

ADALIA B. FRANCISCO, PETITIONER, VS. ZENAIDA F. BOISER, RESPONDENT.

G.R. No. 137677. May 31, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision of the Court of Appeals in CA-G.R. CV No. 55518 which affirmed in toto the decision of the Regional Trial Court, Branch 122, Caloocan City, dismissing petitioner's complaint for redemption of property against respondent.

The facts are as follows:

Petitioner Adalia B. Francisco and three of her sisters, Ester, Elizabeth and Adeluisa, were co-owners of four parcels of registered lands[1] on which stands the Ten Commandments Building at 689 Rizal Avenue Extension, Caloocan City. On August 6, 1979, they sold 1/5 of their undivided share in the subject parcels of land to their mother, Adela Blas, for P10,000.00, thus making the latter a co-owner of said real property to the extent of the share sold.

On August 8, 1986, without the knowledge of the other co-owners, Adela Blas sold her 1/5 share for P10,000.00 to respondent Zenaida Boiser who is another sister of petitioner.

On August 5, 1992, petitioner received summons, with a copy of the complaint in Civil Case No. 15510, filed by respondent demanding her share in the rentals being collected by petitioner from the tenants of the building. Petitioner then informed respondent that she was exercising her right of redemption as a co-owner of the subject property. On August 12, 1992, she deposited the amount of P10,000.00 as redemption price with the Clerk of Court. This move to redeem the property was interposed as a permissive counterclaim in Civil Case No. 15510. However, said case was dismissed after respondent was declared non-suited with the result that petitioner's counterclaim was likewise dismissed.

On September 14, 1995, petitioner instituted Civil Case No. C-17055 before the Regional Trial Court in Caloocan City. She alleged that the 30-day period for redemption under Art. 1623 of the Civil Code had not begun to run against her since the vendor, Adela Blas, never informed her and the other owners about the sale to respondent. She learned about the sale only on August 5, 1992, after she received the summons in Civil Case No. 15510, together with the complaint.

Respondent, on the other hand, contended that petitioner knew about the sale as early as May 30, 1992, because, on that date, she wrote petitioner a letter[2] informing the latter about the sale, with a demand that the rentals corresponding to her 1/5 share of the subject property be remitted to her. Said letter was sent with a copy of the Deed of Sale[3] between respondent and Adela Blas. On the same date, letters[4] were likewise sent by respondent to the tenants of the building, namely, Seiko Service Center and Glitters Corporation, informing them of the sale and requesting that, thenceforth, they pay 1/5 of the monthly rentals to respondent. That petitioner

received these letters is proved by the fact that on June 8, 1992, she wrote^[5] the building's tenants advising them to disregard respondent's request and continue paying full rentals directly to her.

On August 19, 1996, the trial court dismissed petitioner's complaint for legal redemption. It ruled that Art. 1623 does not prescribe any particular form of notifying co-owners about a sale of property owned in common to enable them to exercise their right of legal redemption.^[6] While no written notice was given by the vendor, Adela Blas, to petitioner or the other owners, petitioner herself admitted that she had received respondent's letter of May 30, 1992 and was in fact furnished a copy of the deed evidencing such sale.^[7] The trial court considered the letter sent by respondent to petitioner with a copy of the deed of sale as substantial compliance with the required written notice under Art. 1623 of the New Civil Code.^[8] Consequently, the 30-day period of redemption should be counted not from August 5, 1992, when petitioner received summons in Civil Case No. 15510, but at the latest, from June 8, 1992, the date petitioner wrote the tenants of the building advising them to continue paying rentals in full to her. Petitioner failed to redeem the property within that period.

Petitioner brought the matter to the Court of Appeals, which, on October 26, 1998, affirmed the decision of the Regional Trial Court. She moved for reconsideration, but her motion was denied by the appellate court on February 16, 1999. Hence, this petition.

The sole issue presented in this appeal is whether the letter of May 30, 1992 sent by respondent to petitioner notifying her of the sale on August 8, 1986 of Adela Blas' 1/5 share of the property to respondent, containing a copy of the deed evidencing such sale, can be considered sufficient as compliance with the notice requirement of Art. 1623 for the purpose of legal redemption. The trial court and the Court of Appeals relied on the ruling in *Distrito v. Court of Appeals*^[9] that Art. 1623 does not prescribe any particular form of written notice, nor any distinctive method for notifying the redemptioner. They also invoked the rulings in *De Conejero v. Court of Appeals*^[10] and *Badillo v. Ferrer*^[11] that furnishing the redemptioner with a copy of the deed of sale is equivalent to giving him the written notice required by law.

On the other hand, petitioner points out that the cited cases are not relevant because the present case does not concern the particular form in which notice must be given. Rather, the issue here is whether a notice sent by the vendee may be given in lieu of that required to be given by the vendor or prospective vendor.^[12]

Art. 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 maybe. 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.

In ruling that the notice given by the vendee was sufficient, the appellate court cited the case of *Etcuban v. Court of Appeals*^[13] in which it was held:

Petitioner contends that vendors (his co-heirs) should be the ones to give him written notice and not the vendees (defendants or private respondent herein) citing the case of *Butte vs. Manuel Uy & Sons, Inc.*, 4 SCRA 526. Such contention is of no moment. While it is true that written notice is required by the law (Art. 1623), it is equally true that the same "Art. 1623 does not prescribe any particular form of notice, nor any distinctive method for notifying the redemptioner." So long, therefore, as the latter is informed in writing of the sale and the particulars thereof, the 30 days for redemption start running, and the redemptioner has no real cause to complain. (*De Conejero et al v. Court of Appeals, et al.*, 16 SCRA 775). In the *Conejero* case, we ruled that the furnishing of a copy of the disputed deed of sale to the redemptioner was equivalent to the giving

of written notice required by law in "a more authentic manner than any other writing could have done," and that We cannot adopt a stand of having to sacrifice substance to technicality. More so in the case at bar, where the vendors or co-owners of petitioner stated under oath in the deeds of sale that notice of sale had been given to prospective redemptioners in accordance with Art. 1623 of the Civil Code. "A sworn statement or clause in a deed of sale to the effect that a written notice of sale was given to possible redemptioners or co-owners might be used to determine whether an offer to redeem was made on or out of time, or whether there was substantial compliance with the requirement of said Art. 1623." [14]

In *Etcuban*, notice to the co-owners of the sale of the share of one of them was given by the vendees through their counterclaim in the action for legal redemption. Despite the apparent meaning of Art. 1623, it was held in that case that it was "of no moment" that the notice of sale was given not by the vendor but by the vendees. "So long as the [co-owner] is informed in writing of the sale and the particulars thereof, the 30 days for redemption start running, and the redemptioner has no cause to complain," so it was held. The contrary doctrine of *Butte v. Manuel Uy and Sons, Inc.* [15] was thus overruled *sub silencio*.

However, in the later case of *Salatandol v. Retes*, [16] decided a year after the *Etcuban* case, the Court expressly affirmed the ruling in *Butte* that the notice required by Art. 1623 must be given by the vendor. In *Salatandol*, the notice given to the redemptioner by the Register of Deeds of the province where the subject land was situated was held to be insufficient. Resolving the issue of whether such notice was equivalent to the notice from the vendor required under Art. 1623, this Court stated:

The appeal is impressed with merit. In *Butte vs. Manuel Uy and Sons, Inc.*, the Court ruled that Art. 1623 of the Civil Code clearly and expressly prescribes that the thirty (30) days for making the pre-emption or redemption are to be counted from notice in writing by the vendor. The Court said:

" x x x The test 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 (Civil 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. (2d) (528). As ruled in *Wampher vs. Lecompte*, 150 Atl. 458 (aff'd. 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 that 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."

In the case at bar, the plaintiffs have not been furnished any written notice of sale or a copy thereof by Eufemia Omole, the vendor. Said plaintiffs' right to exercise the legal right of preemption or redemption, given to a co-owner when any one of the other co-owners sells his share in the thing owned in common to a third person, as provided for in Article 1623 of the Civil Code, has not yet accrued.

There was thus a return to the doctrine laid down in *Butte*. That ruling is sound. In the first place, reversion to the ruling in *Butte* is proper. 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.

In the second place, it makes sense to require that the notice required in Art. 1623 be given by the vendor and by nobody else. As explained by this Court through Justice J.B.L. Reyes in *Butte*, the vendor of an undivided interest is in the best position to know who are his co-owners who under the law must be notified of the sale. It is likewise the notification from the seller, not from anyone else, which can remove all doubts as to the fact of the sale, its perfection, and its validity, for in a contract of sale, the seller is in the best position to confirm whether consent to the essential obligation of selling the property and transferring ownership thereof to the vendee has been given.

Now, it is clear that by not immediately notifying the co-owner, a vendor can delay or even effectively prevent the meaningful exercise of the right of redemption. In the present case, for instance, the sale took place in 1986, but it was kept secret until 1992 when vendee (herein respondent) needed to notify petitioner about the sale to demand 1/5 rentals from the property sold. Compared to serious prejudice to petitioner's right of legal redemption, the only adverse effect to vendor Adela Blas and respondent-vendee is that the sale could not be registered. It is non-binding, only insofar as third persons are concerned.^[17] It is, therefore, unjust when the subject sale has already been established before both lower courts and now, before this Court, to further delay petitioner's exercise of her right of legal redemption by requiring that notice be given by the vendor before petitioner can exercise her right. For this reason, we rule that the receipt by petitioner of summons in Civil Case No. 15510 on August 5, 1992 constitutes actual knowledge on the basis of which petitioner may now exercise her right of redemption within 30 days from finality of this decision.

Our ruling is not without precedent. In *Alonzo v. Intermediate Appellate Court*,^[18] we dispensed with the need for written notification considering that the redemptioners lived on the same lot on which the purchaser lived and were thus deemed to have actual knowledge of the sales. We stated that the 30-day period of redemption started, not from the date of the sales in 1963 and 1964, but sometime between those years and 1976, when the first complaint for redemption was actually filed. For 13 years, however, none of the co-heirs moved to redeem the property. We thus ruled that the right of redemption had already been extinguished because the period for its exercise had already expired.

In the present case, as previously discussed, receipt by petitioner of summons in Civil Case No. 15510 on August 5, 1992 amounted to actual knowledge of the sale from which the 30-day period of redemption commenced to run. Petitioner had until September 4, 1992 within which to exercise her right of legal redemption, but on August 12, 1992 she deposited the P10,000.00 redemption price. As petitioner's exercise of said right was timely, the same should be given effect.

WHEREFORE, in view of the foregoing, the petition is GRANTED and the decision of the Court of Appeals is REVERSED and the Regional Trial Court, Branch 122, Caloocan City is ordered to effect petitioner's exercise of her right of legal redemption in Civil Case No. C-17055. Sppedjo

SO ORDERED.

Bellosillo, (Chairman), and Buena, JJ., concur.

Quisumbing, and De Leon, Jr., JJ., on leave.

[1] Covered by TCT Nos. T-125507, T-125495, T-125496 and T-125497 issued by the Register of Deeds of Caloocan.

[2] Exhibit 1; Records, p. 160.

[3] Exhibit 1-A; Id., pp. 161-162.

[4] Exhibits 2 and 3; Id., pp. 163-164.

[5] Exhibits 4 and 5; Id., pp. 165-166. The letters, signed by petitioner herself, read:

I was furnished a copy of a letter of my sister Zenaida F. Boiser demanding from you the payment of one fifth (1/5) of your rental of the premises leased to you directly to her.

Please be advised to disregard such demand and pay the whole amount of rent, as usual, directly to the undersigned.

Thank you for your cooperation.

[6] RTC Decision, p. 3; Rollo, p. 45.

[7] Ibid.

[8] Id., at p. 4.

[9] 197 SCRA 606 (1991).

[10] 16 SCRA 775 (1966).

[11] 152 SCRA 407 (1987).

[12] Petition, p. 8; Rollo, p. 17.

[13] 148 SCRA 507 (1987).

[14] Id., at p. 512. (Emphasis added)

[15] 4 SCRA 526 (1962).

[16] 162 SCRA 568 (1988).

[17] In accordance with §51 of Presidential Decree No. 1529, otherwise known as the PROPERTY REGISTRATION DECREE.

[18] 150 SCRA 259 (1987).

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