

AMADO WENCESLAO ET AL., PLAINTIFFS AND APPELLEES, VS. FAUSTINO CALIMON, DEFENDANT AND APPELLANT.

G.R. No. 20950. December 20, 1923

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is a case of a legal redemption sanctioned by the Court of First Instance of Bulacan, to the effect that the defendant should resell to the plaintiffs a four-fifth part of a parcel of land situated in the barrio of Baluarte, municipality of Bulacan, described in the complaint.

Three principal questions are raised by the appellant in his brief, the first relating to the period of nine days for the redemption, the second to the price of the repurchase, and the third to the capacity of the redeemers.

As to the first point, even supposing the nine days fixed by article 1524 of the Civil Code to have expired, which is not the case, the provision applicable here is that contained in article 1067, as the matter concerns heirs and an inheritance not yet distributed, according to the stipulation of facts. But even considering article 1524 to be applicable, the fact is that the plaintiffs are minors and have no legal guardian. The period fixed in said article could not have run against them. *Contra non valentem agere non currit praescriptio*. This principle is recognized in our substantive law and is expressly enshrined by sections 42 and 45 of our Code of Civil Procedure.

With regard to the price, the evidence and circumstances of the case sufficiently show that the defendant did not pay but P7,700 and a note for P5,000, the effectiveness of which depends upon the said defendant's taking possession of the land.

The evidence does not establish that this action was brought on behalf of Anselmo Hilario. The admission of the affidavit Exhibit A does not constitute any error. Those who have signed it have testified in court against what they had stated in said document (section 343, Code of Civil Procedure).

It is no obstacle to the upholding of the right of redemption that the redeemers have no money to make the redemption. The lack of funds may render such a right inefficacious, but does not affect its existence. The plaintiffs cannot exercise such right unless they reimburse the purchaser with the purchase price paid by him (article 1067, Civil Code).

As to the offer to redeem made by Urbano Wenceslao on behalf of his children, the herein plaintiffs, we think it is valid. He is the natural guardian of his children whom he represents in court and out of court. Such an offer was not an act of administration of property but of representation of his children in their rights.

We find in the proceeding no sufficient ground for altering the judgment appealed from; wherefore the same is hereby affirmed with the costs of this instance against the appellant. So ordered.

Johnson, Street, Avanceña, Villamor, Ostrand, and Johns, JJ., concur.

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