothing of the share of her sister Carmen Soria Abad, as to which there is nothing said therein to contradict plaintiffs' allegation that notice of sale was given on September 6.

It is, therefore, our view that the complaint should not have been dismissed as to the first cause of action.

- The second cause of action is for moral damages alleged to have been suffered by plaintiffs on account of their arrest and incarceration by reason of a false and malicious complaint filed against them in the Justice of the Peace Court of Narvacan by Catalina V. Corrales, one of the herein defendants, charging them with the crime of malicious mischief. But there is no allegation that plaintiffs have been acquitted. Indeed, it would appear from a certified copy of docket entries referring to the case that the same is still pending trial. Obviously, plaintiffs' second cause of action has not yet accrued. The complaint as to that cause was, therefore, properly dismissed as premature.

- For a third cause of action, the complaint alleges that in January, 1950, defendants, being owners of a lot contiguous to the land here in question, constructed a building on said lot with balcony and windows less than three meters distant from said land and with roof that drains rain water into it in violation of Article 670 and 674, respectively, of the New Civil Code. Plaintiffs, therefore, pray that the said balcony and windows be ordered closed and the roofs constructed in such a way that rain water would not fall on plaintiffs' land. Taking the view that, with the acquisition by defendants of a share in the land in question, the easement of light, view and drainage was extinguished "by merger in the same person of the ownership of dominant and servient estates" pursuant to Article 631 of the New Civil Code, the lower court ruled out this cause of action. This view is patently erroneous. As defendants have not become sole owners of the servient estate, for they have acquired only a part interest therein, it cannot be said that in this case ownership of the dominant and servient estates has been merged in the same person for the purposes of the article cited. Thus, commenting on the corresponding article of the Spanish Civil Code (Art. 546), Manresa observes that under that article the easement is not extinguished by the acquisition of a share in property held in common.

He says:

"(c) La adquisicion de una parte proindiviso del dominio. En este caso no se adquiere la propiedad plena indispensable para la extincion de la servidumbre, sino una fraction, porque el dominio se halla representado por todos los comuneros y no por uno solo. Ademas, no se reune propiamente el dominion en una sola persona, segun exige el numero 1.[o] del articulo 546. Asi en el predio o en la servidumbre que se posee proindiviso, existe un derecho abstracto, indeterminado, mientras que respecto a la servidumbre o al predio que se posee por entero existe un derecho determinado y especial. Asi tambien, el duefio del predio dominante, participe proindiviso del sirviente, puede oponerse a todo acto acordado por los comuneros que tienda a perjudicar la servidumbre, y el dueño del predio sirviente, participe proindiviso del dominante, no puede, por su sola voluntad, perjudicar ni menos extinguir el derecho que, no a el, sino a todos los comuneros corresponde." (IV Manresa, 6th ed., pp. 706-707.)

And as to the matter of drainage, Article 674 of the New Civil Code specifically provides "that the owner of a building shall be obliged to construct its roof or covering in such a manner that the rain water shall fall on his own land or on a street or public place, and not on the land of his neighbor, even though the adjacent land may belong to two or more persons, one of whom is the owner of the roof" (*Italics supplied.*)

In view of the foregoing, the order of dismissal is affirmed as to the second cause of action, but revoked with respect to the first and third causes of action, as to which the case is ordered remanded to the court below for further proceedings. Costs against the appellees.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Concepcion and Reyes, J.B.L., JJ., concur.

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