

**ZOSIMA VERDAD, PETITIONER, VS. THE HON. COURT OF APPEALS,
SOCORRO C. ROSALES, AURORA ROSALES, NAPOLEON ROSALES,
ANTONIO ROSALES, FLORENDA ROSALES, ELENA ROSALES AND
VIRGINIA ROS...**

G.R. No. 109972. April 29, 1996

Ponente: VITUG, J.

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VITUG, J.:

The petitioner, Zosima Verdad, is the purchaser of a 248-square meter residential lot (identified to be Lot No. 529, Ts-65 of the Butuan Cadastre, located along Magallanes Street, now Marcos M. Calo St., Butuan City). Private respondent, Socorro Cordero Vda. de Rosales, seeks to exercise a right of legal redemption over the subject property and traces her title to the late Macaria Atega, her mother-in-law, who died intestate on 08 March 1956.

During her lifetime, Macaria contracted two marriages: the first with Angel Burdeos and the second, following the latter's death, with Canuto Rosales. At the time of her own death, Macaria was survived by her son Ramon A. Burdeos and her grandchild (by her daughter Felicidad A. Burdeos) Estela Lozada of the first marriage and her children of the second marriage, namely, David Rosales, Justo Rosales, Romulo Rosales, and Aurora Rosales.

Socorro Rosales is the widow of David Rosales who himself, some time after Macaria's death, died intestate without an issue.

In an instrument, dated 14 June 1982, the heirs of Ramon Burdeos, namely, his widow Manuela Legaspi Burdeos and children Felicidad and Ramon, Jr., sold to petitioner Zosima Verdad (their interest on) the disputed lot supposedly for the price of P55,460.00. In a duly notarized deed of sale, dated 14 November 1982, it would appear, however, that the lot was sold for only P23,000.00. Petitioner explained that the second deed was intended merely to save on the tax on capital gains.

Socorro discovered the sale on 30 March 1987 while she was at the City Treasurer's Office. On 31 March 1987, she sought the intervention of the Lupong Tagapayapa of Barangay 9, Princess Urduja, for the redemption of the property. She tendered the sum of P23,000.00 to Zosima. The latter refused to accept the amount for being much less than the lot's current value of P80,000.00. No settlement having been reached before the Lupong Tagapayapa, private respondents, on 16 October 1987, initiated against petitioner an action for "Legal Redemption with Preliminary Injunction" before the Regional Trial Court of Butuan City.

On 29 June 1990, following the reception of evidence, the trial court handed down its decision holding, in fine, that private respondents' right to redeem the property had already lapsed.

An appeal to the Court of Appeals was interposed by private respondents. the appellate court, in its decision of 22 April 1993, reversed the court a quo; thus:

"WHEREFORE, premises considered, the judgment appealed from is hereby REVERSED, and a new one is

accordingly entered declaring plaintiff-appellant, Socorro C. Rosales, entitled to redeem the inheritance rights (Art. 1088, NCC) or pro indiviso share (Art. 1620, NCC) of the Heirs of Ramon Burdeos, Sr. in Lot 529, Ts-65 of the Butuan Cadastre, within the remaining ELEVEN (11) DAYS from finality hereon, unless written notice of the sale and its terms are received in the interim, under the same terms and conditions appearing under Exhibit 'J' and after returning the purchase price of P23,000.00 within the foregoing period. No cost." [1]

In her recourse to this Court, petitioner assigned the following "errors:" That -

"The Honorable Court of Appeals erred in declaring Socorro C. Rosales is entitled to redeem the inheritance rights (Article 1088, NCC) or pro-indiviso share (Article 1620, NCC) of the heirs of Ramon Burdeos, Sr. in Lot 529, Ts-65 of the Butuan Cadastre, for being contrary to law and evidence.

"The Honorable Court of Appeals erred in ignoring the peculiar circumstance, in that, the respondents' actual knowledge, as a factor in the delay constitutes laches.

"The Honorable Court of Appeals erred in concluding that Socorro C. Rosales, in effect, timely exercised the right of legal redemption when referral to Barangay by respondent signifies bonafide intention to redeem and; that, redemption is properly made even if there is no offer of redemption in legal tender.

"The Honorable Court of Appeals erred in ruling that the running of the statutory redemption period is stayed upon commencement of Barangay proceedings." [2]

Still, the thrust of the petition before us is the alleged incapacity of private respondent Socorro C. Rosales to redeem the property, she being merely the spouse of David Rosales, a son of Macaria, and not being a co-heir herself in the intestate estate of Macaria.

We rule that Socorro can. It is true that Socorro, a daughter-in-law (or, for that matter, a mere relative by affinity), is not an intestate heir of her parents-in-law; [3] however, Socorro's right to the property is not because she rightfully can claim heirship in Macaria's estate but that she is a legal heir of her husband, David Rosales, part of whose estate is a share in his mother's inheritance.

David Rosales, incontrovertibly, survived his mother's death. When Macaria died on 08 March 1956 her estate passed on to her surviving children, among them David Rosales, who thereupon became co-owners of the property. When David Rosales himself later died, his own estate, which included his undivided interest over the property inherited from Macaria, passed on to his widow Socorro and her co-heirs pursuant to the law on succession.

"ART. 995. In the absence of legitimate descendants and ascendants, and illegitimate children and their descendants, whether legitimate or illegitimate, the surviving spouse shall inherit the entire estate, without prejudice to the rights of brothers and sisters, nephews and nieces, should there be any, under Article 1001.

"xxx xxx xxx

"ART. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half." [4]

Socorro and herein private respondents, along with the co-heirs of David Rosales, thereupon became co-owners of the property that originally descended from Macaria.

When their interest in the property was sold by the Burdeos heirs to petitioner, a right of redemption arose in favor of private respondents; thus:

"ART. 1619. Legal redemption is the right to be subrogated, upon the same terms and conditions stipulated in the contract, in the place of one who acquires a thing by purchase or dation in payment, or by any other

transaction whereby ownership is transmitted by onerous title."

"ART. 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."

We hold that the right of redemption was timely exercised by private respondents. Concededly, no written notice of the sale was given by the Burdeos heirs (vendors) to the co-owners[5] required under Article 1623 of the Civil Code "

"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."

Hence, the thirty-day period of redemption had yet to commence when private respondent Rosales sought to exercise the right of redemption on 31 March 1987, a day after she discovered the sale from the Office of the City Treasurer of Butuan City, or when the case was initiated, on 16 October 1987, before the trial court.

The written notice of sale is mandatory. This Court has long established the rule that notwithstanding actual knowledge of a co-owner, the latter is still entitled to a written notice from the selling co-owner in order to remove all uncertainties about the sale, its terms and conditions, as well as its efficacy and status.[6]

Even in *Alonzo vs. Intermediate Appellate Court*,[7] relied upon by petitioner in contending that actual knowledge should be an equivalent to a written notice of sale, the Court made it clear that it was not reversing the prevailing jurisprudence; said the Court:

"We realize that in arriving at our conclusion today, we are deviating from the strict letter of the law, which the respondent court understandably applied pursuant to existing jurisprudence. The said court acted properly as it had no competence to reverse the doctrines laid down by this Court in the above-cited cases. In fact, and this should be clearly stressed, we ourselves are not abandoning the *De Conejero* and *Buttle* doctrines. What we are doing simply is adopting an exception to the general rule, in view of the peculiar circumstances of this case."[8]

In *Alonzo*, the right of legal redemption was invoked several years, not just days or months, after the consummation of the contracts of sale. The complaint for legal redemption itself was there filed more than thirteen years after the sales were concluded.

Relative to the question posed by petitioner on private respondents' tender of payment, it is enough that we quote, with approval, the appellate court; viz:

"In contrast, records clearly show that an amount was offered, as required in *Sempio vs. Del Rosario*, 44 Phil. 1 and *Daza vs. Tomacruz*, 58 Phil. 414, by the redemptioner-appellant during the barangay conciliation proceedings (Answer, par. 8) but was flatly rejected by the appellee, not on the ground that it was not the purchase price (though it appeared on the face of the deed of sale, Exh. 'J-1'), nor that it was offered as partial payment thereof, but rather that it was 'unconscionable' based upon its 'present value.' (Answer, par. 8)."[9]

All given, we find no error in the appellate court's finding that private respondents are entitled to the redemption of the subject property.

WHEREFORE, the petition is DENIED and the assailed decision of the Court of Appeals is AFFIRMED. Costs against petitioner.

SO ORDERED.

Padilla (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Rollo, p. 49.

[2] Rollo, p. 23.

[3] Rosales vs. Rosales, 148 SCRA 69.

[4] Civil Code of the Philippines.

[5] See Rollo, p. 174, Felicidad Burdeos, Deposition, p. 4.

[6] See Cabrera vs. Villanueva, 160 SCRA 672; also Conejero vs. Court of Appeals, 16 SCRA 775.

[7] 150 SCRA 259.

[8] Pp. 267-268.

[9] Rollo, p. 48.

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