

**CLARITA P. HERMOSO AND VICTORIA P. HERMOSO, PETITIONERS,
VS. COURT OF APPEALS, SPOUSES CEFERINO C. PALAGANAS,
AZUCENA R. PALAGANAS AND DR. AMANDA C. PALAGANAS,
RESPONDENTS.**

G.R. No. 108580. December 29, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

This petition seeks the review of the decision dated July 24, 1992[1] of the Court of appeals which reversed the decision dated February 15, 1990 of the Regional Trial Court of Bulacan in an action for legal redemption instituted by the petitioners against the private respondents. The motion for reconsideration of petitioners was likewise denied by the respondent court in its resolution dated December 22, 1992.[2]

There is not much dispute about the background facts, thus we quote with favor the factual antecedents as summarized by the Court of Appeals, to wit:

"Emilio Hermoso, now deceased, and plaintiff Clarita Hermoso were husband and wife whose union was blessed with the following children: Rogelio, Victoria (another plaintiff-appellee), Agustinito and Danilo Ciriaco, all surnamed Hermoso (the latter two being third party defendants-appellees). Emilio Hermoso died on June 22, 1957, leaving as his surviving heirs, his wife Clarita, and the four above-named children. Among the properties left by Emilio Hermoso is an undivided one-third portion of a parcel of land, the whole of which consisting of 7,842 square meters, more or less, is now covered by OCT No. 0-1054 (M) issued in 1983, situated at Calvario, Meycauayan, Bulacan.

"The property was originally owned by Agrifina Francia and the ownership thereof was transmitted upon her death to her three (3) children, to wit: Isidro, Consolacion, and Emilio (herein appellees' predecessor-in-interest) in the proportion of one-third (1/3) each. Consolacion Hermoso, married to Manuel Cruz, later bought the one-third (1/3) undivided share of her brother, Isidro Hermoso. Thus, as indicated in OCT No. 0-1054 (M), Consolacion Hermoso owns two-thirds (2/3) thereof and the remaining one-third (1/3) is in the name of the Heirs of Emilio Hermoso [Exhibit 'A'].

"On May 29, 1974, the Heirs of Emilio Hermoso executed a duly notarized 'Agreement' Exh. "1-A", the pertinent portion of which reads, as follows:

'2. That it is hereby agreed that for the convenience of all parties the following shall be observed in the partition of the above-mentioned properties: that the share of CLARITA P. CARIN shall in all cases be adjacent to the properties adjudicated to CONSOLACION HERMOSO CRUZ; then following by the shares pertaining to DANILO CIRIACO HERMOSO, VICTORINA P. HERMOSO, ROGELIO P. HERMOSO and AGUSTINITO P. HERMOSO, respectively, except in the partition of the parcel of land situated in Calvario, Meycauayan, Bulacan, which is the subject of the DEED OF EXCHANGE above-mentioned, in which case the share pertaining to CLARITA P. CARIN shall be adjacent to the stonewall that segregates the share of CONSOLACION HERMOSO CRUZ, then followed by the shares pertaining to ROGELIO P. HERMOSO, DANILO CIRIANO HERMOSO, VICTORINA P. HERMOSO, and AGUSTINITO P. HERMOSO, at the

extreme end, respectively' [Emphasis and underscoring Ours]

"Sometime in July, 1979, third party defendants-appellees Agustinito hermoso and Danilo Hermoso ('Hermoso brothers' for brevity) offered to sell their respective shares to the land in dispute to one Benjamin Palaganas, brother of appellees Ceferino Palaganas and Amanda Palaganas, who are old family acquaintances of the Hermosos since the lifetime of their late landlord, Don Marcos Hermoso.

"Upon being shown a copy of the duly notarized 'Agreement' [Exh. '1-A'], Ben Palaganas, together with the Hermoso brothers, approached Atty. Ireneo E. Guardiano concerning the preparation of a contract of sale, with the latter noting that the shares offered for sale are separated by the share of Victoria Hermoso; hence, it would be more feasible for Danilo Ciriaco to execute a deed of exchange with his sister, Victoria [TSN, 29 October 1986, p. 8]. A 'Deed of Exchange' [Exh. '11'] was thereafter drawn and signed by Danilo Ciriaco Hermoso but the same was not however signed by Victoria Hermoso.

"Nonetheless, this transaction did not materialize for the reasons that Clarita Carin subsequently offered to redeem the shares sold by her children by returning the amount already received by her son, Agustinito. By reason of their good relations and it appearing that the sale was made without the knowledge and consent of Clarita Carin, Ben Palaganas accepted the offer without suspicion.

"In the month of October of the same year, Agustinito, then reviewing for the Bar Examinations, and Danilo, in dire need of money, for the second time offered to sell their respective shares to Ben Palaganas who acted for and in behalf of his brother, Dr. Ceferino Palaganas, and sister, Dr. Amanda Palaganas (Palaganases, for brevity), this time giving assurance that their mother (Clarita Carin) had already consented to the transaction and that they could convince their sister, Victoria, to finally agree to an exchange of shares with Danilo. Elated with this development, the Palaganases even offered a higher price [P500,000.00] for the sale.

"Thus, with these assurances, the parties executed on January 30, 1980 a duly notarized 'Deed of Absolute Sale Over Two Undivided Shares To A Parcel of Land' (Annex 'B,' Plaintiffs-Appellees; Exhibit 2, Appellants) with the Hermoso brothers receiving P300,000.00 upon the execution of the contract, P100,000.00 to be paid upon the eviction of the squatters/tenants thereon, and the balance of P100,000.00 to be paid upon the issuance of title in the name of the vendees.

"Upon the commencement of the present action (October 8, 1984), the Hermoso brothers have already received a total amount of P401,500.00 with the last condition---transfer of title---not having been yet fulfilled.

"Contrary to the assurances made by the Hermoso brothers, plaintiffs-appellees allegedly came to have known of the transaction only sometime between May, 1983 and January, 1984 (Complaint, par. 8 in relation to TSN, 21 Nov. 1984, p. 32, Victoria Hermoso). Thereafter, plaintiffs-appellees allegedly made arrangements to negotiate for the redemption of the shares sold by the Hermoso brothers. This time, however, the Palaganases were not so open to the idea of the offered repurchase for the value of the property in dispute had considerably increased and that they have already set foothold on said property by reason of their investments and the plans made for its development. Furthermore, they relied upon the assurances made by the Hermoso brothers that the transaction is known to Clarita Carin and Victoria Hermoso." [3]

Consequently, considering the adamant refusal of the private respondents to resell the disputed lots, petitioners on October 8, 1984 filed a complaint for legal redemption before the Regional Trial Court of Bulacan, Branch 7, Malolos, with prayer for the issuance of a writ of preliminary injunction to enjoin defendants third-party plaintiffs from proceeding with the construction of the building thereon. The trial court issued the writ prayed for. After trial on the merits, the court a quo issued its decision dated February 15, 1990, the dispositive portion of which

reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants and third-party defendants as follows:

1. Ordering the defendants to allow the redemption of the shares sold to them by their vendors, the third party defendants herein, and upon payment of the amount of Four Hundred One Thousand Five Hundred (P401,500.00) Pesos, to surrender the possession of the portion of the land covered by OCT No.0-1054 (N), together with whatever improvement they have constructed on the property, to the plaintiffs;
2. Ordering the defendants to pay the plaintiffs, the amount of Twenty Thousand (P20,000.00) Pesos by way of actual damages to cover the transportation expenses of the plaintiffs from Cebu to Malolos and back and also attorney's fees in the amount of Fifteen Thousand (P15,000.00) Pesos which plaintiffs have paid or are bound to pay their counsel;
3. Ordering the third party defendants to pay the defendants, damages by way of legal interest in the amount computed at the rate of twelve (12%) per cent of the P401,500.00 which shall commence from the date of the filing of the complaint on October 8, 1984 until the said amount of P401,500.00 shall have been completely paid to the defendants by the said plaintiffs.

Costs against the defendants."[4]

On appeal, the issues were simplified by the respondent court as follows:

1. Whether or not the property in dispute is still co-owned or has actually been partitioned thereby terminating the co-ownership;
2. If otherwise, whether or not the plaintiffs-appellees could still exercise the rights of redemption.

The respondent court disagreed with the findings of the trial court and was of the view "that laws and jurisprudence favor the appellants, hence we reverse." The dispositive portion of the appellate court's decision reads:

"WHEREFORE, premises considered, the judgment appealed from is hereby REVERSED, and a new one is entered dismissing the Complaint and ordering Third-Party Defendants to pay on the Third Party Complaint, the Third Party Plaintiffs the amount of P10,000.00 by way of attorney's fees.

"The parties shall bear their respective costs."[5]

In this petition for review, Clarita P. Hermoso, now Clarita Carin after her remarriage, and her daughter Victoria P. Hermoso, raise the following grounds:

"I.

THE RESPONDENT COURT ERRED IN NOT AGREEING WITH THE HOLDING OF THE TRIAL COURT THAT THE AGREEMENT, MARKED AS EXHIBIT '1-A,' IS NOT A DEED OF PARTITION BUT IS A MERE SCHEME AS TO HOW TO PARTITION THE PROPERTY IN QUESTION WHICH IS TEMPORARY IN CHARACTER AND SUBJECT TO CHANGE AT ANY TIME AND IS NULL AND VOID AS FAR AS PETITIONER VICTORIA P. HERMOSO IS CONCERNED BECAUSE SHE WAS STILL A MINOR WHEN SAID AGREEMENT WAS EXECUTED AND HER CO-PETITIONER CLARITA P. HERMOSO HAD NO AUTHORITY TO SIGN SAID AGREEMENT IN HER BEHALF;

II.

THE RESPONDENT COURT ERRED IN NOT HOLDING THAT THE PROPERTY IN QUESTION WAS STILL UNDIVIDED AND WAS STILL UNDER CO-OWNERSHIP DESPITE THE EXECUTION OF THE AGREEMENT MARKED AS EXHIBIT '1-A' BECAUSE CONSOLACION HERMOSO, CO-OWNER OF

2/3 OF SAID PROPERTY, WAS NOT A PARTY TO SAID AGREEMENT;

III.

THE RESPONDENT COURT ERRED IN COUNTING THE DATE WHEN THE RIGHT OF REDEMPTION SHOULD BE EXERCISED FROM THE TIME THE PETITIONERS MADE A FORMAL OFFER TO REDEEM INSTEAD OF FROM THE TIME THE PETITIONERS STARTED NEGOTIATING FOR THE REDEMPTION OF THE TWO UNDIVIDED SHARES AFTER THEY WERE CERTAIN THAT SAID UNDIVIDED SHARES WERE SOLD TO THE PRIVATE RESPONDENTS."^[6]

The trial and appellate courts disagreed as to the interpretation to be given to the agreements and contracts and to the notice of sale involved in this case.

In the trial court, petitioners posited the theory that the disputed land is still under co-ownership. On the basis of the same documentary evidence, the private respondents contend that what the two brothers sold was already definite since partition had already been effected.

The first two (2) grounds for this petition refer to the nature of the land sold to the respondents. The question is: Was it still under co-ownership or had it already been partitioned and divided among the co-owners?

In finding that the parcel of land covered and described in OCT No. 0-1054 (M) had not been divided or partitioned among the co-owners, the trial court said:

"In fact, there is no division yet between the spouses, Manuel Cruz and Consolacion Hermoso Cruz on one hand and the Heirs of Emilio Hermoso on the other. This fact of co-ownership is easily discernible in the title itself which has not yet been cancelled, and therefore still subsisting.

'Therefore, it is ordered by the Court that said land be registered in accordance with the provisions of the Land Registration Act, as amended, in the name of said spouses, Manuel C. Cruz and Consolacion Hermoso; and heirs of Emilio Hermoso, namely: Clarita Pajo, Victoria Hermoso, Rogelio Hermoso, Agustinito Hermoso, and Danilo Hermoso as their exclusive property, --'

"The documents relating to the shares of the third party defendants readily show this fact of co-ownership. Thus, in the untitled instrument introduced by the defendants marked as Exhibit 3 which is an agreement to sell purportedly bearing the date October 10, 1979 signed by the Hermoso brothers, Agustinito and Danilo and stating how the P500,000.00 consideration of the sale shall be paid, what was referred to have been sold were the shares, rights and interests over the land of the said vendors. This document states, among others:

'That we have agreed to sell, transfer and convey unto spouses Dr. Ceferino C. Palaganas and Azucena R. Palaganas, both of legal age, Filipinos and with residence and postal address at Bañga, Meycauayan, Bulacan all our shares, rights and interests over the above-described parcel of land free from all liens and encumbrances under the following terms and conditions x x x' Cf. Exhibit 3, def., underlining supplied.

"The document signed by the two brothers on January 30, 1980 was obviously prepared at the instance of Ben Palaganas. Acknowledged before Notary Public Irineo Guardiano whose advice was sought by Ben Palaganas, its title is immediately revealing, as it is titled 'Deed of Absolute Sale Over Two Undivided Shares to a Parcel of Land' Cf. Exhibit C, pl., Exhibit 2, def., underlining supplied. It is also stated in this document that what was sold by the Hermoso brothers were "shares, rights and interests over the above-described parcel of land' (which obviously refers to the land in question).

"It is significant to note that in the deed of sale marked as Exhibit 2, defendant, the area of the shares of the vendors, the Hermoso brothers were not specified. What was mentioned on the matter of area is that of the whole parcel which is 7,829 square meters. If there was a partition or separation of the portions of the whole land assigned to the owners named in the title, the parcels conveyed could have been described with their specified metes and bounds.

"There was no subdivision plan presented by the defendants. In fact, there was none as yet executed by a duly licensed geodetic engineer on that registered land. Ben Palaganas who was then dealing with the Hermoso brothers, the named vendors in the document, is a highly educated man. As he had testified, he is an accountant by profession and he had served as head of a department of the Central Bank until his retirement from the government. In the opinion of this court, he knew all along that what he or his principals were buying at the time were the undivided shares, participation and interests of the vendors to the land. His claim later in court that the shares of the vendors could already be identified and separated is difficult to believe. If his claim were true, Ben Palaganas with his experience and educational background could have easily managed to executed the proper document as a basis of an ultimate issuance of title in the name of the vendees. The document which he relied upon which is Exhibit 1-A as the basis for his conclusion that the Hermoso brothers were selling definite parcels of land is belied by the recitals of the documents he himself introduced to the court, viz. Exhibits 2 and 3. The document, Exhibit 1-A, if at all, could at best be considered as a scheme how the land could be divided in the future among the heirs of Emilio Hermoso. Temporary in nature and subject to the conformity of the 2 sets of co-owners to the land, the spouses Manuel Cruz and Consolacion Hermoso Cruz had not participated in its execution. As it was, there was no sound basis for Ben Palaganas or his principals to have assumed that Exhibit 1-A could be enforced against the spouses Manuel Cruz and Consolacion Cruz and other third persons." [7]

In overturning the aforequoted opinion of the trial court, the respondent court said that:

"In ascertaining whether the community still subsists, or that it had already been extinguished by partition among the co-owners, it is not a mandatory requirement that the property co-owned had been determined with unmistakable definiteness and clarity, as where the property has been given a technical description after proper geodetic survey; it is only required that the shares are properly determinable and the proper arrangements thereof identifiable, as when nothing is left for the co-owners to do but to actually occupy the portion pertaining to their share without any dispute arising over the extent of their respective shares and the respective position of the parcels they are entitled to occupy.

"Although OCT No. 0-1054 (M) reveals on its face the existence of co-ownership between Consolacion Hermoso-Cruz and the Heirs of Emilio Hermoso, the fact that the shares are separated by a stonewall (Cf. Exh. 1-A) unmistakably reveals the determinate or determinable character of the property described under said certificate of title.

"The court a quo subscribed to the theory that Exhibit 1-A is merely a scheme [of] how the land could be divided in the future among the heirs of Emilio Hermoso.' (g.v., Decision, p. 5) Be that as it may, there is nothing more left to be done but the actual subdivision of the property by a duly licensed geodetic engineer prior to the actual titling of their respective shares. The corresponding shares of each of the heirs of Emilio Hermoso is not in dispute---one fifth each; and their proper respective arrangements, one after another, had likewise been included under Exhibit 1-A." [8]

We agree with the trial court's findings that the records show co-ownership of undivided property instead of definite portions of land having been assigned and separately owned by each of the co-owners.

It should be stressed that it was Ben Palaganas, the vendee, who prepared the Deed of Sale. The private respondents never had a hand in the preparation of the document, even if the purchase was made in their behalf. The document states that it is a "Deed of Absolute Sale Over Two Undivided Shares to a Parcel of Land." [9] Ben Palaganas who prepared the deed of sale, knew and intended that the transaction was over "Two Undivided Shares" of land. After all, as observed by the trial court, Ben Palaganas was an accountant and was, prior to retirement from government service, the head of a department in the Central Bank. Again, we quote the trial court on this point, thus:

"In the opinion of this court, he knew all along that what he or his principals were buying at the time were the

undivided shares, participation and interests of the vendors to the land. His claim later in court that the shares of the vendors could already be identified and segregated is difficult to believe. If his claim were true, Ben Palaganas with his experience and educational background could have easily managed to execute the proper document as a basis of an ultimate issuance of title in the name of the vendees. The document which he relied upon which is Exhibit 1-A as the basis for his conclusion that the Hermoso brothers were selling definite parcels of land is belied by the recitals of the documents he himself introduced to the court, viz., Exhibits 2 and 3."^[10]

Ben Palaganas' understanding and interpretation must necessarily prevail over that of the private respondents' who were not present during the transaction and whose claims are colored by self-interest. In fact, the same document refers to the brothers as co-owners of undivided shares in the disputed property.^[11]

It is plain from the deed of sale of two undivided shares that the absence of a clear partition among the heirs of Emilio Hermoso complemented the similar absence of a division of properties between the heirs and their aunt Consolacion Hermoso Cruz.. Two of the heirs were selling shares of undivided property which in turn was also an undivided portion of a much larger undivided inheritance.

The alleged documents of exchange presented by the respondents to show a partition with Consolacion would, to our mind, fall under the same category as the "1994 Agreement" among the heirs of Emilio Hermoso, as we shall hereinafter discuss.

The allegation about Consolacion having segregated and having given her 2/3 share of the inheritance viz-a-viz the 1/3 share of the heirs of Emilio Hermoso is belied by the letter sent by husband Manuel Cruz in August 1981 to the Register of Deeds of Bulacan which intimated his desire to buy the property of his-co-owners in his capacity as such.^[12] The spouses Cruz wanted to buy properties which they heard had been alienated by their co-owners.

The absence of a deed of partition between Consolacion on the one hand, and the heirs of Emilio on the other, is bolstered by the fact that the registered ownership is that of the original owner over the entire property.

The deed of sale executed by the Hermoso brothers on January 30, 1980, referred to undivided shares. Prior to the execution of this document, the Hermoso brothers were parties to a non-notarized certification dated October 10, 1979,^[13] acknowledging the receipt of P25,000.00 from the respondents, and wherein they were described as co-owners with the petitioners.^[14]

The second paragraph of the certification states that "We have agreed to sell, transfer and convey unto the spouses Dr. Ceferino C. Palaganas and Azucena R. Palaganas x x x all our shares, rights and interests over the above-described parcel of land x x x."^[15] Note that the vendors who have described themselves as "co-owners" agreed merely to sell their shares, rights and interests over the land. They were not "selling" but were "agreeing to sell." They did not sell a specific portion of land but sold "shares, rights and interests." It is to be further noted that as late as 1979 and 1980, Ben Palaganas and the Hermoso brothers, the parties to the deeds of sale, were in complete agreement that there was co-ownership.

The basis for the opinion of the respondent court that the co-ownership had been terminated and the property was subdivided is the document dated May 24, 1974 denominated "Agreement," executed by the heirs of Emilio Hermoso. The pertinent portion of the agreement, which has been earlier cited and for emphasis, is reproduced hereunder runs as follows:

"2. That it is hereby agreed that for the convenience of all parties the following shall be observed in the partition of the above-mentioned properties: that the share of CLARITA P. CARIN shall in all cases be adjacent to the properties adjudicated to CONSOLACION HERMOSO CRUZ; then followed by the shares

pertaining to DANILO CIRIACO HERMOSO, VICTORINA P. HERMOSO, ROGELIO P. HERMOSO and AGUSTINITO P. HERMOSO, respectively, except in the partition of the parcel of land situated in Calvario, Meycauayan, Bulacan, which is the subject of the DEED OF EXCHANGE above-mentioned, in which case the share pertaining to CLARITA P. CARIN shall be adjacent to the stonewall that segregates the share of CONSOLACION HERMOSO CRUZ, then followed by the shares pertaining to ROGELIO P. HERMOSO, DANILO CIRIACO HERMOSO, VICTORINA P. HERMOSO, and AGUSTINITO P. HERMOSO, at the extreme end, respectively."

We agree with the trial court that this Agreement was merely a scheme as to how the land would be subdivided in the future among the heirs. The owner of two-thirds (2/3) of the property, Consolacion Hermoso, was not a party to the agreement. As a majority owner of the undivided property, she should have demanded and insisted on getting the particular portions which the respondent court ruled had already been segregated in favor of the two vendors-brothers. The agreement among the heirs of Emilio Hermoso as to shares following one another in a specific order cannot be binding on the co-owner who owns 2/3 of the entire parcel but who was not a signatory or party to the document.

The reference to a stonewall separating the shares of Consolacion Hermoso Cruz from the share of Clarita Carin and the use thereof as reference point should not be taken to mean that thereby a partition was effected among the heirs. The statement of the heirs of Emilio Hermoso that the 2/3 portion of the co-owner in relation to the heirs of Emilio shall be adjacent to that of Clarita Carin followed by the shares of Rogelio, Danilo, Victorina and Agustinito is a statement of a desire on how the land should be subdivided. It cannot be said that it is a kind of division or partition of property which clearly terminates co-ownership. The statement of Agustinito of an assignment of shares cited by the respondent court was more of an expression on how a future partition should be effected. In fact, the word "positions" was used in addition to shares.

The documents evidencing the deed of sale more authoritative in determining the existence of co-ownership. The May 29, 1974 "Agreement" could not have been a partition or division of co-owned properties because five and six years later, as can be gleaned from the October 10, 1979 certification and from the January 13, 1980 Deed of Sale Over Two Undivided Shares To A Parcel of Land, both Ben Palaganas who prepared the documents as vendee, and the brothers Agustinito and Danilo who signed as vendors, were definite about the property being under co-ownership. As late as August, 1981, Manuel Cruz, the husband of Consolacion, described the parties as "co-owners."

The private respondents, to buttress their stance that the standards of concrete determinability and identifiability have been met in the case at bar, cited the case of *De la Cruz v. Cruz*.^[16] We have read the case, regrettably the standards are not present. In *De la Cruz*, the northern half of the property was assigned to the plaintiff and the southern half to the defendant. In which case, such a division is concrete and definite, which is not so in this case. Here, the majority co-owner, Consolacion Hermoso, was not even consulted and the mention of names following one another was apparently only a statement of who are the co-owners-heirs. It was not a formal division or partition of the bigger property still to be validly partitioned with Consolacion, owner of two-thirds (2/3) and later, among the co-heirs who owned the remaining one-third (1/3). It is only a statement of a future action to be taken. We, therefore, rule that the lot in question is still undivided property owned in common by the co-heirs.

The second issue herein refers to the timeliness of exercising the right of legal redemption. The petitioners question the respondent court's ruling that the right had already prescribed when they exercised legal redemption.

The law apropos to this case is Article 1623 of the Civil Code, which provides:

"Art. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not

be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

"The right of redemption of co-owners excludes that of adjoining owners."

An identical provision governing co-heirs is found in Article 1088 of the Civil Code, quoted hereunder:

Art. 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."

It is to be noted that Article 1623 stresses the need for notice in writing in three other species of legal redemption namely: (1) redemption in a case where the share of all the other co-owners or any of them are sold to a third person;^[17] (2) redemption by owners of adjoining lands when a piece of rural land not exceeding one hectare in area is alienated;^[18] and (3) redemption by owners of adjoining lands in the sale of a piece of an urban land so small and so situated that the portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation.^[19]

In all the above-cited provisions of law, the interpretation thereof always tilts in favor of the redemptioner and against the vendee. The purpose is to reduce the number of participants until the community is terminated, being a hindrance to the development and better administration of the property.^[20] Thus, we agree with the trial court when it said:

"The purpose of Article 1067 (of the old Civil Code, now Article 1088 of the present Civil Code) is to keep strangers to the family out of a joint ownership, if, as is often the case, the presence of outsiders be undesirable and the other heir or heirs be willing and in a position to repurchase the share sold (*De Jesus vs. Manlapus*, 81 Phil. 144). While there should no question that an heir may dispose his right before partition (*Rivero vs. Serrano* (CA) 46 O.G. 642; *Wenceslao vs. Calimon*, 46 Phil. 906; *Hernaez vs. Hernaez*, 32 Phil. 214), a co-heir would have had to pay only the price for which the vendee acquired it (*Hernaez vs. Hernaez*, *Ibid.*)."^[21]

It is a one-way street. It is always in favor of the redemptioner since he can compel the vendee to sell to him but he cannot be compelled by the vendee to buy the alienated property.

In this case, the land has not been validly partitioned between Consolacion Hermoso, who owns 2/3 and the heirs of Emilio Hermoso who own 1/3 regardless of the sentiments of Consolacion on the land in dispute may later have been. There has been no subsequent distribution among the co-heirs of their specific shares. But even granting that the heirs divided the properties owned in common in the May 29, 1974 Agreement, the right of legal redemption under Article 1620 of the Code, would still subsist in their capacity as co-owners. For, if a co-owner has offered to redeem the land within the period fixed by law, he has complied with the law. He may bring the action to enforce the redemption after every offer has been rejected. This is exactly the situation in this case.

The respondent court found that the petitioners already had notice of the sale in January 1984. Considering that the letter,^[22] coursed through Atty. Sandico, offering to redeem the property was made only in September 1984, the appellate court was of the view that the action to enforce redemption had prescribed. A perusal of the record, however, shows that after Ben Palaganas had confirmed the transaction, the petitioners confronted the two brothers who were compelled to admit they have sold their shares. The vendor-brothers never took the initiative of informing their co-heirs in writing that they have alienated their shares. As found by the trial court, the petitioners immediately started negotiations with Ben Palaganas to redeem the alienated share. At this time, the payment for the shares had not yet been completed neither by Ben Palaganas nor by the private respondents.

The observation of the trial court on this issue is enlightening, thus:

"It is evident from the evidence in the record that the vendors, i.e., the Hermoso brothers, Agustinito and Danilo had not notified in writing or even verbally their co-heirs which include the plaintiffs herein before or during the execution of the sale of their shares to Ben Palaganas or the defendants. The transaction of these two brothers had with Ben Palaganas was kept out of the knowledge of their mother and sister, the plaintiffs herein. Their need for funds must have been urgent and it was obvious that their mother if advised what they intended to do with the land could have objected to it. This reaction from the plaintiffs was easily expected because when Agustinito Hermoso sold his share to Ben Palaganas in July 1979, the same was aborted by the plaintiff, Clarita Carin. On this regard, Agustinito Hermoso, one of the two third party defendants testified:

"Q - Did you inform your mother and sister about the sale of these properties?

"A - During that time?

"Q - Yes.

"A - I did not.

x x x x x x x x

"ATTY. GARCIA:

"Q - Do you know when, for the first time, did your mother and your sister came to know of this sale?

"A - Personally, I do not know when they came upon that knowledge.

"(TSN, 5-22-86, pp. 10-11)

"ATTY. HERMOSO:

"Q - Did you ever consult your mother or your sister of your desire to sell the property?

"A - No, sir.

"Q - Why not?

"A - Because I personally believe that what we were selling then were but our right to the said property.

"Q - How about your brother Danilo Hermoso, did he inform your mother and sister about the sale of the property?

x x x x x x x x

"A - Danilo Hermoso, my brother, told me that he did not inform our mother and our sister about his desire to sell his share on the property.

"(TSN, 5-21-87, pp. 12-13 &15)

"ATTY. OSORIO:

"Q - How about the second sale which included the share of your brother?

"A - No, we did not inform our mother regarding our desire to sell our respective properties, sir.

"Article 1088 of the Civil Code is applicable in the instant case. But whether it is under this article 1623 of same Code, the period of 30 days has not began to run.

"When the plaintiffs had become certain after Ben Palaganas had confirmed the transaction that there was such

a sale covering the shares of the third party defendants (tsn, 6-19-86, pp. 20-21) sometime in 1984, the vendors had to admit to the herein plaintiffs the fact of sale. Plaintiffs immediately started negotiations with Ben Palaganas to redeem the shares sold by the vendors. Ben Palaganas or the defendants after all, had not completely paid the whole consideration of the sale by that time. Ben Palaganas did not want to give money anymore to the vendors as the amounts already paid ad amounted to P401,500.00 (see footnote of Ben Palaganas in Exhibit 10). The several payments made to the vendors are evidenced by Exhibits 3, 4, 5, 6, 7, 8, 9 and 10. Ben Palaganas acting for himself or for the defendants refused the offers of the plaintiffs to redeem the land, claiming that the rights to the land of his principals to the vendors' shares to the land was already established. The formal demand to redeem was sent by the plaintiffs through counsel to the defendants (Exhibit B, p. 203, record). Still the defendants did not respond accordingly. They had instead constructed a building within the land covered by the title and in a place therein, relying on the temporary scheme of partition marked as Exhibit 1-a. To the plaintiffs, there was no other recourse except to go to court. And they did by filing this complaint on October 4, 1984 with the court." [23]

Ben Palaganas confirmed the offer to redeem. When questioned why the private respondents agreed to the return of the sold shares in 1979 but refused to do so in 1980, this witness waxed sentimental and gave a lengthy narration of the debt of gratitude his family owed to the Hermoso family. Ben Palaganas related that the patriarch Marcos Hermoso allowed the Palaganas clan to build their house on his land and to stay there for 27 years without paying rent. And, when three sons and one daughter of the Palaganases were in medical school, and the family ran out of funds, Marcos Hermoso extended financial assistance without interest and payable only when the Palaganases could afford to pay. Out of respect for the Hermoso family, Ben Palaganas related, the private respondents agreed to the cancellation of the 1979 sale. However, in 1984 when the offer to redeem the share sold in 1980 was made, the Palaganas clan no longer wanted to resell the property. Considering that over the intervening years, they had paid on a piecemeal basis the amount of P400,000.00 to the two brothers and out of "self-respect" refused to agree to the redemption. But since the property purchased had already increased in value not only "self-respect" but apparently self-interest had entered the picture.

It was error for the respondent court to rule that the right of the petitioner to redeem the alienated share had long proscribed. This finding fails to take into account that the period of legal redemption is not a prescriptive period. It is a condition precedent to the exercise of the right of redemption. It is a period set by law to restrict the right of the person exercising the right of legal redemption. [24] It is not one of prescription.

The written notice required by Article 1623 of the Civil Code was enacted to remove all doubts and uncertainty that the alienation may not be definite. [25] The co-owners must know with certainty the circumstances of the sale by his co-owners and the terms and the validity of the alienation. Only after said knowledge is the co-owner required to exercise the right of redemption given to him by law.

While the law requires that the notice must be in writing, it does not state any particular form thereof, so long as the reasons for a written notice are present. The records of the case show that the sale of the brothers' share was deliberately hidden from the petitioners. For sometime after the sale, the petitioners were ignorant about its execution. When they somehow heard rumors about it, they had to take one step after another to find out if the information was true.

It is to be noted that in the case at bar, not only were the petitioners intentionally kept in the dark for several years but even after knowledge of the act of the two brothers, they still had difficulty in ascertaining and confirming its veracity. Far from giving the notice required by law or giving information on the history and details of the sale, Agustinito and Danilo gave the petitioners the run-around until the brothers were practically forced to admit it and the petitioners immediately went to see Ben Palaganas. In their dialogue with Ben Palaganas, petitioners offered to redeem the property, but this time, unlike the first, the offer was rejected.

When the petitioners offered to redeem within the period fixed by law, they complied with the condition precedent to the exercise of their right. The filing of an action to enforce the redemption is not the determining point in time. In Conejero, supra, this Court ruled that a consignment of the tendered price is not necessary as long as a valid tender is present.^[26] However, the offer to redeem is indispensable. Considering the indignation and the wrath of the petitioners directed at the two brother for their acts of alienating an undivided portion of the property, despite the earlier redemption of the sale sold in 1979, there can be no question about the willingness and capability of the petitioners to buy back the shares sold in 1980.

In applying Article 1623 of the Civil Code on the exercise of legal redemption to certain facts, the interpretation must be in favor of justice and equity.^[27] This Court explained "x x x. We test a law by its result. A law should not be interpreted so as not to cause an injustice x x x. There are laws which are generally valid but may seem arbitrary when applied in a particular case because of its peculiar circumstances. We are not bound to apply them in slavish obedience to their language."

Whether it is the vendees who will prevail as in the Alonzo doctrine, or the redemptioners as in this case, the righting of justice is the key to the resolution of the issues.

The standards and conditions of legal redemption provided under Article 1623 of the Civil Code have not been met in this petition. Furthermore, there is the fact that justice and equity, as the law provides, are also on the side of the petitioners. As we said, the righting of an injustice is the key to the resolution of this case and thus would be the end result of our decision.

The two brothers, Agustinito and Danilo Hermoso, were still students when they sold their shares in their inheritance. In 1979, Agustinito was already a graduating student of law. According to the trial court, it was "sometime in October of that year, he and his younger brother Danilo separately needed cash which they could not easily secure from their mother, Clarita Carin, one of the plaintiffs herein."^[28] However, if they were strapped of cash, considering that their allowances were insufficient for their needs, they could have pleaded with their mother for additional funds instead of selling the still undivided property without her knowledge and against her known will. They knew that their mother was against the very idea of selling a portion of the undivided property considering that Consolacion Hermoso cancelled the prior sale made by them in July 1979 by redeeming the property. From the records, one gets the impression that the two brothers, Agustinito and Danilo, were irresponsible and self centered, failing to consider the wishes of their mother.

Ben Palaganas, who represented the respondents in a transaction, admitted a debt of gratitude to the Hermoso family. Yet, apparently he took advantage of the situation. Through several years he doled out funds in installments to the two brothers in partial payment of the disputed property until the indebtedness had reached an amount that Agustinito and Danilo had no other recourse but to sell their inheritance and practically compelled them to execute the deed of sale in dispute.

Again, we reiterate the salient fact that Clarita Carin, their mother, and Victoria Hermoso, their sister, were kept in the dark about the sale. Considering the factual background of this case, the honorable and expected step for the Palaganas was to inform the petitioners about the action taken by Agustinito and Danilo. Instead, as the record reveals the parties to the sale concealed the transaction from petitioners for four (4) years. It was only after hearing rumors about the sale when petitioners started to investigate and search for evidence to confirm their hearsay knowledge about the transaction. Even then, the two brother and the Palaganas gave them a hard time.

The Palaganas clan knew all along the strong feelings of the petitioners against the alienation of share in the still undivided property. This was their second attempt to buy the property. As a matter of fact, they knew that in 1979 when the land was first sold, the petitioner immediately took steps to cancel the sale upon discovery thereof. In

1980, the private respondents and Ben Palaganas still did what the petitioners vigorously opposed and did not want to happen. They also hid the sale from the petitioners until confronted with facts that they could no longer hide or deny. The impressions of the trial judge is worth quoting hereunder thus:

"It is obvious that the acts of Ben Palaganas or his principals would be considered as done in bad faith. Ben Palaganas should not be allowed to say that he had relied merely on the impressions given by the vendors, the Hermoso brothers. Aside from what was obvious in the documents executed by the Hermoso brothers, he should have inquired or verified said impressions made by the vendors from the plaintiffs or any of the co-owners to the property. The evidence in the record shows that it was their intense desire to own a property in the place where the land is located because of the business potentials thereat stated herein above. They did not exercise the diligence of a good father of a family because they did not want to, what with their experience with the first transaction affecting the share of the third party defendant, Agustinito Hermoso which took place only in July, 1979 a few months earlier to the transaction in question." [29]

There can be no doubt that the Palaganas clan were in bad faith at the time they bought the disputed property from the Hermoso brothers. We cannot thus close our eyes to the injustice which would befall the petitioners considering that this is not the first time that they have expressed their desire to redeem the property sold by the Hermoso brothers. Under the circumstances, it is just and equitable to rule in favor of the exercise of legal redemption.

WHEREFORE, the assailed decision of the Court of Appeals should be, as it is hereby, **REVERSED** and **SET ASIDE**. The decision of the Regional Trial Court dated February 15, 1990 is hereby **REINSTATED**.

SO ORDERED.

Bellosillo (Chairman), Puno, and Mendoza, JJ., concur.

[1] Rollo, p. 48.

[2] Rollo, p. 82.

[3] Decision in CA-G.R. CV No. 28989; Rollo, pp. 42-45.

[4] Decision in Civil Case No. 7783-M; Rollo, p. 40.

[5] Decision in CA-G.R. CV No. 28989; Rollo, p. 58.

[6] Rollo, pp. 10-11.

[7] Decision in Civil Case No. 7783-M; Rollo, pp. 35-36.

[8] Decision in CA-G.R. CV NO. 28989; Rollo, pp. 47-48.

[9] Exhibit "2" & Exhibit "C".

[10] p. 36, Rollo.

[11] Rollo, pp. 35, 44 & 57.

[12] Rollo, pp. 20-21, 71-72 & 134-135.

[13] Exhibit "3."

[14] Rollo, p. 33.

[15] Rollo, p. 35.

[16] 32 SCRA 307 [1970].

[17] Article 1620.

[18] Article 1621.

[19] Article 1622.

[20] Estrada v. Reyes, 33 Phil. 31 [1915].

[21] P. 38, Rollo.

[22] Exhibit "A".

[23] RTC Decision, pp. 6-7; Rollo, pp. 37-38.

[24] Caro v. Court of Appeals, 113 SCRA 10 [1982]; Cornejo v. Court of Appeals, 16 SCRA 775 [1966]; Lim Tuico v. Cu-Unjieng, 21 Phil. 493 [1912].

[25] Conejero v. Court of Appeals, supra.

[26] Mariano v. Court of Appeals, 222 SCRA 736 [1993].

[27] Alonzo v. IAC, 150 SCRA 259 [1987].

[28] P. 33. Rollo.

[29] P. 39, Rollo.

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