

**FRANCISCO GARCIA, PAZ GARCIA, AND MARIA GARCIA,
PETITIONERS, VS. JOSE CALALIMAN, PACIENCIA TRABADILLO
& HON. COURT OF APPEALS, THIRD DIVISION, RESPONDENTS.**

G.R. No. L-26855. April 17, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision* of the Court of Appeals in CA G.R. No. 22179-R, promulgated on August 31, 1966, reversing the decision of the Court of Instance of Iloilo** in Civil Case No. 3489, and rendering a new one dismissing the complaint of petitioner herein, the dispositive portion of which reads as follows:

"WHEREFORE, the judgment appealed from is hereby reversed and another entered, dismissing plaintiff's complaint. No pronouncement as to costs." (p. 29 Rollo)

The facts of the case are as follows:

On February 11, 1946, one Gelacio Garcia died intestate, leaving a parcel of unregistered land about 372 sq. meters, situated in the Municipality of Tubungan, Province of Iloilo (Exhibits, p. 19). On his death the property was inherited by his nephews, nieces, grandnephews who are the descendants of his late brothers, Pedro, Simeon, Buenaventura and Marcos (TSN, Sept. 6, 1956, p. 3).

On December 3, 1954, the heirs, Juanita Bertomo, Joaquin Garcia, Porfirio Garcia, Dioscoro Garcia, Flora Garcia, Consolacion Garcia, Remedios Garcia, Trinidad Garcia, Baltazar Garcia, signed a document entitled, "Extrajudicial Partition and Deed of Sale" (Exhibits, p. 19). The parcel of land subject of the document was described as follows:

"A parcel of residential land, about 372 square meters, 1st class, identified as Assessor's Lot No. 107, Block No. 8, bounded on the north by Paz and Federal Streets; on the south by Tabaosares and Antonia Tacalar; on the East by Piedad Street; and on the West by Paz Street. This parcel of land has no concrete monuments to indicate its boundaries but there are dikes, stones and temporary fences used as landmarks and boundary signals. This parcel of land is covered by Tax Declaration No. 1149, S. of 1947, in the name of Gelacio Garcia, and its assessed value of P110.00." (p. 19, Exhibits)

The last paragraph of the same document states:

"That for and in consideration of the sum of FIVE HUNDRED PESOS (P500.00), Philippine Currency, to us in hand paid by the spouses, JOSE CALALIMAN and PACIENCIA TRABADILLO, all of legal age, Filipinos and residents of the municipality of Tubungan, province of Iloilo, Philippines, receipt of which we hereby acknowledged and confessed to our entire satisfaction, do by these presents, cede, sell, convey and transfer the above-described parcel of land unto the said spouses. Jose Calaliman and Paciencia Trabadillo, their heirs, successors and assigns free from all liens and encumbrances whatsoever." (p. 19. Exhibits)

The document was inscribed in the Register of Deeds of Iloilo on February 24, 1955, inscription No. 20814, Page 270, Vol. 64 (Exhibits. p. 20).

On December 17, 1954 another group of heirs, Rosario Garcia, Margarita Garcia, Dolores Rufino, Resurreccion Tagarao, Serafin Tagarao, Buenaventura Tagarao, Fortunata Garcia and Simeon Garcia, all residents of Isabela, Negros Occidental, also sold to the spouses Jose Calaliman and Paciencia Trabadillo through their attorney-in-fact, Juanito Bertomo their shares, rights, interest and participation in the same parcel of land. The Deed of Sale was registered in the Register of Deeds of Iloilo also on December 22, 1954. Inscription No. 20640, p. 88, Vol. 64 (Exhibits, p. 21-22).

On May 7, 1955 the heirs Francisco Garcia, Paz Garcia and Maria Garcia, petitioners herein, filed against the spouses Jose Calaliman and Paciencia Trabadillo, private respondents herein, Civil Case No. 3489 with the Court of First Instance of Iloilo, for legal redemption of the 3/4 portion of the parcel of land inherited by the heirs from the late Gelacio Garcia, which portion was sold by their co-heirs to the defendants. In the complaint (Record on Appeal, p. 4) plaintiffs alleged, among others:

"5. - That, plaintiffs' co-owners had never offered for sale their interest and shares over the said land to the plaintiffs prior to the sale in favor of the defendants, nor given notice of such intention on their part; and that, no notice in writing has been given by said co-owners to the plaintiffs of the said sale, such that, plaintiffs came to learn of it only from other source;

"6. - That, plaintiffs would have purchased the interest and shares of their co-owners had the latter offered the same to them prior to the sale thereof to the defendants; and that, within 30 days after learning of the sale made to the defendants under annexes 'A', 'B' and 'B-1', plaintiffs made repeated offer to the defendants to allow them to redeem said interest and shares acquired by the defendants in accordance with the right granted to the plaintiffs by law in such a case, offering a reasonable price thereof of P300 taking into consideration the fact that the defendants had acquired only 3/4 of the land of 372 square meters more or less, in area with assessed value of P110 and a fair market value of 372 at P1 per square meter, the price actually obtaining in the locality at the time of the sale thereof under Annexes 'A', 'B' and 'B-1'; however, the defendants refused and have until the present refused to grant redemption thereof giving no reason why other than challenging the plaintiffs to bring their case in court;

"7. - That, circumstances surrounding the transaction between the defendants and plaintiffs' co-owners, the vendors, were such that defendants could not have actually paid nor the vendors actually received the total price of P800 as stipulated in the deeds Annexes 'A', 'B' and 'B-1', while the said price fixed is grossly excessive and highly exaggerated and prohibitive for evidently ulterior motive;

"8. -That, the land herein described in an ancestral property and plaintiffs have actually a house standing thereon and having lived thereon ever since, such that, the defendants' refusal to allow redemption thereof has caused the plaintiffs mental torture, worry and anxiety, forcing them to litigate and retain services of counsel, therefore, plaintiffs demand against the defendants P500 for moral damage, P500 for exemplary damage, P300 for attorney's fees, aside from actual expenses incurred; and, furthermore, P5 monthly as reasonable value of defendants' occupation of a portion of the premises counting from the filing of this complaint."

They prayed that the trial court render judgment:

"1. - Declaring the plaintiffs to be entitled to redeem from the defendants for the price of P300 or for such reasonable price as may be determined by this Honorable Court the interest and shares over the land described in this complaint of plaintiffs' co-owners, Joaquin, Porfirio, Flora, Dioscoro, Consolacion, Remedios, Trinidad, Baltazar, Rosario, Margarita, Dolores, Fortunata and Simon, all surnamed Garcia, and Resurreccion, Serafin and Buenaventura, all surnamed Tagarao, sold by them to the defendants under the deeds of sale Annexes 'A', 'B' and 'B-1' of this complaint; and ordering the defendants to execute the proper instrument of

reconveyance or redemption thereof in favor of the plaintiffs; and, ordering them to vacate the premises;

"2. - Condemning the defendants to pay to the plaintiffs P500 for moral damage; P500 for exemplary damage; P300 for attorney's fees and actual expenses incurred; P5 monthly from the filing of this complaint as reasonable value of defendants' occupation of a portion of the land; the costs of this action; and, for such other relief and remedy as may be legal, just and equitable."

On the other hand, the defendants, private respondents herein, alleged in their answer the following special affirmative defenses (Record on Appeal, p. 14):

"1. -That plaintiffs have no cause of action against the herein defendants;

"2. -That due notices in writing have been sent to plaintiff Francisco Garcia at his residence at 2875 Felix Huertas St., Sta. Cruz, Manila, sometime last June 1953, in which plaintiff Francisco Garcia was informed of his co-owners signified intention to sell their shares, and likewise, the other plaintiffs Paz and Maria Garcia were personally notified of the same hence, for that reason, they are now barred to claim legal redemption of the land in question, having filed their belated claim too late."

The trial court rendered judgment on September 12, 1957 in favor of the plaintiffs (Record on Appeal, p. 15), the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered:

'(a) Sentencing the defendants to resell the property to the plaintiffs for P800.00 which is the total consideration of the two deeds of sale Exhibits A and B;

'(b) In the event that the defendants fail to execute the deed of resale within ten days from the date decision becomes final, the Clerk Court is hereby ordered to execute the corresponding deed pursuant to the provisions of Section 10 of Rule 39 of the Rules of Court;

'(c) Without pronouncement as to costs."

On October 14, 1957 plaintiffs filed their notice of Appeal predicated on "(a) failure of the Court to adjudge the real or reasonable price of the sale or otherwise the redemption value thereof; (b) failure of the Court to adjudge damages including attorney's fees in favor of the plaintiffs and the costs." (Record on Appeal, p. 18).

Defendants filed their own notice of appeal on October 15, 1957 (Record on Appeal, p. 19).

On appeal the Court of Appeals in a decision promulgated on August 31, 1966 reversed the decision of the trial court and rendered another one dismissing plaintiff's complaint with no pronouncement as to costs (Rollo, p. 22).

The instant petition for review by certiorari was filed with the Court on December 12, 1966 (Rollo, p. 11). The Court at first dismissed the petition in a resolution dated December 22, 1966, for insufficient supporting papers (Rollo, p. 35) but reconsidered the said Resolution of Dismissal later in a Resolution dated February 8, 1967 (Rollo, p. 97) as prayed for in a motion for reconsideration filed by petitioners on February 1, 1967 (Rollo, p. 38). The same Resolution of February 8, 1967 gave due course to the petition.

The Brief for the Petitioners was filed on June 9, 1967 (Rollo, p. 106); the Brief for Respondents was received in the Court on August 31, 1967 (Rollo, p. 119).

Petitioners having manifested they would not file reply brief on September 14, 1967 (Rollo, p. 122) the Court considered the case submitted for decision, in a Resolution dated September 21, 1967 (Rollo, p. 124).

Petitioners assign the following errors:

I. THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT THE 30-DAY PERIOD PRESCRIBED IN ARTICLE 1088 OF THE NEW CIVIL CODE FOR A CO-HEIR TO EXERCISE HIS RIGHT OF LEGAL REDEMPTION, HAD ALREADY ELAPSED WHEN THE HEREIN PLAINTIFFS FILED THE ACTION ON MAY 7, 1955.

II. THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT THERE WAS NO OFFER TO REIMBURSE THE DEFENDANTS FOR THE PORTION OF THE LAND IN QUESTION SOLD TO THEM BY THE CO-HEIRS OF THE PLAINTIFFS.

III. THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE JUDGMENT OF THE LOWER COURT, AND IN NOT ADJUDGING DAMAGES, ATTORNEY'S FEES AND COSTS IN FAVOR OF THE PLAINTIFFS." (Brief for the Petitioners, p. 1)

There is no question that the provision of law applicable in the instant case is Art. 1088 of the New Civil Code (Art. 1067, Old Civil Code) as the matter concerns heirs and inheritance not yet distributed (*Wenceslao v. Calimon*, 46 Phil. 906 [1923]). Art. 1088 states:

"Article 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."

The main issue is whether or not petitioners took all the necessary steps to effectuate their exercise of the right of legal redemption within the period fixed by Art. 1088 of the Civil Code.

It is undisputed that no notification in writing was ever received by petitioners about the sale of the hereditary interest of some of their co-heirs in the parcel of land they inherited from the late Gelacio Garcia, although in a letter dated June 23, 1953 petitioner Francisco Garcia wrote one of his co-heirs, Joaquin Garcia, who is an uncle of petitioners, proposing to buy the hereditary interests of his co-heirs in their unpartitioned inheritance, (Exhibit, p. 3). Although said petitioner asked that his letter be answered "in order that I will know the results of what I have requested you," (Exhibit, p. 14) there is no proof that he was favored with one.

Petitioners came to know that their co-heirs were selling the property on December 3, 1954 when one of the heirs, Juanito Bertomo, asked Petitioner Paz Garcia to sign a document prepared in the Municipality of Tubungan because the land they inherited was going to be sold to private respondent, Jose Calaliman (TSN, September 6, 1957, p. 60). The document mentioned by petitioner Paz Garcia could be no other than the one entitled "Extra?Judicial Partition and Deed of Sale" dated December 3, 1954 as it is in this document that the name of Paz Garcia, Maria Garcia and Amado Garcia appear unsigned by them (Exhibits, p. 19).

It is not known whether the other heirs whose names appear in the document had already signed the document at the time Paz Garcia was approached by Juanita Bertomo. Paz Garcia, however, testified that she immediately informed her brother Francisco that Juanita Bertomo wanted to sell the land to Jose Calaliman (TSN, September 6, 1957, p. 62). On December 26, 1954 he wrote respondents giving them notice of his desire to exercise the right of legal redemption and that he will resort to court action if denied the right (Exhibits, p. 8). The respondents received the letter on January 13, 1955 but petitioner Francisco Garcia did not get any answer from them. Neither did respondents show him a copy of the document of sale nor inform him about the price they paid for the sale when he went home to Tubungan from Manila sometime in March 1955 and went to see the respondent spouse about the matter on March 24, 1955 (TSN, September 6, 1957, p. 18).

Because of the refusal of respondent Jose Calaliman to show him the document of sale or reveal to him the price paid for the parcel of land, petitioner Francisco Garcia went to the Office of the Register of Deeds on the same

date, March 24, 1955 and there found two documents of sale regarding the same parcel of land (TSN, *ibid*, p. 19).

Petitioners filed the case for legal redemption with the trial court on May 7, 1955. Respondents claim that the 30-day period prescribed in Article 1088 of the New Civil Code for petitioners to exercise the right to legal redemption had already elapsed at that time and that the requirement of Article 1088 of the New Civil Code that notice must be in writing is deemed satisfied because written notice would be superfluous, the purpose of the law having been fully served when petitioner Francisco Garcia went to the Office of the Register of Deeds and saw for himself, read and understood the contents of the deeds of sale (Brief for respondents, p. 6).

The issue has been squarely settled in the case of *Castillo v. Samonte*, where this Court observed:

"Both the letter and spirit of the new Civil Code argue against any attempt to widen the scope of the notice specified in Article 1088 by including therein any other kind of notice, such as verbal or by registration. If the intention of the law had been to include verbal notice or any other means of information as sufficient to give the effect of this notice, then there would have been no necessity or reasons to specify in Article 1088 of the New Civil Code that the said notice be made in writing for, under the old law, a verbal notice or information was sufficient (106 Phil. 1023 [1960])."

In the above-quoted decision the Court did not consider the registration of the deed of sale with the Register of Deeds sufficient notice, most specially because the property involved was unregistered land, as in the instant case. The Court took note of the fact that the registration of the deed of sale as sufficient notice of a sale under the provision of Section 51 of Act No. 496 applies only to registered lands and has no application whatsoever to a case where the property involved is, admittedly, unregistered land.

Consistent with aforesaid ruling, in the interpretation of a related provision (Article 1623 of the New Civil Code) this Court had stressed that written notice is indispensable, actual knowledge of the sale acquired in some other manners by the redemptioner, notwithstanding. He or she is still entitled to written notice, as exacted by the Code, to remove all uncertainty as to the sale, its terms and its validity, and to quiet any doubt that the alienation is not definitive. The law not having provided for any alternative, the method of notifications remains exclusive, though the Code does not prescribe any particular form of written notice nor any distinctive method for written notification of redemption (*Conejero at al. v. Court of Appeals et al.* 16 SCRA 775 [1966]; *Etcuban v. Court of Appeals*, 148 SCRA 507 [1987]; *Cabrera v. Villanueva*, G.R. No. 75069, April 15, 1988).

Petitioners fault the appellate court in not awarding them damages, attorney's fees and costs. After finding in favor of respondent spouses and against petitioners herein it is untenable for petitioners to expect that the appellate court would award damages and attorney's fees and costs. However as already discussed, petitioners have not lost their right to redeem, for in the absence of a written notification of the sale by the vendors, the 30-day period has not even begun to run. Petitioners clearly can claim attorney's fees for bad faith on the part of respondents, first, for refusing redemption, and secondly for declaring the entire land as theirs, although they knew some heirs had not sold their shares.

PREMISES CONSIDERED, the decision of the Court of Appeals is REVERSED and the decision of the trial court is REINSTATED with the modification that petitioners be awarded damages, attorney's fee and costs in the amount prayed for.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by then Associate Justice Hermogenes Concepcion, Jr., and concurred in by Justices Juan P. Enriquez and Edilberto Soriano.

** CFI Judge Roberto Zurbano

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