

RESTITUTA, JESUS, ISIDRO AND JOEL, ALL SURNAMED HULGANZA AND MATILDE COLLAMAR, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND BASILIA GEMARINO, RESPONDENTS.

G.R. No. 56196. January 07, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking to set aside: (a) the judgment of reversal of the respondent Court of Appeals dated November 25, 1980 in CA-G.R. No. 58189-R, entitled Restituta, Isidro, Jesus and Joel all surnamed Hulganza and Matilde Collamar, Plaintiffs-Appellees, versus Basilia Gemarino, Defendant-Appellant; and (b) respondent Court's resolution dated January 14, 1981 denying petitioners' motion for reconsideration of said judgment. (Original Petition, pp. 51-67, Rollo).

The dispositive portion of the decision rendered by the lower court reads as follows:

"WHEREFORE, judgment is hereby rendered as follows:

- (1) declaring that the plaintiffs have the legal right to exercise the right of redemption over the lot in question;
- (2) ordering the defendant to allow the plaintiffs to exercise said right of legal redemption at the original purchase price of P10,000.00, which is the principal obligation, with accumulated interest, at the legal rate, from the date of the execution of the deed of sale up to and until the time of repurchase; and
- (3) to pay the costs.

No award for attorney's fees is hereby made for failure of the plaintiffs to adduce evidence on this matter.

SO ORDERED."

(Record on Appeal, p. 38).

Aforementioned judgment was reversed by the Court of Appeals, in above-cited decision dated November 25, 1980, the dispositive portion of which reads:

"WHEREFORE, the decision appealed from is hereby reversed and another one entered dismissing the complaint as well as the counterclaim. No pronouncement is made as to costs."

SO ORDERED."

(Rollo, p. 33, Annex "B" to Petition).

Petitioners (plaintiff therein filed with the Court of First Instance of Negros Occidental on May 24, 1973 Civil Case No. 925 entitled "Hulganza, et al. v. Gemarino", to: (1) recover from private respondent (defendant therein) the sum of P3,000.00 representing the unpaid balance of Lot. No. 161, Pls. 256; (2) compel private respondent to allow petitioners to redeem said parcel of land under Sec. 119 of Commonwealth Act 141 (Public Land Act); and (3) compel respondent to pay actual damages in the amount of P2,000.00.

Private respondent, in her answer, denied that said balance is due from her and countered that the period of legal redemption had already lapsed. She added that the instant action was filed as a business speculation, intended merely to harass her.

The factual background of this case as admitted by both parties at the pre-trial conducted on May 24, 1973, is as follows:

Lot 161, Pls. 256, the subject matter of the present case, is situated in Barrio Mina-otoc, Calatrava, Negros Occidental and is registered in the name of spouses Nicomedez Hulganza and Matilde Collamar covered by Original Certificate of Title No. P-1672 issued pursuant to a free patent. Before Nicomedez Hulganza died leaving as his heirs herein petitioners, namely: his wife, Matilde Collamar, Restituto Hulganza, Joel Hulganza, and Isidro Hulganza, he and his wife Matilde had sold the said property on April 21, 1971 in favor of the defendant Basilia Gemarino in the amount of P10,000.00 and by virtue of the sale the original title was cancelled and a new one issued (T-5082) in the name of private respondent Basilia Gemarino. Since that date, up to the present private respondent has been in possession of the property peacefully, openly or publicly, adversely and without interruption in the concept of owner.

But on April 13, 1972, petitioners filed a complaint in court seeking to repurchase the property from said respondent under the provision of Section 119 of Public Land Act 141 as amended. (Record on Appeal, pp. 25-26, Rollo p. 87).

After pre-trial, the plaintiffs (herein petitioners) narrowed down their stand by withdrawing their other causes of action but asserted their rights under their second cause of action, maintaining that they have the right of legal redemption of the property under Sec. 119 of Act 141 (Public Land Act). In their memorandum, they agreed not only to support the foregoing position but also on the fact that they are not obligated to pay for the improvements introduced by the vendee.

On the other hand defendant (herein private respondent) also narrowed down her stand by reiterating the grounds alleged as special defenses in her answer, such as: (1) that the second cause of action does not state a cause of action; (2) that the period of redemption had already lapsed and (3) that should the Court hold that the right of redemption still exists, she should be paid the cost of improvements introduced on the land, estimated to be valued at P25,000.00. However, she prays that the first ground be treated as a motion to dismiss. Private respondent concentrated her memorandum only on the first ground. (ibid pp. 28-29).

The trial court in its Order dated February 1, 1974 denied the above-mentioned first ground which was considered as a motion to dismiss. (ibid p. 32).

In its decision dated February 25, 1975, the same court rendered judgment in favor of the plaintiffs (herein petitioners) declaring that they have the legal right to exercise the right of redemption and ordering among other things, the defendant (herein private respondent) to allow the former to exercise said right at the original purchase price of P10,000.00 with interest.

As above-stated, on appeal, the Court of Appeals reversed the decision of the lower court.

Hence, this petition.

In the resolution of July 6, 1981 of the Second Division of this Court, respondent was required to comment (Rollo, p. 89). Thereafter, counsel for private respondent having failed to file comment within the required period was required in the resolution of March 3, 1982 to explain such failure and to file the required comment, both of which were complied with on May 4, 1982 (Rollo, p. 91) and on May 20, 1982 (Rollo, p. 94), respectively.

Petitioners were required to file Reply to aforesaid comment in the resolution of June 14, 1982 (Rollo, p. 99) which was complied with on August 16, 1982 (Rollo, p. 100). The Court gave due course to the petition in the resolution of September 1982 (Rollo, p. 104). Petitioners filed their brief on January 3, 1983 (Rollo, p. 110) while private respondent filed her brief on December 1, 1983 and the case was considered submitted for deliberation on June 20, 1984 (Rollo, p. 143).

There is merit in this petition.

The only issue raised herein, is whether or not it is necessary that the formal offer to redeem the land in question be accompanied by a bona fide tender of the redemption price, or the repurchase price be consigned in Court, within the period of redemption even if the right is exercised through the filing of a judicial action (Brief for Petitioners; p. 5; Rollo p. 110).

Respondent Court of Appeals made the following findings:

"In the instant case it bears repeating that plaintiffs-appellees failed to consign the amount due at the time they filed the complaint, four days before the lapse of the five-year period, and in fact it was only on the date of the trial more than three years later that the lower court was informed of the alleged existence of the money available in the hands of Isidro Hulganza who was then in Mindanao.

"This court is, therefore, of the belief that the act of merely filing the complaint on the part of the plaintiffs-appellees without consignment of the proper amount due within the period prescribed was an ineffective and incomplete redemption and to say otherwise would in effect extend the period of redemption beyond that provided by law."

(Brief for Petitioners, p. 3, Rollo, p. 110).

This issue has already been laid to rest in successive decisions of the Supreme Court which ruled:

"The formal offer to redeem, accompanied by a bona fide tender of the redemption price, within the period of redemption prescribed by law, is only essential to preserve the right of redemption for future enforcement beyond such period of redemption and within the period prescribed for the action by the statute of limitations. Where, as in the instant case, the right to redeem is exercised thru the filing of judicial action within the period of redemption prescribed by the law, the formal offer to redeem, accompanied by a bona fide tender of the redemption price, might be proper, but it is not essential. The filing of the action itself, within the period of redemption, is equivalent to a formal offer to redeem. Any other construction, particularly with reference to redemption of homesteads conveyed to third parties, would work hardships on the poor homesteaders who cannot be expected to know the subtleties of the law, and would defeat the evident purpose of the Public Land Law — 'to give the homesteader or patentee every chance to preserve for himself and his family the land that the state granted him as a reward for his labor in cleaning and cultivating it.' (Avendaño vs. Hao Su Ton, 47 Off. Gaz., 357; Pascua vs. Talens, 45 Off. Gaz., Supp. No. 9, 413.)" *Reveros v. Abel, et al.*, 48 Off. Gaz., 5318-5319 [1952]; recently reiterated in *Tolentino v. Court of Appeals*, 106 SCRA 526 [1981]).

In view of the foregoing consideration, it appears evident that the bona fide tender of the redemption price or its equivalent — consignment of said price in court is not essential or necessary in the case at bar where the filing of the action itself is equivalent to a formal offer to redeem.

PREMISES CONSIDERED, the assailed decision of the Court of Appeals is hereby **REVERSED** and **SET ASIDE** and the decision of the trial court dated February 25, 1975 is hereby **AFFIRMED** or **REINSTATED**.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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