

MARINA Z. REYES, AUGUSTO M. ZABALLERO AND SOCORRO Z. FRANCISCO, PETITIONERS, VS. THE HONORABLE ALFREDO B. CONCEPCION, PRESIDING JUDGE, CFI OF CAVITE, TAGAYTAY, BR. IV, SOCORRO M...

G.R. No. 56550. October 01, 1990

Ponente: CORTES, J.

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CORTES, J.:

On March 13, 1980, petitioners filed with the CFI a complaint for injunction and damages, docketed as Civil Case No. TG-572, seeking to enjoin private respondents Socorro Marquez Vda. De Zaballero, Eugenia Z. Luna and Leonardo M. Zaballero from selling to a third party their pro-indiviso shares as co-owners in eight parcels of registered land (covered by TCT Nos. A-1316 to A-1322) located in the province of Cavite, with an aggregate area of about 96 hectares. Petitioner claimed that under Article 1620 of the new Civil Code, they, as co-owners, had a preferential right to purchase these shares from private respondents for a reasonable price.

On March 17, 1980, respondent trial judge denied the ex parte application for a writ of preliminary injunction, on the ground that petitioners' registered notice of lis pendens was ample protection of their rights.

On April 24, 1980, private respondents received the summons and copies of the complaint. Private respondents then filed their answer with counterclaim, praying for the partition of the subject properties. Private respondent Elena Fronda Zaballero filed a motion for intervention dated April 29, 1980, adopting therein her co-respondents answer with counterclaim.

At the pre-trial hearing, the parties agreed on the following stipulation of facts:

* * *

1. That the plaintiffs, the defendants and the intervenor are the pro-indiviso co-owners of the properties cited and described in the complaint;
2. That six and nine tenth (6-9/10) hectares of the land covered by TCT No. T-1319; approximately twelve (12) hectares of that covered by TCT No. T-1320; and the entire parcel of covered by TCT No. T-1321, are subject of expropriation proceedings instituted by the National Housing Authority (NHA) now pending before this Court in Civil Case Nos. TG-392, TG-396 and TG-417;
3. That based on the evidence presented by the herein parties in the aforecited expropriation cases, the current valuation of the land and the improvements thereon is at P95,132.00 per hectare;
4. That on 16 April 1980, the plaintiffs received a written notice from the defendants and the intervenor that the VOLCANO SECURITIES TRADERS AND AGRI-BUSINESS CORPORATION had offered to buy the latter's share in the properties listed in the complaint subject to the following terms:

"1. The selling price shall be net at TWELVE & 50/100 (P12.50) PESOS per square meter, or a total price of

NINE MILLION (P9,000,000.00) PESOS for a total area of SEVENTY TWO (72) HECTARES ONLY;

“2. A downpayment equivalent to THIRTY (30%) PERCENT of the selling price, or a minimum downpayment of TWO MILLION SEVEN HUNDRED THOUSAND (P2,700,000.00) PESOS;

“3. The balance of the purchase price to be payable within THREE (3) YEARS from the date of downpayment in THREE (3) EQUAL ANNUAL PAYMENTS with interest at the legal rate prevailing at the time of payment;

“4. The balance shall be covered by a BANK GUARANTEE of payments and shall not be governed by Art. 1250 of the Civil Code.”

(Cf. Annexes 1, 2 and 3, Answer)

5. That in said letters (Annexes 1, 2 and 3, Answer), the plaintiffs were requested:

- a) To exercise their pre-emptive right to purchase defendants’ and intervenor’s shares under the above-quoted terms; or
- b) To agree to a physical partition of the properties; or
- c) To sell their shares, jointly with the defendants and the intervenor, to the VOLCANO SECURITIES TRADERS AND AGRI-BUSINESS CORPORATION at the price and under the terms aforequoted.

6. That the VOLCANO SECURITIES TRADERS AND AGRI-BUSINESS CORPORATION is ready, willing and able to purchase not only the aliquot shares of the defendants and the intervenor, but also that of the plaintiffs, in and to all the properties subject of this case, for and in consideration of the net amount of TWELVE and 50/100 (P12.50) PESOS per square meter and under the afore-quoted terms;

* * *

[Annex “C” of the Petition, pp. 1-2; Rollo, pp. 43-44.]

The parties laid down their respective positions, as follows:

PLAINTIFFS

- 1. That the subject properties are incapable of physical partition;
- 2. That the price of P12.50 per square meter is grossly excessive;
- 3. That they are willing to exercise their pre-emptive right for an amount of not more that P95,132.00 per hectare, which is the fair and reasonable value of said properties;
- 4. That the statutory period for exercising their pre-emptive right was suspended upon the filing of the complaint.

DEFENDANTS AND INTERVENOR

- 1. That the reasonable price of the subject properties is P12.50 per square meter;
- 2. That plaintiffs’ right of legal pre-emption had lapsed upon their failure to exercise the same within the period prescribed in Art. 1623 of the Civil Code of the Philippines;
- 3. That, assuming the soundness of plaintiffs’ claim that the price of P12.50 per square meter is grossly excessive, it would be to the best interest of the plaintiffs to sell their shares to the VOLCANO SECURITIES TRADERS AND AGRI-BUSINESS CORPORATION, whose sincerity, capacity and good faith is beyond

question, as the same was admitted by the parties herein;

4. That the subject properties consisting of approximately 95 hectares may be physically partitioned without difficulty in the manner suggested by them to plaintiffs, and as graphically represented in the subdivision plan, which will be furnished in due course to plaintiffs' counsel.

[Annex "C" of the Petition, pp. 2-3; Rollo, pp. 44-45.]

Based on the foregoing, respondent trial judge rendered a pre-trial order dated July 9, 1980 granting petitioners a period of ten days from receipt of the subdivision plan to be prepared by a competent geodetic engineer within which to express their approval or disapproval of the said plan, or to submit within the same period, if they so desire, an alternative subdivision plan.

On July 16, 1980, counsel for private respondents sent to the counsel for petitioners a letter enclosed with a subdivision plan.

On August 4, 1980, petitioners filed their comment to the pre-trial order, contending that the question of reasonable value of the subject properties remains a contentious issue of fact ascertainable only after a full trial. Petitioners likewise insisted on their pre-emptive right to purchase private respondents' shares in the co-ownership after due determination of the reasonable price thereof.

Thereafter, counsel for private respondents sent the counsel for petitioners another subdivision plan prepared by a geodetic engineer. Still, no definite communication was sent by petitioners signifying their approval or disapproval to the subdivision plans.

In order to settle once and for all the controversy between the parties, private respondents filed a motion dated December 16, 1980 requesting that petitioners be required to formally specify which of the two options under Article 498 of the New Civil Code they wished to avail of that petitioners' shares in the subject properties be sold to private respondents, at the rate of P12.50 per square meter; or that the subject properties be sold to a third party, VOLCANO LAKEVIEW RESORTS, INC. (claimed to have been erroneously referred to in the pre-trial as VOLCANO SECURITIES TRADERS AND AGRI-BUSINESS CORPORATION) and its proceeds thereof distributed among the parties.

Finding merit in the private respondents' request, and for the purpose of determining the applicability of Article 498 of the New Civil Code, respondent trial judge issued an order dated February 4, 1981 which directed the parties to signify whether or not they agree to the scheme of allotting the subject properties to one of the co-owners, at the rate of P12.50 per square meter, or whether or not they know of a third party who is able and willing to buy the subject properties at terms and conditions more favorable than that offered by VOLCANO LAKEVIEW RESORTS, INC. The order contained a series of questions addressed to all the parties, who were thereupon required to submit their answers thereto.

Private respondents filed a "Constancia" expressing that they were willing to allot their shares in the subject properties to Socorro Marquez Vda. de Zaballero, at the rate of P12.50 per square meter, and that they did not know of any other party who was willing and able to purchase the subject properties under more favorable conditions than that offered by VOLCANO LAKEVIEW RESORTS, INC.

However, instead of submitting their answers to the queries posed by respondent trial judge, petitioners filed a motion for clarification as to the true identity of the third party allegedly willing to purchase the subject properties.

On February 26, 1981, respondent trial judge rejected petitioners' motion on the ground that it was irrelevant.

Thereupon, on February 27, 1981, petitioners filed a pleading captioned “Compliance and Motion”, (1) reiterating the relevance of ascertaining the true identity of the third party buyer, VOLCANO SECURITIES TRADERS AND AGRI-BUSINESS CORPORATION or VOLCANO LAKEVIEW RESORTS, INC., (2) expressing their view that there is actually no bona fide and financially able third party willing to purchase the subject properties at the rate of P12.50 per square meter, and, (3) once again insisting on their pre-emptive right to purchase the shares of private respondents in the co-ownership at a “reasonable price”, which is less than that computed excessively by the latter at the rate of P12.50 per square meter. Petitioners therein prayed that further proceedings be conducted in order to settle the factual issue regarding the reasonable value of the subject properties.

On March 16, 1981, respondent trial judge issued an order denying petitioners’ motion. The judge ruled that petitioners did not possess a pre-emptive right to purchase private respondents’ shares in the co-ownership. Thus, finding that the subject properties were essentially indivisible, respondent trial judge ordered the holding of a public sale of the subject properties pursuant to Article 498 of the New Civil Code. A notice of sale was issued setting the date of public bidding for the subject properties on April 13, 1981.

Petitioners then filed a motion for reconsideration from the above order. Respondent trial judge reset the hearing on petitioners’ motion for reconsideration to April 6, 1981, and moved the scheduled public sale to April 14, 1981.

Without awaiting resolution of their motion for reconsideration, petitioners filed the present petition for certiorari, alleging that the respondent trial judge acted without jurisdiction, or in grave abuse of its discretion amounting to lack jurisdiction, in issuing his order dated March 16, 1981 which denied petitioners’ claim of a pre-emptive right to purchase private respondents’ pro-indiviso shares and which, peremptorily, ordered the public sale of the subject properties. On April 8, 1981, this Court issued a temporary restraining order enjoining the sale of the subject properties at public auction.

With the comment and reply, the Court considered the issues joined and the case submitted for decision.

The Court finds no merit in the present petition.

The attack on the validity of respondent trial judge’s order dated March 16, 1981 is ultimately premised on petitioners’ claim that they had a pre-emptive right to purchase the pro-indiviso shares of their co-owners, private respondents herein, at a “reasonable price”. It is this same claim which forms the basis of their complaint for injunction and damages filed against private respondents in the court a quo.

This claim is patently without basis. In this jurisdiction, the legal provisions on co-ownership do not grant to any of the owners of a property held in common a pre-emptive right to purchase the pro-indiviso shares of his co-owners. Petitioners’ reliance on Article 1620 of the New Civil Code is misplaced. Article 1620 provides:

A co-owner of a thing may exercise the right of redemption in case the shares of all the co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common [Underscoring supplied.]

Article 1620 contemplates of a situation where a co-owner has alienated his pro-indiviso shares to a stranger. By the very nature of the right of “legal redemption”, a co-owner’s right to redeem is invoked only after the shares of the other co-owners are sold to a third party or stranger to the co-ownership [See *Estrada v. Reyes*, 33 Phil. 31 (1915).] But in the case at bar, at the time petitioners filed their complaint for injunction and damages against private respondents, no sale of the latter’s pro-indiviso shares to a third party had yet been made. Thus, Article

1620 of the New Civil Code finds no application to the case at bar.

There is likewise no merit to petitioners' contention that private respondents had acknowledged the pre-emptive right of petitioners to purchase their shares at a "reasonable price". Although it appears that private respondents had agreed to sell their pro-indiviso shares to petitioners, the offer was made at a fixed rate of P12.50 per square meter [See Pre-trial Order dated July 9, 1980, Annex "C" of the Petition; Rollo, pp. 43-45.] It cannot be said that private respondents had agreed, without qualification, to sell their shares to petitioners. Hence, petitioners cannot insist on a right to purchase the shares at a price lower than the selling price of private respondents.

Neither do petitioners have the legal right to enjoin private respondents from alienating their pro-indiviso shares to a third party. The rights of a co-owner of a property are clearly specified in Article 493 of the New Civil Code, thus:

Article 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation of the mortgage, with respect to the co-owners shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

The law does not prohibit a co-owner from selling, alienating or mortgaging his ideal share in the property held in common. The law merely provides that the alienation or mortgage shall be limited only to the portion of the property which may be allotted to him upon termination of the co-ownership [See *Mercado v. Liwanag*, G.R. No. L-14429, June 30, 1962, 5 SCRA 472; *PNB v. The Honorable Court of Appeals*, G.R. No. L-34404, June 25, 1980, 98 SCRA 207; *Go Ong v. The Honorable Court of Appeals*, G.R. No. 75884, September 24, 1987, 154 SCRA 270,] and, as earlier discussed, that the remaining co-owners have the right to redeem, within a specified period, the shares which may have been sold to the third party [Articles 1620 and 1623 of the New Civil Code.]

Considering the foregoing, the Court holds that respondent trial judge committed no grave abuse of discretion when he denied petitioners' claim of a pre-emptive right to purchase private respondents' pro-indiviso shares.

Moreover, there is no legal infirmity tainting respondent trial judge's order for the holding of a public sale of the subject properties pursuant to the provisions of Article 498 of the New Civil Code. After a careful examination of the proceedings before respondent trial judge, the Court finds that respondent trial judge's order was issued in accordance with the laws pertaining to the legal or juridical dissolution of co-ownerships.

It must be noted that private respondents, in their answer with counterclaim prayed for, inter alia, the partition of the subject properties in the event that the petitioners refused to purchase their pro-indiviso shares at the rate of P12.50 per square meter. Unlike petitioners' claim of a pre-emptive right to purchase the other co-owners' pro-indiviso shares, private respondents' counterclaim for the partition of the subject properties is recognized by law, specifically Article 494 of the New Civil Code which lays down the general rule that no co-owner is obliged to remain in the co-ownership. Article 494 reads as follows:

No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time partition of the thing owned in common, insofar as his share is concerned.

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be partition when it is prohibited by law.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

None of the legal exceptions under Article 494 applies to the case at bar. Private respondents' counterclaim for the partition of the subject properties was therefore entirely proper. However, during the pre-trial proceedings, petitioners adopted the position that the subject properties were incapable of physical partition. Initially, private respondents disputed this position. But after petitioners inexplicably refused to abide by the pre-trial order issued by respondent trial judge, and stubbornly insisted on exercising an alleged pre-emptive right to purchase private respondents' shares at a "reasonable price", private respondents relented and adopted petitioner's position that the partition of the subject properties was not economically feasible; and, consequently, invoked the provisions of Article 498 of the New Civil Code [Private respondents' "Motion To Allot Properties To Defendants Or To Sell The Same Pursuant To Article 498 Of The Civil Code", Annex "D" of the Petition; Rollo, pp. 46-49.]

Inasmuch as the parties were in agreement as regards the fact that the subject properties should not be partitioned, and private respondents continued to manifest their desire to terminate the co-ownership arrangement between petitioners and themselves, respondent trial judge acted within his jurisdiction when he issued his order dated February 4, 1981 requiring the parties to answer certain questions for the purpose of determining whether or not the legal conditions for the applicability of Article 498 of the New Civil Code were present in the case.

Article 498 provides that:

Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed.

The sale of the property held in common referred to in the above article is resorted to when (1) the right to partition the property among the co-owners is invoked by any one of them but because of the nature of the property, it cannot be subdivided or its subdivision [See Article 495 of the New Civil Code] would prejudice the interests of the co-owners [See Section 5 of Rule 69 of the Revised Rules of Court] and (2) the co-owners are not in agreement as to who among them shall be allotted or assigned the entire property upon reimbursement of the shares of the other co-owners.

Petitioners herein did not have justifiable grounds to ignore the queries posed by respondent trial judge and to insist that hearings be conducted in order to ascertain the reasonable price at which they could purchase private respondents' pro-indiviso shares [Petitioners' "Compliance and Motion" dated February 27, 1981, Annex "H" of the Petition; Rollo, pp. 57-60.]

Since at this point in the case it became reasonably evident to respondent trial judge that the parties could not agree on who among them would be allotted the subject properties, the Court finds that respondent trial judge committed no grave abuse of discretion in ordering the holding of a public sale for the subject properties (with the opening bid pegged at P12.50 per square meter,) and the distribution of the proceeds thereof amongst the co-owners, as provided Under Article 498 of the New Civil Code.

Contrary to petitioners' contention, there was no need for further hearings in the case because it is apparent from the various allegations and admissions of the parties made during the pre-trial proceedings, and in their respective pleadings, that the legal requisites for the application of Article 498 of the New Civil Code were present in the case. No factual issues remained to be litigated upon.

WHEREFORE, the present petition is DISMISSED for lack of merit. The temporary restraining order issued by the Court is hereby LIFTED.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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