

**CONCEPCION MATURAN AND FELICIDAD MATURAN, PLAINTIFFS
AND APPELLANTS, VS. ARCADIO GULLES AND GODOFREDO
ESCOBIDAL, DEFENDANTS AND APPELLEES.***G.R. No. L-6298. March 30, 1954*

Ponente: REYES, J.

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This is an appeal from a judgment of the Court of First Instance of Leyte, dismissing plaintiff-appellants' action for legal redemption. The appeal involves a purely legal question with reference to the application of article 1621 of the New Civil Code.

It appears that the land sought to be redeemed was formerly a part of a greater area belonging to Domingo Angub which, after the latter's death, was in 1932 partitioned among his six children, among them Perfecta and Heraclio, the portions allotted to these two being contiguous to each other and each containing less than one hectare. Upon the death of Perfecta, her portion passed to her children, Concepcion Maturan and Felicidad Maturan, to the plaintiffs herein, while Heraclio's portion was inherited by his children, Julio and Diosdado, and later by their respective widows and children, who, on January 29, 1952, sold it to the defendant Arcadio Guiles for P100. Upon learning of the sale, plaintiffs sought to repurchase the property in the exercise of their right to legal redemption but as the buyer refused to resell, they brought the present action for the enforcement of that right. The action is directed not only against Guiles but also against Godofredo Escobidal on the theory that the former is only a dummy of the latter.

The lower court found and it is not disputed that the land sought to be redeemed adjoins that of the plaintiffs, that it is rural and has an area of not more than one hectare and that its purchaser already owns or is a co-owner of another rural land. Upon these findings of facts, plaintiffs are entitled to redeem the land in question from its purchaser in accordance with the first paragraph of article 1521 of the new Civil Code, which says:

"Art. 1621. The owners of adjoining lands shall also have the right of redemption when a piece of rural land, the area of which does not exceed one hectare, is alienated, unless the grantee does not own any rural land."

But taking note of the second paragraph of the same article, which says that the right of redemption accorded by the article to owners of adjoining lands "is not applicable to adjacent land which are separated by brooks, drains, ravines, roads and other apparent servitudes for the benefit of other estates", the lower court held that it is incumbent upon the plaintiffs to prove that their land and the one they seek to redeem are not separated by any of those barriers and dismissed their action because of their failure to prove that fact.

We agree with plaintiff-appellants that the ruling below is erroneous. Having proved that their land and that which they seek to redeem are contiguous, plaintiffs should not be called upon to prove the contrary by showing that the two estates are separated by a brook, drain, ravine, etc. As Manresa observes in his comment on the corresponding article (Art. 1523) of the old Civil Code, it is evident that two estates do not adjoin each other if they are separated by a brook, drain, ravine, road or other such apparent servitude, for in that case each estate would be bounded by

the brook, drain, ravine, etc., and not by the other estate. The one called upon to prove the existence of a barrier between the two estates is he who wants to defeat the right of redemption on the grounds that the two estates are not contiguous to each other.

In view of the foregoing, the judgment of dismissal is set aside and it is ordered that another judgment be entered condemning the defendant Arcadio Guiles (it not having been established that he was mere dummy of the other defendant, Godofredo Escobidal) to deed over the land in question to the plaintiffs upon payment by the latter of the sum of P100.00. Godofredo Escobidal is absolved from the complaint. With costs against the defendant Arcadio Guiles.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautisa Angela, Labrador, Concepcion, and Diokno, JJ., concur.

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