

THE MINORS ALBERTO, NENITA, HILLY, CRISTY, AND MARIA SALOME ALL SURNAMED BADILLO, ASSISTED BY THEIR GUARDIAN MODESTA BADILLO, VS. CLARITA FERRER, DEFENDANT, GREGORIO SOROMERO AN...

G.R. No. 51369. July 29, 1987

Ponente: GANCAYCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-51369/>

GANCAYCO, J.:

This case was certified to this Court by the Court of Appeals which found in its Resolution dated August 13, 1979, that the issues raised therein are pure questions of law. The instant case is treated as a petition for review on certiorari.

The facts of this case as found by the Court of Appeals are as follows:

"xxx Macario Badillo died intestate on February 4, 1966, survived by his widow, Clarita Ferrer, and five minor children: Alberto 16, Nenita 14, Hilly 12, Cristy 9, and Maria Salome 5. He left a parcel of registered land of 77 square meters in Lumban, Laguna, with a house erected thereon, valued at P7,500.00, (the "PROPERTY", for short). Hence, each of the five minor plaintiffs had inherited a 1/12 share of the P7,500.00, or P625.00 each, which is less than the P2,000.00 mentioned in Article 320 of the Civil Code.

"On January 18, 1967, the surviving widow, in her own behalf and as natural guardian of the minor plaintiffs, executed a Deed of Extrajudicial Partition and Sale of the PROPERTY through which the PROPERTY was sold to defendants-appellants, the spouses Gregorio Soromero and Eleuteria Rana. The Register of Deeds at Sta. Cruz, Laguna, extended recognition to the validity of the Deed of Extrajudicial Partition and Sale, recorded the same, and issued a new transfer certificate of title to defendants-appellants. x x x.

On November 11, 1968, Modesta Badillo, a sister of Macario Badillo, was able to obtain guardianship over the persons and properties of the minor plaintiffs, without personal notice to their mother, who was alleged "could not be located inspite of the efforts exerted" (ROA, p. 26).

"On July 23, 1970, their guardian caused the minor plaintiffs to file a complaint in the case below for the annulment of the sale of their participation in the PROPERTY to defendants-appellants and, conceding the validity of the sale of the widow's participation in the PROPERTY, they asked that, as co-owners, they be allowed to exercise the right of legal redemption.

"The lower court defined the issues in the case below as follows:

'(1) Was the sale of the shares of the plaintiffs in the ownership of the land in question which was made by their mother, defendant Clarita Ferrer Badilla, in favor of the defendant spouses Gregorio Soromero and Eleuteria Rana as evidenced by the document marked as Exhibit "A" for the plaintiffs and Exhibit "2" for the defendants, valid and binding upon the plaintiffs?

(2) May the plaintiffs, as co-owners of the property in question, still exercise their right of redemption under Art.

1620 and pursuant to Art. 1623 of the Civil Code; and if so, for how much?'

"The lower court, invoking the Nario case (Nario vs. Philippine American Life Insurance Co., 20 SCRA 434), promulgated the appealed judgment annulling the sale to defendants-appellants of the minor plaintiffs' participation in the PROPERTY, and allowing them to redeem the sold participation of their mother." [1]

In this appeal, the defendants-appellants assign the following errors:

I

THE COURT ERRED IN FINDING THAT THE PERIOD OF THIRTY (30) DAYS PROVIDED FOR BY ARTICLE 1623 OF THE NEW CIVIL CODE FOR PLAINTIFFS TO REDEEM THE SHARE OF THEIR MOTHER IN THE PROPERTY SUBJECT OF THEIR CO-OWNERSHIP SOLD BY THE LATTER TO DEFENDANTS HAS NOT YET ELAPSED.

2

THE COURT ERRED IN DECLARING THE SALE BY CLARITA FERRER BADILLO OF THE 5/12 SHARE OF HIS CHILDREN ON THE PROPERTY INVOLVED TO DEFENDANTS AS NULL AND VOID AND RELATIVE THERETO THE COURT CONSEQUENTLY ERRED IN ITS FAILURE TO ORDER PLAINTIFFS MINORS TO RETURN TO DEFENDANTS THE PURCHASE PRICE AS WELL AS THE VALUE OF THE IMPROVEMENTS MADE BY DEFENDANTS ON THE PROPERTY.

3

THE COURT ERRED IN ORDERING THE DEFENDANTS TO RE-SELL TO PLAINTIFFS THE REMAINING 7/12 PORTION OF THE PROPERTY IN QUESTION IN THE AMOUNT OF P4,375.00. [2]

The Statutory provision involved in the first error assigned is Article 1623 of the New Civil Code, which is hereunder reproduced, thus:

"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 adjoining owners."

Under their first assignment of error, the appellants advance the view that "the requisite notice in writing provided for by Article 1623 of the New Civil Code was already received by the minors-plaintiffs thru their then legal guardian, Clarita Ferrer Badillo, their mother, on the date the deed of extra-judicial partition and sale was executed on January 18, 1967. And the thirty-day period of redemption must be reckoned from this date." [3] Stated differently, under Article 320 of the New Civil Code, the right granted to Clarita Ferrer Badillo to administer her children's property if the same is less than P2,000.00 includes the right to receive for her minor children such notice in writing. When she received her copy of the Deed of Extrajudicial Partition and Sale, Clarita Ferrer Badillo in effect received a notice in writing of the said sale in behalf of her minor children.

This argument is meritorious.

Articles 320 and 326 of the New Civil Code state that:

"ART. 320. The father, or in his absence the mother, is the legal administrator of the property pertaining to the child under parental authority. If the property is worth more than two thousand pesos, the father or mother shall give a bond subject to the approval of the Court of First Instance.

"ART. 326. When the property of the child is worth more than two thousand pesos, the father or mother shall be considered a guardian of the child's property, subject to the duties and obligations of guardians under the Rules of Court."

In other words, the father, or in his absence the mother, is considered the legal administrator of the property pertaining to his child under parental authority without need of giving a bond in case the amount of his child's property does not exceed Two Thousand Pesos.

Rule 93, Section 7, of the Revised Rules of Court goes further by automatically designating the parent as the legal guardian of the child without need of any judicial appointment in case the latter's property does not exceed Two Thousand Pesos. It reads, thus:

"SEC. 7. Parents as guardians. - When the property of the child under parental authority is worth two thousand pesos or less, the father or the mother, without the necessity of court appointment, shall be his legal guardian. When the property of the child is worth more than two thousand pesos, the father or the mother shall be considered guardian of the child's property, with the duties and obligations of guardians under these rules, and shall file the petition required by section 2 hereof. For good reasons the court may, however, appoint another suitable person."

Our standing jurisprudence reveals that there is a case which is applicable to the case at bar. This case involved an interpretation of Article 1524 of the Old Civil Code, the statutory provision from which Article 1623 of the New Civil Code originated and the one which the latter amended. The two articles are basically the same except that Article 1623 mandates a longer period for redemption and limits the manner of transmitting the notice of the sale of the property co-owned to one in writing served by the vendor.

The case is Villazor vs. Medel, et al.[4]

In this case, the co-owner plaintiff, upon reaching the age of majority, sought to redeem a portion of a large tract of land which was sold to the defendant while the former was still a minor. The plaintiff, during his minority, became a co-owner of an undivided property which he, together with his cousins, acquired by donation from his grandmother. A legal guardian was duly appointed by the court to represent the minor co-owners. This legal guardian later sold, with the necessary permission of the court, the shares of three co-owners to the defendant. When the plaintiff reached the age of majority, he wanted to redeem the said shares.

This Court ruled in favor of the defendant, holding that:

"The law in prescribing certain contingencies as the starting point from which the nine-day period should be counted, is to be presumed to exclude all others. *Exclusio unius est exclusio alterius*. The starting point is registration or, in the absence of registration, knowledge of the conveyance by the co-owners. It is logical to assume that if minority had been contemplated, the law would have so expressly stated. This is specially true in a code which, unlike an ordinary statute, is framed with meticulous care and thorough reflection. The role of minors in cases of legal redemption is too conspicuous and perceptible to have been overlooked in the framing of article 1524. The onerous position of the purchaser and considerations of public interest, we believe, forbade liberality as to time in favor of redemptioners; hence the limitation of the causes of extension to those factors (actual or constructive notice) without which the exercise of the right of redemption would not be possible. The shortness of the period fixed in the above article is itself a safe index, in our opinion, of its peremptoriness and inflexibility."

"xxx The present appellant not only had such a guardian but it was this very guardian, Jose C. Villazor, who, as guardian of plaintiff's cousins and former co-owners, sold the lots in question to the defendant-appellee. This guardian not only could have repurchased those lots for the plaintiff within nine days but could have sold them, with the court's authority, directly to the plaintiff himself instead of to Medalla."[5]

In the decision, this Court frowned against a liberal interpretation of the codal provision prescribing the period for legal redemption, hence, the following disquisition, to wit:

xxx legal redemption is in the nature of a mere privilege created by law partly for reasons of public policy and partly for the benefit and convenience of the redemptioner, to afford him a way out of what might be a disagreeable or inconvenient association into which he has been thrust."

"xxx The right of legal redemption is a pure creature of the law regulated by law, and works only one way - in favor of the redemptioner. Not having parted with anything, the legal redemptioner can compel the purchaser to sell but can not be compelled to buy.

"We do not believe that the framers of the Civil Code ever intended to countenance a situation so unjust to one of the parties and prejudicial to social interest. The construction of article 1524 which the plaintiff offers would keep the property in a state of indivision even if one of the co-owners wanted to separate. This is contrary to the express policy of the law that 'No co-owner shall be obliged to remain a party to the community, but each may, at any time, demand partition of the thing held in common.' (Article 400, Civil Code.) It would be extremely unfair to the purchaser and injurious to the public welfare to keep in a state of suspense, for possibly as long as 20 years or more, what his co-owner might do when he becomes of age. While the uncertainty continued the purchaser could not make any improvement on the property without running the risk of losing his investments and the fruits of his labor."[6]

The wisdom that can easily be formulated in reconciling the laws and the case discussed above is that the period fixed for legal redemption in accordance with Article 1623 (then Article 1524) of the New Civil Code will run against a minor co-owner duly represented by a judicially appointed guardian, provided that said guardian is served with the necessary written notice by the vendor. Corollary to this, the period fixed for legal redemption will also run against a minor co-owner whose property is valued no more than Two Thousand Pesos and who is merely represented by his father or mother with no judicial appointment as a guardian because according to Rule 93, Section 7, of the Revised Rules of Court, the parent in this situation is automatically the child's legal guardian. Of course, the parent-guardian must first be served with a notice in writing of the sale of an undivided portion of the property by the vendor in order that the period for redemption may begin to accrue.

In the case at bar, the value of the property of each appellee minor does not exceed Two Thousand Pesos. The Court of Appeals found that each of them inherited only an undivided portion worth P625.00.[7] Therefore, after the minors' father died, their mother, Clarita Ferrer Badillo, automatically became their legal guardian. As such, she acquired the plenary powers of a judicial guardian except that power to alienate or encumber her children's property without judicial authorization.[8]

When Clarita Ferrer Badillo signed and received on January 18, 1967, her copy of the Deed of Extrajudicial Partition and Sale, the document evidencing the transfer of the property in question to the appellants, she also in effect received the notice in writing required by Article 1623 in behalf of her children. This manner of receiving a written notice is specifically sanctioned by the case of Conejero, et al. vs. Court of Appeals, et al.[9] Thus, in this case, the period of redemption began to toll from the time of that receipt.

On the other hand, the judicial guardian of the appellee minors, Modesta Badillo, was only appointed as such on November 11, 1968. She thereafter manifested her desire to redeem the property from the appellants, formalizing such intention in the complaint that was finally filed for this case on July 23, 1970.

Since the required written notice was served on January 18, 1967 and the offer to redeem was only made after November 11, 1968, the period for legal redemption had already expired and the appellants cannot now be ordered to reconvey to the appellees that portion of the undivided property which originally belonged to Clarita Ferrer Badillo.

Under the second assignment of error, the appellants contend that the Deed of Extrajudicial Partition and Sale, in so far as it sold to them the appellee minors' share of 5/12, is a voidable contract pursuant to Article 1390 of the New Civil Code. They then quoted verbatim the text of the said article without identifying the particular portion of that provision which directly supports their contention.

According to the appellants, in case a voidable contract is annulled, Article 1398 requires the restitution by the contracting parties to each other of the things received by them under the contract. The appellants, however, concede that by express mandate of Article 1399, full restitution cannot be ordered from the minors involved in the contract. Said minors can only be required to restore partially, only to the extent of the benefits they received by virtue of the questioned contract.

This contention is untenable.

The Deed of Extrajudicial Partition and Sale is not a voidable or an annulable contract under Article 1390 of the New Civil Code. Article 1390 renders a contract voidable if one of the parties is incapable of giving consent to the contract or if the contracting party's consent is vitiated by mistake, violence, intimidation, undue influence or fraud. In this case, however, the appellee minors are not even parties to the contract involved. Their names were merely dragged into the contract by their mother who claimed a right to represent them, purportedly in accordance with Article 320 of the New Civil Code.[10]

The Deed of Extrajudicial Partition and Sale is an unenforceable or, more specifically, an unauthorized contract under Articles 1403(1) and 1317 of the New Civil Code. These provisions state that:

"ART. 1403. The following contracts are unenforceable, unless they are ratified:

"(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers; xxx"

"ART. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

"A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party."

Clearly, Clarita Ferrer Badillo has no authority or has acted beyond her powers in conveying to the appellants that 5/12 undivided share of her minor children in the property involved in this case. The powers given to her by the laws as the natural guardian covers only matters of administration[11] and cannot include the power of disposition.[12] She should have first secured the permission of the court before she alienated that portion of the property in question belonging to her minor children.[13]

The appellee minors never ratified this Deed of Extrajudicial Partition and Sale. In fact, they questioned its validity as to them. Hence, the contract remained unenforceable or unauthorized. No restitution may be ordered from the appellee minors either as to that portion of the purchase price which pertains to their share in the property or at least as to that portion which benefited them because the law does not sanction any.

The third error assigned need not be discussed further because Our pronouncement on the first assignment of error has rendered it academic. Suffice it to state that since the 30-day period for redemption had already lapsed, the appellants cannot be ordered to re-sell to the appellees the remaining 7/12 portion of the property in question.

In view of the foregoing, the appellants are hereby ordered to restore to the appellees the full ownership and possession of the latter's 5/12 share in the undivided property by executing the proper deed of reconveyance. The

appellants' ownership over the remaining 7/12 share in the undivided property is hereby confirmed.

WHEREFORE, the decision under review is hereby modified accordingly and appellants are directed to deliver possession of above appellees' share, with no pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Paras, JJ., concur.

[1] Rollo, pp. 57-58, CA Resolution.

[2] Brief for the defendants-appellants, pp. 1-2.

[3] Ibid., p. 7.

[4] No. C.A.-8677, September 29, 1948, 81 Phil. 546.

[5] Ibid, at 550-551, 553.

[6] Ibid, at 550 and 552.

[7] Rollo, p. 57, CA Resolution.

[8] Nario vs. Philippine American Life Ins. Co., L-22796, June 26, 1967.

[9] G.R. No. L-21812, April 29, 1966, 16 SCRA 775.

[10] Deed of Extrajudicial Partition & Sale, p. 14, 19, Record on Appeal.

[11] Art. 320, New Civil Code.

[12] Rule 93, Sec. 7, Revised Rules of Court.

[13] Nario vs. Phil. American Life Ins. Co., supra.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.