

**PAZ TORRES DE CONEJERO AND ENRIQUE CONEJERO,
PETITIONERS, VS. COURT OF APPEALS, VISITACION A. DE RAFFIÑAN
AND ENRIQUE TORRES, RESPONDENTS.**

G.R. No. 21812. April 29, 1966

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

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

Petitioners, spouses Paz Torres and Enrique Conejero, petitioned for the review and setting aside of a decision rendered by the Court of Appeals, in its Case CA-GR No. 19634-R, dismissing their action to compel respondents Miguel Raffiñan and his wife, Visitacion A. de Raffiñan, to permit redemption of an undivided half interest in a property in Cebu City which had been sold to said respondents by their co-respondent, Enrique Torres, brother and co-owner of petitioner Paz Torres de Conejero.

Shorn of unessentials, the facts found by the Court of Appeals, in its decision under review, are that Paz Torres and Enrique Torres were co-owners pro indiviso of a lot and building in Cebu City, covered by Transfer Certificate of Title No. 197-A1230 (T-3827), that both had inherited from their deceased parents. As of September 15, 1949, Enrique Torres sold his half interest to the Raffiñan spouses for P13,000, with right to repurchase within one year. Subsequent advances by the vendees a retro increased their claims against Enrique Torres, and finally, on April 3, 1951 (six months after the expiration of the right to repurchase), said Enrique executed a deed of absolute sale of the same half interest in the property in favor of the Raffiñans for P28,000. This deed of absolute sale (Exhibit "3-A") had not been brought to the attention of Enrique's sister and co-owner, Paz Torres de Conejero, nor of her husband, until August 19, 1952, when Enrique Torres showed his brother-in-law, Enrique Conejero[1], a copy of the deed of absolute sale (Exhibit "C") of his share of the property in favor of the Raffiñans. Conejero forthwith went to the buyers, offering to redeem his brother-in-law's share, which offer he later raised to P29,000.00 and afterwards to P34,000.

Amicable settlement not having been attained, the Conejeros filed, on October 4, 1952, a complaint in the Court of First Instance of Cebu, seeking to be declared entitled to redeem the half interest of Enrique Torres; to which the Raffiñans made answer, claiming absolute title to the property in dispute and pleading that plaintiffs lost their right of redemption because they failed to exercise it within the statutory period.

The court of first instance found the deed of sale to be an equitable mortgage, and declared the plaintiffs Conejero entitled to redeem Enrique's half interest for P34,000. Upon appeal by the defendants, the Court of Appeals reversed the decision of the court of first instance, found that the deed in favor of the Raffiñans was a true sale, and declared as follows:

"The pertinent provision of the law reads:

"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' (Art. 1623).

Appellants claim—appellees denying—that a written notice of the sale had been sent to the latter. We will concede that the evidence does not sufficiently show that a written notice was in fact given to the appellees; but this point is not decisive for the reason that ultimately, according to appellees themselves, they came to know of the sale on August 19, 1952, on which date they immediately made an offer to redeem the property. Appellees argue that their offer to redeem the property on the first day they came to know of the sale on August 19, 1952, and subsequently on September 7 and 8, 1952, has preserved their right of legal redemption as the 30-day period provided for by law had not lapsed. On the other hand, the appellants claim that as early as April 3, 1951, the date of the absolute sale of the property by Enrique Torres in favor of the Raffiñans, the appellees already know of the sale, so that when the offer to redeem was made on August 19, 1952, the 30-day period provided by law had already lapsed. Taken together, all the circumstances we find in the case indeed will guide us into forming the conclusion that while appellees might not have received a written notice they could not have failed to have actual and personal knowledge of the sale much earlier than August 19, 1952. But in view of our opinion directed at another phase of the question involved, we will not rule on their respective claims as to whether or not there was notice within the 30-day period. To us, this point is inconsequential.

Under the circumstances, what is more substantial and decisive is—was there a valid and effective offer to redeem. The law grants unto the co-owner of a property the right of redemption. But in so granting that right, the law intended that the offer must be valid and effective, accompanied by an actual tender of an acceptable redemption price. In the case at bar, the evidence shows that the appellees had offered only P10,000.00 in check with which to redeem the property with a promise to pay the balance by means of a loan which they would apply for and obtain from the bank. We hold that the offer was not in pursuance of a legal and effective exercise of the right of redemption as contemplated by law; hence, refusal of the offer on the part of the appellants is justified. The conditions precedent for the valid exercise of the right do not exist."

We are now asked by petitioners Conejero to reverse and set aside the foregoing decision of the Court of Appeals, on the basis of two propositions advanced by them, to wit: (a) that, no written notice of the sale to the Raffiñans having been given by Enrique Torres to his sister and co-owner, Paz T. de Conejero, the latter's right to exercise legal redemption has not expired, in fact, it has not even started to run; and (b) that in legal redemption no tender of the redemption price is required, mere demand to allow redemption being sufficient to preserve the redemptioner's right.

With regard to the written notice, we agree with petitioners that such notice is indispensable, and that, in view of the terms in which Article 1623 of the Philippine Civil Code is couched, mere knowledge of the sale, acquired in some other manner by the redemptioner, does not satisfy the statute. The written notice was obviously exacted by the Code to remove all uncertainty as to the sale, its terms and its validity, and to quiet any doubts that the alienation is not definitive. The statute not having provided for any alternative, the method of notification prescribed remains exclusive.

Upon the other hand, Article 1623 does not prescribe any particular form of notice, nor any distinctive method for notifying the redemptioner. So long, therefore, as the latter is informed in writing of the sale and the particulars thereof, the 30 days for redemption start running, and the redemptioner has no real cause to complain. In the case at bar, the redemptioners (now petitioners) admit that on August 19, 1952 the co-owner-vendor, Enrique Torres, showed and gave Enrique Conejero (who was acting for and on behalf of his wife, Paz Torres) a copy of the 1951 deed of sale in favor of respondents Raffiñans. The furnishing of this copy was equivalent to the giving of written notice required by law: it came from the vendor and made available in writing the details and finality of the sale.

In fact, as argued for the respondents at bar, it served all the purposes of the written notice, in a more authentic manner than any other writing could have done. As a necessary consequence, the 30-day period for the legal redemption by co-owner Paz Torres (*retracto de comuneros*) began to run its course from and after August 19, 1952, ending on September 18, of the same year.

The next query is: did petitioners effectuate all the steps required for the redemption? We agree with the Court of Appeals that they did not, for they failed to make a valid tender of the price of the sale paid by the Raffiñans within the period fixed by law. Conejero merely offered a check for P10,000, which was not even legal tender and which the Raffiñans rejected, in lieu of the price of P28,000 recited by the deed of sale. The factual finding of the Court of Appeals to this effect is final and conclusive. Nor were the vendees obligated to accept Conejero's promise to pay the balance by means of a loan to be obtained in futuro from a bank. Bona fide redemption necessarily imports a seasonable and valid tender of the entire repurchase price, and this was not done. There is no cogent reason for requiring the vendee to accept payment by installments from a redemptioner, as it would ultimately result in an indefinite extension of the 30-day redemption period, when the purpose of the law in fixing a short and definite term is clearly to avoid prolonged and anti-economic uncertainty as to ownership of the thing sold (cf. *Torrijos vs. Crisolago, et al.*, G. R. No. L-1773, Sept. 29, 1962).

Petitioners Conejero urge that, under the provisions of the Civil Code of the Philippines, a valid tender of the redemption (or repurchase) price is not required, citing *De la Cruz vs. Marcelino*, 84 Phil. 709, and *Torio vs. Rosario*, 93 Phil. 800. Close scrutiny of these cases reveals that the Supreme Court held therein that a judicial demand, by action filed within the redemption period and accompanied by consignment in Court of the redemption price, can take the place of a personal tender to the vendee of the redemption money under the Civil Code of 1889, because the nine-day redemption period allowed thereunder was so short as to render it impractical that in every case the redemptioner should be required to seek out and offer the redemption price personally to the buyer. Under the present Civil Code, the urgency is greatly lessened by the prolongation of the repurchase period to 30 days, instead of the 9 previously allowed; and the petitioners herein have neither filed suit within the 30-day redemption period nor made consignment of the price. While they received copy of the deed of sale on August 19, 1952, complaint was only filed on October 4, 1952.

It is, likewise, argued that tender of the price is excused because Article 1620 of the new Civil Code allows the redemptioner to pay only a reasonable price if the price of alienation is grossly excessive, and that the reasonableness of the price to be paid can only be determined by the courts. We think that the right of a redemptioner to pay a reasonable price under Article 1620 does not excuse him from the duty to make proper tender of the price that can be honestly deemed reasonable under the circumstances, without prejudice to final arbitration by the courts; nor does it authorize said redemptioner to demand that the vendee accept payment by installments, as petitioners have sought to do. At any rate, the petitioners, in making their offer to redeem, never contested the reasonableness of the price recited in the deed of sale. In fact, they even offered more, and were willing to pay as much as P34,000.

It is not difficult to discern why the redemption price should either be fully offered in legal tender or else validly consigned in court. Only by such means can the buyer become certain that the offer to redeem is one made seriously and in good faith. A buyer can not be expected to entertain an offer of redemption without attendant evidence that the redemptioner can, and is willing to, accomplish the repurchase immediately. A different rule would leave the buyer open to harassment by speculators or crackpots, as well as to unnecessary prolongation of the redemption period, contrary to the policy of the law. While consignment of the tendered price is not always necessary because legal redemption is not made to discharge a pre-existing debt (*Asturias Sugar Central versus Cane Molasses Co.*, 60 Phil. 253), a valid tender is indispensable, for the reasons already stated. Of course,

consignation of the price would remove all controversy as to the petitioner's ability to pay at the proper time.

We find no substantial error in the decision appealed from, and the same is hereby affirmed. Petitioners Conejero shall pay the costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

[1] Par. 7 of the Conejero's amended complaint in the Court of First Instance avers that Torres gave Conejero his copy (not notarized) of the deed of sale (Rec. App. in C.A., annexed to petition for review, p. 69).

RESOLUTION

June 30, 1966

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

Petitioners, Paz Torres and Enrique Conejero, by motion of June 4, 1966, have asked this Court to reconsider and set aside its decision of April 29, 1966, upon various grounds.

1. It is argued that this Court committed error in that it "Considered the 30-day period provided for in Article 1623 of the new Civil Code" as a period of prescription. This assertion is gratuitous and unfounded. Nowhere in its decision has this Court expressed or implied that the loss of petitioners' right of redemption was due to the bar of the Statute of Limitations, or that it was a result of their failure to commence action within the 30-day period. If in page 7 of the main decision reference was made to petitioners' failure to file it was merely to show that, unlike in the cases cited by them (*Cruz vs. Marcelino*, 84 Phil. 709; *Torio vs. Rosario*, 93 Phil. 800), they had failed to take the action therein considered as equivalent to the timely tender of the entire redemption price. This is readily apparent from a reading of paragraph 2 in said page 7 of the decision.

What was repeatedly asserted and ruled in our main decision is that the petitioners' right of redemption was lost because they failed to make a valid tender of the entire redemption money within the period allotted by law; hence, the invoked doctrine in *Sempio vs. del Rosario*, 44 Phil. 1, while correct law, is totally inapplicable. A decent regard for the Court on the part of counsel requires that the latter should not attempt to distort this Court's rulings.

2. While the co-owner's right of legal redemption (*retracto legal de comuneros*) is a substantive right, it is exceptional in nature, limited in its duration and subject to strict compliance with the legal requirements. One of these is that the redemptioner should tender payment of the redemption money within 30 days from written notice of the sale by the co-owner's, and, as we have ruled, the buyer of the co-owner's share can not be compelled, nor is he obligated, to accept payment in installments. Otherwise, the 30-day limitation fixed by law for the exercise of the right to redeem would nullified, or be indefinitely evaded. If a partial payment can bind the purchaser, by what rule can the payment of the balance be determined?

3. Whether or not the petitioners exercised diligence in asserting their willingness to pay is irrelevant. Redemption by the co-owners of the vendor within 30 days is not a matter of intent; but is effectuated only by payment, or valid tender, of the price within said period. How the redemptioners raise the money is immaterial; timeliness and completeness of payment or tender are the things that matter.

4. The offer of the redemption price is not bona fide where it is shown that the offeror could not have made payment in due time if the offer had been accepted. Note that the co-owner's right to redeem, being granted by

law, is binding on the purchaser of the undivided share by operation of law, and the latter's consent or acceptance is not required for the existence of the right of redemption. The only matter to be investigated by the courts, therefore, is the timely of the right, and the only way to exercise it is by a valid payment or tender within the 30 days prefixed by the Civil Code.

Wherefore the motion for reconsideration is denied.

Concepcion, C. J. Barrera, Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Sanchez, JJ., concur

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