

VICENTE DEL ROSARIO, PETITIONER, VS. SPOUSES JULIO BANSIL AND JOSEFINA TAMAYO AND ALEJANDRA SANCHEZ, RESPONDENTS.*G.R. No. 51655. November 29, 1989*

Ponente: PARAS, J.

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This case, filed with the Court of Appeals but forwarded to this Court for disposition since it involves purely questions of law, is an appeal from the September 5, 1977 decision of the then Court of First Instance of Pampanga, Branch VI, presided over by Hon. Mariano Castaneda, Jr. dismissing the complaint of herein appellant.

Herein appellant Vicente del Rosario and appellee Julio Bansil" are uncle and nephew, and two (2) of the heirs of Pelagia Sanchez. On November 28, 1973, the heirs of Pelagia Sanchez executed an extrajudicial partition, and pursuant to the same, appellant was given Lot No. 2854-A, now registered in his name and that of his spouse Emiliana Gonzales under Transfer Certificate of Title No. 125739-R of the Register of Deeds of Pampanga. On the other hand, appellee Julio Bansil received as his share an adjacent lot, Lot No. 2854-B, which was registered in his name and that of his spouse Josefina Tamayo under Transfer Certificate of Title No. 125740-R of the Register of Deeds of Pampanga. On May 10, 1976, the said share of appellee Julio Bansil was sold to herein other appellee, Alejandra Sanchez, for P1,500.00 without first being offered to appellant Vicente del Rosario as an adjoining owner. Said appellant, claiming the right of preemption, on May 27, 1976, filed with the then Court of First Instance of Pampanga, Branch VI, a complaint, praying for the annulment of the sale and for the reconveyance of the said lot in his favor (Record on Appeal, pp. 4-10). On June 11, 1976, he deposited with the Clerk of Court the sum of P1,500.00 so that his right of preemption can be upheld (Record on, pp. 11-12).

On July 13, 1976, the appellees filed their Answer with Counterclaim (Record on Appeal, pp. 12-16) controverting the material allegations of the complaint and by way of special and affirmative defenses alleged that the complaint states no valid cause of action as there is no law that grant such pre-emptive rights to adjoining owners with respect to the sale of adjoining properties. Appellees explained that despite the absence of legal obligation on their part, out of respect to appellant who is their uncle, they did actually offer to sell said property to appellant and to other relatives who jointly own another adjoining property of about 86 square meters, prior to its sale to Alejandra Sanchez, but they refused to buy the same because of financial incapacity. On the other hand, appellant's claim that he sincerely wanted to buy the said property is belied by the fact that appellant, thru his wife Emiliana Gonzales, had consistently offered and appealed to appellee Alejandra Sanchez, before and after the latter bought the property, to likewise buy appellant's lot of about 86 square meters. The only reason why appellee Alejandra Sanchez failed to buy the properties offered was due to disagreement over the price. Said failure to sell was surmised to have brought great disenchantment and ill will to appellant which eventually caused the filing of the instant complaint. At any rate, as additional proof appellees alleged that a signboard "House and Lot for Sale" was posted in appellant's premises for several months prior to the filing of the complaint, to which several prospective buyers responded. Appellees argued further that under appellant's own unfounded theory that

adjoining property owners have legal pre-emptive rights in the sale of adjoining properties, Alejandra Sanchez must certainly have as much right and should be preferred, being an adjoining property owner herself of about 300 square meters, as compared to only about 86 square meters of the adjoining property belonging to appellant. (Record on Appeal, p. 32).

On July 28, 1976, appellant filed his Reply with Answer to Counterclaim (Record on Appeal, pp. 17-21), to which appellees filed their Rejoinder on September 1, 1976 (Record on Appeal, pp. 21-24).

On October 20, 1976, the parties filed a Joint Petition for Judgment on the Pleadings (Record on Appeal, p. 25) on the ground that the principal issue involved therein being a question of law, that is, the application or non-application of either or both Articles 1622 and 1623 of the New Civil Code. The same, however, was denied by the trial court in an order dated November 15, 1976 (Record on Appeal, p. 26).

After the hearing on March 28, 1977, wherein the lawyers of the parties jointly requested the reconsideration of the order denying the joint motion for judgment on the pleadings, the trial court, in a decision dated September 5, 1977 (Record on Appeal, pp. 30-36), dismissed the complaint —

"IN VIEW OF THE FOREGOING, judgment is rendered dismissing the plaintiffs complaint dated May 27, 1976 without pronouncement as to cost."

Not satisfied with the decision, appellant filed an appeal with the Court of Appeals, docketed therein as CA-G.R. No. 63585-R.

After the parties have submitted their respective briefs, appellant on June 5, 1978 (Rollo, p. 15) and appellees on October 19, 1978 (Rollo, p. 23), the case was considered submitted for decision (Rollo, p. 27); and in a resolution promulgated on September 25, 1979, the Court of Appeals[*] ordered its Clerk of Court to forward to this Court the whole record of the case for final determination (Rollo, pp. 28-29).

In the resolution dated October 15, 1979 of the First Division of this Court, this case was ordered docketed and declared submitted for decision (Rollo, p. 31).

Appellant raised two (2) assignments of error, to wit:

I

THE COURT BELOW ERRED IN APPLYING ART. 1622 OF THE NEW CIVIL CODE INSTEAD OF ART. 1623 OF THE SAME CODE WHICH IS APPLICABLE IN THE CASE AT BAR.

II

THE COURT BELOW ERRED IN NOT DECLARING TRANSFER CERTIFICATE OF TITLE NO. 130540-R ISSUED BY THE REGISTER OF DEEDS OF PAMPANGA IN FAVOR OF DEFENDANT ALEJANDRA SANCHEZ NULL AND VOID AFTER IT WAS SHOWN THAT THE REQUIREMENT PROVIDED UNDER THE PROVISION OF ART. 1623 OF THE NEW CIVIL CODE WAS NOT COMPLIED.

The instant petition is devoid of merit.

Stripped of bare essentials, the issue in this case is whether or not petitioner is entitled to the right of preemption or redemption under Article 1622 of the Civil Code as an adjoining owner or under Article 1623 of the same code as co-owner.

As an adjoining owner, this Court has already ruled that an owner of an urban land has no right of preemption or

redemption over the adjoining portion of his land where he has not alleged in his complaint and has not proved that said portion is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation (*De la Cruz v. Cruz*, 32 SCRA 308 [1970]).

As correctly found by the trial court, the two requisites as enumerated above do not obtain in the case at bar as to warrant the exercise of the right of preemption or redemption by the appellant. As pointed out, the 86 square meters lot in question cannot be considered so small for practical purposes as a residential house can be constructed thereon in the same manner as the residential houses built on two equally sized lots situated on both sides of the litigated property, one of which belongs to petitioner himself. Likewise, true is the fact that the disputed lot had not been bought for speculation, the same having been inherited by appellee Julio Bansil from his grandmother (Record on Appeal, pp. 34-35).

Neither can appellant claim the right of preemption or redemption as co-owner after the inherited property has been subdivided and distributed among co-owners, for then the community has terminated and there is no reason to sustain any right of preemption or redemption (*Caro v. Court of Appeals*, 113 SCRA 17 [1982]; *Caram et al. v. Court of Appeals, et al.*, 101 Phil. 315 [1957]).

In the case at bar, not only was the inherited property partitioned but actually subdivided into several parcels which were assigned by lots to the heirs and Transfer Certificates of Titles have already been issued in their respective names.

PREMISES CONSIDERED, the instant appeal (petition) is hereby DISMISSED.

SO ORDERED.

Padilla, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, J. (Chairman), on leave.

[1] Special Fifth Division; penned by then Associate Justice Emilio A. Gancayco and concurred to by Associate Justices Milagros A. German and Ambrosio M. Germaldez.

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