

MERCEDES CASTRO, EXEQUIEL CASTRO, MARIANO G. SISON AND GERARDO S. SISON, PLAINTIFFS AND APPELLEES, VS. LUIS CASTRO, DEFENDANTS AND APPELLANT.

G.R. No. L-7464. October 24, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

The plaintiffs-appellees sued Luis Castro for actual partition of a parcel of land in Bugallon, Pangasinan, in the following proportion: 7/14 to Mariano and Gerardo Sison; 3/14 to Mercedes Castro; 2.5/14 to Exequiel Castro and 1.5/14 to defendant.

Resisting the demand, Luis Castro interposed, in the form of a counterclaim, his right to repurchase from Mariano and Gerardo Sison, alleging that the latter had bought their part from one of his co-heirs (co-owners according to plaintiffs).

After hearing the parties, and after several proceedings unnecessary to relate, the court of first instance of Pangasinan, Hon. Segundo M. Martinez, sustained the plaintiffs, overruled defendant's counterclaim and approved the report of partition dated August 11, 1953 prepared by Commissioner Norberto Castro, finding it to be reasonable and agreeable to the parties concerned.

The defendant has appealed solely from that portion dismissing his counterclaim.

The property originally pertained to Francisco Castro; and in proceedings to settle his estate in Pangasinan, it was finally awarded (in 1921) pro-indiviso to his children as follows: To Mercedes and Vicente—undivided 4.5/14 each; to Exequiel, Emiliano, Luis, Ildefonso and Antonio 1/14 each.

When Vicente Castro died about the year 1938, intestate proceedings were instituted and in consequence of certain agreements therein the same property was adjudicated in August 1939 to:

- (a) Maura Repato, widow of the deceased, 7/14;
- (b) Exequiel, Luis, Emiliano, Ildefonso and Antonio, brothers 1/14 each; and
- (c) Mercedes Castro 2/14.

Thereafter Exequiel and Luis purchased from Emiliano, and inherited from Ildefonso and Antonio their respective portions, so that the property was owned in March 1944 by the following: Maura Repato 7/14; Mercedes Castro 3/14; Exequiel Castro 2.5/14; and Luis Castro 1.5/14.

On March 31, 1944 Maura Repato sold her share of the property to Mariano G. Sison and Gerardo S. Sison by a Deed of sale which was duly registered in the Registry of Deeds on April 1, 1944.

Having been informed of the conveyance on or about May 15, 1944, Luis Castro immediately offered to repurchase Maura Repato's share, but Mariano and Gerardo declined to sell.

In this litigation Luis Castro rests his case on Article 1067 of the Civil Code providing that "if either of the heirs should sell his hereditary rights to a stranger before the partition, any or all of his co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the purchase price, provided it be done within the period of one month, to be counted from the time they were informed thereof." He says he came to know the sale on May 15, 1944 and immediately offered to buy.

On the other hand the plaintiffs cite articles 1522 and 1524 of the Civil Code prescribing that any co-owner of a thing held in common may redeem the share of any co-owner that is sold to a third person, provided such right is exercised within nine days from the date of the record of the transfer in the Registry of Deeds * * *. And there is no question that the sale by Maura Repato to Mariano and Gerardo Sison was registered on April 1, 1944 and the offer to buy was made after May 15, 1944.

Plaintiffs argue that when, after 1938, the property was adjudicated pro-indiviso to Maura Repato (7/14), Exequiel and his brothers (5/14) and Mercedes Castro (2/4), their abstract hereditary rights became determinate and therefore they ceased to be co-heirs and became co-owners. Hence the sale by Maura was a sale by a co-owner, governed by Articles 1522 and 1524.

The trial judge ruled that Article 1067 applies only where a co-heir sells his share before partition or distribution or before the determination of the portion to which each heir is entitled. Once the portion corresponding to each heir had been fixed—as in this case—the co-heirs turned into co-owners, and their right of legal redemption should be governed by Articles 1522 and 1524.

His Honor adopted the correct view. There was already a partition, or adjudication of the respective shares; wherefore article 1067 does not apply,

"3. The sale to said respondent Justina S. Vda. de Manglapuz of the two parcels of land in question by Sixto de Jesus and Natalia Alfonga took place after the project of partition had been approved by the court (order of the probate court of March 11, 1946, in civil case No. 3960, the legal redemption case, Appendix 1 of respondents' answer), on account of which article 1067 of the Civil Code cannot support petitioners' claim, said article referring to a sale by any of the heirs of his hereditary right to a stranger before partition." (De Jesus vs. Daza, 43 Off. Gaz., 2055, 2060.)

Furthermore, disregarding the partition for the moment, Maura Repato was not, strictly speaking, the co-heir of Luis Castro with regard to Francisco Castro (she was not heir of Francisco). Neither was she a co-heir of Luis Castro with regard to Vicente Castro, for the obvious reason that Luis inherited nothing of this land from his brother Vicente. It is true that upon the death of Vicente Castro this property was "adjudicated" to Maura Repato, and his brothers Exequiel, Luis etc. But these brothers, specially Luis got the same portion they had already received from their father Francisco—namely 1/4 of the property. Luis therefore has not inherited any portion of this property from Vicente Castro, and may not be considered as "co-heir" of Maura Repato.

The appealed judgment will therefore be affirmed, with costs against appellant. So ordered.

Paras, C.J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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