

**GUINO ESCABARTE, MARIA HAMPAC VDA. DE ANGUILID, HEIRS OF
FAUSTO ISAW, PEDRO LATAWAN, ADELAIDA ISIG-VALLECER,
ROGELIO B. MACIAS, SALVADOR BAWING, BRUNO ESCABARTE,
NENE ESCABARTE,...**

G.R. No. 208595. August 28, 2019

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

Assailed in this Petition for Review on Certiorari are the October 22, 2012 Decision[1] and the July 29, 2013 Resolution[2] of the Court of Appeals-Cagayan de Oro City (CA) in CA-G.R. CV No. 01659-MIN which reversed and set aside the July 15, 2008 Decision[3] of the Regional Trial Court (RTC), Sindangan, Zamboanga del Norte, Branch 11 in Civil Case No. S-733.

The Antecedents

Spouses Ipo Bawing and Tanod Subano (spouses Bawing) were the owners of a parcel of land, with an area of 16.2962 hectares, located in Nipaan, Sindangan, Zamboanga del Norte and covered by Original Certificate of Title (OCT) No. RP-837(3107). Ipo Bawing died intestate in February 1943 while his wife Tanod Subano died intestate in January 1948. Thus, the property, by operation of law, passed on to their children, namely, Onday, Igbay, Garay, Anong, Octoc, Martina, Leoncio and Pedro.

On September 5, 1960, Pelagia Isig, the declared sole legitimate heir of Octoc as well as Igbay sold their respective aliquot shares in the property to spouses David Barrios and Luz Barrios (spouses Barrios). On April 16, 1962, Martina also sold her aliquot share over the said property to spouses Barrios. The deeds of sale were approved by Guadalupe C. Adaza, then Provincial Governor of Zamboanga del Norte.

In September 1976, spouses Barrios reconveyed the shares sold to them as evidenced by a Deed of Resale duly annotated at the back of OCT No. RP-837(3107). The reconveyance was under the names of Fausto and Benigno Isaw, sons of Garay.

Meanwhile, on September 24, 1976, Fausto executed a Deed of Absolute Sale conveying all rights, interest and participation over the properties in favor of his brother Benigno.

In 1980, the subdivision of the property into five (5) lots was duly approved. Lot 1 has an area of 2,240 square meters, Lot 2 with 69,841 square meters, Lot 3 with 67,600 square meters, Lot 4 with an area of 10,000 square meters and Lot 5 with an area of 13,280 square meters.

On the basis of the subdivision plan, a Petition for Issuance of Transfer Certificate of Title (TCT) was filed. Consequently, on November 10, 1980, TCT Nos. T-34992 and T-34994, both in the name of Benigno Isaw, were issued for Lots 1 and 3, respectively. On the same date, TCT Nos. T-34993, T-34995 and T-34996, all in the name of Ipo Bawing, were issued for Lots 2, 4 and 5. From the issuance of the TCTs, Benigno and his family had been

in possession of Lots 1 and 3 and enjoying the fruits thereof.

Twenty-three years later or on October 17, 2003, petitioners Guino Escabarte, Maria Hampac Vda. de Anguilid, Fausto Isaw, Pedro Latawan, Adelaida Isig-Vallecer, Rogelio B. Macias, Salvador Bawing, Bruno Escabarte, Nene Escabarte, Apolonio Escabarte, Naning Escabarte, Juanito Escabarte, Vicenta Escabarte, Notoo C. Latawan, Lolong C. Isaw, Bulac C. Isaw, Dodoy C. Isaw, Mayan Caindog-Hampac, Obig Hampac, Alene Talibinio-Isaw, Heirs of Candelaria Isaw, Antonia Perater-Isaw, Heirs of Pedro Isaw, Lovenia Isaw, Laida Latawan, Arquilina Latawan, Estrella Bawing, Nelia Echavia-Bawing and Tiburcio Bawing were seeking the annulment of TCT Nos. T-34992 and T-34994 and the judicial partition of the 16.2962-hectare property of spouses Bawing. They alleged that the heirs of spouses Bawing agreed that the document of conveyance should be in the name of Fausto and Benigno considering that they provided the amount needed for the redemption of the shares sold to spouses Barrios. The agreement was subject to the condition that after Benigno and Fausto were reimbursed, the property should be partitioned among the heirs. However, without the benefit of any extrajudicial settlement of the estate of spouses Bawing, Benigno fraudulently sought the titling of Lots 1 and 3 in his name.

Respondent heirs of Benigno counter that there was already an oral partition of the property when Pelagia, Martina and Igbay sold their respective undivided interests to spouses Barrios. Further, they asserted that while generally an action for partition does not prescribe as among co-heirs, the exception is when a co-owner had properly repudiated the co-ownership by registering in his name some of the shares of the estate which Benigno did when he registered Lots 1 and 3 in his name.

The RTC Ruling

In a Decision dated July 15, 2008, the trial court declared that no oral partition was agreed upon by the heirs of spouses Bawing as evidenced by the lack of titles issued in the name of the other heirs. The fallo reads:

WHEREFORE, premises considered, judgment is hereby rendered in this case in favor of the plaintiffs and against the defendants, as follows:

- Declaring Transfer Certificate of Title Nos. T-34992, T-34993, T-34994, T-34995, T-34996, null and void ab initio, or inexistent, and hereby ordering the cancellation of said titles;
- Ordering the revival or restoration of Original Certificate of Title No. RP-837 (3107) in the name of Bawing Ipo married to Tanod (Subano);
- Ordering the PARTITION of the property covered by the said original Certificate [of] Title No. RP-837 (3107) in SEVEN (7) equal shares among ONDAY BAWING, IGBAY BAWING, GARAY BAWING, ANONG BAWING, OCTOC BAWING, MARTINA BAWING AND PEDRO BAWING and/or their respective heirs, and to conduct a subdivision survey thereon in accordance with said partition, nullifying hereto the previous subdivision survey conducted on said property;
- Ordering the defendants to render an accounting of the products and/or income of the properties which were covered by titles under the names of BENIGNO ISAW, as Transfer Certificate of Title Nos. T-34992 and T-34994, which are among those declared null and void hereon and to deduct there from the corresponding amount allegedly paid to spouses David Barrios and Luz Lucasan Barrios and also the amount allegedly paid to Fausto Isaw in the total sum of Three Thousand Pesos (P3,000.00)'
- Ordering the defendants to pay plaintiffs the amount of Thirty Thousand Pesos (P30,000.00) as Attorney's Fees and the amount of Twenty Thousand Pesos (P20,000.00) for ligations expenses.

Counterclaim is DISMISSED for lack of merit.

No special pronouncement as to cost.

Let copies of this decision be furnished to the Registry of Deeds of Zamboanga del Norte for implementation.

SO ORDERED.[4]

Aggrieved, respondents elevated an appeal before the CA.

The CA Ruling

In a Decision, dated October 22, 2012, the CA reversed and set aside the RTC ruling. It noted that the petitioners have not denied that Benigno and Fausto held the redeemed shares of Martina, Igbay and Pelagia in trust until they be reimbursed of the expenses they incurred in the redemption. Further, the petitioners failed to show that they had reimbursed Benigno of the expenses incurred in redeeming the aforementioned shares. Thus, the appellate court opined that an implied trust was created between Benigno and the petitioners. It observed that the heirs of spouses Bawing attended and participated in the subdivision of the entire property but did not protest the subdivision and segregation of the portions redeemed by Benigno from spouses Barrios. The CA held that from 1980, when Benigno filed a petition for issuance of TCTs based on the approved subdivision plan of the entire property and eventually had the OCT in the name of spouses Bawing cancelled and new certificates of title were issued, no one from among the petitioners came forward and opposed the same. It emphasized that Benigno secured his title over Lots 1 and 3 for 23 years before the filing of the complaint. Hence, the action to include Lots 1 and 3 in the partition of the estate of spouses Bawing had already prescribed.

Nevertheless, the CA ordered the partition of the remaining portions of the subject property, the 9.0880 hectares which are covered by TCT Nos. T-34993, T-34995 and T-34996. It declared that the heirs of Martina, Igbay and the legitimate sole heir of Octoc should be necessarily excluded from the partition considering that they had already validly disposed of their interests. The dispositive portion reads:

WHEREFORE, the appeal is GRANTED. The assailed Decision dated July 15, 2008 is ordered REVERSED and SET ASIDE. Let a new judgment be ENTERED as follows:

The validity of Transfer Certificates of Title Nos. T-34992 and T-34994 in the name of the late Benigno Isaw is ORDERED UPHELD.

Likewise, the validity of Transfer Certificates of Title Nos. T-34993, T-34995 and T-34996 is ORDERED UPHELD. Consequently, Lots 2, 4 and 5 covered by these certificates with the total area of 9.0880 hectares shall be equally divided by five (5), that is, 1.8176 hectares for each of the five (5) children of spouses Bawing or their respective heirs by representation, namely:

- ONDAY-1.8176 hec

- GARAY- 1.8176 hec

- ANONG-1.8176 hec

- LEONCIO - 1.8176 hec

- PEDRO - 1.8176 hec

Leoncio's share, however, shall be divided in equal shares among his nephews and nieces who are still alive to the exclusion of the children of the deceased nephews and nieces.

SO ORDERED.[5]

Petitioners moved for reconsideration, but the same was denied by the CA on July 29, 2013. Hence, this Petition for Review on Certiorari.

The Issue

Whether Lots 1 and 3 which were registered in Benigno's name form part of the estate of spouses Bawing.

The Court's Ruling

The petition is denied.

The Deed of Resale executed in favor of Fausto and Benigno which also covers the aliquot shares of Octoc, Igbay and Martina in the Zamboanga del Norte lot refers to an ordinary sale and not a redemption done for the benefit of the heirs of spouses Bawing. Through this sale, Fausto and Benigno acquired three-eighths of the Zamboanga del Norte lot to the exclusion of the other heirs of spouses Bawing.

For resolution of the present case, a reference to Article 1088 of the Civil Code is proper. The said provision states, "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."

For a transaction to be considered one of legal redemption inuring to the benefit of the co-heirs, the following requisites must concur: 1) there should be several heirs or partitioners to the common thing; 2) one of them sells his hereditary right; 3) the sale should be made to a stranger to the inheritance and before the partition is made; 4) one or more of the co-heirs exercise this right within the period of one month counted from the time they are notified in writing of the sale by the vendor; and 5) the buyer is reimbursed for the price of the same.[6]

In this case, the fourth requisite is lacking. As a general rule, the 30-day redemption period given to the remaining co-heirs under Article 1088 runs from written notice of the sale by the vendor. In *Mariano v. Court of Appeals*,[7] the Court declared:

The requirement of a written notice has long been settled as early as in the case of *Castillo v. Samonte*, 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."

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The ruling in *Castillo v. Samonte*, supra, was reiterated in the case of *Garcia v. Calaliman*, 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.[8] (Citations omitted)

In *Butte v. Uy*,^[9] the Court emphasized that the written notice should be given by the vendor and not the vendees, conformably to a similar requirement under Article 1623 of the New Civil Code.^[10]

In *Alonzo v. Intermediate Appellate Court*,^[11] however, the Court recognized an exception to the rule requiring written notice and held that actual notice to the co-heirs satisfied the requirement of the law. In *Alonzo*, five brothers and sisters inherited in equal pro indiviso shares a parcel of land registered in the name of their deceased parents. Two of them sold their respective shares to spouses Carlos and Casimira Alonzo, the petitioners therein. Thus, spouses Alonzo and their children introduced improvements on the area corresponding to two-fifths of the said lot, representing the portions sold to them. More than a decade later, one of the siblings filed a complaint seeking to redeem the area sold to spouses Alonzo. The Court ruled:

The only real question in this case, therefore, is the correct interpretation and application of the pertinent law as invoked, interestingly enough, by both the petitioners and the private respondents. This is Article 1088 of the Civil Code, providing as follows:

"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."

In reversing the trial court, the respondent court declared that the notice required by the said article was written notice and that actual notice would not suffice as a substitute. Citing the same case of *De Conejero v. Court of Appeals* applied by the trial court, the respondent court held that that decision, interpreting a like rule in Article 1623, stressed the need for written notice although no particular form was required.

Thus, according to Justice J.B.L. Reyes, who was the ponente of the Court, furnishing the co-heirs with a copy of the deed of sale of the property subject to redemption would satisfy the requirement for written notice. "So long, therefore, as the latter (i.e., the redemptioner) is informed in writing of the sale and the particulars thereof," he declared, "the thirty days for redemption start running."

In the earlier decision of *Butte v. Uy*, the Court, speaking through the same learned jurist, emphasized that the written notice should be given by the vendor and not the vendees, conformably to a similar requirement under Article 1623, reading as follows:

"Art. 1623. The right of legal predemption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendors, 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 the adjoining owners."

As "it is thus apparent that the Philippine legislature in Article 1623 deliberately selected a particular method of giving notice, and that notice must be deemed exclusive," the Court held that notice given by the vendees and not the vendor would not toll the running of the 30-day period.

The petition before us appears to be an illustration of the Holmes dictum that "hard cases make bad laws" as the petitioners obviously cannot argue against the fact that there was really no written notice given by the vendors to their co-heirs. Strictly applied and interpreted, Article 1088 can lead to only one conclusion, to wit, that in view of such deficiency, the 30-day period for redemption had not begun to run, much less expired in 1977.

But as has also been aptly observed, we test a law by its results; and likewise, we may add, by its purposes. It

is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is to render justice.

Thus, we interpret and apply the law not independently of but in consonance with justice. Law and justice are inseparable, and we must keep them so. To be sure, there are some laws that, while generally valid, may seem arbitrary when applied in a particular case because of its peculiar circumstances. In such a situation, we are not bound, because only of our nature and functions, to apply them just the same, in slavish obedience to their language. What we do instead is find a balance between the word and the will, that justice may be done even as the law is obeyed.

As judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence. "Courts are apt to err by sticking too closely to the words of a law," so we are warned, by Justice Holmes again, "where these words import a policy that goes beyond them." While we admittedly may not legislate, we nevertheless have the power to interpret the law in such a way as to reflect the will of the legislature. While we may not read into the law a purpose that is not there, we nevertheless have the right to read out of it the reason for its enactment. In doing so, we defer not to "the letter that killeth" but to "the spirit that vivifieth," to give effect to the lawmaker's will.

"The spirit, rather than the letter of a statute determines its construction, hence, a statute must be read according to its spirit or intent. For what is within the spirit is within the statute although it is not within the letter thereof, and that which is within the letter but not within the spirit is not within the statute. Stated differently, a thing which is within the intent of the lawmaker is as much within the statute as if within the letter; and a thing which is within the letter of the statute is not within the statute unless within the intent of the lawmakers."

In requiring written notice, Article 1088 seeks to ensure that the redemptioner is properly notified of the sale and to indicate the date of such notice as the starting time of the 30-day period of redemption. Considering the shortness of the period, it is really necessary, as a general rule, to pinpoint the precise date it is supposed to begin, to obviate any problem of alleged delays, sometimes consisting of only a day or two.

The instant case presents no such problem because the right of redemption was invoked not days but years after the sales were made in 1963 and 1964. The complaint was filed by Tecla Padua in 1977, thirteen years after the first sale and fourteen years after the second sale. The delay invoked by the petitioners extends to more than a decade, assuming of course that there was a valid notice that tolled the running of the period of redemption.

Was there a valid notice? Granting that the law requires the notice to be written, would such notice be necessary in this case? Assuming there was a valid notice although it was not in writing, would there be any question that the 30-day period for redemption had expired long before the complaint was filed in 1977?

In the face of the established facts, we cannot accept the private respondents' pretense that they were unaware of the sales made by their brother and sister in 1963 and 1964. By requiring written proof of such notice, we would be closing our eyes to the obvious truth in favor of their palpably false claim of ignorance, thus exalting the letter of the law over its purpose. The purpose is clear enough: to make sure that the redemptioners are duly notified. We are satisfied that in this case the other brothers and sisters were actually informed, although not in writing, of the sales made in 1963 and 1964, and that such notice was sufficient.

Now, when did the 30-day period of redemption begin?

While we do not here declare that this period started from the dates of such sales in 1963 and 1964, we do say

that sometime between those years and 1976, when the first complaint for redemption was filed, the other co-heirs were actually informed of the sale and that thereafter the 30-day period started running and ultimately expired. This could have happened any time during the interval of thirteen years, when none of the co-heirs made a move to redeem the properties sold. By 1977, in other words, when Tecla Padua filed her complaint, the right of redemption had already been extinguished because the period for its exercise had already expired.

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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.[12] (Citations omitted and emphases supplied)

The present case warrants a similar conclusion. The portions subject of the Deed of Resale were sold to spouses Barrios in 1960 (for Octoc and Igbay's shares) and 1962 (for Martina's share). Petitioners themselves admit that Fausto and Benigno contested the validity of the 1960 and 1962 sales for being violative of the Administrative Code of Mindanao and Sulu. Thus, the co-heirs could not feign ignorance of the 1960 and 1962 sales, and that their 30-day period to redeem the same under Article 1088 had lapsed prior to the sale in favor of Fausto and Benigno more than a decade after, or in 1976. The co-heirs were undeniably informed of the sales although no notice in writing was given them and there is no doubt either that the 30-day period began and ended during the 14 years between the sale of Octoc, Igbay and Martina's shares to spouses Barrios and the subsequent resale of the shares to Benigno and Fausto.

In addition, TCT Nos. T-34992 and T-34994 in Benigno's name were issued on November 10, 1980 after subdivision of the entire estate was duly approved. After such registration, Benigno and his heirs had been in open and continuous possession of Lots 1 and 3. This circumstance was never denied by any of the petitioners. As such, the petitioners were not without knowledge of Benigno's claim over the two lots as the latter had always been in actual possession thereof since 1980 — which length of possession had never been questioned, rebutted or disputed by any of the petitioners.

Consequently, the transaction covered by the Deed of Resale cannot be deemed to be one of redemption which inures to the benefit of all the heirs of spouses Bawing. Rather, it was an ordinary sale which Fausto and Benigno entered into solely for their own account. In so purchasing the previously sold aliquot shares, Fausto and Benigno acquired three-eighths of the Zamboanga del Norte lot to the exclusion of the other heirs of spouses Bawing. In fine, when Fausto sold his share to Benigno, the latter became the sole owner of the portions corresponding to Octoc, Igbay and Martina's shares and he may rightfully register the lots in his name under the Torrens system.

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit. The assailed Decision dated October 22, 2012 and the Resolution dated July 29, 2013 of the Court of Appeals-Cagayan de Oro City in CA-G.R. CV No. 01659-MIN are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[1] Penned by Associate Justice Renato C. Francisco, with Associate Justices Edgardo A. Camello and Ma. Luisa

Quijano-Padilla, concurring; rollo, pp. 56-82.

[2] Penned by Associate Justice Renato C. Francisco, with Associate Justices Edgardo A. Camello and Marie Christine Azcarraga Jacob, concurring; id. at 97-98.

[3] Penned by Judge Arturo M. Paculanang; id. at 104-128.

[4] Id. at 127-128.

[5] Id. at 81.

[6] Eduardo P. Caguioa, Comments and Cases on Civil Law, Civil Code of the Philippines, Vol. III (1983 Rev. 2[nd] Ed.), p. 474.

[7] 294 Phil. 156 (1993).

[8] Id. at 765-766.

[9] G.R. No. L-15499. February 28, 1962

[10] 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 the adjoining owners.

[11] 234 Phil. 267 (1987).

[12] Id. at 271-275.

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