

**LEONARDO MARIANO, AVELINA TIGUE, LAZARO MARIANO,
MERCEDES SAN PEDRO, DIONISIA M. AQUINO, AND JOSE N.T.
AQUINO, PETITIONERS, VS. HON. COURT OF APPEALS, (SIXTEENTH
DIVISION), GRAC...**

G.R. No. 101522. May 28, 1993

Ponente: NOCON, J.

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NOCON, J.:

Before Us is a petition for review of the decision dated May 13, 1991 of the Court of Appeals in CA-G.R. CV No. 13122, entitled *Grace Gosiengfiao, et al. v. Leonardo Mariano v. Amparo Gosiengfiao*[1] raising as issue the distinction between Article 1088[2] and Article 1620[3] of the Civil Code.

The Court of Appeals summarized the facts as follows:

“It appears on record that the decedent Francisco Gosiengfiao is the registered owner of a residential lot located at Ugac Sur, Tuguegarao, Cagayan, particularly described as follows, to wit:

‘The eastern portion of Lot 1351, Tuguegarao Cadastre, and after its segregation now designated as Lot 1351-A, Plan PSD-67391, with an area of 1,346 square meters.’

and covered by Transfer Certificate of Title No. T-2416 recorded in the Register of Deeds of Cagayan.

“The lot in question was mortgaged by the decedent to the Rural Bank of Tuguegarao (designated as Mortgagee bank, for brevity) on several occasions before the last, being on March 9, 1956 and January 29, 1958.

“On August 15, 1958, Francisco Gosiengfiao died intestate survived by his heirs, namely: Third-Party Defendants: wife Antonia and Children Amparo, Carlos, Severino and herein plaintiffs-appellants Grace, Emma, Ester, Francisco, Jr., Norma, Lina (represented by daughter Pinky Rose), and Jacinto.

“The loan being unpaid, the lot in dispute was foreclosed by the mortgagee bank and in the foreclosure sale held on December 27, 1963, the same was awarded to the mortgagee bank as the highest bidder.

“On February 7, 1964, third-party defendant Amparo Gosiengfiao-Ibarra redeemed the property by paying the amount of P1,347.89 and the balance of P423.35 was paid on December 28, 1964 to the mortgagee bank.

“On September 10, 1965, Antonia Gosiengfiao on her behalf and that of her minor children Emma, Lina, Norma together with Carlos and Severino executed a ‘Deed of Assignment of the Right of Redemption’ in favor of Amparo G. Ibarra appearing in the notarial register of Pedro (Lagui) as Doc. No. 257, Page No. 6, Book No. 8, Series of 1965.

“On August 15, 1966, Amparo Gosiengfiao sold the entire property to defendant Leonardo Mariano who subsequently established residence on the lot subject of this controversy. It appears in the Deed of Sale dated August 15, 1966 that Amparo, Antonia, Carlos and Severino were signatories thereto.

“Sometime in 1982, plaintiff-appellant Grace Gosiengfiao learned of the sale of said property by the third-party defendants. She went to the Barangay Captain and asked for a confrontation with defendants Leonardo and Avelina Mariano to present her claim to the said property.

“On November 27, 1982, no settlement having been reached by the parties, the Barangay Captain issued a certificate to file action.

“On December 8, 1982, defendant Leonardo Mariano sold the same property to his children Lazaro F. Mariano and Dionicia M. Aquino as evidenced by a Deed of Sale notarized by Hilarion L. Aquino as Doc. No. 143, Page No. 19, Book No. V, Series of 1982.

“On December 21, 1982, plaintiffs Grace Gosiengfiao, et al. filed a complaint for ‘recovery of possession and legal redemption with damages’ against defendants Leonardo and Avelina Mariano. Plaintiffs alleged in their complaint that as co-heirs and co-owners of the lot in question, they have the right to recover their respective shares in the said property as they did not sell the same, and the right of redemption with regard to the shares of other co-owners sold to the defendants.

“Defendants in their answer alleged that the plaintiffs has (sic) no cause of action against them as the money used to redeem the lot in question was solely from the personal funds of third-party defendant Amparo Gosiengfiao-Ibarra, who consequently became the sole owner of the said property and thus validly sold the entire property to the defendants, and the fact that defendants had already sold the said property to their children, Lazaro Mariano and Dionicia M. Aquino. Defendants further contend that even granting that the plaintiffs are co-owners with the third-party defendants, their right of redemption had already been barred by the Statute of Limitations under Article 1144 of the Civil Code, if not by laches.”[4]

After trial on the merits, the Regional Trial Court of Cagayan, Branch I, rendered a decision dated September 16, 1986, dismissing the complaint and stating that respondents have no right of ownership or possession over the lot in question. The trial court further said that when the subject property was foreclosed and sold at public auction, the rights of the heirs were reduced to a mere right of redemption. And when Amparo G. Ibarra redeemed the lot from the Rural Bank on her own behalf and with her own money she became the sole owner of the property. Respondents’ having failed to redeem the property from the bank or from Amparo G. Ibarra, lost whatever rights they might have on the property.[5]

The Court of Appeals in its questioned decision reversed and set aside the ruling of the trial court and declared herein respondents as co-owners of the property in the question. The Court of Appeals said:

“The whole controversy in the case at bar revolves on the question of ‘whether or not a co-owner who redeems the whole property with her own personal funds becomes the sole owner of said property and terminates the existing state of co-ownership.’

“Admittedly, as the property in question was mortgaged by the decedent, a co-ownership existed among the heirs during the period given by law to redeem the foreclosed property. Redemption of the whole property by a co-owner does not vest in him sole ownership over said property but will inure to the benefit of all co-owners. In other words, it will not put an end to the existing state of co-ownership. Redemption is not a mode of terminating a co-ownership.

x x x

“In the case at bar, it is undisputed and supported by records, that third-party defendant Amparo G. Ibarra redeemed the property in dispute within the one year redemption period. Her redemption of the property, even granting that the money used was from her own personal funds did not make her the exclusive owner of the mortgaged property owned in common but inured to the benefit of all co-owners. It would have been otherwise if third-party defendant Amparo G. Ibarra purchased the said property from the mortgagee bank (highest bidder

in the foreclosure sale) after the redemption period had already expired and after the mortgagee bank had consolidated its title in which case there would no longer be any co-ownership to speak of.”[6]

The decision of the Court of Appeals is supported by a long line of case law which states that a redemption by a co-owner within the period prescribed by law inures to the benefit of all the other co-owners.[7]

The main argument of petitioners in the case at bar is that the Court of Appeals incorrectly applied Article 1620 of the Civil Code, instead of Article 1088 of the same code which governs legal redemption by co-heirs since the lot in question, which forms part of the intestate estate of the late Francisco Gosiengfiao, was never the subject of partition or distribution among the heirs, thus, private respondents and third-party defendants had not ceased to be co-heirs.

On that premise, petitioners further contend that the right of legal redemption was not timely exercised by the private respondents, since Article 1088 prescribes that the same must be done within the period of one month from the time they were notified in writing of the sale by the vendor.

According to Tolentino, the fine distinction between Article 1088 and Article 1620 is that when the sale consists of an interest in some particular property or properties of the inheritance, the right of redemption that arises in favor of the other co-heirs is that recognized in Article 1620. On the other hand, if the sale is the hereditary right itself, fully or in part, in the abstract sense, without specifying any particular object, the right recognized in Article 1088 exists.[8]

Petitioners allege that upon the facts and circumstances of the present case, respondents failed to exercise their right of legal redemption during the period provided by law, citing as authority the case of Conejero, et al., v. Court of Appeals, et al.[9] wherein the Court adopted the principle that the giving of a copy of a deed is equivalent to the notice as required by law in legal redemption.

We do not dispute the principle laid down in the Conejero case. However, the facts in the said case are not four square with the facts of the present case. In Conejero, redemptioner Enrique Conejero was shown and given a copy of the deed of sale of the subject property. The Court in that case stated that the furnishing of a copy of the deed was equivalent to the giving of a written notice required by law.[10]

The records of the present petition, however, show no written notice of the sale being given whatsoever to private respondents. Although, petitioners allege that sometime on October 31, 1982 private respondent, Grace Gosiengfiao was given a copy of the questioned deed of sale and shown a copy of the document at the Office of the Barangay Captain sometime November 18, 1982, this was not supported by the evidence presented. On the contrary, respondent, Grace Gosiengfiao, in her testimony, declared as follows:

Q. When you went back to the residence of Atty. Pedro Laggui were you able to see him?

A. Yes, I did.

Q. When you saw him, what did you tell?

A. I asked him about the Deed of Sale which Mrs. Aquino had told me and he also showed me a Deed of Sale. I went over the Deed of Sale and I asked Atty. Laggui about this and he mentioned here about the names of the legal heirs. I asked why my name is not included and I was never informed in writing because I would like to claim and he told me to better consult my own attorney.

Q. And did you go?

A. Yes, I did.

Q. What kind of copy or document is that?

A. It is a deed of sale signed by my mother, sister Amparo and my brothers.

Q. If shown to you the copy of the Deed of Sale will you be able to identify it?

A. Yes, sir.[11]

Thereafter, Grace Gosiengfiao explicitly stated that she was never given a copy of the said Deed of Sale.

Q. Where did Don Mariano, Dr. Mariano and you see each other?

A. In the house of Brgy. Captain Antonio Bassig.

Q. What transpired in the house of the Brgy. Captain when you saw each other there?

A. Brgy. Captain Bassig informed my intention of claiming the lot and I also informed him about the Deed of Sale that was not signed by me since it is mine it is already sold and I was never informed in writing about it. I am a legal heir and I have also the right to claim.

Q. And what was the reply of Don Mariano and Dr. Mariano to the information given to them by Brgy. Captain Bassig regarding your claim?

A. He insisted that the lot is already his because of the Deed of Sale. I asked for the exact copy so that I could show to him that I did not sign and he said he does not have a copy.[12]

The above testimony was never refuted by Dr. Mariano who was present before Brgy. Captain Bassig.

The requirement of a written notice has long been settled as early as in the case of *Castillo v. Samonte*,^[13] where this Court quoted the ruling in *Hernaez v. Hernaez*, 32 Phil., 214, thus:

“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.”^[14]

Moreover, petitioners themselves adopted in their argument respondents’ allegation in their complaint that sometime on October, 1982 they sought the redemption of the property from spouses Leonardo Mariano and Avelina Tigie, by tendering the repurchase money of P12,000.00, which the spouses rejected.^[15] Consequently, private respondents exercised their right of redemption at the first opportunity they have by tendering the repurchase price to petitioners. The complaint they filed before the Barangay Captain and then to the Regional Trial Court was necessary to assert their rights. As we learned in the case of *Castillo*, supra:

“It would seem clear from the above that the reimbursement to the purchaser within the period of one month from the notice in writing is a requisite or condition precedent to the exercise of the right of legal redemption; the bringing of an action in court is the remedy to enforce that right in case the purchaser refuses the redemption. The first must be done within the month-period; the second within the prescriptive period provided in the Statute of Limitation.”^[16]

The ruling in *Castillo v. Samonte*, supra, was reiterated in the case of *Garcia v. Calaliman*, where We also discussed the reason for the requirement of the written notice. We said:

“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 et 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).”[17] (*Italics ours*)

We likewise do not find merit in petitioners’ position that private respondents could not have validly effected redemption due to their failure to consign in court the full redemption price after the tender thereof was rejected by the petitioners. Consignation is not necessary, because the tender of payment was not made to discharge an obligation, but to enforce or exercise a right. It has been previously held that consignation is not required to preserve the right of repurchase as a mere tender of payment is enough if made on time as a basis for an action to compel the vendee a retro to resell the property; no subsequent consignation was necessary to entitle private respondents to such reconveyance.[18]

Premises considered, respondents 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.

WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED. Cost against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Justice Justo P. Torres, Jr., ponente, Justices Ricardo J. Francisco and Consuelo Ynares-Santiago, concurring.

[2] 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.

[3] Article 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common.

[4] Decision, pp. 2-4; Rollo, pp. 71-73.

[5] Rollo, pp. 67-68.

[6] Decision, pp. 5-6; Rollo, pp. 74-75.

[7] *Annie Tan v. C.A.*, G.R. No. 79899, 172 SCRA 660 (1989); *Adille v. C.A.*, G.R. No. 44546, 157 SCRA 455 (1988); *De Guzman v. C.A.*, G.R. No. 47378, 148 SCRA 75 (1987).

[8] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. III, pp. 607-608, citing *Manresa* at p. 777.

[9] 16 SCRA 775 (1966).

[10] *Id.*, at pp. 779-780.

[11] TSN, October 9, 1984, pp. 11-12.

[12] *Id.*, at pp. 14-15.

[13] 106 Phil. 1023 (1960).

[14] *Id.*, at 1028.

[15] Amended Complaint; par. 15-16, Rollo, p. 34

[16] *Ibid*, at 1029.

[17] *Garcia v. Calaliman*, G.R. No. 26855, 172 SCRA 201 (1989).

[18] *Francisco v. Bautista*, G.R. No. 44167, 192 SCRA 388 (1991).

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