

SANTIAGO ORTEGA, PLAINTIFF-APPELLANT, VS. ANDRES ORCINE AND DOROTEO ESPLANA, DEFENDANTS-APPELLEES.

G.R. No. L-28317. March 31, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the decision of the Court of First Instance of Camarines Sur dismissing its Civil Case No. 6043 - an action filed therein by herein appellant Santiago Ortega, owner of a parcel of land in Iriga, Camarines Sur occupied and used as school site by the Saint Anthony Academy, against herein appellees Andres Orcine and Doroteo Esplana, for the purpose of enforcing an alleged right of legal redemption under Article 1622 of the Civil Code over an adjoining 4,452-square-meter parcel of land.

The appealed decision is one practically on the pleadings as may be gleaned from the following pertinent portions thereof:

"This case was instituted by plaintiff to enable him to redeem the property sold by defendant Andres Orcine to his co-defendant Doroteo Esplana.

"Originally plaintiff's complaint was based on Art. 1621, New Civil Code. Motion to dismiss was timely presented by the defendants, opposed by the plaintiff, and this Court resolving said motion to dismiss, issued an order dated March 3, 1966, which, among others, stated as follows:

'x x x x x

'From the aforesaid decision it is indeed clear that the right of legal redemption can be availed of only by adjoining owner if the two adjacent lands are both rural. The absence, however, of an allegation to that effect in the complaint will only amount to a vagueness or uncertainty of the complaint which will entitle the defendant to ask for a bill of particulars but not to an outright dismissal of the case.

'x x x The best that the plaintiff can do is to file a complaint against the defendant vendor to compel the latter to notify him in writing of the sale of his land.'

"It was because of that order that on March 8, 1966, defendants filed their motion for Bill of Particulars or Motion for Clarification (p. 20, Records), and this Court in its order dated April 21, 1966, ordered the plaintiff

'To be specific in his pleading as to whether or not his land which adjoins that upon which he wishes to exercise the legal right of redemption is also rural, within 10 days from receipt of this order.' (p. 27, Records)

"Plaintiff obviously in obedience to the above order of this Court, presented on April 28, 1966, an Amended Complaint (pp. 28-32, Records) - the most notable Change in it is that plaintiff seeks now to exercise his alleged right of legal redemption under Article 1622, (Objection to Motion to Dismiss Amended Complaint, pp. 39-40, Records) instead of Article 1621, New Civil Code, as was his intention in the original complaint.

"Defendant presented again a motion to dismiss the amended complaint on exactly the same grounds as the

former motion to dismiss, which likewise, was denied by this Court in its order dated June 21, 1966 (pp. 45-46, Records). Motion for reconsideration was equally denied by order of this Court dated July 25, 1966 (p. 52, Records).

"All the above proceedings were had under then presiding Judge Jose Surtida of this Court, and all the resolutions above adverted to were made by him.

"A pre-trial was had in the case. This time under a different Judge - Judge de la Cruz. In the order of this Court dated December 8, 1966, Judge de la Cruz gave the defendants ten days to file a motion to dismiss - which the defendants did on December 15, 1966, and was just a reiteration of the reasons and arguments urged on this Court in the previous motions to dismiss, and was also denied by this Court per order dated January 4, 1967 (p. 1, Records).

"Such was the situation of this case when the undersigned presiding Judge of this Court took over.

"This Court believes that based on the pleadings submitted in this case by both parties, the case can be decided on the merits. The parties and their respective counsels, felt the same, that is why they agreed to have the case set for Oral arguments before this Court and after such argument, the same shall be submitted for decision, and no other proceedings shall be taken on the case. (order dated July 13, 1967, pp. 83-84, Records)

"There is no dispute that the land sold to the defendant Esplana on March 27, 1965, for P10,000.00 by his co-defendant Orcine was a ricefield, an agricultural land (rural); that after the same was sold, defendant Esplana, had it filled with earth and then had it subdivided into small lots for residential purposes. The land has then ceased to be rural, and is now urban land. Likewise, the land owned by the plaintiff is adjacent to the land in question, not separated by a creek, drain, ravines, road and apparent servitude for the benefit of other estates, was formerly an agricultural land (rural) but at the time of the sale made by Orcine to Esplana on March 27, 1965, the same was already urban, and in fact, was and is being used and occupied as school site of St. Anthony Academy, a private school."

Reversal of the dismissal is now sought by appellant upon the claim that:

"I. THE LOWER COURT ERRED IN HOLDING THAT DESPITE THE CONVERSION BY APPELLEE DOROTEO ESPLANA OF THE LAND IN QUESTION FROM RURAL TO URBAN LAND APPELLANT IS NOT ENTITLED TO THE RIGHT OF REDEMPTION OR PRE-EMPTION UNDER ARTICLE 1622 OF THE NEW CIVIL CODE.

"II. THE LOWER COURT ERRED IN HOLDING THAT APPELLEE DOROTEO ESPLANA DID NOT PURCHASE THE LAND IN QUESTION FOR SPECULATIVE PURPOSES.

"III. THE LOWER COURT ERRED IN HOLDING THAT APPELLANT IS NOT ENTITLED TO WRITTEN NOTICE AS PROVIDED FOR UNDER ARTICLE 1623 OF THE NEW CIVIL CODE."

The provisions of law invoked by appellant read as follows:

"Art. 1622. Whenever a piece of urban land which is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation, is about to be re-sold, the owner of any adjoining land has a right of pre-emption at a reasonable price.

"If the re-sale has been perfected, the owner of the adjoining land shall have a right of redemption, also at a reasonable price.

"When two or more owners of adjoining lands wish to exercise the right of pre-emption or redemption, the owner whose intended use of the land in question appears best justified shall be preferred."

Appellant contends under his first assignment of error that under Article 1622, above-quoted, he has the right of

legal redemption over the land in question since it is not disputed that he is the owner of the urban property adjoining said land on the North and the latter had already been converted into urban land by appellee Esplana at the time he (appellant) exercised his right, hence the lower court erred in holding that he is not entitled to such right on the ground, stated by His Honor, that at the time of the sale of the said land by Orcine to Esplana on March 27, 1965, the land sought to be redeemed and his land were not of the same kind - that of appellant being urban land while that of appellees rural. In essence, the position of appellant is that what governs for purposes of the redemption provided for in the law is the nature or character of the adjoining land at the time redemption is actually sought and not at the time of its sale to the person from whom redemption is asked.

We believe it is idle to rule in this case on appellant's contention. The legal issue he raises involves many aspects which do not appear to have been dealt with by the parties whether in their pleadings here or in the court below and without which it is not possible to resolve properly the point in question. Indeed, even the question alone of what is rural and what is urban land is itself one that is not easy to resolve. Even under Article 1523 of the Spanish Civil Code which, incidentally, referred to rural land only, the Spanish authorities preferred to make the needed classification only on a case to case basis.[1] This, notwithstanding that it was clear to them that the reason underlying the provision is to encourage better development and utilization of agricultural lands. According to Manresa:

"Limitado dicho derecho a las fincas rusticas, cuya cabida no exceda de una hectarea, es visto que el espíritu del Código no es otro que favorecer el desarrollo de la propiedad territorial y de los intereses de la agricultura. Una finca, cuya cabida no excede de una hectarea, no produce, por regla general, lo suficiente para mantener a una familia: su cultivo teniendo que transportar por entre heredades ajenas los instrumentos de labranza, no se hace en condiciones económicas; lo mismo puede decirse de la saca y transporte de los frutos. Todas estas dificultades desaparecen, si al venderse la finca, la compra un propietario que tenga tierras colindantes: se favorece de este modo el interés público, porque la producción aumenta, se atiende al interés privado del retrayente y no es de apreciar ningún ostensible perjuicio para el vendedor ni para el comprador." (10 Manresa, Código Civil Español, 328.)

which reasoning was echoed by Justice Romualdez in *Cortes vs. Flores*,[2] thus:

"Hallamos acertado este criterio. La intención de la ley al conceder este retracto es proteger la agricultura, haciendo que los terrenos agrícolas pequeños se unan a sus colindantes bajo un solo dueño para su mejor explotación. Si el terreno colindante con el que se trata de retraer no es agrícola, entonces es vano el retracto, no responde al propósito de la ley.

"'Esta ajustada a este precepto' dice el Tribunal Supremo de España en su fallo de 12 de marzo de 1902, 'la sentencia que desestima la demanda de retracto, cuando las dos o una sola de las fincas, son urbanas.'"

On the assumption then that the land in question is rural or that in legal contemplation it continued to be such even after it was developed, for purposes of determining appellant's right of redemption, it is obvious that since appellant's land is admittedly urban, the redemption sought cannot be allowed because it would not be in line with the above-discussed purposes of redemption of rural land contemplated in Article 1621 of the present Civil Code. Incidentally, this provision which is substantially Article 1523 of the Spanish Civil Code above-mentioned was the one firstly invoked by appellant in the trial court. Hence, the above ruling in *Cortes vs. Flores* is applicable to this case.

On the other hand, even on the assumption that the land in controversy is urban, still Article 1622 of present Civil Code which is now invoked by appellant does not support his case. This Court has already emphasized in previous cases,[3] that an owner of urban land may not redeem an adjoining urban property where he does not allege in his complaint, much less prove at the trial, that the latter is so small and so situated that a major portion

thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation. In *Soriente vs. Court of Appeals*,^[4] We held:

"Said Article 1622 reads:

'Whenever a piece of urban land which is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation, is about to be re-sold, the owner of any adjoining land has a right of pre-emption at a reasonable price.' (Italics supplied.)

"This provision is not in point. It has been neither proved nor alleged, either that the land purchased by ap-pellant from Lamberto Reyes 'is so small and so situated that a major portion thereof cannot be used for any practical purpose,' or that it has 'been bought merely for speculation,' or, even, that it 'is about to be re-sold,' Besides, it is alleged in ap-pellant's answer 'that the land sought to be redeemed by plaintiff is x x x sufficiently big in area and so si-tuated that the major portion or the whole thereof can serve comfortably as workshop and storage of machine-ries and equipments which defendant is putting up in the exercise and furtherance of his profession as professional mechanical engineer and associate electrical engineer;' that 'in fact a portion of said lot is actually used for residential purposes x x x;' and 'that de-fendant has no intention now or in the future to dispose of or sell the property subject, matter of the present action to any person x x.' What is more, appellee does not con-test appellant's evidence on these allegations. Hence, the first two assignments of error are well taken."

It may be mentioned here that the right of redemption of adjoining urban land did not exist in the Spanish Civil Code, which confined itself to the redemption of rural lands. It was introduced here only by the new Civil Code. Whereas, as already observed, the objective of the right of redemption of adjoining rural land under the old code, as adopted in the new Civil Code, is to encourage the maximum development and utilization of agricultural lands, it is evident that the purpose of the new Civil Code in allowing redemption of adjoining urban land is to discourage speculation in real estate and the consequent aggravation of the housing problems in centers of population. As a matter of fact, having in view this legislative pur-pose, We are of the opinion that whatever difficulty may exist in determining if a land is rural for the proper application of Article 1621, as previously noted to be the view of Spanish authorities, no such problem arises in regard to the urban lands contemplated in Article 1622 of the Code. It is clear to Us that the term urban in this provision does not necessarily refer to the nature of the land itself sought to be redeemed nor to the pur-pose to which it is somehow devoted, but to the charac-ter of the community or vicinity in which it is found. In this sense, even if the land is somehow dedicated to agriculture, it is still urban, in contemplation of this law, if it is located within the center of population or the more or less populated portion of a city or town.^[5]

In the case at bar, appellant himself submits that the land in question should be considered as urban. Actually, the facts on record do not sufficiently show where it is situated. In view, however, of the facts that: (1) the land of appellant is a school site and (2) the one in question has been filled with earth, developed and sub-divided into small lots for residential purposes, it is quite safe to conclude that both lands are in the popu-lated section of the town and are accordingly urban.

Now, considering that the land which appellant seeks to redeem is 4,452 square meters in area, which is far from being "so small and so situated that a major por-tion thereof cannot be used for any practical purpose" for quite the contrary, it has been made a subdivision, and also that it cannot be said that appellee Esplana bought the same "merely for speculation", since in less than eight months, from March 27, 1965 when he bought it, to December 7, 1965 when the present complaint was filed, he had developed the same into a subdivision for re-sale, which shows that he must have had that definite purpose in mind in buying the same, it is Our holding that appellant cannot invoke Article 1622 of the Civil Code. We cannot hold that such purpose is speculative. As appellees aptly point

out, according to Webster's International Dictionary to speculate means:

"To enter into a business trans-action or venture from which the profits or return are conjectural because the undertaking is outside of the ordinary course of business; to purchase or sell with the ex-pectation of profiting by antici-pated, but conjectural, fluctua-tions in price; often in a somewhat depreciative sense, to engage in hazardous business transaction for the chance of an unusually large profit; as to speculate in coffee, in sugar or in bank stock." (2nd Edition p. 2417, Webster's Inter-national Dictionary.)

Consequently, all of appellant's assignments of error must be as they are hereby overruled.

WHEREFORE, the decision appealed from is affirmed with costs against appellant.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, and Teehankee, JJ., concur.

[1] 10 Manresa, Código Civil Español, pp. 328-329.

[2] 47 Jurisprudencia Filipina, 1048, 1049.

[3] De la Cruz vs. Cruz, et al., L-27759, April 17, 1970, 32 SCRA 307, 311; Soriente vs. Court of Appeals, et al., L-17343, Aug. 31, 1963, 8 SCRA 750, 755.

[4] Supra.

[5] In this connection, it may be noted that despite Manre-sa's comment that it is not very easy to make the cor-rect classification of rural land under Article 1523 of the Spanish Civil Code, he nevertheless mentions deci-sions of the Supreme Court of Spain indicating broad criteria, at least, in determining the question thus:

"Jurisprudencia - En las sentencias de 26 de Noviembre de 1895, 12 de Marzo de 1902 y 18 de Julio de 1903, el Tribunal Supremo muestra su criterio acerca de lo que debe entenderse por fincas rusticas, exigiendo que sears tierras destinadas a la explotacion agricola, y negando esa consideracion a las huertas y hardines anejos a edificios sitios dento de pob-lado, y a los terrenos destinados al apro-vechamiento de aguas medicinales.

"Extremando este mismo criterio, la de 14 de Diciembre de 1905 conceptua como fincas urbanas, que caresen de las condiciones que el legislador tubo presentes al establecer el retracto de aledaños, las fincas inmediatas a poblacion, de la que unicamente las separa un estrecho camino, por ser utilizadas facilmente como huertos accesorios de las ca-ses." (10 Manresa, Código Civil Español, p. 332.)

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