

LEONORA ESTOQUE, PLAINTIFF-APPELLANT, VS. ELENA M. PAJIMULA, ASSISTED BY HER HUSBAND CIRIACO PAJIMULA, DEFENDANTS-APPELLEES.

G.R. No. L-24419. July 15, 1968

Ponente: REYES J. B. L., J.

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REYES J. B. L., J.:

Direct appeal from an order of the Court of first instance of La Union, in its Civil Case No. 1990, granting a motion to dismiss the complain for legal redemption by a co-owner (*retracto legal de comuneros*) on account of failure to state a cause of action.

The basic facts and issues are stated in the decision appealed from, follows:

"Plaintiff based her complaint for legal redemption on a claim that she is a co-owner of lot No. 802, for having purchased 1/3 portion thereof, containing an area of 640 square meters as evidenced by a deed of sale, Annex "A", which was executed on October 28, 1961 by Crispina Perez de Aquitania, one of the co-owners, in her favor.

On the other hand, the defendant, who on December 30, 1959 acquired the other 2/3 portion of Lot No. 802 from Crispina Aquitania and her children, claimed that the plaintiff bought the 1/3 southeastern portion, which is definitely identified and, segregate hence there existed no co-ownership at the time and after said plaintiff bought the aforesaid portion, upon which right of legal redemption can be exercised or taken advantage of.

From the complaint, it would appear that Lot No. 802 of the Cadastral survey of Rosario, covered by original certificate of title No. RO-2720 (N.A.), was originally owned by the late spouses Rosendo Perez and Fortunata Bernal, who were survived by her child namely, Crispin Perez, Lorenzo Perez and Ricardo Perez. Ricardo Perez is also now dead. On October 28, 1951, Crispina P. Vda. de Aquitania sold her right and participation in Lot No. 802 consisting of 1/3 portion with an area of 640 square meters to Leonora Estoque (Annex of the complaint). On October 29, 1951, Lorenzo Perez, Crispina Perez and Emilia P. Posadas, widow of her deceased husband, Ricardo Perez, for herself and in behalf of her minor children, Gumersendo, Raquel, Emilio a and Ricardo, Jr., executed a deed of extrajudicial settlement wherein Lorenzo Perez, Emilia P. Posadas and her minor children assigned all their right, interest and participation in lot No. 802 to Crispina Perez (Annex B of the complaint). On December 30, 1959, Crispina Perez and her children, Rosita Aquitania Belmonte, Remedios Aquitania Misa, Manuel Aquitania, Sergio Aquitania and Aurora Aquitania sold to Elena Pajimula, the remaining 2/3 western portion of Lot No. 802 with an area of 958 square meters (Annex C of the complaint).

The action of the plaintiff is premised on the claim of co-ownership. From the deed of sale executed in favor of the plaintiff, it can be seen that the 1/3 portion sold to plaintiff is definitely identified as the 1/3 portion located on the south-eastern part of Lot No. 802 and specifically bounded on the north by De Guzman Street, on the east by Posadas street, on the sought by Perez street, and on the west by remaining portion of the same lot, which contained an area of 640 square meters. And in the deed of sale executed by Crispina Perez and her

children in favor of defendant Elena Pajimula over the remaining 2/3 portion of Lot No. 802, said portion is identified as the western portion of Lot No. 802 which is bounded on the north by Dc Guzman street, on the east by properties of Leonarda Estoque, on the south by the national road and on the west by Lots Nos. 799 and 801, containing an area of 958 square meters.'

The appellant's stand is that the deed in her favor was inoperative to convey the southeastern third of Lot 802 of the Rosario Cadastre notwithstanding the description in the deed itself, for the reason that the vendor being a mere co-owner, had no right to sell any definite portion of the land held in common but could only transmit her undivided share, since the specific portion corresponding to the selling co-owner is not known until partition takes place (*Lopez vs. Ilustre*, 5 Phil. 567; *Ramirez vs. Bautista* 14 Phil. 528). From this premise, the appellant argues that the sale in her favor, although describing a definite area, should be construed as having conveyed only the undivided 1/3 interest in Lot 802 owned at the time by the vendor, Crispina Perez Vda. de Aquitania. Wherefore, when the next day said vendor acquired the 2/3 interest of her two other co-owners, Lot 802 became the common property of appellant and Crispina Perez. Therefore, appellant argues, when Crispina sold the rest of the property to appellee Pajimula spouses, the former was selling an undivided 2/3 that appellant, as co-owner was entitled to redeem, pursuant to Article 1620 of the New Civil Code.

"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.

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 lower court, upon motion of defendant, dismissed the complaint, holding that the deeds of sale show that the lot acquired by plaintiff Estoque was different from that of the defendants Pajimula; hence they never became co-owners, and the alleged right of legal redemption was not proper. Estoque appealed.

We find no error in the order of dismissal, for the facts pleaded negate the claim that appellant Estoque ever became a co-owner of appellee Pajimula.

(1) The deed of sale to Estoque (Annex A of the complaint) clearly specifies the object sold as the southeastern third portion of lot 802 of the Rosario Cadastre, with an area of 840 square meters, more or less. Granting that the seller, Crispina Perez Vda. de Aquitania could not have sold this particular portion of the lot owned in common by her and her two brothers, Lorenzo and Ricardo Perez, by no means does it follow that she intended to sell to appellant Estoque her 1/3 undivided interest in the lot aforementioned. There is nothing in the deed of sale to justify such inference. That the seller could have validly sold her one-third undivided interest to appellant is no proof that she did choose to sell the same. *Ab posse ad actu non vale illatio*.

(2) While on the date of the sale to Estoque (Annex A) said contract may have been ineffective, for lack of power in the vendor to sell the specific portion described in the deed, the transaction was validated and became fully effective when the next day (October 29, 1951) the vendor, Crispina Perez, acquired the entire interest of her remaining co-owners (Annex B) and there became the sole owner of Lot No. 802 of the Rosario Cadastral survey (*Llace, vs. Muñoz*, 12 Phil. 328). Article 1434 of the Civil Code of the Philippines clearly prescribes that -

"When a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto such title passes by operation of law to the buyer or grantee."

Pursuant to this rule, appellant Estoque became the actual owner of southeastern third of lot 802 on October 29, 1951. Wherefore, she never acquired an undivided interest in lot 802. And when eight years later Crispina Perez sold to the appellees Pajimula the western two-thirds of the same lot appellant did not acquire a right to redeem the

property thus sold, since the respective portions were distinct and separate.

IN VIEW OF THE FOREGOING, the appealed order of dismissal is affirmed. Costs against appellant Estoque.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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