

VALENTIN CASTILLO, PLAINTIFF AND APPELLEE, VS. ARTURO SAMONTE, DEFENDANT AND APPELLANT.*G.R. No. 13146. January 30, 1960*

Ponente: BARRERA, J.

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Arturo Samonte has interposed this appeal from the decision of the Court of First Instance of Bulacan (in Civil Case No. 1424), directing him to reconvey, under the terms of Article 1088 of the new Civil Code, certain property and pay attorney's fees to plaintiff-appellee Valentin Castillo.

Defendant specifically took this appeal directly to this Court stating in his notice of appeal and prayer for approval of the record on appeal that "esta apelacion envuelve tan solamente cuestion de derecho". In view thereof he is bound by the findings of fact of the court a quo, and this Court will, therefore, decide this appeal purely on the questions of law raised.[1]

The facts, as found by the trial court, are that Romualda Meneses was, during her lifetime, the owner of the unregistered residential land in question located at Bambang, Bulacan, Bulacan, with approximate area of 394 square meters. Upon her demise, she left as compulsory heirs the plaintiff herein and his brothers and sister Gregorio" Amando, Jose, and Melencia,[2] all surnamed Castillo. Said property remained undivided, as the heirs did not partition the inherited estate either judicially or extra-judicially. On July 13, 1953, one of the heirs, Gregorio Castillo, without giving any notice in writing to his coheirs, including plaintiff herein, sold for P1,000.00 his undivided interest in the property to defendant who, on July 16, 1953, succeeded in registering the deed of sale (Exh. 2) with the Register of Deeds of Bulacan. Sometime in September, 1956, when the place was surveyed cadastrally, plaintiff learned for the first time about the sale and forthwith (on September 15, 1956), he offered to redeem the property from defendant, but the latter refused to re-sell the same to him. Plaintiff, therefore, on December 19, 1956, filed a complaint in the above-mentioned court praying that defendant, be ordered to resell the property to him.

On September 6, 1957, the court rendered a decision, the dispositive part of which reads as follows:

"For all the foregoing considerations, the Court hereby renders judgment in favor of the plaintiff and against the defendant, ordering the latter to reconvey or transfer the portion of the property in question to the plaintiff herein, upon the payment by the latter to the former of the amount of one thousand pesos (P1,000.00), which is the consideration of the sale made by Gregorio Castillo in favor of the defendant; to pay the plaintiff the amount of two hundred pesos (P200.00) as attorney's fees, and the costs of this action."

Defendant, in this appeal, claims that the court a quo erred: (1) in not ordering the heir-vendor Gregorio Castillo to be included either as party plaintiff or party defendant in the case; (2) in upholding plaintiff's right to redeem the property subject of the controversy; and (3) in awarding to plaintiff attorney's fees.

As to the first assigned error, the trial court had no obligation to order the inclusion of the vendor either as a party plaintiff or party defendant in the case, because while he may be a necessary party, still he is not indispensable in

the sense that the matter before it could not; be completely adjudicated without him. The deed of sale in favor of appellant clearly state that what is being sold is an undivided 1/5 portion of the land jointly owned by the vendor and his brothers and nephew. The vendee-appellant is, therefore, conclusively presumed to know the law that under such circumstances, the co-heirs are entitled to redeem the portion being sold within 30 days from notice in writing of the sale, under Article 1088 of the New Civil Code. In effect, he is a vendee with notice of the right of redemption by the Vendor's co-heirs.

Moreover, if vendee-appellant believed he had a claim against the vendor by reason of the warranty, it was his duty to have filed a third-party complaint against the latter pursuant to Section 1, Rule 12, of the Rules of Court, which states:

"SECTION 1. Claim against one not a party to an action.—When a defendant claimed to be entitled against a person not a party to the action, hereinafter called the third-party defendant, to contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim, he may file, with leave of court, against such person a pleading which shall state the nature of his claim and shall be called the third-party complaint."

In respect of the second assigned error, Article 1088 of the Civil Code, provides:

"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." (Italics supplied.)

From the facts found by the trial court, it is indisputable that plaintiff is entitled to redeem the hereditary right over the 1/5 undivided share sold by his brother Gregorio Castillo to herein defendant-appellant. The only remaining question is whether plaintiff exercised his right within the period prescribed in the law.

It is admitted that plaintiff, as co-heir, has never been notified in writing of the sale made by his brother, Gregorio Castillo. Nor were the other co-heirs. But defendant-appellant argues that the registration of the deed of sale (Exh. 2) on July 16, 1953, with the Register of Deeds of Bulacan, was sufficient notice of the sale under the provisions of Section 51 of Act No. 496 (Land Registration Act), which read:

"SEC. 51. Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry affecting registered land which would under existing laws, if recorded, filed or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all persons from the time such registering, filing or entering." (Italics supplied.)

But the above-quoted provision of the statute applies only to registered lands, and has no application whatsoever to the instant case, for the reason that the property herein involved is, admittedly, unregistered land.[3] In this connection, the court a quo correctly observed that "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." [4]

It is nevertheless urged by appellant that since appellee admits having learned about the sale in September, 1956, and filed his complaint only in December of the same year, or after a lapse of three months, his action has already prescribed, arguing that actual knowledge constitutes and supplies the written notice required by Article 1088 of the new Civil Code. In the view we take in this case, we need not now decide whether actual knowledge will

dispense with the notice in writing mentioned in the law. Suffice it to note that herein appellee, upon learning of the sale in September, 1956, within 30 days thereafter (specifically on the 15th of the same month), offered to repurchase the property from the appellant. This, in our opinion established his right to redeem and he could bring an action in court to enforce the right of redemption at any time thereafter, provided it is not barred by the Statute of Limitations.

Interpreting a similar provision in Article 1524[5] of the old Civil Code, this Court hold that the same was not a prescriptive period, and stated:

"* * * the right of legal redemption and the right to commence actions are of an entirely different nature. The first creates a substantive right which, in the absence of the article, would never exist; the second restricts the period in which a cause of action may be asserted." (Sempio vs. Del Rosario, 44 Phil., 1, 3).

To the same effect is the case *Villasor vs. Medel, et al.* (46 Off. Gaz. [Supp. 10] 344, 348) where this Court, speaking through Mr. Justice Tuason further stated:

"* * * An action seeks to assert a fundamental, primary right of which the plaintiff has been unlawfully deprived, or to redress a wrong which has been inflicted; legal redemption is in the nature of a mere privilege created by law partly for reasons of public policy and partly for the benefit and convenience of the redemptioner, to afford him a way out of what might be a disagreeable or inconvenient association into which he has been thrust. (10 Manresa, 4th ed., 317)"

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 Limitations. If a redemptioner, therefore, has offered to redeem the property within the period fixed, he has complied with the condition prescribed by the law and may, thereafter, bring an action to enforce the redemption. If, on the other hand, the period is allowed to lapse before the right is made use of, then the action to enforce the redemption will not prescribe even if brought within the ordinary prescriptive period.[6]

The case of *Asuncion vs. Jacob, et al.* decided by the Court of Appeals (48 Off. Gaz., 2786) and cited by defendant-appellant is not authority to support his submission that the complaint for redemption must be filed within the one month period, especially where it appears that such a statement was a mere obiter not supported by the finding that the complaint in that case was filed after a lapse of fourteen (14) years from the time the redemptioner was informed of the sale.

Regarding the last assigned error, defendant cites as authority the case of *Jimenez vs. Bucoy* (103 Phil., 40). In said case, as in the instant case, the lower court awarded attorney's fees to plaintiff without explaining why it made the award. Disapproving said award, on appeal, we stated as follows:

"Under the new Civil Code, attorney's fees and expenses of litigation may be awarded in this case if defendant acted in gross and evident bad faith in refusing to satisfy plaintiff's plainly valid, just and demandable claim' or where the court deems it just and equitable that attorney's fees be recovered. (Art 2208, Civil Code). These are—if applicable—some of the exceptions to the general rule that in the absence of stipulation no attorney's fees shall be awarded.

"The trial court did not explain why it ordered payment of counsel fees. Needless to say, it is desirable that the decision should state the reason why such award is made, bearing in mind that it must necessarily rest on an exceptional situation. Unless of course the text of the decision plainly shows the case to fall into one of the exceptions, for instance in actions for legal support, when exemplary damages are awarded, etc. * * * If the

trial judge considered it just and equitable' to require payment of attorney's fees because the defense * * * proved to be untenable in view of this Court's applicable rulings, it would be error to uphold his view. Otherwise, every time a defendant loses, attorney's fees would follow as a matter of course. Under the article above cited, even a clearly untenable defense would be no ground for awarding attorney's fees unless it amounted to 'gross and evident bad faith.'" (Italics supplied.)

In conformity with the above ruling and, since in the instant case, it does not appear that defendant had acted in gross and evident bad faith in refusing plaintiff's offer to redeem the property in question, or that there are in the text of the appealed decision reasonable or equitable reasons for allowing the award of attorney's fees to plaintiff, we are constrained to disallow the same.

Wherefore, modified as above indicated, the judgment of the court a quo is affirmed in all respects, with costs against the defendant appellant. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes J.B.L., Endencia and Gutierrez David, JJ., concur.

[1] Sec. 3, Rule 42, Rules of Court; Millar vs. Nadres, 74 Phil., 307.

[2] Now deceased and represented by her only son Gregorio Asuncion.

[3] There is no registration of title to speak of relative to such land of lands. (Ventura, Land Titles and Deeds [4th Ed.] 270.)

[4] Art. 1067, old Civil Code; Hernaez vs. Hernaez, 32 Phil., 214.

[5] Now Article 1623 of the New Civil Code.

[6] V. Tolentino, Civil Code of the Philippines (1959 Ed.), 163, 164.

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