

PERPETUA VDA. DE APE, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND GENOROSA CAWIT VDA. DE LUMAYNO, RESPONDENTS.

G.R. NO. 133638. April 15, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a petition for review on certiorari of the Decision^[1] of the Court of Appeals in CA-G.R. CV No. 45886 entitled, “Generosa Cawit de Lumayno, accompanied by her husband Braulio Lumayno v. Fortunato Ape, including his wife Perpetua de Ape.”

The pertinent facts are as follows:

Cleopas Ape was the registered owner of a parcel of land particularly known as Lot No. 2319 of the Escalante Cadastre of Negros Occidental and covered by Original Certificate of Title (OCT) No. RP 1379 (RP-154 [300]).^[2] Upon Cleopas Ape’s death sometime in 1950, the property passed on to his wife, Maria Ondoy, and their eleven (11) children, namely: Fortunato, Cornelio, Bernalda, Bienvenido, Encarnacion, Loreta, Lourdes, Felicidad, Adela, Dominador, and Angelina, all surnamed Ape.

On 15 March 1973, Generosa Cawit de Lumayno (private respondent herein), joined by her husband, Braulio,^[3] instituted a case for “Specific Performance of a Deed of Sale with Damages” against Fortunato and his wife Perpetua (petitioner herein) before the then Court of First Instance of Negros Occidental. It was alleged in the complaint that on 11 April 1971, private respondent and Fortunato entered into a contract of sale of land under which for a consideration of P5,000.00, Fortunato agreed to sell his share in Lot No. 2319 to private respondent. The agreement was contained in a receipt prepared by private respondent’s son-in-law, Andres Flores, at her behest. Said receipt was attached to the complaint as Annex “A” thereof and later marked as Exhibit “G” for private respondent. The receipt states:

April 11, 1971

TO WHOM IT MAY CONCERN:

This date received from Mrs. Generosa Cawit de Lumayno the sum of THIRTY PESOS ONLY as Advance Payment of my share in Land Purchased, for FIVE THOUSAND PESOS – LOT #2319.

(Signed)

FORTUNATO APE

P30.00 WITNESS:

(Illegible) ^[4]

As private respondent wanted to register the claimed sale transaction, she supposedly demanded that Fortunato

execute the corresponding deed of sale and to receive the balance of the consideration. However, Fortunato unjustifiably refused to heed her demands. Private respondent, therefore, prayed that Fortunato be ordered to execute and deliver to her “a sufficient and registrable deed of sale involving his one-eleventh (1/11) share or participation in Lot No. 2319 of the Escalante Cadastre; to pay P5,000.00 in damages; P500.00 reimbursement for litigation expenses as well as additional P500.00 for every appeal made; P2,000.00 for attorney’s fees; and to pay the costs.[5]

Fortunato and petitioner denied the material allegations of the complaint and claimed that Fortunato never sold his share in Lot No. 2319 to private respondent and that his signature appearing on the purported receipt was forged. By way of counterclaim, the defendants below maintained having entered into a contract of lease with respondent involving Fortunato’s portion of Lot No. 2319. This purported lease contract commenced in 1960 and was supposed to last until 1965 with an option for another five (5) years. The annual lease rental was P100.00 which private respondent and her husband allegedly paid on installment basis. Fortunato and petitioner also assailed private respondent and her husband’s continued possession of the rest of Lot No. 2319 alleging that in the event they had acquired the shares of Fortunato’s co-owners by way of sale, he was invoking his right to redeem the same. Finally, Fortunato and petitioner prayed that the lease contract between them and respondent be ordered annulled; and that respondent be ordered to pay them attorney’s fees; moral damages; and exemplary damages.[6]

In their reply,[7] the private respondent and her husband alleged that they had purchased from Fortunato’s co-owners, as evidenced by various written instruments,[8] their respective portions of Lot No. 2319. By virtue of these sales, they insisted that Fortunato was no longer a co-owner of Lot No. 2319 thus, his right of redemption no longer existed.

Prior to the resolution of this case at the trial court level, Fortunato died and was substituted in this action by his children named Salodada, Clarita, Narciso, Romeo, Rodrigo, Marieta, Fortunato, Jr., and Salvador, all surnamed Ape.[9]

During the trial, private respondent testified that she and her husband acquired the various portions of Lot No. 2319 belonging to Fortunato’s co-owners. Thereafter, her husband caused the annotation of an adverse claim on the certificate of title of Lot No. 2319.[10] The annotation states:

Entry No. 123539 – Adverse claim filed by Braulio Lumayno. – Notice of adverse claim filed by Braulio Lumayno affecting the lot described in this title to the extent of 77511.93 square meters, more or less, the aggregate area of shares sold to him on the basis of (alleged) sales in his possession. Doc. No. 157, Page No. 33, Book No. XI, Series of 1967 of Alexander Cawit of Escalante, Neg. Occ. Date of instrument. – June 22, 1967 at 8:30 a.m. (SGD) FEDENCIO RAZ, Actg. Register of Deeds.[11]

In addition, private respondent claimed that after the acquisition of those shares, she and her husband had the whole Lot No. 2319 surveyed by a certain Oscar Mascada who came up with a technical description of said piece of land.[12] Significantly, private respondent alleged that Fortunato was present when the survey was conducted.[13]

Also presented as evidence for private respondent were pictures taken of some parts of Lot No. 2319 purportedly showing the land belonging to Fortunato being bounded by a row of banana plants thereby separating it from the rest of Lot No. 2319.[14]

As regards the circumstances surrounding the sale of Fortunato’s portion of the land, private respondent testified that Fortunato went to her store at the time when their lease contract was about to expire. He allegedly demanded the rental payment for his land but as she was no longer interested in renewing their lease agreement, they agreed instead to enter into a contract of sale which Fortunato acceded to provided private respondent bought his portion

of Lot No. 2319 for P5,000.00. Thereafter, she asked her son-in-law Flores to prepare the aforementioned receipt. Flores read the document to Fortunato and asked the latter whether he had any objection thereto. Fortunato then went on to affix his signature on the receipt.

For her part, petitioner insisted that the entire Lot No. 2319 had not yet been formally subdivided;^[15] that on 11 April 1971 she and her husband went to private respondent's house to collect past rentals for their land then leased by the former, however, they managed to collect only thirty pesos;^[16] that private respondent made her (petitioner's) husband sign a receipt acknowledging the receipt of said amount of money;^[17] and that the contents of said receipt were never explained to them.^[18] She also stated in her testimony that her husband was an illiterate and only learned how to write his name in order to be employed in a sugar central.^[19] As for private respondent's purchase of the shares owned by Fortunato's co-owners, petitioner maintained that neither she nor her husband received any notice regarding those sales transactions.^[20] The testimony of petitioner was later on corroborated by her daughter-in-law, Marietta Ape Dino.^[21]

After due trial, the court a quo rendered a decision^[22] dismissing both the complaint and the counterclaim. The trial court likewise ordered that deeds or documents representing the sales of the shares previously owned by Fortunato's co-owners be registered and annotated on the existing certificate of title of Lot No. 2319. According to the trial court, private respondent failed to prove that she had actually paid the purchase price of P5,000.00 to Fortunato and petitioner. Applying, therefore, the provision of Article 1350 of the Civil Code,^[23] the trial court concluded that private respondent did not have the right to demand the delivery to her of the registrable deed of sale over Fortunato's portion of the Lot No. 2319.

The trial court also rejected Fortunato and petitioner's claim that they had the right of redemption over the shares previously sold to private respondent and the latter's husband, reasoning as follows:

Defendants in their counterclaim invoke their right of legal redemption under Article 1623 of the New Civil Code in view of the alleged sale of the undivided portions of the lot in question by their co-heirs and co-owners as claimed by the plaintiffs in their complaint. They have been informed by the plaintiff about said sales upon the filing of the complaint in the instant case as far back as March 14, 1973. Defendant themselves presented as their very own exhibits copies of the respective deeds of sale or conveyance by their said co-heirs and co-owners in favor of the plaintiffs or their predecessors-in-interest way back on January 2, 1992 when they formally offered their exhibits in the instant case; meaning, they themselves acquired possession of said documentary exhibits even before they formally offered them in evidence. Under Art. 1623 of the New Civil Code, defendants have only THIRTY (30) DAYS counted from their actual knowledge of the exact terms and conditions of the deeds of sale or conveyance of their co-heirs' and co-owners' share within which to exercise their right of legal redemption.^[24]

Within the reglementary period, both parties filed their respective notices of appeal before the trial court with petitioner and her children taking exception to the finding of the trial court that the period within which they could invoke their right of redemption had already lapsed.^[25] For her part, private respondent raised as errors the trial court's ruling that there was no contract of sale between herself and Fortunato and the dismissal of their complaint for specific performance.^[26]

The Court of Appeals, in the decision now assailed before us, reversed and set aside the trial court's dismissal of the private respondent's complaint but upheld the portion of the court a quo's decision ordering the dismissal of petitioner and her children's counterclaim. The dispositive portion of the appellate court's decision reads:

WHEREFORE, the decision dated March 11, 1994, is hereby REVERSED and SET ASIDE insofar as the dismissal of plaintiffs-appellants' complaint is concerned, and another one is entered ordering the defendant-appellant Fortunato Ape and/or his wife Perpetua de Ape and successors-in-interest to execute in

favor of plaintiff-appellant Generosa Cawit de Lumayno a Deed of Absolute Sale involving the one-eleventh (1/11) share or participation of Fortunato Ape in Lot No. 2319, Escalante Cadastre, containing an area of 12,527.19 square meters, more or less, within (30) days from finality of this decision, and in case of non-compliance with this Order, that the Clerk of Court of said court is ordered to execute the deed on behalf of the vendor. The decision is AFFIRMED insofar as the dismissal of defendants-appellants' counterclaim is concerned.

Without pronouncement as to costs.[27]

The Court of Appeals upheld private respondent's position that Exhibit "G" had all the earmarks of a valid contract of sale, thus:

Exhibit G is the best proof that the P5,000.00 representing the purchase price of the 1/11[th] share of Fortunato Ape was not paid by the vendee on April 11, 1971, and/or up to the present, but that does not affect the binding force and effect of the document. The vendee having paid the vendor an advance payment of the agreed purchase price of the property, what the vendor can exact from the vendee is full payment upon his execution of the final deed of sale. As is shown, the vendee precisely instituted this action to compel the vendor Fortunato Ape to execute the final document, after she was informed that he would execute the same upon arrival of his daughter "Bala" from Mindanao, but afterwards failed to live up to his contractual obligation (TSN, pp. 11-13, June 10, 1992).

It is not right for the trial court to expect plaintiff-appellant to pay the balance of the purchase price before the final deed is executed, or for her to deposit the equivalent amount in court in the form of consignment. Consignment comes into fore in the case of a creditor to whom tender of payment has been made and refuses without just cause to accept it (Arts. 1256 and 1252, N.C.C.; Querino vs. Pelarca, 29 SCRA 1). As vendee, plaintiff-appellant Generosa Cawit de Lumayno does not fall within the purview of a debtor.

We, therefore, find and so hold that the trial court should have found that exhibit G bears all the earmarks of a private deed of sale which is valid, binding and enforceable between the parties, and that as a consequence of the failure and refusal on the part of the vendor Fortunato Ape to live up to his contractual obligation, he and/or his heirs and successors-in-interest can be compelled to execute in favor of, and to deliver to the vendee, plaintiff-appellant Generosa Cawit de Lumayno a registerable deed of absolute sale involving his one-eleventh (1/11[th]) share or participation in Lot No. 2319, Escalante Cadastre, containing an area of 12,527.19 square meters, more or less, within 30 days from finality of this decision, and, in case of non-compliance within said period, this Court appoints the Clerk of Court of the trial court to execute on behalf of the vendor the said document.[28]

The Court of Appeals, however, affirmed the trial court's ruling on the issue of petitioner and her children's right of redemption. It ruled that Fortunato's receipt of the Second Owner's Duplicate of OCT (RP) 1379 (RP-154 ([300])), containing the adverse claim of private respondent and her husband, constituted a sufficient compliance with the written notice requirement of Article 1623 of the Civil Code and the period of redemption under this provision had long lapsed.

Aggrieved by the decision of the appellate court, petitioner is now before us raising, essentially, the following issues: whether Fortunato was furnished with a written notice of sale of the shares of his co-owners as required by Article 1623 of the Civil Code; and whether the receipt signed by Fortunato proves the existence of a contract of sale between him and private respondent.

In her memorandum, petitioner claimed that the Court of Appeals erred in sustaining the court a quo's pronouncement that she could no longer redeem the portion of Lot No. 2319 already acquired by private respondent for no written notice of said sales was furnished them. According to her, the Court of Appeals unduly expanded the scope of the law by equating Fortunato's receipt of Second Owner's Duplicate of OCT (RP) 1379

(RP-154 ([300]) with the written notice requirement of Article 1623. In addition, she argued that Exhibit “G” could not possibly be a contract of sale of Fortunato’s share in Lot No. 2319 as said document does not contain “(a) definite agreement on the manner of payment of the price.”[29] Even assuming that Exhibit “G” is, indeed, a contract of sale between private respondent and Fortunato, the latter did not have the obligation to deliver to private respondent a registrable deed of sale in view of private respondent’s own failure to pay the full purchase price of Fortunato’s portion of Lot No. 2319. Petitioner is also of the view that, at most, Exhibit “G” merely contained a unilateral promise to sell which private respondent could not enforce in the absence of a consideration distinct from the purchase price of the land. Further, petitioner reiterated her claim that due to the illiteracy of her husband, it was incumbent upon private respondent to show that the contents of Exhibit “G” were fully explained to him. Finally, petitioner pointed out that the Court of Appeals erred when it took into consideration the same exhibit despite the fact that only its photocopy was presented before the court.

On the other hand, private respondent argued that the annotation on the second owner’s certificate over Lot No. 2319 constituted constructive notice to the whole world of private respondent’s claim over the majority of said parcel of land. Relying on our decision in the case of *Cabrera v. Villanueva*,[30] private respondent insisted that when Fortunato received a copy of the second owner’s certificate, he became fully aware of the contracts of sale entered into between his co-owners on one hand and private respondent and her deceased husband on the other.

Private respondent also averred that “although (Lot No. 2319) was not actually partitioned in a survey after the death of Cleopas Ape, the land was partitioned in a ‘hantal-hantal’ manner by the heirs. Each took and possessed specific portion or premises as his/her share in land, farmed their respective portion or premises, and improved them, each heir limiting his/her improvement within the portion or premises which were his/her respective share.”[31] Thus, when private respondent and her husband purchased the other parts of Lot No. 2319, it was no longer undivided as petitioner claims.

The petition is partly meritorious.

Article 1623 of the Civil Code provides:

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.

Despite the plain language of the law, this Court has, over the years, been tasked to interpret the “written notice requirement” of the above-quoted provision. In the case *Butte v. Manuel Uy & Sons, Inc.*,[32] we declared that –

In considering whether or not the offer to redeem was timely, we think that the notice given by the vendee (buyer) should not be taken into account. The text of Article 1623 clearly and expressly prescribes that the thirty days for making the redemption are to be counted from notice in writing by the vendor. Under the old law (Civ. Code of 1889, Art. 1524), it was immaterial who gave the notice; so long as the redeeming co-owner learned of the alienation in favor of the stranger, the redemption period began to run. It is thus apparent that the Philippine legislature in Article 1623 deliberately selected a particular method of giving notice, and that method must be deemed exclusive. (39 Am. Jur., 237; *Payne vs. State*, 12 S.W. 2(d) 528). As ruled in *Wampler vs. Lecompte*, 150 Atl. 458 (affd. in 75 Law Ed. [U.S.] 275) –
why these provisions were inserted in the statute we are not informed, but we may assume until the contrary is shown, that a state of facts in respect thereto existed, which warranted the legislature in so legislating.

The reasons for requiring that the notice should be given by the seller, and not by the buyer, are easily divined. The seller of an undivided interest is in the best position to know who are his co-owners that under the law must be notified of the sale. Also, the notice by the seller removes all doubts as to fact of the sale, its perfection; and its

validity, the notice being a reaffirmation thereof, so that the party notified need not entertain doubt that the seller may still contest the alienation. This assurance would not exist if the notice should be given by the buyer.[33]

The interpretation was somehow modified in the case of *De Conejero, et al. v. Court of Appeals, et al.*[34] wherein it was pointed out that Article 1623 “does not prescribe a particular form of notice, nor any distinctive method for notifying the redemptioner” thus, as long as the redemptioner was notified in writing of the sale and the particulars thereof, the redemption period starts to run. This view was reiterated in *Etcuban v. The Honorable Court of Appeals, et al.*,[35] *Cabrera v. Villanueva*,[36] *Garcia, et al. v. Calaliman, et al.*,[37] *Distrito, et al. v. The Honorable Court of Appeals, et al.*,[38] and *Mariano, et al. v. Hon. Court of Appeals, et al.*[39]

However, in the case of *Salatandol v. Retes*,[40] wherein the plaintiffs were not furnished any written notice of sale or a copy thereof by the vendor, this Court again referred to the principle enunciated in the case of *Butte*. As observed by Justice Vicente Mendoza, such reversion is only sound, thus:

... Art. 1623 of the Civil Code is clear in requiring that the written notification should come from the vendor or prospective vendor, not from any other person. There is, therefore, no room for construction. Indeed, the principal difference between Art. 1524 of the former Civil Code and Art. 1623 of the present one is that the former did not specify who must give the notice, whereas the present one expressly says the notice must be given by the vendor. Effect must be given to this change in statutory language. [41]

In this case, the records are bereft of any indication that Fortunato was given any written notice of prospective or consummated sale of the portions of Lot No. 2319 by the vendors or would-be vendors. The thirty (30)-day redemption period under the law, therefore, has not commenced to run.

Despite this, however, we still rule that petitioner could no longer invoke her right to redeem from private respondent for the exercise of this right “presupposes the existence of a co-ownership at the time the conveyance is made by a co-owner and when it is demanded by the other co-owner or co-owners.”[42] The regime of co-ownership exists when ownership of an undivided thing or right belongs to different persons.[43] By the nature of a co-ownership, a co-owner cannot point to specific portion of the property owned in common as his own because his share therein remains intangible.[44] As legal redemption is intended to minimize co-ownership,[45] once the property is subdivided and distributed among the co-owners, the community ceases to exist and there is no more reason to sustain any right of legal redemption.[46]

In this case, records reveal that although Lot No. 2319 has not yet been formally subdivided, still, the particular portions belonging to the heirs of Cleopas Ape had already been ascertained and they in fact took possession of their respective parts. This can be deduced from the testimony of petitioner herself, thus:

Q When the plaintiffs leased the share of your husband, were there any metes and bounds?

A It was not formally subdivided. We have only a definite portion. (hantal-hantal)

Q This hantal-hantal of your husband, was it also separate and distinct from the hantal-hantal or the share of the brothers and sisters of your husband?

A Well, this property in question is a common property.

Q To the north, whose share was that which is adjacent to your husband’s assumed partition?

A I do not know what [does] this “north” [mean].

COURT

(To Witness)

Q To the place from where the sun rises, whose share was that?

A The shares of Cornelia, Loreta, Encarnacion and Adela.

Q How could you determine their own shares?

A They were residing in their respective assumed portions.

Q How about determining their respective boundaries?

A It could be determined by stakes and partly a row of banana plantations planted by my son-in-law.

Q Who is this son-in-law you mentioned?

A Narciso Ape.

ATTY. CAWIT

(Continuing)

Q You said that there were stakes to determine the hantal-hantal of your husband and the hantal-hantal of the other heirs, did I get you right?

ATTY. TAN

Admitted, Your Honor.

...

ATTY. CAWIT

Q Mrs. Ape, in 1960, Cleopas Ape was already dead, is that correct?

A Certainly, since he died in 1950.

Q By the manifestation of your counsel that the entire land (13 hectares) of your father-in-law, Cleopas Ape, was leased to Generosa Lumayno, is this correct?

A No, it is only the assumed portion of my husband [which] was leased to Generosa Lumayno.

Q For clarification, it was only the share of your husband [which] was leased to Generosa Cawit Lumayno?

A Yes.[47]

ATTY. CAWIT

Q My question: is that portion which you said was leased by your husband to the Lumayno[s] and which was included to the lease by your mother-in-law to the Lumayno[s], when the Lumayno[s] returned your husband[']s share, was that the same premises that your husband leased to the Lumayno[s]?

A The same.

Q In re-possessing this portion of the land corresponding to the share of your husband, did your husband demand that they should re-possess the land from the Lumayno[s] or did the Lumayno[s] return them to your husband voluntarily?

A They just returned to us without paying the rentals.

COURT

Q Was the return the result of your husband's request or just voluntarily they returned it to your husband?

A No, sir, it was just returned voluntarily, and they abandoned the area but my husband continued farming.[48]

Similarly telling of the partition is the stipulation of the parties during the pre-trial wherein it was admitted that Lot No. 2319 had not been subdivided nevertheless, "Fortunato Ape had possessed a specific portion of the land ostensibly corresponding to his share." [49]

From the foregoing, it is evident that the partition of Lot No. 2319 had already been effected by the heirs of Cleopas Ape. Although the partition might have been informal is of no moment for even an oral agreement of partition is valid and binding upon the parties.[50] Likewise, the fact that the respective shares of Cleopas Ape's

heirs are still embraced in one and the same certificate of title and have not been technically apportioned does not make said portions less determinable and identifiable from one another nor does it, in any way, diminish the dominion of their respective owners.[51]

Turning now to the second issue of the existence of a contract of sale, we rule that the records of this case betray the stance of private respondent that Fortunato Ape entered into such an agreement with her.

A contract of sale is a consensual contract, thus, it is perfected by mere consent of the parties. It is born from the moment there is a meeting of minds upon the thing which is the object of the sale and upon the price.[52] Upon its perfection, the parties may reciprocally demand performance, that is, the vendee may compel the transfer of the ownership and to deliver the object of the sale while the vendor may demand the vendee to pay the thing sold.[53] For there to be a perfected contract of sale, however, the following elements must be present: consent, object, and price in money or its equivalent. In the case of *Leonardo v. Court of Appeals, et al.*, [54] we explained the element of consent, to wit:

The essence of consent is the agreement of the parties on the terms of the contract, the acceptance by one of the offer made by the other. It is the concurrence of the minds of the parties on the object and the cause which constitutes the contract. The area of agreement must extend to all points that the parties deem material or there is no consent at all.

To be valid, consent must meet the following requisites: (a) it should be intelligent, or with an exact notion of the matter to which it refers; (b) it should be free and (c) it should be spontaneous. Intelligence in consent is vitiated by error; freedom by violence, intimidation or undue influence; spontaneity by fraud.[55]

In this jurisdiction, the general rule is that he who alleges fraud or mistake in a transaction must substantiate his allegation as the presumption is that a person takes ordinary care for his concerns and that private dealings have been entered into fairly and regularly.[56] The exception to this rule is provided for under Article 1332 of the Civil Code which provides that “[w]hen one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.”

In this case, as private respondent is the one seeking to enforce the claimed contract of sale, she bears the burden of proving that the terms of the agreement were fully explained to Fortunato Ape who was an illiterate. This she failed to do. While she claimed in her testimony that the contents of the receipt were made clear to Fortunato, such allegation was debunked by Andres Flores himself when the latter took the witness stand. According to Flores:

ATTY. TAN

Q Mr. Witness, that receipt is in English, is it not?

A Yes, sir.

Q When you prepared that receipt, were you aware that Fortunato Ape doesn't know how to read and write English?

A Yes, sir, I know.

Q Mr. Witness, you said you were present at the time of the signing of that alleged receipt of P30.00, correct?

A Yes, sir.

Q Where, in what place was this receipt signed?

A At the store.

Q At the time of the signing of this receipt, were there other person[s] present aside from you, your

mother-in-law and Fortunato Ape?

A In the store, yes, sir.

Q When you signed that document of course you acted as witness upon request of your mother-in-law?

A No, this portion, I was the one who prepared that document.

Q Without asking of (sic) your mother-in-law, you prepared that document or it was your mother-in-law who requested you to prepare that document and acted as witness?

A She requested me to prepare but does not instructed (sic) me to act as witness. It was our opinion that whenever I prepared the document, I signed it as a witness.

Q Did it not occur to you to ask other witness to act on the side of Fortunato Ape who did not know how to read and write English?

A It occurred to me.

Q But you did not bother to request a person who is not related to your mother-in-law, considering that Fortunato Ape did not know how to read and write English?

A The one who represented Fortunato Ape doesn't know also how to read and write English. One a maid.

Q You mentioned that there [was another] person inside the store, under your previous statement, when the document was signed, there [was another] person in the store aside from you, your mother-in-law and Fortunato Ape, is not true?

A That is true, there is one person, but that person doesn't know how to read also.

...

Q Of course, Mr. Witness, since it occurred to you that there was need for other witness to sign that document for Fortunato Ape, is it not a fact that the Municipal Building is very near your house?

A Quite (near).

Q But you could readily proceed to the Municipal Building and request one who is knowledgeable in English to act as witness?

A I think there is no need for that small receipt. So I don't bother myself to go.

Q You did not consider that receipt very important because you said that small receipt?

A Yes, I know.[57]

As can be gleaned from Flores's testimony, while he was very much aware of Fortunato's inability to read and write in the English language, he did not bother to fully explain to the latter the substance of the receipt (Exhibit "G"). He even dismissed the idea of asking somebody else to assist Fortunato considering that a measly sum of thirty pesos was involved. Evidently, it did not occur to Flores that the document he himself prepared pertains to the transfer altogether of Fortunato's property to his mother-in-law. It is precisely in situations such as this when the wisdom of Article 1332 of the Civil Code readily becomes apparent which is "to protect a party to a contract disadvantaged by illiteracy, ignorance, mental weakness or some other handicap."[58]

In sum, we hold that petitioner is no longer entitled to the right of redemption under Article 1632 of the Civil Code as Lot No. 2319 had long been partitioned among its co-owners. This Court likewise annuls the contract of sale between Fortunato and private respondent on the ground of vitiated consent.

WHEREFORE, premises considered, the decision dated 25 March 1998 of the Court of Appeals is hereby REVERSED and SET ASIDE and the decision dated 11 March 1994 of the Regional Trial Court, Branch 58, San Carlos City, Negros Occidental, dismissing both the complaint and the counterclaim, is hereby REINSTATED. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Associate Justice Artemon D. Luna with Associate Justices Godardo A. Jacinto and Roberto A. Barrios, concurring; Rollo, pp. 29-48.

[2] Records, Vol. II, pp. 213-214.

[3] Braulio Lumayno passed away on 14 October 1988 per Notice of Death of (Plaintiff) Braulio Lumayno and Motion for Substitution dated 21 February 1989 filed by counsel, Atty. Alexander J. Cawit; Records, Vol. I, pp. 27-29.

[4] Records, Vol. I, p. 5.

[5] Records, Vol. I, p. 3.

[6] Records, Vol. I, pp. 8-11.

[7] *Id.*, p. 16.

[8] Exhibits “Q,” “T,” “U,” “W,” “X,” “Y,” “Z,” “AA,” “CC,” “DD,” “EE,” “FF,” “GG,” “HH,” “II,” “JJ,” “KK,” “LL,” “TT,” “XX,” “YY,” “ZZ,” “AAA,” “BBB,” “CCC,” and “DDD” for respondent.

[9] Records, Vol. I, pp. 118-120.

[10] TSN, 7 March 1990, p. 51.

[11] Rollo, p. 47.

[12] *Supra*, note 10, p. 56; Exhibit “D” for respondent.

[13] *Ibid.*

[14] Exhibits “NN,” “NN-1,” “NN-2,” “NN-3,” “OO,” “OO-1,” “OO-2,” “OO-3,” “PP,” “PP-1,” “PP-2,” and “PP-3” for respondent.

[15] TSN, 24 October 1990, p. 7.

[16] *Id.*, p. 8.

[17] *Id.*, p. 12.

[18] *Ibid.*

[19] *Id.*, pp. 13-14.

[20] *Id.*, pp. 14-15.

[21] TSN, 27 November 1991.

[22] Records, Vol. II, pp. 355-369.

[23] Article 1350 of the Civil Code reads: “In onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other; in remuneratory ones, the service or benefit which is remunerated; and in contracts of pure beneficence, the mere liberality of the benefactor.”

- [24] Supra, note 22, pp. 362-363; emphasis in the original.
- [25] Ibid., p. 370.
- [26] CA Rollo, p. 93.
- [27] Rollo, pp. 47-48.
- [28] Rollo, pp. 45-46.
- [29] Rollo, p. 204; citing *Limketkai Sons Milling, Inc. v. Court of Appeals*, G.R. No. 118509, 29 March 1996, 255 SCRA 626.
- [30] G.R. No. 70569, 05 April 1988, 160 SCRA 672.
- [31] Rollo, p. 158.
- [32] G.R. No. L-15499, 28 February 1962, 4 SCRA 526.
- [33] Id. at p. 533.
- [34] G.R. No. L-21812, 29 April 1966, 16 SCRA 775.
- [35] G.R. No. L-45164, 16 March 1987, 148 SCRA 507.
- [36] Supra, note 30.
- [37] G.R. No. 26855, 17 April 1989, 172 SCRA 201.
- [38] G.R. No. 95256, 28 May 1991, 197 SCRA 606.
- [39] G.R. No. 101522, 28 May 1993, 222 SCRA 736.
- [40] G.R. No. L-38120, 27 June 1988, 162 SCRA 569.
- [41] *Francisco v. Boiser*, G.R. No. 137677, 31 May 2000, 332 SCRA 792, 800.
- [42] *Uy v. Hon. Court of Appeals*, G.R. No. 107439, 20 July 1995, 246 SCRA 711.
- [43] *Felices v. Colegado*, G.R. No. L-23374, 30 September 1970, 35 SCRA 173.
- [44] Supra., note 40, p. 573.
- [45] *Basa, et al. v. Hon. Adres C. Aguilar, et al.*, G.R. No. L-30994, 30 September 1982, 117 SCRA 128.
- [46] *Hernandez v. Hon. Pedro C. Quitain, et al.*, G.R. No. L-48457, 29 November 1988, 168 SCRA 92, citing *Caro v. Court of Appeals*, G.R. No. L-46001, 25 March 1982, 113 SCRA 10.
- [47] TSN, 24 October 1990, pp. 30-34.
- [48] TSN, 25 July 1991, pp. 6-7.
- [49] Records, Vol. II, p. 68.
- [50] *Caro v. Court of Appeals*, G.R. No. L-46001, 25 March 1982, 113 SCRA 10, citing *Hernandez v. Andal, et al.*, 78 Phil. 196 (1947).
- [51] *Dela Cruz v. Cruz, et al.*, G.R. No. L-27759, 17 April 1970, 32 SCRA 307.
- [52] *Katipunan v. Katipunan, Jr.*, G.R. No. 132415, 30 January 2002, 375 SCRA 200.

[53] Article 1458 of the Civil Code.

[54] G.R. No. 125485, 13 September 2004.

[55] *Id.*, pp. 6-7.

[56] *Cayabyab v. Intermediate Appellate Court*, G.R. No. 75120, 28 April 1994, 232 SCRA 1.

[57] TSN, 3 October 1990, pp. 10-13.

[58] *Supra*, note 56, p. 6.

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