

ARISTON ESTRADA, PLAINTIFF AND APPELLANT, VS. CIRILA T. REYES, DEFENDANT AND APPELLEE.*G.R. No. 10329. December 24, 1915*

Ponente: TORRES, J.

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This case has been brought to this court on bill of exceptions by virtue of an appeal filed by the plaintiff, Ariston Estrada, from the judgment of the 20th of July, 1914, by which Cirila T. Reyes was absolved from the complaint and, on a cross-complaint, the said plaintiff was ordered to execute in favor of the said defendant Reyes a document transferring his share acquired from Luisa del Rosario, for the sum of "P166.66. No special finding was made as to costs.

The plaintiff in his complaint of the 31st of October, 1913, prayed that a final judgment be rendered declaring him to have the right to be subrogated in place of the defendant Reyes in the sale made by Juan N. Aragon and Agustin del Rosario of their respective shares in the property referred to in his complaint, after payment to the defendant of the sum of P399.99, and that the said defendant be ordered, after said amount was paid, to execute the corresponding instrument of transfer to the plaintiff of all interest and share which she had acquired in the said property from the said Juan N. Aragon and Agustin del Rosario, with the costs of the proceedings. Plaintiff alleged that he is owner of a sixth part, together with Juan N. Aragon, Agustin del Rosario, Jose Pereyra, Remedios Pereyra, Ramon Pereyra, Inocencio Pereyra and Carmen Pereyra, of certain land owned in common, situated in Calle Real, interior, in the district of Malate, the extent and boundaries whereof appear in the plan made for the purpose; that the ownership and dominion of the cotenants are evidenced by the certificate of title No. 2846, appearing at page 343, volume 11, in the property registry of Manila; that on the 29th of October, 1913, Juan N. Aragon and Agustin del Rosario sold and transferred to the defendant, Cirila T. Reyes, their respective interests and share in the said property, the first receiving the sum of P266.66 and the second P133.33, and for that purpose they executed a deed of transfer before a notary public; that on the 30th of October, 1913, the plaintiff, as cotenant with the said vendors, Aragon and Del Rosario, availing himself of his rights under article 1522 of the Civil Code, offered to redeem or repurchase from the defendant all the interest and share of the latter which she had acquired in the said real property for the same amount which she had paid to the said two vendors; this petition the defendant refused without sufficient reasons, inasmuch as the plaintiff has the right to recover from the defendant the shares referred to and is ready to pay the price paid for the interest and share of the vendors in the said property.

Counsel for the defendant in his amended answer made a general and specific denial of each and all the allegations contained in the foregoing complaint, with the exception of those which were admitted, and as a special defense and by way of a cross-complaint alleged: that on the 6th of March, 1907, Alberto Pereyra, Juan N. Aragon, Longinos M. Javier and Agustin del Rosario executed and signed a contract in favor of Manuel Calvo y Perez, undertaking to sell to him, after the securing of a Torrens title, the property in question for the sum of P300, and he attached a copy of said contract, Exhibit A, as an integral part of his cross-complaint; that after the

execution of the said contract, Exhibit A, and before the Torrens title was secured, the purchaser, Manuel Calvo, died in this city of Manila; that the defendant was appointed administratrix of the estate of the deceased; that on the 15th of May, 1911, the register of deeds, by virtue of a decree of the Court of Land Registration, issued certificate of title No. 2000 in the name of Juan N. Aragon as co-tenant of one-third part, pro indiviso, of Luisa del Rosario of a sixth part, of Agustin del Rosario of another sixth part, and of Jose, Remedios, Ramon, Inocencio and Carmen, all surnamed Pereyra, as cotenants of a third part pro indiviso of the said property; that on the 25th of May, 1911, the defendant, as administratrix, wrote the letter, a copy of which, Exhibit B, is attached to his cross-complaint as an integral part thereof, to each and all of the subscribers to the contract of the 6th of March, 1907, which set out the purchase of the land agreed on with Manuel Calvo, according to the instrument Exhibit A; that in view of the refusal of the parties to said instrument to effect the sale, the defendant, on the 6th of October, commenced proceedings against the said parties to secure their compliance with the terms thereof, that is to say, to make the sale of the land in question to the defendant; that the plaintiff Estrada appeared in behalf of the said Aragon, Rosario, Javier, and Pereyra; that in the course of the proceedings it was discovered that Longinos Javier was not a co-tenant of the land, but that his wife, Luisa del Rosario, was, and that she had taken no part in the said contract; that the defendant Pereyra who signed the contract Exhibit A, owned no share whatever in the land and for this reason was sentenced to the payment of damages; that a decision was rendered on October 23, 1911, a copy of which, Exhibit C, is attached as an integral part of his cross-complaint; that by this judgment Juan N. Aragon and Agustin del Rosario were ordered to make the respective transfers of their shares in the property to the defendant; that on the 18th of November the plaintiff Estrada, in representation of the defendants, appealed to this court, and this court in a decision rendered on the 26th of August, 1913, affirmed the judgment 'of the lower court in all its parts; that notwithstanding these facts and in spite of the fact that the plaintiff Estrada was aware of the existence of the said contract and that he knew of the decision of the Court of First Instance, on the 20th of March, 1912, he acquired from Luisa del Rosario the sixth part which she owned in the said property in litigation for the sum of P166.66; that on April 13, 1912, the defendant widow of the deceased Calvo in an order issued in the intestate proceedings was declared to be the heir of all the property left by the latter at his death; that in accordance with the decision of the court, Juan N. Aragon and Agustin del Rosario, on October 29, 1913, executed deeds of transfer or sale of their respective shares of the property in question in favor of the defendant, the latter not being aware of the transfer made to the plaintiff by one of the cotenants of the property; for this reason, when, on the 30th of October, 1913, she was advised of said transfer of the sixth part of the property to Estrada, the plaintiff, on the same date the defendant sought to exercise the right granted her by the said article 1522 of the Civil Code and to that effect she offered the same amount of P166.66 to the plaintiff Estrada for the sixth part of the property which he had acquired; but Estrada refused to accept the money, for which reason she prayed that he be ordered to execute the deed of transfer in favor of the defendant of all his right, title, interest and share in the sixth part of the said pro indiviso property, payment of the said amount as the purchase price first being made, and that the plaintiff be ordered to pay the costs of the suit.

After hearing of the case and a consideration of the evidence adduced by both parties, the court issued the order above referred to. The plaintiff appealed therefrom and prayed for a new trial; his motion being overruled, he excepted and filed a bill of exceptions, which was approved and forwarded to the clerk of this court.

Each of the contending parties claims to exercise the legal right of redemption established by article 1522 of the Civil Code, subrogating the one for the other and vice versa in the ownership of that part of the land which each one respectively had bought from its original owners.

In view of these conflicting claims, the questions to be decided are: Does either of the two parties have a right to avail himself of the redemption referred to in the said article of the Code against the other with relation to that part of the property which he had acquired and vice versa? Which of the two contending parties is the cotenant and

which is the third party, and under either of these concepts which of them has the better right to avail himself of the said right of redemption? The law itself resolves these questions in a decisive manner.

Article 1622 of the Civil Code says:

"A coowner of a thing held in common may exercise the redemption in case the shares of all the other coowners, or of any of them, are sold to a third party.

"When two or more coowners wish to exercise the redemption, they shall only do so pro rata with regard to the share they have in the thing owned in common."

As is seen by the text of the foregoing article the right of redemption lies in all cotenants of the thing held in common. The law concedes to all the use of the right of redemption in equal degree whenever they exercise it within the period indicated for the purpose, and on the particular condition that the alienation of the property, or of a part of it, has been made to a third party who is not a cotenant.

The privilege granted by the said article of the Code to the cotenant of the thing held in common in order to facilitate and provide a method for terminating the tenancy in common and to establish the dominion in one sole owner can in no manner be exercised against another cotenant of the same property to whom the law allows the same privilege; it must be exercised against the third person.

If by reason of Ariston Estrada having bought a one-sixth part of the property from Luisa del Rosario and Cirila T. Reyes, a one-third part from Juan N. Aragon and another sixth part of said property from Agustin del Rosario each may be considered as cotenants as between themselves and in relation to the other persons surnamed Pereyra, then neither Estrada nor Reyes has the right of redemption against the other, because neither of them is a third party with relation to the other.

The fact that the instrument of purchase made by Estrada on the 20th of March, 1912, was executed a long time prior to that effected on the 29th of October, 1912, by Cirila T. Reyes, does not give the former a better right than the latter, when we keep in mind the date of October 11, 1911, on which Juan N. Aragon and Agustin del Rosario were ordered by the court to execute the deed of sale in favor of said Reyes—an order affirmed by this Court on the 26th of August, 1913,—and that on the same date, October 30, 1913, they mutually called upon each other to have Estrada subrogated in place of Reyes in that portion of the property which the latter had purchased, and vice versa, a claim which is repeated in these proceedings in the complaint of Estrada and in Reyes' cross-complaint.

If the right of redemption had been duly exercised by any of the original owners, then both Estrada and Reyes would perhaps be considered as third parties to the purchases effected, and on these grounds and as such, neither is entitled to exercise the right of redemption against the other, for the reason that this right lies in the cotenant of the thing held in common, and in nobody else, to redeem from a third party that part of the property alienated by another cotenant in favor of such third party.

From all aspects then it is clear that none of the parties in these proceedings is entitled to exercise the right of redemption with relation to the respective portions of the property which they acquired.

For the foregoing reasons the judgment of the lower court is reversed and the complaint and cross-complaint filed by both parties are dismissed, without special finding as to the costs in both instances. So ordered.

Arellano, C.J., Johnson, and Araullo, JJ., concur.

CONCURRING
MORELAND, J.,

I concur in the result in this case. I do not express any opinion with reference to the sufficiency of the grounds set forth in the majority opinion, because my concurrence in the result of the decision is based on other grounds.

DISSENTING
CARSON, J.,

I dissent. I think that the judgment appealed from should be affirmed.

DISSENTING
TRENT, J.,

I think judgment should be entered in favor of the plaintiff. Judgment reversed; case dismissed.

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