

OSCAR C. FERNANDEZ, GIL C. FERNANDEZ AND ARMANDO C. FERNANDEZ, PETITIONERS, VS. SPOUSES CARLOS AND NARCISA TARUN, RESPONDENTS.

G.R. No. 143868. November 14, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The right of redemption may be exercised by a co-owner, only when part of the community property is sold to a stranger. When the portion is sold to a co-owner, the right does not arise because a new participant is not added to the co-ownership.

The Case

The Petition for Review on Certiorari before us challenges the July 7, 2000 Decision of the Court of Appeals (CA)[1] in CA-GR CV No. 55264, which reversed the Regional Trial Court (RTC) of Dagupan City (Branch 44) in Civil Case No. D-3815.[2] The assailed Decision disposed as follows:

“WHEREFORE, the appealed decision is REVERSED and a NEW ONE is entered:

“1. Ordering the partition of Lot 2991 in the proportion stated in Transfer Certificate of Title No. 24440, that is: Angel Fernandez, married to Corazon Cabal – 7,114.46 sqm; spouses Carlos Tarun and Narcisa Zareno – 1094.54 sqm.

“The costs of the subdivision shall be equitably shared by plaintiffs-appellants and defendants-appellees.

“2. Ordering the Register of Deeds of Dagupan City to issue a separate transfer certificate of title each to plaintiffs-appellants and defendants-appellees corresponding to their respective shares upon completion of the partition.”[3]

The Facts

The antecedent facts of the case are narrated in the assailed CA Decision as follows:

“An 8,209-square meter fishpond situated at Arellano-Bani, Dagupan City is disputed by [Respondents] Carlos Tarun and Narcisa Zareno, and [Petitioners] Corazon Cabal vda. de Fernandez and her children Oscar, Gil and Armando, all surnamed Fernandez.

“The property is known as Lot No. 2991 of the Cadastral Survey of Dagupan. It was originally covered by OCT No. 43099, subsequently cancelled by TCT No. 24440. The brothers Antonio, Santiago, Demetria and Angel Fernandez, together with their uncle Armando, co-owned this property to the extent of 1/6 thereof.[4] It was subsequently increased to 1/5 on account of the 1/6 share of Armando, who died single and without issue, which accrued in favor of the five remaining co-owners.

“On June 4, 1967, Antonio Fernandez sold his share of about 547.27 square meters to [the Spouses] Tarun (Exh. I).[5] On June 18, 1967, Demetria Fernandez, also sold her share on the same fishpond consisting of

547.27 square meters to [respondents].[6] Thus, the total area sold to [respondents] is 1094.54 square meters, more or less. The two sales were registered and annotated on OCT No. 43099.

“On November 14, 1969, the co-owners of the subject fishpond and another fishpond covered by TCT No. 10944 executed a Deed of Extrajudicial Partition of two parcels of registered land with exchange of shares. Among the parties to the deed are Antonio, Santiago, Demetria and Angel, all surnamed Fernandez.

“It was stipulated in the deed that the parties recognize and respect the sale of a portion of Lot 2991 consisting of 1094.54 square meters previously sold by Antonio and Demetria Fernandez in favor of [respondents]. This portion was excluded in the partition.

“Likewise, by virtue of the Deed of Extrajudicial Partition, Angel B. Fernandez exchanged his share on the other fishpond covered by TCT No. 10944 to the shares of his co-owners on the remaining portion of [L]ot No. 2991 covered by TCT No. 10945, making Angel B. Fernandez and [respondents] as co-owners of Lot No. 2991.

“By virtue of the terms and conditions set forth in the Deed, TCT No. 24440 of the Registry of Deed[s] of Dagupan City, (Exh. ‘A’) was issued in favor of Angel B. Fernandez and [respondents]. From the time the latter bought the 1094.54-square meter portion of the fishpond, they had been paying the realty taxes thereon. However, it was Angel B. Fernandez and later on his heirs, [petitioners], who remained in possession of the entire fishpond.

“When Angel B. Fernandez was still alive, [respondents] sought the partition of the property and their share of its income. Angel Fernandez refused to heed their demand. After the death of Angel Fernandez, [respondents] wrote [petitioners] of their desire for partition but this was rejected by [petitioners]. Hence, this suit for partition and damages.”[7]

Ruling of the RTC

On August 1, 1996, the RTC rendered judgment in favor of petitioners, ruling that, under Articles 1620 and 1621 of the Civil Code, they were entitled to redeem the property that they had sold to respondents. It further held that the sale was highly iniquitous and void for respondent’s failure to comply with Article 1623 of the same code.

Ruling of the Court of Appeals

Reversing the RTC, the CA held that petitioners were not entitled to redeem the controversial property for several reasons. First, it was Angel Fernandez who was its co-owner at the time of the sale; hence, he was the one entitled to receive notice and to redeem the property, but he did not choose to exercise that right. Second, the execution of the Deed of Extrajudicial Partition was a substantial compliance with the notice requirement under that law. Finally, it was too late in the day to declare the exchange highly iniquitous, when Angel Fernandez had not complained about it. As his successors-in-interest, petitioners were bound by the terms of the agreement.

Hence, this Petition.[8]

Issues

In their Memorandum,[9] petitioners raise the following issues:

- “1. Whether or not petitioners are entitled to exercise their right of legal redemption.
- “2. Whether or not the transaction is one of equitable mortgage.
- “3. Whether or not the deed of extra-judicial partition is void and inefficacious.
- “4. Whether or not petitioners are entitled to damages, attorney’s fees and costs.

“5. Whether or not the lower court committed grave abuse of discretion amounting to lack of jurisdiction when it substituted it surmises, conjectures and guesswork in place of the trial court’s findings of fact borne by the evidence on record.”[10]

This Court’s Ruling

The Petition is not meritorious.

First Issue:

Entitlement to Legal Redemption

Petitioners aver that the sale to respondents is void, because it did not comply with the requirements of the Civil Code. According to them, they were not notified of the sale, but learned about it only when they received the summons for the partition case. They claim their right to redeem the property under the following provisions of the Civil Code:

“Article 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.

“Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common.”

“Article 1621. The owners of adjoining lands shall also have the right of redemption when a piece of rural land, the area of which does not exceed one hectare, is alienated, unless the grantee does not own any rural land.

“The right is not applicable to adjacent lands which are separated by brooks, drains, ravines, roads and other apparent servitudes for the benefit of other estates.

“If two or more adjoining owners desire to exercise the right of redemption at the same time, the owner of the adjoining land of smaller area shall be preferred; and should both lands have the same area, the one who first requested the redemption.”

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“Article 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.”

We disagree with petitioners. True, the right to redeem is granted not only to the original co-owners, but also to all those who subsequently acquire their respective shares while the community subsists.[11] However, it must be stressed that this right of redemption is available only when part of the co-owned property is sold to a third person. Otherwise put, the right to redeem referred to in Article 1620 applies only when a portion is sold to a non-co-owner.

In this case, it is quite clear that respondents are petitioners’ co-owners. The sale of the contested property to Spouses Tarun had long been consummated before petitioners succeeded their predecessor, Angel Fernandez. By the time petitioners entered into the co-ownership, respondents were no longer “third persons,” but had already become co-owners of the whole property. A third person, within the meaning of Article 1620, is anyone who is not a co-owner.[12]

In *Basa v. Aguilar*,^[13] this Court has unequivocally ruled that the right of redemption may be availed of by a co-owner, only when the shares of the other owners are sold to a third person. “Legal redemption is in the nature of a 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 [an] inconvenient association into which he has been thrust. (10 Manresa, 4th. Ed., 317.) It is intended to minimize co-ownership. The law grants a co-owner the exercise of the said right of redemption when the shares of the other owners are sold to a ‘third person.’”^[14] There is no legal redemption, either in case of a mere lease^[15] and if the purchaser is also a tenant.^[16]

Equally unavailing is petitioners’ contention that the sale was void, because the vendor had not sent any notice in writing to the other co-owners as required under Article 1625 of the Code. Indeed, the Code merely provides that a deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit that a written notice has been given to all possible redemptioners. However, it does not state that, by reason of such lack of notice, the sale shall become void.

Jurisprudence affirms the need for notice, but its form has been the subject of varying interpretations. *Conejero v. Court of Appeals*^[17] held that a written notice was still required, even if the redemptioner had actual prior knowledge of the sale. However, in *Distrito v. Court of Appeals*,^[18] the Court ruled that written notice was not necessary, if the co-owner was actually aware of the sale. While the law requires that the notice must be in writing, it does not prescribe any particular form, so long as the reasons for a written notice are satisfied otherwise.^[19] Thus, in a civil case for collection of a share in the rentals by an alleged buyer of a co-owned property, the receipt of a summons by a co-owner has been held to constitute actual knowledge of the sale. On that basis, the co-owner may exercise the right of redemption within 30 days from the finality of the decision.^[20]

Applying the presently prevailing principles discussed above, petitioners’ predecessor -- Angel Fernandez -- is deemed to have been given notice of the sale to respondents by the execution and signing of the Deed of Extrajudicial Partition and Exchange of Shares. As correctly held by the CA, the law does not require any specific form of written notice to the redemptioner.^[21] From such time, he had 30 days within which to redeem the property sold under Article 1623. The Deed was executed November 4, 1969; hence, the period to redeem expired on December 4, 1969. Consequently, the right to redeem was deemed waived, and petitioners are bound by such inaction of their predecessor. The former cannot now be allowed to exercise the right and adopt a stance contrary to that taken by the latter. Otherwise stated, the right to redeem had long expired during the lifetime of the predecessor and may no longer be exercised by petitioners who are his successors-in-interest.

Second Issue:

Sale or Equitable Mortgage?

Petitioners contend that the sale was only an equitable mortgage because (1) the price was grossly inadequate, and (2) the vendors remained in possession of the land and enjoyed its fruits. Since the property is situated primarily within the city proper, the price of P7,662 for 1,094.54 square meters is supposedly unconscionable. Moreover, since June 4, 1967 up to the present, the vendees (or herein respondents) have allegedly never been in actual possession of the land.

The contention is untenable. On its face, a document is considered a contract of equitable mortgage when the circumstances enumerated in Article 1602 of the Civil Code are manifest, as follows: (a) when the price of the sale with the right to repurchase is unusually inadequate,^[22] and (b) when the vendor remains in possession as lessee or otherwise.^[23] Although it is undisputed that Angel Fernandez was in actual possession of the property, it is important to note that he did not sell it to respondents. The sellers were his co-owners -- Antonio and

Demetria Fernandez -- who, however, are not claiming that the sale between them was an equitable mortgage. For the presumption of an equitable mortgage to arise, one must first satisfy the requirement that the parties entered into a contract denominated as a contract of sale, and that their intention was to secure an existing debt by way of mortgage.[24]

Furthermore, mere alleged inadequacy of the price does not necessarily void a contract of sale, although the inadequacy may indicate that there was a defect in the consent, or that the parties really intended a donation, mortgage, or some other act or contract.[25] Finally, unless the price is grossly inadequate or shocking to the conscience,[26] a sale is not set aside. In this case, petitioners failed to establish the fair market value of the property when it was sold in 1967. Hence, there is no basis to conclude that the price was grossly inadequate or shocking to the conscience.

Third Issue:

Validity of the Extrajudicial Partition

Petitioners also assail the partition as lopsided and iniquitous. They argue that their predecessor stood to lose 5,498.14 square meters under the extrajudicial partition.

We are not convinced. It is a long-established doctrine that the law will not relieve parties from the effects of an unwise, foolish or disastrous agreement they entered into with all the required formalities and with full awareness of what they were doing. Courts have no power to relieve them from obligations they voluntarily assumed, simply because their contracts turn out to be disastrous deals or unwise investments.[27] Neither the law nor the courts will extricate them from an unwise or undesirable contract which they entered into with all the required formalities and with full knowledge of its consequences.[28] On the other hand, petitioners herein are bound by the extrajudicial partition, because contracts not only take effect between the parties, but also extend to their assigns and heirs.[29]

Moreover, if petitioners intended to annul the extrajudicial partition for being “lopsided and iniquitous,” then they should have argued this in a proper action and forum. They should have filed an action to annul the extrajudicial partition and claimed their rightful share in the estate, impleading therein the other signatories to the Deed and not just herein respondents.

In any event, a perusal of the Deed of Extrajudicial Partition with Exchange of Shares reveals that the partition of Lot Nos. 2991 and 2924 was done equally and fairly. Indeed, 1,641.80 square meters of Lot No. 2991[30] and 10,971.80 square meters of Lot No. 2924-B[31] were originally given to all the co-owners -- except Antonio, Demetria and Santiago Fernandez, who had already sold parts of their share to third persons. However, Angel Fernandez agreed and stipulated in the same Deed that he had traded his share in Lot No. 2924-B for the entire Lot No. 2991, except the portion already sold to respondents.[32]

Taking these stipulations into consideration, we are inclined to believe that the swapping of shares by the heirs was more favorable to the late Angel Fernandez, because his ownership became contiguous and compact in only one fishpond, instead of being merely shared with the other co-heirs in two different fishponds.[33]

Fourth Issue:

Damages and Attorney's Fees

Petitioners' claim that they are entitled to P50,000 as attorneys fees and damages deserves scant consideration. It has been clearly established that respondents are co-owners of the subject property. Under Article 494 of the Civil Code, each co-owner may demand at any time the partition of the thing owned in common. Hence, respondents' action for partition was not an unfounded suit. Verily, it was founded on a right given by law.

Fifth Issue:

Factual Findings of the CA

Petitioners insist that the CA made some factual findings that were neither in conformity with those of the RTC nor borne by the evidence on record. They assert that the appellate court erred in ruling that the extrajudicial partition had been freely and willfully entered into when, in fact, Angel B. Fernandez had been shortchanged by 5,498.14 square meters. They also contend that the registration of the two Deeds of Sale in favor of respondents was not valid, because it was not accompanied by an affidavit that written notice had been served to all possible redemptioners.

We are not persuaded. We do not find any factual or legal basis to conclude that the extrajudicial partition was iniquitous, and that the sale of Antonio and Demetria's share in Lot No. 2991 is void. Factual findings of the CA supported by substantial evidence are conclusive and binding,[34] unless they fall under the exceptions in *Fuentes v. Court of Appeals*[35] and similar cases.

WHEREFORE, the Petition is DENIED and the assailed Decision AFFIRMED. Costs against petitioners.

SO ORDERED.

Puno (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] Fifteenth Division. Penned by Justice Ruben T. Reyes (Division chairman) and concurred in by Justices Candido V. Rivera and Jose L. Sabio Jr. (members).

[2] Written by Judge Crispin C. Laron; records, pp. 298-305.

[3] Rollo, pp. 32-33.

[4] Actually, the property was co-owned by Jose, Amando (not Armando), Miguel, Paz, Angel and Aurelio Fernandez (records, pp. 13-14). Antonio, Demetria and Santiago are the children of Aurelio Fernandez, while petitioners are the children of Angel Fernandez.

[5] Records, p. 132.

[6] Id., p. 131.

[7] CA Decision, pp. 2-4; rollo, pp. 20-22.

[8] The case was deemed submitted for decision on November 14, 2001, upon this Court's receipt of respondents' Memorandum signed by Atty. Fernando P. Cabrera.

[9] Signed by Atty. Oscar C. Fernandez and received by this Court on October 15, 2001.

[10] Petitioners' Memorandum, pp. 4-5; rollo, pp. 85-86.

[11] *Viola v. Tecson*, 49 Phil. 808, 810, December 24, 1926.

[12] *Francisco v. Boiser*, 332 SCRA 792, May 31, 2000; *Pilapil v. Court of Appeals*, 250 SCRA 566, 576, December 4, 1995.

[13] 117 SCRA 128, September 30, 1982.

[14] Id., pp. 130-131, per Vasquez, J.

- [15] *De la Cruz v. Marcelino*, 84 Phil. 709, 712, October 12, 1949.
- [16] *Estrada v. Reyes*, 33 Phil. 31, December 24, 1915.
- [17] 16 SCRA 775, 779-780, April 29, 1966.
- [18] 197 SCRA 606, 610, May 28, 1991.
- [19] *Hermoso v. Court of Appeals*, 300 SCRA 516, 538, December 29, 1998.
- [20] *Francisco v. Boiser*, *supra*, p. 801.
- [21] CA Decision, p. 9; rollo, p. 27, citing *Cabrera v. Villanueva*, 160 SCRA 672, 678, April 15, 1988.
- [22] Art. 1602, par. (1), Civil Code.
- [23] *Id.*, par. (2), Code.
- [24] *Lustan v. Court of Appeals*, 266 SCRA 663, 671-672, January 27, 1997; *Reyes v. Court of Appeals*, 339 SCRA 97, 104, August 25, 2000.
- [25] Art. 1470, Civil Code.
- [26] *Abapo v. Court of Appeals*, 327 SCRA 180, 187, March 2, 2000.
- [27] *Esguerra v. Court of Appeals*, 267 SCRA 380, 393, February 3, 1997; *Sanchez v. Court of Appeals*, 279 SCRA 647, 683-684, September 29, 1997; *Heirs of Joaquin Teves v. Court of Appeals*, 316 SCRA 632, 649, October 13, 1999.
- [28] *Opulencia v. Court of Appeals*, 293 SCRA 385, 396, July 30, 1998.
- [29] Art. 1311, Civil Code; *Smith, Bell & Co., Inc. v. Court of Appeals*, 267 SCRA 530, 538-539, February 6, 1997; *Bangayan v. Court of Appeals*, 278 SCRA 379, 385, August 29, 1997.
- [30] Annex "B," records, p. 16.
- [31] *Ibid.*
- [32] *Id.*, p. 17.
- [33] Respondents' Memorandum, rollo, p. 108.
- [34] *Bañas v. Court of Appeals*, 325 SCRA 259, 271, February 10, 2000; *Mari v. Court of Appeals*, 332 SCRA 475, 480-481, May 31, 2000; *Heirs of Tan Eng Kee v. Court of Appeals*, 341 SCRA 740, 748, October 3, 2000.
- [35] 268 SCRA 703, 708-709, February 26, 1997.

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