

[With Resolutions of April 23, 1962]*G. R. No. 15499. February 28, 1962*

Ponente: REYES, J.B.L., J.

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Appeal from a decision of the Court of First Instance of Manila dismissing the action for legal redemption filed by plaintiff-appellant.

It appears that Jose V. Ramirez, during his lifetime, was a co-owner of a house and lot located at Sta. Cruz, Manila, as shown by Transfer Certificate of Title No. 52789, issued in the name of the following co-owners: Marie Gamier Vda. de Ramirez, 1/6; Jose V. Ramirez, 1/6; Jose E. Ramirez, 1/6; Belen T. Ramirez, 1/6; Rita De Ramirez, 1/6; and Jose Ma. Ramirez, 1/6.

On October 20, 1951, Jose V. Ramirez died. Subsequently, Special Proceeding No. 15026 was instituted to settle his estate, that included the one sixth (1/6) undivided share in the aforementioned property. And although his last will and testament, wherein he bequeathed his estate to his children and grandchildren and one-third (1/3) of the free portion to Mrs. Angela M. Butte, hereinafter referred to as plaintiff-appellant, has been admitted to probate, the estate proceedings are still pending up to the present on account of the claims of creditors which exceed the assets of the deceased. The Bank of the Philippine Islands was appointed judicial administrator.

Meanwhile, on December 9, 1958, Mrs. Marie Gamier Vda. de Ramirez, one of the co-owners of the late Jose V. Ramirez in the Sta. Cruz property, sold her undivided 1/6 share to Manuel Uy & Sons, Inc., defendant-appellant here. in, for the sum of P500,000.00. After the execution by her attorney-in-fact, Mrs. Elsa R. Chambers, of an affidavit to the effect that formal notices of the sale had been sent to all possible redemptioners, the deed of sale was duly registered and Transfer Certificate of Title No. 52789 was cancelled in lieu of which a new one was issued in the name of the vendee and the other co-owners.

On the same day (December 9, 1958), Manuel Uy & Sons, Inc. sent a letter to the Bank of the Philippine Islands as judicial administrator of the estate of the late Jose V. Ramirez informing it of the above-mentioned sale. This letter, together with that of the bank, was forwarded by the latter to Mrs. Butte c/o her counsel Delgado, Flores and Macapagal, Escolta, Manila, and having received the same on December 10, 1958, said law office delivered them to plaintiff-appellant's son, Mr. Miguel Papa, who in turn personally handed the letters to his mother, Mrs. Butte, on December 11 or 12, 1958. Aside from this letter of defendant-appellant, the vendor, thru her attorney-in-fact Mrs. Chambers, wrote said bank on December 11, 1958 confirming vendee's letter regarding the sale of her 1/6 share in the Sta. Cruz property for the sum of P500,000.00. Said letter was received by the bank on December 15, 1958 and having endorsed it to Mrs. Butte's counsel, the latter received the same on December 16, 1958. Appellant received the letter on December 19, 1958.

On January 15, 1959, Mrs. Angela M. Butte, thru Atty. Resplandor Sobretudo, sent a letter and a Philippine National Bank cashier's check in the amount of P500,000.00 to Manuel Uy & Sons, Inc. offering to redeem the 1/6 share sold by Mrs. Marie Gamier Vda. de Ramirez. This tender having been refused, plaintiff on the same day

consigned the amount in court and filed the corresponding action for legal redemption. Without prejudice to the determination by the court of the reasonable and fair market value of the property sold which she alleged to be grossly excessive, plaintiff prayed for conveyance of the property, and for actual, moral and exemplary damages.

After the filing by defendant of its answer containing a counterclaim, and plaintiff's reply thereto, trial was held, after which the court rendered decision on May 13, 1959, dismissing plaintiff's complaint on the grounds that she has no right to redeem the property and that, if ever she had any, she exercised the same beyond the statutory 30day period for legal redemptions provided by the Civil Code. The counterclaim of defendant for damages was likewise dismissed for not being sufficiently established. Both parties appealed directly to this Court.

Based on the foregoing facts, the main issues posed in this appeal are: (1) whether or not plaintiff-appellant, having been bequeathed 1/3 of the free portion of the estate of Jose V. Ramirez, can exercise the right of legal redemption over the 1/6 share sold by Mrs. Marie Gamier Vda. de Ramirez despite the presence of the judicial administrator and pending the final distribution of her share in the testate proceeding; and (2) whether or not she exercised the right of legal redemption within the period prescribed by law.

The applicable law involved in the present case is contained in Articles 1620, p. 1, and 1623 of the Civil Code of the Philippines, which read as follows:

"ART. 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. (1522a)"

"ART. 1623. The right of legal preemption 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. (1524a)"

That the appellant Angela M. Butte is entitled to exercise the right of legal redemption is clear. As testamentary heir of the estate of J. V. Ramirez, she and her co-heirs acquired an interest in the undivided one-sixth (1/6) share owned by her predecessor (causante) in the Santa Cruz property, from the moment of the death of the aforesaid co-owner, J. V. Ramirez. By law, the rights to the succession of a deceased person are transmitted to his heirs from the moment of his death, and the right of succession includes all property rights and obligations that survive the decedent.

"ART. 776. The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death. (659)"

"ART. 777. The rights to the succession are transmitted from the moment of the death of the decedent. (657a)"

"ART. 947. The legatee or devisee acquires a right to the pure and simple legacies or devises from the death of the testator, and transmits it to his heirs. (881a)"

The principle of transmission as of the time of the predecessor's death is basic in our Civil Code, and is supported by other related articles. Thus, the capacity of the heir is determined as of the time the decedent died (Art 1034); their legitimate is to be computed as of the same moment (Art. 908), and so is the inofficiousness of the donations inter vivos (Art. 771). Similarly, the legacies of credit and remission are valid only in the amount due and

outstanding at the death of the testator (Art. 935), and the fruits accruing after that instant are deemed to pertain to the legatee (Art. 948).

As a consequence of this fundamental rule of succession, the heirs of Jose V. Ramirez acquired his undivided share in the Sta. Cruz property from the moment of his death; and from that instant, they became co-owners in the aforesaid property, together with the original surviving co-owners of their decedent (causante). A co-owner of an undivided share is necessarily a co-owner of the whole. Wherefore, any one of the Ramirez heirs, as such co-owner, became entitled to exercise the right of legal redemption (*retracto de comuneros*) as soon as another co-owner (Marie Gamier Vda. de Ramirez) had sold her undivided share to a stranger, Manuel Uy & Sons, Inc. This right of redemption vested exclusively in consideration of the redemptioner's quality of co-owner, independently of the size of the redemptioner's share which the law nowhere takes into account.

The situation is in no wise altered by the existence of a judicial administrator of the estate of Jose V. Ramirez. While under the Rules of Court the administrator has the right to the possession of the real and personal estate of the deceased, so far as needed for the payment of the decedent's debts and the expenses of administration (sec. 3, Rule 85), and the administrator may bring or defend actions for the recovery or protection of the property or rights of the deceased (sec. 2, Rule 88), such rights of possession and administration do not include the right of legal redemption of the undivided share sold to Uy & Company by Mrs. Gamier Ramirez. The reason is obvious: this right of legal redemption only came into existence when the sale to Uy & Sons, Inc. was perfected, eight (8) years after the death of Jose V. Ramirez, and formed no part of his estate. The redemption right vested in the heirs originally, in their individual capacity; they did not derivatively acquire it from their decedent, for when Jose V. Ramirez died, none of the other co-owners of the Sta. Cruz property had as yet sold his undivided share to a stranger. Hence, there was nothing to redeem and no right of redemption; and if the late Ramirez had no such right at his death, he could not transmit it to his own heirs. Much less could Ramirez acquire such right of redemption eight years after his death, when the sale to Uy & Sons, Inc. was made; because death extinguishes civil personality, and, therefore, all further juridical capacity to acquire or transmit rights and obligations of any kind (Civil Code of the Phil, Art. 42).

It is argued that the actual share of appellant Mrs. Butte in the estate of Jose V. Ramirez has not been specifically determined as yet, that it is still contingent; and that the liquidation of the estate of Jose V. Ramirez may require the alienation of the decedent's undivided portion in the Sta. Cruz property, in which event Mrs. Butte would have no interest in said undivided portion. Even if it were true, the fact would remain that so long as that undivided share remains in the estate, the heirs of Jose V. Ramirez own it, as the deceased did own it before his demise, so that his heirs are now as much co-owners of the Sta. Cruz property as Jose V. Ramirez was himself a co-owner thereof during his life-time. As co-owners of the property, the heirs of Jose V. Ramirez, or any one of them, became personally vested with the right of legal redemption as soon as Mrs. Gamier sold her own pro-indiviso interest to Uy & Sons. Even if subsequently, the undivided share of Ramirez (and of his heirs) should eventually be sold to satisfy the creditors of the estate, it would not destroy their ownership of it before the sale, but would only convey or transfer it as of the time the share that originally belonged to Ramirez is in turn sold (if it actually is sold) to pay his creditors. Hence, the right of any of the Ramirez heirs to redeem the Gamier share will not be retroactively affected. All that the law requires is that the legal redemptioner should be a co-owner at the time the undivided share of another co-owner is sold to a stranger. Whether or not the redemptioner will continue being a co-owner after exercising the legal redemption is irrelevant for the purposes of the law.

Nor can it be argued that if the original share of Ramirez is sold by the administrator, his heirs would stand in law as never having acquired that share. This would only be true if the inheritance is repudiated or the heir's quality as such is voided. But where the heirship is undisputed, the purchaser of hereditary property is not deemed to have

acquired the title directly from the deceased Ramirez, because a dead man can not convey title, nor from the administrator who owns no part of the estate; the purchaser can only derive his title from the Ramirez heirs, represented by the Administrator, as their trustee or legal representative.

The right of appellant Angela M. Butte to make the redemption being established^ the next point of inquiry is whether she had made or tendered the redemption price within the 30 days from notice as prescribed by law. This period, be it noted, is peremptory, because the policy of the law is not to leave the purchaser's title in uncertainty beyond the established 30-day period.

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. (2d) 528). As ruled in *Wampler 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 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.

The notice which became operative is that given by Mrs. Chambers, in her capacity as attorney-in-fact of the vendor Marie Gamier Vda. de Ramirez. Under date of December 11, 1958, she wrote the Administrator Bank of the Philippine Islands that her principal's one-sixth (1/6) share in the Sta. Cruz property had been sold to Manuel Uy & Sons, Inc. for P500,000.00. The Bank received this notice on December 15, 1958, and on the same day endorsed it to Mrs. Butte, care of Delgado, Flores and Macapagal (her attorneys), who received the same on December 16, 1958. Mrs. Butte tendered redemption and' upon its refusal, judicially consigned the price of P500,000 on January 15, 1959. The latter date was the last one of the thirty days allowed by the Code for the redemption, counted by excluding December 16, 1958 and including January 15, 1959, pursuant to Article 13 of the Civil Code. Therefore, the redemption was made in due time.

The date of receipt of the vendor's notice by the Administrator Bank (December 15) can not be counted as determining the start of the thirty days; for the Administrator of the estate was not a proper redemptioner, since, as previously shown, the right to redeem the share of Marie Gamier did not form part of the estate of Jose V. Ramirez.

We find no justification for appellant's claim that the P500,000 paid by Uy & Sons, Inc. for the Gamier share is grossly excessive. Gross excess can not be predicated on mere individual estimates of market price by a single realtor.

The redemption and consignment having been properly made, the Uy counterclaim for damages and attorneys' fees predicated on the assumption that plaintiff's action was clearly unfounded, becomes untenable.

PREMISES CONSIDERED, the judgment appealed from is hereby reversed and set aside, and another one

entered:

- (a) Declaring the consignment of P500,000 made by appellant Angela M. Butte duly and properly made;
- (b) Declaring that said appellant properly exercised in due time the legal redemption of the one-sixth (1/6) undivided portion of the land covered by Certificate of Title No. 59363 of the Office of the Register of Deeds of the City of Manila, sold on December 9, 1958 by Marie Gamier Vda. de Ramirez to appellant Manuel Uy & Sons, Inc.;
- (c) Ordering appellant Manuel Uy & Sons, Inc. to accept the consigned price and to convey to Angela M. Butte the undivided portion above-referred to, within 30 days from the time our decision becomes final, and subsequently to account for the rentals and fruits of the redeemed share from and after January 15, 1958, until its conveyance; and
- (d) Ordering the return of the records to the court of origin for further proceedings conformable to this opinion.

Without finding as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Dizon, JJ., concur.

RESOLUTION

April 23, 1962

REYES, J. B. L., J.:

Manuel Uy & Sons, Inc., has timely asked for a reconsideration of our main decision on the grounds (1) that the consignment of P500,000.00 by appellant Mrs. Butte was actually withdrawn by her on August 24, 1959, as shown by the certification of the Chief Accountant of the Department of Justice under date March 8, 1962, hence appellee should not be made accountable for rents and profits from and after January 15, 1959 until payment of the redemption price is actually made; (b) that the appellant is not entitled to exercise legal redemption; and

(c) that the certificate of title did not show that appellee was a co-owner of the property covered by said certificate.

Appellee Angela M. Butte opposed the reconsideration prayed for on the ground that the withdrawal of the amount consigned does not alter the appellee's responsibility for damages due to its mora in refusing to allow redemption of the property when the amount was first tendered, and that the other grounds were amply discussed in the briefs and the decision.

The first ground is meritorious. The actual withdrawal of the P500,000 originally consigned in court was not taken into account because it did not appear of record when our main decision was rendered; but the withdrawal is not denied by the appellee, and is supported besides by an official certification; hence, it must be conceded as an actual fact. While the lack or withdrawal of the consignment does not affect appellant's right of redemption, such redemption being optional and not compulsory, and the price tendered in due time, still the fact remains that no actual redemption would have been legally made until the price is in fact paid to the appellee Uy & Sons, Inc. The latter, therefore, continues to be the owner of the undivided sixth share sold to it by the former co-owner, Marie Gamier Vda. de Ramirez, and is entitled to the fruits and benefits accruing to it by reason of that share, until the redemption price is actually delivered.

Granting that, as contended for appellant, Uy & Sons, Inc. became in mora when it improperly refused to allow

the redemption of the undivided share it had purchased from Mrs. Gamier, such mora does not necessarily entitle appellant to recover damages, in the absence of proof as to the reality of such damage and of the extent thereof. Damages are not presumed, specially in this case where there has been no showing that the fruits of the undivided sixth purchased by appellee Uy would exceed the interest and profits that could have been earned by the P500,000 that appellee should have paid over to effectuate the legal redemption.

We find no merit in the other grounds adduced by appellant in its motion to reconsider. The right of appellee to redeem the undivided sixth in question and the timeliness of the tender of the redemption price have been amply discussed in our main decision, and no new arguments are adduced. The fact that the certificate of title covering the Sta. Cruz property did not show that appellee Angela M. Butte was one of the co-owners is irrelevant, since the appellant Uy & Sons, Inc. well knew that it was a stranger to the co-ownership, and that it was buying an undivided interest therein. Under these conditions, the purchaser is in law charged with notice that its acquisition is subject to redemption by any other co-owner within the statutory 30-day period, and the identity of the redemptioner is immaterial so far as the purchaser is concerned.

In view of the foregoing, the dispositive part of our decision of February 28, 1962 is hereby modified to read as follows:

- (a) Declaring the tender of P500,000 made by appellant Angela M. Butte duly and properly made;
- (b) Declaring that by such tender made in due time, the appellant has preserved her right to redeem the one-sixth (1/6) portion of the land covered by Certificate of Title No. 59363 of the Office of the Register of Deeds of the City of Manila, sold on December 9, 1958 by Marie Gamier Vda. de Ramirez to appellee Manuel Uy & Sons, Inc., and that said appellant Angela M. Butte is entitled to a reconveyance of said one-sixth portion upon payment of the amount of P500,000 to Manuel Uy & Sons, Inc.;
- (c) Ordering appellee Manuel Uy & Sons, Inc., to execute the deed of conveyance of the undivided portion above-referred to in favor of Angela M. Butte upon payment by the latter of the sum of P500,000 within sixty (60) days from the time our decision becomes final;
- (d) Ordering the return of the records to the court of origin for execution conformably to this opinion.

Without finding as to costs." So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, and Paredes, JJ., concur.

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