

GRACE GOSIENGFIAO GUILLEN, DECEASED EMMA GOSIENGFIAO GALAOS, REPRESENTED BY HER DAUGHTER EMELYN GALAOS-MELARION, DECEASED FRANCISCO GOSIENGFIAO, JR., REPRESENTED BY HIS WIDOW ED...

G.R. No. 159755. June 18, 2009

Ponente: BRION, J.

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BRION, J.:

At issue in this petition is the timeliness of the exercise of the right of legal redemption that this Court has recognized in a final and executory decision.

The petitioners, heirs of Francisco Gosiengfiao (petitioner-heirs), assail in this Rule 45 petition for review on certiorari the January 17, 2003 decision and September 9, 2003 resolution of the Court of Appeals (CA) in CA-G.R. CV No. 63093.[1] The assailed CA decision ruled that the thirty-day period for the exercise of the right of legal redemption should be counted, not from the notice of sale by the vendor but, from the finality of the judgment of this Court.

BACKGROUND FACTS

I. G.R. No. 101522 - Mariano v. Court of Appeals

The previous case where we recognized the petitioner-heirs' right of legal redemption is Mariano v. CA.[2] To quote, by way of background, the factual antecedents that Mariano recognized:

It appears on record that the decedent Francisco Gosiengfiao is the registered owner of a residential lot located at Ugac Sur, Tuguegarao, Cagayan, particularly described as follows, to wit:

The eastern portion of Lot 1351, Tuguegarao Cadastre, and after its segregation now designated as Lot 1351-A, Plan PSD-67391, with an area of 1,346 square meters.

and covered by Transfer Certificate of Title (TCT) No. T-2416 recorded in the Register of Deeds of Cagayan.

The lot in question was mortgaged by the decedent to the Rural Bank of Tuguegarao (designated as mortgagee bank, for brevity) on several occasions before the last, being on March 9, 1956 and January 29, 1958.

On August 15, 1958, Francisco Gosiengfiao died intestate survived by his heirs, namely: Third-Party Defendants: wife Antonia and Children Amparo, Carlos, Severino and herein plaintiffs-appellants Grace, Emma, Ester, Francisco, Jr., Norma, Lina (represented by daughter Pinky Rose), and Jacinto.

The loan being unpaid, the lot in dispute was foreclosed by the mortgagee bank, and in the foreclosure sale held on December 27, 1963, the same was awarded to the mortgagee bank as the highest bidder.

On February 7, 1964, third-party defendant Amparo Gosiengfiao-Ibarra redeemed the property by paying the amount of P1,347.89 and the balance of P423.35 was paid on December 28, 1964 to the mortgagee bank.

On September 10, 1965, Antonia Gosiengfiao on her behalf and that of her minor children Emma, Lina, Norma, together with Carlos and Severino, executed a "Deed of Assignment of the Right of Redemption" in favor of Amparo G. Ibarra appearing in the notarial register of Pedro (Lagui) as Doc. No. 257, Page No. 6, Book No. 8, Series of 1965.

On August 15, 1966, Amparo Gosiengfiao sold the entire property to defendant Leonardo Mariano who subsequently established residence on the lot subject of this controversy. It appears in the Deed of Sale dated August 15, 1966 that Amparo, Antonia, Carlos and Severino were signatories thereto.

Sometime in 1982, plaintiff-appellant Grace Gosiengfiao learned of the sale of said property by the third-party defendants. She went to the Barangay Captain and asked for a confrontation with defendants Leonardo and Avelina Mariano to present her claim to the said property.

On November 27, 1982, no settlement having been reached by the parties, the Barangay Captain issued a certificate to file action.

On December 8, 1982, defendant Leonardo Mariano sold the same property to his children Lazaro F. Mariano and Dionicia M. Aquino as evidenced by a Deed of Sale notarized by Hilarion L. Aquino as Doc. No. 143, Page No. 19, Book No. V, Series of 1982.

On December 21, 1982, plaintiffs Grace Gosiengfiao, et al. [herein petitioner-heirs] filed a complaint for "recovery of possession and legal redemption with damages" against defendants Leonardo and Avelina Mariano [herein respondent-buyers]. Plaintiffs alleged in their complaint that as co-heirs and co-owners of the lot in question, they have the right to recover their respective shares in the said property as they did not sell the same, and the right of redemption with regard to the shares of other co-owners sold to the defendants.

Defendants in their answer alleged that the plaintiffs has [sic] no cause of action against them as the money used to redeem the lot in question was solely from the personal funds of third-party defendant Amparo Gosiengfiao-Ibarra, who consequently became the sole owner of the said property and thus validly sold the entire property to the defendants, and the fact that defendants had already sold the said property to their children, Lazaro Mariano and Dionicia M. Aquino. Defendants further contend that even granting that the plaintiffs are co-owners with the third-party defendants, their right of redemption had already been barred by the Statute of Limitations under Article 1144 of the Civil Code, if not by laches.

On September 16, 1986, the trial court dismissed the complaint before it, as "only Amparo redeemed the property from the bank" using her money and solely in her behalf so that the petitioner-heirs had lost all their rights to the property.[3] The trial court explained that what Gosiengfiao's heirs inherited from him was only the right to redeem the property, as it was then already owned by the bank. By redeeming the property herself, Amparo became the sole owner of the property, and the lot ceased to be a part of Gosiengfiao's estate.

On May 13, 1991, the CA reversed the trial court's decision, declaring the petitioner-heirs "co-owners of the property who may redeem the portions sold" to the respondent-buyers. The CA denied the respondent-buyers' motion for reconsideration;[4] thus, they came to this Court to question the CA's rulings.

Our Decision, promulgated on May 28, 1993, affirmed the appellate court decision.[5] It stated in its penultimate paragraph and in its dispositive portion that:

Premises considered, respondents have not lost their right to redeem, for in the absence of a written notification of the sale by the vendors, the 30-day period has not begun to run.

WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED. Costs against petitioners.

Aside from this express declaration, the Court explained that, as the property was mortgaged by the decedent, co-ownership existed among his heirs during the period given by law to redeem the foreclosed property.

Redemption of the whole property by co-owner Amparo did not vest in her the sole ownership over the property, as the redemption inured to the benefit of all co-owners; redemption will not put an end to co-ownership, as it is not a mode of terminating a co-ownership. The Court also distinguished[6] between Articles 1088[7] and 1620[8] of the Civil Code and ruled as inapplicable the doctrine that "the giving of a copy of the deed of sale to the co-heirs as equivalent to a notice." [9] On July 12, 1993, this Court denied the respondent-buyers' motion for reconsideration. The entry of judgment was made on August 2, 1993.

II. Execution of the Mariano Decision

(G.R. No. 101522) By the Lower Court

a. The Incidents

On April 26, 1994, the petitioner-heirs, as winning parties, filed a motion for the execution of our Decision in G.R. No. 101522, which motion the trial court granted on May 11, 1994.[10] The next day, the clerk of court issued a writ of execution and a notice to vacate.[11] The respondent-buyers moved for a reconsideration of the May 11, 1994 order and prayed for the nullification of the notice to vacate, arguing that the dispositive portion of the decision to be executed merely declared and recognized the petitioner-heirs as co-owners of the lot and did not authorize the sheriff to remove their houses from the land. They argued they can remain in possession of the property as co-owners because the judgment did not divest them of possession.[12] The sheriff later informed the trial court that copies of the notice to vacate and the writ of execution were served on, but were not signed by, the respondent-buyers. After the expiration of the 45-day period to vacate, the sheriff went back to check if the respondent-buyers had complied. They had not.

On March 31, 1995, the petitioner-heirs filed a notice of redemption with the court of origin, duly served on the respondent-buyers, for the shares of Amparo, Antonia, Carlos, and Severino, and tendered the redemption price of P53,760.[13] On April 18, 1995, the sheriff issued a certificate of redemption after the first and second buyers refused to sign the notice and accept the tender, and after the aggrieved heirs deposited the redemption money with the court.[14] On the same date, the sheriff issued a return of service informing the court that on March 31, 1995, the redemption money was tendered to, but was not accepted by, Engr. Jose Aquino who received, but did not sign, the notice of redemption.[15]

From 1994 to 1995, the respondent-buyers filed four motions: a motion for reconsideration of the May 11, 1994 order granting the motion for the issuance of a writ of execution;[16] a motion to ascertain the redemptive shares of third-party defendants;[17] a motion to declare the petitioner-heirs to have lost their right of legal redemption;[18] and a motion to expunge from the records the petitioner-heirs' notice of redemption.[19]

b. The Judge Beltran Rulings

On December 4, 1995, the trial court, through Judge Orlando Beltran,[20] issued an order (1) recalling the writ of execution for "incorrectly" quoting the dispositive portion of the CA decision and nullifying the notice to vacate; (2) denying the motion to ascertain third-party defendants' shares, as Amparo's redemption inured to the benefit of her co-heirs, thus, each of the 10 heirs has 1/10 equal share of the lot; (3) denying the third motion as no written notice of the sale has been served on the petitioner-heirs by the vendor or by the vendee; and (4) denying the last motion for lack of legal and factual basis.[21] The trial court thereafter denied the respondent-buyers' motion for reconsideration that followed.[22]

On May 30, 1996, the court denied their motion to nullify the certificate of redemption and cancellation of the certificate at the back of TCT No. T-2416; the respondent-buyers moved to reconsider this denial on July 9, 1996.[23]

On June 11, 1996, the respondent-buyers filed an omnibus motion for reconsideration, arguing that the December 4, 1995 order is contrary to law, jurisprudence, and the decisions of the CA and this Court on this case.[24]

On July 15, 1996, the respondent-buyers again filed a motion for reconsideration of the May 30, 1996 order denying their motion to nullify the certificate of redemption and to order its cancellation at the back of TCT No. T-2416, which move the petitioner-heirs opposed. They argued that the decision of this Court was not self-executing, and the sheriff had no power to do anything without a court sanction. They also argued that it was untrue that the basis of the April 18, 1995 certificate of redemption was the May 31, 1991 decision of the CA, as affirmed by this Court, because the certificate was "inexistent" when those decisions were promulgated.

c. The Judge Luczon Rulings

On September 26, 1997, the trial court, through Judge Jimmy Henry F. Luczon, Jr.,[25] issued an order granting the respondent-buyers' omnibus motion for reconsideration of the December 4, 1995 order, declaring the petitioner-heirs to have lost their right of redemption, and nullifying the notice and the certificate of redemption.[26] Noting the absence of a written notice of sale or manifestation received by the petitioner-heirs, the trial court deemed as notice of sale this Court's decision which became final and executory on August 2, 1993. The trial court considered September 1, 1993 as the last day of the redemption period, and, consequently, declared that the notice and the certificate of redemption were filed late.

The trial court denied the petitioner-heirs' motion for reconsideration of the September 26, 1997 order, ruling that the introduction of the deed of sale as the parties' evidence in the trial and higher courts was sufficient to give the petitioner-heirs written notice of the sale; and that the Civil Code does not require any particular form of written notice or distinctive method for written notification of redemption.

III. The Assailed Court of Appeals Decision

The petitioner-heirs thereupon went to the CA on a petition for certiorari to question the lower court's orders. (They had earlier filed an Appeal Ad Cautelam which the CA consolidated with the petition for certiorari).[27] As grounds, they cited the lower court's lack of jurisdiction since the motions ruled upon were really initiatory pleadings based on causes of action independent of, although related to, Civil Case No. 3129, and that no certificate of non-forum shopping was attached, nor any docket fees paid. They also claimed that the respondent-buyers' motion was a prohibited second motion for reconsideration that the lower court could not rule upon, and one that was filed beyond the 15-day period of appeal.[28] Finally, they faulted the lower court for ignoring the law of the case, as established in Mariano.

The respondent-buyers questioned the petition on technicalities, but focused on the issue of whether the final and executory decision of this Court in Mariano was effectively a written notice of sale to the heirs; they continued to maintain that the redemption period should run from the finality of our Decision, and, thus, had already lapsed.

The CA followed the respondent-buyers' lead and likewise focused on the effect of our Decision on the petitioner-heirs' redemption of the disputed co-owned property. To quote the appellate court:

The pivot of inquiry here is: whether or not the final and executory Decision of the Supreme Court constitutes written notice to plaintiffs-appellants [herein petitioner-heirs].

x x x

It is undisputed that the Highest Magistrate's Decision in G.R. 101522 had become final and executory on 02 August 1993 and that it was only on 26 April 1994 or after the lapse of more than eight (8) months from the finality of the said Decision that plaintiffs-appellants filed a Motion for Execution.

The Entry of Judgment of G.R. 101522 states as follows, thus:

This is to certify that on May 26, 1993 a decision rendered in the above-entitled case was filed in this Office, the dispositive portion of which reads as follows:

Premises considered, respondents have not lost their right to redeem, for in the absence of a written certification of the sale by the vendors, the 30-day period has not even begun to run.

WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED. Costs against the petitioners.

SO ORDERED.

and that the same has, on August 2, 1993 become final and executory and is hereby recorded in the book of Entries of Judgment.

As it is an established procedure in court that when an entry of judgment was issued, it means that the contending parties were already properly notified of the same either through the parties themselves or through their respective counsels.

Thus, the very existence of the Supreme Court's Entry of Judgment negates plaintiffs-appellants' claim that no notice of what [sic] nature was received by them insofar as G.R. 101522 was concerned.

Concomitantly, the Court concurs with the argument of respondents-appellees [herein respondent-buyers] that the thirty (30) days grace period within which to redeem the contested property should be counted from 02 August 1993.

As they failed to redeem the same in accordance with the instruction of the High Court, plaintiffs-appellants lost all the rights and privileges granted to them by the Supreme Court in G.R. 101522.

From the foregoing facts, it is clear that plaintiffs-appellants had slept from their rights and their failure to exercise the same within the period allowed by the High Court is deemed a waiver on their part.

All told, the Court holds and so rules that the court a quo erred not in reversing itself.

To summarize, the appellate court ruled that (1) because an entry of judgment had been made, the Mariano Decision is deemed to have been served on the petitioner-heirs; (2) based on this premise, the appellate court held that the 30-day redemption period should run from August 2, 1993 (the date of the entry of judgment); and (3) for the petitioner-heirs' failure to redeem within that period, they "lost all the rights and privileges granted to them by the Supreme Court in G.R. No. 101522."

THE PETITION

Faced with the CA's ruling and the denial of their motion for reconsideration, the petitioner-heirs filed the present petition with this Court. They argue in this petition and in their memorandum that the January 17, 2003 decision of the CA is erroneous for the reasons outlined below.

First. They clarify that their theory that the Decision of this Court is not the written notice required by law was not anchored on lack of notice of that decision, but on Article 1623 of the Civil Code: the written notice should be given by the vendor, not by this Court by virtue of a final decision. The CA erred and abused its discretion in concluding that they lost their right of redemption under this Court's Decision because the start of the redemption period is not reckoned from the date of the finality of that decision; the Decision is not the source of their right to redeem.

Second. They posit a redemption period is not a prescriptive period, and the lower courts erred in considering the

30-day period as an extinctive prescriptive period because legal redemption under Article 1623 does not prescribe. The period has not even begun to run. Their use of the services of the sheriff to exercise their right of redemption through a motion for execution was approved by this Court as a method of redemption.

In their Comment, the respondent-buyers stress that the main issue in this petition is whether the petitioner-heirs' right of legal redemption, as recognized in G.R. No. 101522, had been lost. The "non-reviewable" findings of facts of the trial and appellate courts that plaintiffs exercised their right of redemption late, and that the decision in G.R. No. 101522 had already become final, bind this Court.

In their Reply to Comment, the petitioner-heirs argue that the 30-day redemption period under Article 1623 cannot be reckoned from the date of finality of this Court's Decision in G.R. No. 101522 because it is not and cannot be a "notice" in writing by the vendor; this Court is not the vendor and a written notice by the vendor is mandatory for the 30-day redemption period to run. The Decision negates the notion that it serves as a "notice," because it clearly states that the period of redemption had not begun to run. Having previously exercised the right of redemption, the execution was nothing more than the implementation of what had been the final ruling of this Court.

In their memorandum, the respondent-buyers maintain that the petitioner-heirs' "time-barred" right to redeem the property was not cured by the notice of redemption and by their "late" tender of the redemption money; since the petitioner-heirs were exercising their right of legal redemption by virtue of the Decisions of this Court and the CA, it was incumbent upon them to effectuate the steps of redemption seasonably. The "belated" notice of redemption and tender of payment of redemption price were not bona fide, as they were not made within the required period.

THE COURT'S RULING

The parties' positions all focus, and rightly so, on the main issue: when did the 30-day period to redeem the subject property start? This is a question of law, not of fact, as the respondent-buyers erroneously claim; thus, the lower courts' findings cannot bind this Court.

The appellate court unfortunately failed to appreciate the breadth and significance of this issue, simply ruling on the case based on the implications of an entry of judgment. Because of this myopic view, it completely missed the thrust and substance of the Mariano Decision.

We grant the petition and hold - pursuant to the Mariano Decision and based on the subsequent pleaded developments - that the petitioner-heirs have effectively exercised their right of redemption and are now the owners of the redeemed property pursuant to the Sheriff's Certificate of Redemption.

A significant aspect of Mariano that the CA failed to appreciate is our confirmation of the ruling that a written notice must be served by the vendor.[29] We ruled as follows:

The requirement of a written notice has long been settled as early as in the case of *Castillo v. Samonte* (106 Phil. 1023 [1960]) where this Court quoted the ruling in *Hernaez v. Hernaez* (32 Phil. 214), thus:

Both the letter and spirit of the New Civil Code argue against any attempt to widen the scope of the notice specified in Article 1088 by including therein any other kind of notice, such as verbal or by registration. If the intention of the law had been to include verbal notice or any other means of information as sufficient to give the effect of this notice, then there would have been no necessity or reasons to specify in Article 1088 of the New Civil Code that the said notice be made in writing for, under the old law, a verbal notice or information was sufficient.

X X X

The ruling in *Castillo v. Samonte*, supra, was reiterated in the case of *Garcia v. Calaliman* (G.R. No. 26855, April 17, 1989, 172 SCRA 201) where We also discussed the reason for the requirement of the written notice. We said:

Consistent with aforesaid ruling, in the interpretation of a related provision (Article 1623 of the New Civil Code) this Court had stressed that written notice is indispensable, actual knowledge of the sale acquired in some other manners by the redemptioner, notwithstanding. He or she is still entitled to written notice, as exacted by the code to remove all uncertainty as to the sale, its terms and its validity, and to quiet any doubt that the alienation is not definitive. The law not having provided for any alternative, the method of notifications remains exclusive, though the Code does not prescribe any particular form of written notice nor any distinctive method for written notification of redemption (*Conejero et al. v. Court of Appeals et al.*, 16 SCRA 775 [1966]; *Etcuban v. Court of Appeals*, 148 SCRA 507 [1987]; *Cabrera v. Villanueva*, G.R. No. 75069, April 15, 1988).

We also made the factual finding that:

The records of the present petition, however, show no written notice of the sale being given whatsoever to private respondents [petitioner-heirs]. Although, petitioners allege that sometime on October 31, 1982 private respondent, Grace Gosiengfiao was given a copy of the questioned deed of sale and shown a copy of the document at the Office of the Barangay Captain sometime November 18, 1982, this was not supported by the evidence presented. x x x

From these premises, we ruled that "[P]etitioner-heirs have not lost their right to redeem, for in the absence of a written notification of the sale by the vendors, the 30-day period has not even begun to run." These premises and conclusion leave no doubt about the thrust of *Mariano*: The right of the petitioner-heirs to exercise their right of legal redemption exists, and the running of the period for its exercise has not even been triggered because they have not been notified in writing of the fact of sale. This is what our Decision held, as the penultimate paragraph and the dispositive portion clearly state. This is the law of the case that should guide all other proceedings on the case, particularly its execution.[30] For the *Luczon* ruling and the CA to miss or misinterpret the clear ruling in *Mariano* - the Decision subject of the execution - is a gross and patent legal error that cannot but lead to the reversal of their decisions.

In light of this conclusion, we see no need to discuss the other presented issues. We hold that the computation of the 30-day period to exercise the legal right of redemption did not start to run from the finality of the *Mariano* Decision, and that the petitioner-heirs seasonably filed, via a writ of execution, their notice of redemption, although they applied for the issuance of the writ some eight (8) months after the finality of the Decision. In seeking the execution of a final and executory decision of this Court, what controls is Section 11, Rule 51,[31] in relation to Section 2, Rule 56,[32] of the Rules of Court. Before the trial court executing the decision, Section 6, Rule 39,[33] on the question of timeliness of the execution, governs. Eight (8) months after the finality of the judgment to be executed is still a seasonable time for execution by motion pursuant to this provision. The writ, notice of redemption, and the tender of payment were all duly served, so that it was legally in order for the Sheriff to issue a Certificate of Redemption when the respondent-buyers failed to comply with the writ and to accept the notice and the tender of payment.

WHEREFORE, in light of the foregoing, we hereby GRANT the petition and, accordingly, REVERSE and SET ASIDE the January 17, 2003 decision and September 9, 2003 resolution of the Court of Appeals in CA-G.R. CV No. 63093. The petitioner-heirs' exercise of their right of redemption of co-heirs Amparo G. Ibarra, Antonio C. Gosiengfiao, Carlos Gosiengfiao, and Severino Gosiengfiao's shares over Lot 1351-A, Plan Psd-67391, covered by Transfer Certificate of Title No. T-2416, and located in Ugac Sur, Tuguegarao, Cagayan, in view of their March 31, 1995 Notice of Redemption and the April 18, 1995 Certificate of Redemption issued by the Sheriff of the Regional Trial Court, Branch IV, Tuguegarao, Cagayan, is hereby declared VALID and LEGAL.

Costs against the respondents.

SO ORDERED.

Quisumbing, (Chairperson), Ynares-Santiago[*], Chico-Nazario[**], and Leonardo-De Castro[***], JJ., concur.

[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2009.

[***] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

[1] CA Justice Andres B. Reyes, Jr., ponente; Justices Delilah Vidallon-Magtolis and Regalado E. Maambong, concurring.

[2] G.R. No. 101522, May 28, 1993, 222 SCRA 736; Justice Rodolfo A. Nocon, ponente; Chief Justice Andres R. Narvasa (Chairperson), and Justices Teodoro R. Padilla and Florenz D. Regalado, concurring.

[3] The decision was penned by Judge Juan P. Jimenez, RTC, Branch 1, Tuguegarao, Cagayan.

[4] Supra note 1.

[5] Supra note 2.

[6] The Court held: "According to Tolentino, the fine distinction between Article 1088 and Article 1620 is that when the sale consists of an interest in some particular property or properties of the inheritance, the right of redemption that arises in favor of the other co-heirs is that recognized in Article 1620. On the other hand, if the sale is the hereditary right itself, fully or in part, in the abstract sense, without specifying any particular object, the right recognized in Article 1088 exists."

[7] Art. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor.

[8] 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.

[9] The Court further held: "Petitioners allege that upon the facts and circumstances of the present case, respondents failed to exercise their right of legal redemption during the period provided by law, citing as authority the case of Conejero, et al., v. Court of Appeals, et al. (16 SCRA 775) wherein the Court adopted the principle that the giving of a copy of a deed is equivalent to the notice as required by law in legal redemption. We do not dispute the principle laid down in the Conejero case. However, the facts in the said case are not four square with the facts of the present case. In Conejero, redemptioner Enrique Conejero was shown and given a copy of the deed of sale of the subject property. The Court in that case stated that the furnishing of a copy of the deed was equivalent to the giving of a written notice required by law."

[10] Records, Vol. II, p. 164.

[11] Id., pp. 161-163.

[12] Rollo, p. 429.

[13] Id. , pp. 111-112.

[14] Id. , p. 113.

[15] Id. , p. 15.

[16] Id. , pp. 427-431.

[17] Id. , pp. 102-106.

[18] Id. , pp. 107-110.

[19] Id. , pp. 116-119.

[20] RTC, Branch IV, Tuguegarao, Cagayan.

[21] Rollo, pp. 120-123.

[22] Id. , p. 134.

[23] Id. , pp. 148-151.

[24] Id. , pp. 468-479.

[25] RTC, Branch 1, Tuguegarao, Cagayan.

[26] Rollo, pp. 152-155.

[27] Per Resolution dated February 9, 2000 of the Former Fifteenth Division of the CA (see CA-G.R. SP No. 51857 rollo, pp. 245-247), CA-G.R. SP No. 51857 was ordered consolidated with CA-G.R. CV No. 63093, which involved the same issues and parties, provided that the ponencia of the civil case conformed to the consolidation pursuant to Rule 3, Section 7 (b) (3) of the Revised Internal Rules of the Court of Appeals directing that the consolidated cases shall pertain to the justice to whom the civil case is assigned. On February 23, 2000, Associate Justice Elvi John S. Asuncion of the then Seventh Division of the CA conformed to the consolidation of cases (see CA-G.R. CV No. 63093 rollo, p. 26).

[28] Rollo, pp. 71 - 73, supported by Annexes A to A-20.

[29] Parenthetically, Mariano is not the latest ruling on the requirement of notice from the vendor. In *Perpetua vda. De Ape v. Court of Appeals*, G.R. No. 133638, April 15, 2005, 456 SCRA 193, we said:

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.*, 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 v. State*, 12 S.W. 2(d) 528). As ruled in *Wampler v. 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.

The interpretation was somehow modified in the case of *De Conejero, et al. v. Court of Appeals, et al.*, 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.*, *Cabrera v. Villanueva, Garcia, et al. v. Calaliman, et al.*, *Distrito, et al. v. The Honorable Court of Appeals, et al.*, and *Mariano, et al. v. Hon. Court of Appeals, et al.*

However, in the case of *Salatandol v. Retes*, 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.

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.

[30] In *Vios v. Pantangco, Jr.*, G.R. 163103, February 6, 2009, we defined the law of the case as:

[T]he opinion delivered on a former appeal. It is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

[31] Rule 51, Sec. 11. Execution of judgment.

Except where the judgment or final order or resolution, or a portion thereof, is ordered to be immediately executory, the motion for its execution may only be filed in the proper court after its entry.

x x x

[32] Rule 56, Sec. 2. Rules applicable.

The procedure in original cases for certiorari, prohibition, mandamus, quo warranto and habeas corpus shall be in accordance with the applicable provisions of the Constitution, laws, and Rules 46, 48, 49, 51, 52 and this Rule, subject to the following provisions:

a) All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court;

x x x

[33] Rule 39, Sec. 6. Execution by motion or by independent action.

A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations

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