

**PRIMARY STRUCTURES CORP. REPRESENTED HEREIN BY ITS
PRESIDENT ENGR. WILLIAM C. LIU, PETITIONER, VS. SPS. ANTHONY
S. VALENCIA AND SUSAN T. VALENCIA, RESPONDENTS.**

G.R. No. 150060. August 19, 2003

Ponente: VITUG, J.

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VITUG, J.:

On appeal is the decision of the Court of Appeals in CA-G.R. CV No. 59960, promulgated on 13 February 2001, which has affirmed in toto the decision of the Regional Trial Court of Cebu City dismissing the complaint of petitioners for legal redemption over certain rural lots sold to respondents.

Petitioner is a private corporation based in Cebu City and the registered owner of Lot 4523 situated in Liloan, Cebu, with an area of 22,214 square meters. Adjacent to the lot of petitioner are parcels of land, identified to be Lot 4527, Lot 4528, and Lot 4529 with a total combined area of 3,751 square meters. The three lots, aforementioned, have been sold by Hermogenes Mendoza to respondent spouses sometime in December 1994. Petitioner learned of the sale of the lots only in January, 1996, when Hermogenes Mendoza sold to petitioner Lot No. 4820, a parcel also adjacent to Lot 4523 belonging to the latter. Forthwith, it sent a letter to respondents, on 30 January 1996, signifying its intention to redeem the three lots. On 30 May 1996, petitioner sent another letter to respondents tendering payment of the price paid to Mendoza by respondents for the lots. Respondents, in response, informed petitioner that they had no intention of selling the parcels. Thereupon, invoking the provisions of Articles 1621 and 1623, petitioner filed an action against respondents to compel the latter to allow the legal redemption. Petitioner claimed that neither Mendoza, the previous owner, nor respondents gave formal or even just a verbal notice of the sale of the lots as so required by Article 1623 of the Civil Code.

After trial, the Regional Trial Court of Cebu dismissed petitioner's complaint and respondents' counterclaim; both parties appealed the decision of the trial court to the Court of Appeals. The appellate court affirmed the assailed decision.

Basically, the issues posed for resolution by the Court in the instant petition focus on the application of Article 1621 and Article 1623 of the Civil Code, which read:

"ART. 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.

"This 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."

"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.

"The right of redemption of co-owners excludes that of adjoining owners."

Whenever a piece of rural land not exceeding one hectare is alienated, the law grants to the adjoining owners a right of redemption except when the grantee or buyer does not own any other rural land.[1] In order that the right may arise, the land sought to be redeemed and the adjacent property belonging to the person exercising the right of redemption must both be rural lands. If one or both are urban lands, the right cannot be invoked.[2]

The trial court found the lots involved to be rural lands. Unlike the case of *Fabia vs. Intermediate Appellate Court*[3] (which ruled, on the issue of whether a piece of land was rural or not, that the use of the property for agricultural purpose would be essential in order that the land might be characterized as rural land for purposes of legal redemption), respondents in the instant case, however, did not dispute before the Court of Appeals the holding of the trial court that the lots in question are rural lands. In failing to assail this factual finding on appeal, respondents would be hardput to now belatedly question such finding and to ask the Court to still entertain that issue.

Article 1621 of the Civil Code expresses that the right of redemption it grants to an adjoining owner of the property conveyed may be defeated if it can be shown that the buyer or grantee does not own any other rural land. The appellate court, sustaining the trial court, has said that there has been no evidence proffered to show that respondents are not themselves owners of rural lands for the exclusionary clause of the law to apply.

With respect to the second issue, Article 1623 of the Civil Code provides that the right of legal pre-emption or redemption shall not be exercised except within thirty days from notice in writing by the prospective vendor, or by the vendor, as the case may be. In stressing the mandatory character of the requirement, the law states that the deed of sale shall not be recorded in the Registry of Property unless the same is accompanied by an affidavit of the vendor that he has given notice thereof to all possible redemptioners.

The Court of Appeals has equated the statement in the deed of sale to the effect that the vendors have complied with the provisions of Article 1623 of the Civil Code, as being the written affirmation under oath, as well as the evidence, that the required written notice to petitioner under Article 1623 has been met. Respondents, like the appellate court, overlook the fact that petitioner is not a party to the deed of sale between respondents and Mendoza and has had no hand in the preparation and execution of the deed of sale. It could not thus be considered a binding equivalent of the obligatory written notice prescribed by the Code.

In *Verdad vs. Court of Appeals*[4] this court ruled:

"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 required under Article 1623 of the Civil Code -

"x x x x x x x x

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.

"Even in *Alonzo vs. Intermediate Appellate Court* (150 SCRA 259), 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.'

"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." [5]

WHEREFORE, the instant petition is GRANTED, and the assailed decision of the Court of Appeals is reversed and set aside. Petitioner is hereby given a period of thirty days from finality of this decision within which to exercise its right of legal redemption. No costs.

SO ORDERED.

Ynares-Santiago, Carpio, and Azcuna, JJ., concur.
Davide, Jr., C.J., (Chairman), on leave.

[1] Article 1621, Civil Code of the Philippines.

[2] *Halili vs. Court of Appeals*, 287 SCRA 465 citing *Cortes vs. Flores*, 47 Phil. 992.

[3] 133 SCRA 364.

[4] 256 SCRA 593.

[5] At pp. 598-599.

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