

**DOROTEA DE LA CRUZ, PLAINTIFF AND APPELLANT, VS.  
DEOGRACIAS MARCELINO, DEFENDANT AND APPELLEE.***G.R. No. L-1610. October 12, 1949*

Ponente: BENGZON, J.

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Proceeding from the Court of First Instance of Bulacan, this case involves the right of legal redemption of a co-owner. No questions of fact. His Honor, the trial judge, aptly describes the situation as follows:

"Que la aqui demandante, Dorotea de la Cruz, y Ruperto Villanueva eran condueños y proindiviso de una pesqueria que es objeto de la presente causa; que en 10 de agosto de 1939 ambos condueños cedieron en arrendamiento dicha propiedad por un periodo de 28 años desde el otorgamiento de dicha escritura, cuyo plazo termina el agosto 10 de 1962, a los esposos Ladislao Caparas y Sixta Adriano. (Exhibit A); que mas tarde, o sea el 23 de marzo de 1946 los citados esposos Caparas y Adriano traspasaron dicha propiedad a Ruperto Villanueva (Exhibit B); que en diciembre 12 de 1946 Ruperto Villanueva hipoteco la mitad proindivisa de dicha propiedad a Francisco Aniag, que mas tarde fue rescatada y redimida mediante el pago a Francisco Aniag de las obligaciones contraidas por aquel, habiendose cancelado consiguientemente la escritura de hipoteca por la mitad proindivisa del terreno (Exhibit C); que en 13 de febrero de 1947, el referido Ruperto Villanueva vendio absolutamente al aqui demandado Deogracias Marcelino todo su derecho, interes y participacion en la propiedad objeto de la demanda de autos como tambien cedio y traspaso al aqui demandado todo su derecho e interes en el arrendamiento de la pesqueria en cuestion, habiendose registrado dicha escritura de venta absoluta por Ruperto Villanueva a favor de Deogracias Marcelino en la oficina del Registrador de Titulos de Bulacan el 5 de marzo de 1947 (Exhibit D).

"La demandante, Dorothea de la Cruz, una de los condueños de la propiedad mencionada, cuya mitad ha sido vendida por el otro condueño Ruperto Villanueva, a favor de Deogracias Marcelino, trata ahora de rescatar la mitad proindivisa vendida por su condueño Ruperto Villanueva del comprador Deogracias Marcelino, depositando como, en efecto se deposito en la Escribania de este Juzgado la cantidad importe de la venta el 12 de marzo de 1947, en la misma fecha en que se presento la demanda de autos.

"El demandado, Deogracias Marcelino, contiene que dicho deposito hecho por la demandante es nulo e ilegal, por no haberse cumplido los requisitos exigidos en el articulo 1524, en relacion con los articulos 1518 y 1176, 1177 y 1178 delCodigo Civil; y contiene, ademas, que aun suponiendo que la oferta y consignacion de pago se hubiese hecho en debida forma y bajo las condiciones prescritas por la ley, sin embargo, el unico derecho que tiene la demandante es el rescate de la mitad proindivisa de la nuda propiedad, perteneciente al condueño Ruperto Villanueva, que fue vendida al aqui demandado Deogracias Marcelino y en esta redencion legal no lleva consigo necesariamente el derecho de redencion del derecho de arrendamiento del demandado sobre la totalidad de la pesqueria."

Upon the above statement, the court reached the conclusion that plaintiff Dorotea de la Cruz could not legally redeem, because she had not offered to repurchase the one-half belonging to Ruperto Villanueva before actually filing this action against the defendant Deogracias Marcelino and making the deposit of money.

Articles 1522 and 1524 of the Civil Code, which are the statutes applicable, say that any co-owner may exercise the right of redemption if the share of any co-owner is sold to a third person; and such right may be exercised only within nine days counted from the date of the record of the transfer in the Registry of Deeds.

Of course it is usual—and the better practice—for the co-owner to first approach the third person and offer to buy back the share of the co-owner. If the third person agrees, the repurchase is effected. If he does not agree, or there is any question as to the amounts to be paid, resort is made to the courts. However, there is nothing to prevent the co-owner from going to the court directly—as in this case—and practically make the offer to repurchase through it. The third person (defendant) could upon answering the complaint, manifest his conformity—or else oppose the plaintiff's petition. If he agrees, the suit should cause him no prejudice, in the form of costs for example, or damages if any. If he opposes, the litigation will necessarily proceed to judgment.

The trial judge held that a previous tender was a condition precedent to the right of redemption, because article 1525 makes applicable to legal redemption the provisions of articles 1511 and 1518, and the last one says that the co-owner may not exercise the right of redemption without returning to the third person the price of the sale, plus (1) the expenses of the contract and the lawful payments by reason of the sale and (2) the useful and necessary expenditures incurred upon the thing sold.

The position is not entirely groundless; but it is the consensus among the members of this Court that the above articles merely enumerate the amounts to be paid by the co-owner who wishes to redeem. They do not postulate any previous notice to the new owner nor a meeting between him and the redemptioner, much less a previous formal tender, before any action is begun in court to enforce the right. A sensible and prudent man would naturally endeavor to present the offer privately, to avoid the inconvenience of court proceedings. But it is not always just to graft into the statute such rules of common sense as may be deemed appropriate. And then, considering that the co-owner has nine days only<sup>[1]</sup>, the "previous tender" requisite might in some instances frustrate the assertion of the co-owners prerogative. He might not know the third person's whereabouts. The latter might even conceal himself to prevent redemption.

Wherefore the declaration is imperative that such offer or tender is not an essential condition precedent to the co-owner's right to redeem. The important thing is to assert it in time and in proper form. This action and the consequent consignment must be held proper. Plaintiff's right to redeem must be upheld. Observe that nobody claims the amount deposited is insufficient to satisfy the expenses chargeable to the redeemer.

On the other hand, we approve his Honor's opinion that the plaintiff is not entitled to reacquire the lease privileges that had previously been granted to the Caparases, not even those pertaining to the one-half ownership she is authorized to reclaim. In the first place, the co-owner's right of redemption seems to exist only where there has been a sale or alienation—not in the event of a lease. In the second place, granting *arguendo* that the execution of the lease was a sale or alienation of lease rights, inasmuch as Dorotea de la Cruz herself also leased her portion and therefore "alienated" her lease rights, she may not now claim any privilege to repurchase, because obviously, when a co-owner disposes of his share he may not thereafter repurchase it nor that of the other co-owners; for the simple reason—as rightly stated by appellee—that he has relinquished his status as co-owner, which is the basis and origin of the right to redeem.

Now, the amount of P4,200 has been deposited in court for the repurchase of the one-half share owned by Ruperto Villanueva and also for the re-acquisition of the lease interests over the whole landed property. As stated before, none questions the sufficiency of the money so deposited. Nevertheless, inasmuch as we hold that the lease privileges may not be repurchased, and inasmuch as the record contains no data to enable us to make a fair apportionment, the matter will be returned to the court below for a determination of amounts necessary to buy

back the half naked ownership, and for such appropriate directives as may be in consonance with the law and the views herein expressed. So ordered.

Moran, C.J., Ozaeta, Feria, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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[1] This limitation is still in force. *Sempio vs. Del Rosario*, 44 Phil., 1.

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### CONCURRING AND DISSENTING

#### PARAS, J.:

Dorotea de la Cruz (plaintiff-appellant herein) and Ruperto Villanueva were co-owners of a certain fishery. In 1939, they leased the same to the spouse Ladislao Caparas and Sixta Adraino for a term of 23 years. In 1946, said spouses transferred their rights to Ruperto Villanueva who, in the same year, mortgaged and undivided half of the fishery to Francisco Aniag. This mortgage was later paid off by Ruperto Villanueva. In 1947, the latter conveyed, by way of absolute sale, all his rights and interest in the fishery to Deogracias Marcelino (defendant-appellee herein). Appellant seeks to exercise her right of legal redemption against appellee. The Court of First Instance of Bulacan rendered judgment against appellant.

I concur with the majority of the court in so far as they uphold appellant's right of redemption, but dissent from their ruling that said right does not include the leasehold over the whole fishery acquired by appellee from Ruperto Villanueva. When the latter bought back the lease from the spouses Ladislao Caparas and Sixta Adraino, he became the full (naked and beneficial) owner and thereby ceased to be the lessor of his undivided half, in the same way that when Ruperto Villanueva conveyed his rights to appellee, the latter acquired the leasehold corresponding to the one-half share of appellant, plus the full (naked and beneficial) ownership of the other half belonging to Ruperto Villanueva (who was no longer a lessor). I hold, therefore, that the appellee has the right to keep in lease only one-half of the fishery pertaining to appellant, who should respect and be bound, as to her share, by the contract of lease executed by her in 1939.

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