

**BASILISA GENEROSO AND NARCISO MERCED, PETITIONERS, VS.
JUDGE CIPRIANO VAMENTA, JR., COURT OF FIRST INSTANCE,
DUMAGUETE CITY BRANCH III, AND HEIRS OF TEODORA C. NICOLAS
LAGASCA, ...**

G.R. No. L-46005. August 24, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

The Court of Appeals in its decision dated August 7, 1975 allowed Basilisa Generoso to redeem for P4,000 from Teodora A. Nicolas Lagasca the one-sixth pro-indiviso share of Basilisa's co-owner, Gorgonia Generoso, in Lot No. 6396 of the Dumaguete cadastre, with an area of 1,234 square meters (with building) located at the corner of Alfonso XIII and Noblefranca Streets and assessed at P24,340. The redemption should be made within thirty days from the finality of the judgment.

This Court dismissed Lagasca's petition for review of the Appellate Court's decision which became final and executory on April 4, 1976 (L-41915). Basilisa had deposited in 1970 the redemption price of P4,000 pursuant to the lower court's judgment. But in 1975, while the case was pending in the Appellate Court, her lawyer, Jose G. Hernando, Jr., withdrew the P4,000 from the court and used it for his personal purposes.

Basilisa made another deposit of P4,000 on November 29, 1976 to effect the redemption. Judge Vamenta in his order of February 11, 1977 disallowed the redemption because it should have been made on or before May 4, 1976, the last day of the thirty-day period (p. 18, Rollo). This order is being assailed in the instant certiorari petition filed on June 2, 1977 through lawyers Edelmiro A. Amante and Nemesio D. Tejero, Jr.

Hernando admitted in his comment that he withdrew the redemption money (pp. 46-48, Rollo). His misconduct was referred to the Solicitor General in the resolution dated May 5, 1978. His case is pending as Administrative Case No. 1938.

In the meantime, Basilisa, without informing this Court, sold on November 28, 1977, for P40,000 to Natividad Delgado, the alleged common-law wife of Ang Tay, the disputed one-sixth interest in the property in litigation with an area of 235 square meters (pp. 151-152, Rollo).

Lawyer Henry Nicolas, an heir of deceased respondent Lagasca, and one Vincent Torres, in their affidavits of July 23, 1980, swore that Ang Tay had purchased the five-sixth share of the five Generosos in the property and that Ang Tay had been negotiating for the purchase of the one-sixth share in the name of his mother, Teodora C. Nicolas Lagasca (p. 116-117, Rollo).

By reason of the sale, Felix M. Lagrito, son-in-law and counsel of Lagasca, filed on August 11, 1980 a motion to dismiss this case because the petitioners have no more interest in the case (p. 115, Rollo).

As the contending parties have sold to Ang Tay for distinct considerations the controverted one-sixth portion, the

dismissal of the instant case is unavoidable. "Where all substantial interest in the controversy has been parted with or extinguished, a motion for dismissal of the appeal is proper" (J. Moreland in *Velasco vs. Rosenberg*, 29 Phil. 212).

WHEREFORE, the motion is granted. This case is dismissed for having become moot and academic. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, Escolin, and Cuevas, JJ., concur.

Makasiar, J., (Chairman), no part.

Abad Santos, J., reserves his vote.

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