

VALENTINA G. VILLANUEVA, ASSISTED BY HER HUSBAND SEVERINO FERI, ANTONIO G. VILLANUEVA, ANGEL G. VILLANUEVA AND OLIMPIA G. GILLANUEVA, ASSISTED BY HER HUSBAND F. DAGUIMOL, PETITI...

G.R. No. L-33158. October 17, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

Petition for review on certiorari of the decision[1] dated July 14, 1970 of the then Court of First Instance of Cagayan-Branch II, in Civil Case No. 1486-A, entitled "Valentina G. Villanueva, et al., plaintiffs, versus Erlinda V. Vallangca, et al., defendants", the dispositive portion of which reads as follows:

"WHEREFORE, the Court hereby renders judgment —

1. Ordering the reformation and amendment of Exhibit '3' by deleting the phrase 'located at the western side of the lot which is five and one half (5-½) meters in width and fifteen (15) meters long';
2. Declaring Erlinda Vallangca, married to Concepcion Villanueva absolute owners of an ideal and undivided share of one-half (½) of the land described in paragraph 2 of the complaint, which was conveyed to them by Exhibit '3';
3. Ordering the partition of the land described in paragraph 2 of the complaint among the heirs of Basilia Garcia;
4. Ordering the dismissal of the defendants' counterclaim; and
5. Ordering the Clerk of Court to return to the plaintiffs the sum of P1,100.00 deposited by them with costs de oficio.

SO ORDERED."

Petitioners and respondent Concepcion Villanueva are the children of spouses Macario Villanueva (one of the respondents) and Basilia Garcia. Said spouses owned a small parcel of land with an area of 165 square meters situated along Pres. Quezon St., in the Poblacion of Aparri, Cagayan. Sometime in 1944, Basilia Garcia died intestate, leaving her husband, Macario Villanueva and children (herein petitioners) as her sole and only legitimate heirs.

On May 13, 1964, the surviving spouse, Macario, without the subject lot having been partitioned, sold in favor of Erlinda Vallangca, the wife of respondent Concepcion Villanueva, one-half or 82.5 square meters of the aforementioned lot, particularly the western portion thereof, measuring 15-½ meters by 15 meters, for P1,100.00, as evidenced by a Deed of Sale marked as Exhibit "3".[2] Having been informed of the sale, petitioners signified their intention to redeem the lot in question but respondent vendee refused to allow such redemption contending that she is the wife of one of the legal heirs and therefore redemption will not lie against her because she is not the

"third party" or "stranger" contemplated in the law.

Petitioners filed a complaint for rescission of sale and legal redemption of the portion sold to Vallangca. The trial court, on July 14, 1970, rendered a decision ordering among other things, the reformation of the Deed of Sale and declaring the vendee the absolute owner of the subject lot.

Petitioners now submit^[3] that the lower court erred —

(1) in holding that the property sold to Erlinda Vallangca, married to Concepcion Villanueva, is a conjugal partnership property of the spouses, and therefore, the right of legal redemption will not lie against Erlinda Vallangca and Concepcion Villanueva, instead of holding that Erlinda V. Vallangca, being a "third person" or "stranger", the right of legal redemption contemplated under Art. 1620 and/or 1088 (NCC) can be exercised as against the vendee in the sale;

(2) in ordering for the reformation and amendment of the document Exh. 3 by deletion of the phrase "located at the western side of the lot which is five and one-half meters in width and 15 meters long" instead of annulling and rescinding the sale as called for under the circumstances; and

(3) in ordering the partition of the property described in par. 2 of the complaint among the heirs of Basilia Garcia, where partition is not warranted considering that there is still pending before the same court a separate action for partition of the same property filed by Concepcion Villanueva against plaintiff-petitioners.

Art. 1620 of the New Civil Code provides:

"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."

It is not disputed that co-ownership exists but the lower court disallowed redemption because it considered the vendee, Erlinda Vallangca, a co-heir, being married to Concepcion Villanueva, and the conveyance was held valid since it was in favor of the conjugal partnership of the spouses in the absence of any statement that it is paraphernal in character. Within the meaning of Art. 1620, the term "third person" or "stranger" refers to all persons who are not heirs in succession, and by heirs are meant only those who are called either by will or the law to succeed the deceased and who actually succeeds. In short, a third person is any one who is not a co-owner.^[4] The vendee is related by affinity to the deceased by reason of her marriage to one of the heirs and being married to Concepcion does not entitle the vendee to inherit or succeed in her own right. She is not an heir of Basilia Garcia nor included in the "family relations" of spouses Macario and Basilia as envisioned in Art. 217 of the Civil Code —

"Art. 217. Family relations shall include those:

- (1) Between husband and wife;
- (2) Between parent and child;
- (3) Among other ascendants and their descendants;
- (4) Among brothers and sisters.

The co-owners should therefore be allowed to exercise their right to redeem the property sold to Erlinda Vallangca. To deny petitioners the right of redemption recognized in Art. 1620 of the Civil Code is to defeat the purpose of minimizing co-ownership and to contravene the public policy in this regard. Moreover, it would result in disallowing the petitioners a way out of what, in the words of Manresa, "might be a disagreeable or

inconvenient association into which they have been thrust."[5] Respondent seller Macario, as co-owner and before partition, has the right to freely sell and dispose of his undivided interest or his ideal share but not a divided part and one with boundaries as what was done in the case at bar. It is an inherent and peculiar feature of co-ownership that although the co-owners may have unequal shares in the common property quantitatively speaking, each co-owner has the same right in a qualitative sense as any one of the other co-owners. In other words, every co-owner is the owner of the whole and over the whole, he exercises the right of dominion, but he is at the same time the owner of a portion which is truly abstract because until division is effected, such portion is not correctly determined.

It appearing that a separate action for partition of the subject lot is still pending before the CFI of Cagayan, the trial court's order of partition is, therefore, uncalled for.

WHEREFORE, the petition is hereby GRANTED and the decision dated July 14, 1970 of the then CFI of Cagayan, Br. II, is accordingly REVERSED. Costs against private respondents.

SO ORDERED.

Concepcion, Jr., Abad Santos, Escolin, and Alampay, JJ., concur.

Aquino, J., (Chairman), see dissenting opinion.

[1] pp. 58-65 Rollo

[2] p. 56-A Rollo

[3] p. 132 Rollo

[4] Basa vs Aguilar, 117 SCRA 131

[5] Basa vs Aguilar, supra

DISSENTING OPINION

AQUINO, J.:

This is an intra-family litigation over 82.5 square meters of land. The spouses Macario K. Villanueva and Basilia Garcia owned a lot with an area of 165 square meters located on President Quezon Street, Aparri, Cagayan. Basilia died in 1944 survived by Macario and their five children named Valentina, Olimpia, Angel, Antonio and Concepcion (a male person), the husband of Erlinda V. Vallangca.

The five children each owned a 1/10 share of that same lot while Macario owned ½ thereof as his conjugal share or 82.5 square meters. Note that north of the lot is the lot of Severino Feri, Valentina's husband. On 3/4 of the lot stands a house of strong materials occupied by Valentina.

Macario claims that he is the owner of the house because after liberation he bought a house for P500 and transferred to the lot (6 tsn Jan. 16, 1970). On the other hand, the trial court found that it is owned by Valentina (p. 64, Rollo). Macario admits in his letter, Exhibit D.

On May 13, 1964 Macario (he is an insurance underwriter and was 79 in 1970 when he testified) sold for P1,100 to Erlinda, the wife of his son Concepcion, his ½ conjugal share in said lot but he made the mistake of selling "the

western side of the lot". He should have sold only his ideal proindiviso $\frac{1}{2}$ share. He had to sell because he had to pay one Timbang the mortgage debt secured by the lot (4 tsn Jan. 16, 1970; p. 35, Rollo).

Four years after the sale, or on October 17, 1968, the four children sued their father, brother and sister-in-law for rescission of the sale and for redemption. They alleged that there was no written notice to them of the sale, that they learned of it only in September 1968 and that the house on the lot was valued at P7,000. They consigned the redemption price of P1,100.

Macario answered the complaint without counsel's assistance. He stated therein that to avoid trouble and quarrelling among the members of his family, he would like to cancel the sale since Erlinda could not buy Valentina's house, to sell his $\frac{1}{2}$ share to Valentina and to return the P1,100 to Erlinda (Exh. C, pp. 32-33, Rollo).

That answer should have terminated the case. But later a motion to dismiss and an answer were filed by Erlinda, Concepcion and Macario. They insisted on the validity of the sale to Erlinda. Valentina filed another case, Civil Case No. 1501-A, for partition.

When the trial judge categorically asked Macario what was his proposition about the case, he said that it was his desire that his son Concepcion should stay on the disputed lot because he had no lot on which to build his house (9-10 tsn Jan. 16, 1970).

Judge Florendo in his decision dated July 14, 1970 declared Erlinda the owner of the $\frac{1}{2}$ portion bought by her after ordering the reformation of the deed of sale to make it appear that an ideal $\frac{1}{2}$ share was bought by her and ordering the return of the P1,100 to Valentina. Judge Florendo also ordered partition of the lot. Valentina and her brothers and sister appealed to this Court under Republic Act No. 5440.

Macario created in this case a big legal problem for a small property. That problem would not have arisen had he been properly legally advised. Instead of selling his proindiviso $\frac{1}{2}$ share or 82.5 square meters to his son Concepcion, a co-owner to the extent of $\frac{1}{10}$ or 16.5 square meters, he chose to sell it to his daughter-in-law, Erlinda, thus provoking the issue of whether Erlinda is a third-person with respect to the co-owners.

Had he sold his $\frac{1}{2}$ share to his son Concepcion, a co-owner, there would be no question about the sale to a "third person". The right of redemption does not exist with respect to the vendee-co-owner. The Civil Code provides:

"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. x x x x x. (1522a)"

"ART. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor. (1067a)"

Note that the "third person" in article 1620 is "extraño" (stranger) in the Spanish original of article 1522, not "tercero" which is the Spanish for "third person".

Manresa, commenting on article 1067, now article 1088, observes, that "el marido de una heredera" is a stranger (7 Código Civil Español, 7th Ed., 1955, p. 812).

I am of the opinion that no right of redemption exists in favor of Erlinda's sisters-in-law and brothers-in-law because the sale was made to the conjugal partnership of Erlinda and Concepcion, a co-owner. The sale made Concepcion and Erlinda the co-owners of $\frac{6}{10}$ or $\frac{3}{5}$ of the 165-square-meter lot. We have to be realistic and pragmatic in this case.

Even now, Macario could himself revoke or rectify the sale and resell his 1/2 share to Concepcion.

Castan Tobeñas says that an "extraño" is a person who is not a co-owner. Literally, Erlinda is not a co-owner but the unblinkable fact is that she is married to a co-owner and the ½ portion sold became her conjugal property and that of her husband. They in turn are co-owners of that conjugal ½ portion.

The view that Erlinda is not a third person with respect to the co-ownership is supported by the ruling in *Saclolo and Pascual vs. Madlangasakay and Court of Agrarian Relations*, 106 Phil. 1038. It was held in that case:

"Under legal principles, by the contract of marriage, a man and a woman enter a joint life, acting, living and working as one. Whether under the common law or under the civil law, upon marriage the husband and the wife become one single moral, spiritual and social being, not only for purposes of procreation but also for the purpose of mutual help and protection, physically, morally and materially. There is between them a full and complete community of existence."

Castan Tobeñas says that "el matrimonio es el acto solemne por medio del cual el hombre y la mujer constituyen entre si una union legal para la plena y perpetua comunidad de existencia".

Justice Labrador says that "if there is unity and community of existence between husband and wife, then the husband may not be considered as a being distinct and different from the wife".

Hence, in the *Saclolo* case it was ruled that for purposes of the Agricultural Tenancy Law, Republic Act No. 1199, where the wife sought to eject a tenant from her paraphernal land on the ground that her husband, who was jobless, would work on the land, the tenant may be ejected although the law provides that the landowner may eject the tenant only when he will personally cultivate his land.

The unity of husband and wife is patent in this case. Plaintiffs Valentina and Olimpia had to bring this case with the assistance of their husbands against Erlinda and her husband, Concepcion.

The majority opinion relies on *Basa vs. Aguilar*, 117 SCRA 128 where one-half of a parcel of land, with an area of 32,383 square meters, was owned proindiviso by Olimpia, Arsenio, Nemesio, Ricardo, Atanacia, Juliana and Feliciano, surnamed Basa, and the other half was owned proindiviso by the spouses Genaro Puyat and Brigida Mesina.

The Puyats sold their undivided ½ share to their son-in-law, Primo Tiongson, who was married to their daughter Macaria. It was held that the Basas had the right to redeem the ½ share sold to Tiongson who was considered a third person with respect to the co-ownership in spite of the fact that he was a son-in-law of the two co-owners.

The instant case is different from the *Basa* case because the vendee herein is the wife of a co-owner, Concepcion, who owns a 1/10 proindiviso share of the disputed lot.

What is the just solution of this case? To a fairminded person, the judicious solution is to award the lot to Valentina whose house is built on 3/4 of the lot. The P1,100 deposited by her in payment of the ½ proindiviso share of her father should be paid to Erlinda. This is in accordance with the original answer of Macario (Exh. C) which should be regarded as binding on him.

The second case filed by Valentina, Civil Case No. 1501-A, should be consolidated with the instant case. In the two cases the trial judge should determine what amount at current prices should be paid by Valentina for the 1/10 share of Concepcion and the 1/10 share of each of the other children. This solution should establish peace among the five children.

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