

**BENJAMIN BELISARIO, PACITA B. PINAR, VICTORIA BELISARIO,
SILVERIO BELISARIO, FRANCISCO BELISARIO, ANATOLIA B.
JACULAN, FELIPE BELISARIO AND TERESITA B. ALKUINO,
PETITIONERS, VS....**

G.R. No. 73503. August 30, 1988

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of a decision of the Intermediate Appellate Court (now the Court of Appeals) in AC-G.R. No. 63407-R affirming the decision of the Court of First Instance of Bukidnon in Civil Case No. 715 entitled, "Benjamin Belisario, et al., vs. Philippine National Bank, et al.", dismissing herein petitioners' complaint for Repurchase of Homestead.

The undisputed facts of the case are as follows:

The subject matter of this case is a piece of land originally covered by Original Certificate of Title No. 366, pursuant to Homestead Patent No. 45183 issued in the names of Rufino Belisario and Felipa Lauga, located in Valencia, Bukidnon, and consisting of an area of 23.2210 hectares.

On August 3, 1948, upon the death of Rufino Belisario, the ownership of the land was extrajudicially settled among his children (petitioners herein), namely: Benjamin, Pacita, Victoria, Silverio, Francisco, Anatolia, Felipe and Teresita, all surnamed Belisario and his widow, Felipa Lauga, and in whose names Transfer Certificate of Title No. T-124 was issued.

Sometime in 1950, on the strength of a special power of attorney executed by some of the petitioners in favor of petitioner, Benjamin Belisario, said land was mortgaged to the Philippine National Bank (PNB) to secure a promissory note in the sum of P1,200.00.

Petitioners-mortgagors defaulted in the payment of the loan. Consequently, the mortgage was extrajudicially foreclosed and on January 31, 1963 the land was sold at public auction for P3,134.76 with respondent PNB as the highest bidder.

On April 21, 1971, petitioners wrote to respondent PNB making known their "desire to redeem and/or repurchase the said property for and in the same price as the auction sale, P3,134.76," and enclosed therein a postal money order in the amount of P630.00 as partial payment, with the balance to be paid in twelve equal monthly installments. At the time petitioners offered to redeem the subject property, the Sheriff's Certificate of Sale covering the sale at public auction to the respondent PNB was not yet registered.

Having been apprised of the non-registration, the respondent PNB caused the registration of the Sheriff's Certificate of Sale with the Register of Deeds of Bukidnon on July 22, 1971 and Transfer Certificate of Title No. T--6834 was later issued in the name of respondent bank.

On August 24, 1971, respondent PNB sent a reply letter to petitioners, refusing the tender of P630.00 as partial payment of the total obligations of P7,041.41 due from petitioners (which included the amount of P2,027.02 allegedly paid by respondent Vicente Cabrera to respondent PNB) and stating further that under existing regulations of the bank, payment by way of redemption must be paid in full and not by installments. It cannot, however, be determined from the records of the case why the amount of P2,027.02 was received from respondent Cabrera by respondent PNB on December 12, 1967 and why the same was included in the statement of accounts sent by respondent PNB to petitioners.

On February 8, 1973, respondent PNB sold the land in question to respondent Cabrera for P5,000.00 and the corresponding TCT No. 7264 was issued in his name.

On November 20, 1974, respondent Cabrera filed an action for Recovery of Possession and Damages against herein petitioners, together with their tenants, who were actual possessors of the land, with the Court of First Instance (now Regional Trial Court) of Bukidnon and docketed as Civil Case No. 708. In turn, petitioners filed on January 9, 1975, an action for Repurchase of Homestead against the respondents PNB and Cabrera with the Court of First Instance of Bukidnon and docketed as Civil Case 715. Being interrelated, the two cases were heard jointly.

After pre-trial but before trial on the merits, respondent Cabrera (as defendant in Civil Case No. 715), filed a Motion to Dismiss the petitioners' action for Repurchase of Homestead, Civil Case No. 715, on two (2) grounds:

- No tender of payment of the redemption price and/or no consignation of the redemption was made by plaintiff.
- Complaint states no cause of action.

The petitioners herein (as plaintiffs in Civil Case No. 715) opposed the motion contending that they offered to repurchase the property from respondent PNB (one of the defendants in the same Civil Case) within the five – year redemption period and tendered payment which was, however, refused by the respondent PNB. Petitioners also manifested that on August 1 and 4, 1977, they consigned with the Clerk of Court of Bukidnon the amount of P5,000.00 as repurchase price.

On September 15, 1977, the trial court granted the Motion to Dismiss. After their motion for reconsideration and/or new trial was denied by the trial court, petitioners appealed to the Intermediate Appellate Court (now Court of Appeals), assigning the following errors:

- The lower court erred in giving due course to the Motion to Dismiss, without receiving evidence and/or in ignoring the tender of payment made by plaintiffs to defendant bank.
- The lower court erred in declaring that because plaintiffs never bothered to attend to that letter (letter of bank addressed to the plaintiffs) for a long time it was obliged to sell the land to its co-defendant Vicente Cabrera on February 8, 1973.
- The lower court erred in holding that the plaintiffs made no pretense whatever in their opposition to the motion that Vicente Cabrera disallowed the repurchase of the land and in holding that tender of payment to defendant Cabrera was necessary to preserve their right to repurchase.
- The lower court erred in holding that the consignation of the amount of P5,000.00 was conceivably made to cure the deficiency of plaintiffs' position and was made beyond the redemption period of five years.
- The lower court erred in not considering the motion filed out of time and the conduct of the defendants especially Atty. Cabrera a waiver of their right to a preliminary hearing on the defense of lack of tender or that defendants are guilty of estoppel or bad faith. (Rollo, p. 25)

Respondent appellate court affirmed the lower court's decision in toto. Hence, the instant petition with the petitioner assigning the following errors:

- That the Honorable Intermediate Appellate Court erred in holding that appellants never bothered to tender the payment of redemption and that the filing of judicial action to redeem did not preserve appellants' right to redeem. It cited out of context the doctrine enunciated in *Tolentino vs. Court of Appeals*, 106 SCRA 513.
- The Honorable Intermediate Appellate court erred in holding that appellants' posture that they have offered to repurchase the property from the appellee bank and tendered payment of redemption price within the redemption period is unmeritorious.
- The Honorable Intermediate Appellate Court erred in considering long inaction or laches in deciding the case, the said defense not having been raised in the answers of defendants-appellees not even in the motion to dismiss or appellees' memoranda. (Rollo, p. 9)

The subject piece of land was sold at public auction to respondent PNB on January 31, 1963. However, the Sheriff's Certificate of Sale was registered only on July 22, 1971. The redemption period, for purposes of determining the time when a final Deed of Sale may be executed or issued and the ownership of the registered land consolidated in the purchaser at an extrajudicial foreclosure sale under Act 3135, should be reckoned from the date of the registration of the Certificate of Sale in the Office of the Register of Deeds concerned and not from the date of public auction (*PNB vs. CA et al.*, G.R. L-30831 and L-31176, Nov. 21, 1979, 94 SCRA 357, 371). In this case, under Act 3135, petitioners may redeem the property until July 22, 1972. In addition, Section 119 of Commonwealth Act 141 provides that every conveyance of land acquired under the free patent or homestead patent provisions of the Public Land Act, when proper, shall be subject to repurchase by the applicant, his widow or legal heirs, within the period of five years from the date of conveyance. The five-year period of redemption fixed in Section 119 of the Public Land Law of homestead sold at extrajudicial foreclosure begins to run from the day after the expiration of the one -year period of repurchase allowed in an extrajudicial foreclosure. (*Manuel vs. PNB, et al.*, 101 Phil. 968) Hence, petitioners still had five (5) years from July 22, 1972 (the expiration of the redemption period under Act 3135) within which to exercise their right to repurchase under the Public Land Act.

The general rule in redemption is that in making a repurchase, it is not sufficient that a person offering to redeem makes manifestation of his desire to repurchase; this statement of intention must be accompanied by an actual and simultaneous tender of payment, which constitutes the legal use or exercise of the right to repurchase (*Angao vs. Clavano*, 17 Phil. 152). Likewise, in several cases decided by this Court (*Fructo vs. Fuentes*, 15 Phil. 362; *Retes vs. Suelto*, 20 Phil. 394; *Rosales vs. Reyes, et al.*, 25 Phil. 495, *Canuto vs. Mariano*, 37 Phil. 840; *Dela Cruz, et al. vs. Resurreccion, et al.*, 98 Phil. 975) where the right to repurchase was held to have been properly exercised, there was a definite finding of tender of payment having been made by the vendor. The tender of payment must be for the full amount of the repurchase price, otherwise the offer to redeem will be held ineffectual. (*Rumbaoa vs. Arzaga*, 84 Phil. 812) Bona fide redemption necessarily imports a reasonable and valid tender of the entire repurchase price. There is no cogent reason for requiring the vendee to accept payment by installments from the redemptioner, as it would ultimately result in an indefinite extension of the redemption period (*Conejero, et al. vs. Court of Appeals, et al.*, L-21812, April 29, 1966, 16 SCRA 775, 780).

The rule that tender of payment of the repurchase price is necessary to exercise the right of redemption finds support in civil law. Articles 1616 of the Civil Code of the Philippines, in the absence of an applicable provision in Commonwealth Act No. 141, furnishes the guide, to wit: "The vendor cannot avail himself of the right to repurchase without returning to the vendee the price of the sale x x x" (*Uy Lee vs. Court of Appeals*, L-28126, November 28, 1975, 68 SCRA 196, 204).

However, the filing of a complaint to enforce repurchase within the period for redemption is equivalent to an offer

to redeem and has the effect of preserving the right to redemption (*Reoveros vs. Abel and Sandoval*, 48 O.G. 5318). In the case of *Tolentino vs. Court of Appeals*, L-50405-06, August 5, 1981, 106 SCRA 513, 626), this Court expounded:

"And in this connection, a formal offer to redeem, accompanied by a bona fide tender of the redemption price, although proper, is not essential where, as in the instant case, the right to redeem is exercised thru the filing of judicial action, which as noted earlier was made simultaneously with the deposit of the redemption price within the period of redemption. 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 even beyond such period of redemption. The filing of the action itself, within the period of redemption, is equivalent to a formal offer to redeem. Should the court allow redemption, the redemptioners should then pay the amount already adverted to."

In a later case, *Tioseco vs. Court of Appeals*, (G.R. 66597, August 29, 1986, 148 SCRA 705), this Court reiterated the rule that the filing of the action itself, within the period of redemption, is equivalent to a formal offer to redeem.

For purposes of determining whether petitioners exercised their right to repurchase effectively, We have only to consider their filing of the action for Repurchase of Homestead on January 9, 1975, against respondent PNB and Cabrera, which was filed well within the five-year period to repurchase. The question of timeliness of the tender of payment by petitioners on August 1 and 4, 1977 of the amount of P5,000.00 had become insignificant in view of the filing of the action for Repurchase of Homestead which has been held equivalent to an offer to redeem and has the effect by itself of preserving their right of recovering the property.

This case is different from *Uy Lee vs. Court of Appeals*, *supra* where the action to compel redemption was filed after the lapse of the period of redemption. Thus, the Court held in said case, to wit:

"It is clear that the mere sending of letters by vendor Simeon expressing his desire to repurchase the property without an accompanying tender of redemption price fell short of the requirements of law. Having failed to properly exercise his right of redemption within the statutory five-year period, the right is lost and the same can no longer be revived by the filing of an action to compel redemption after the lapse of the period."

The same factual antecedent obtained in *Conejero, et al. vs. Court of Appeals*, *supra* where the complaint seeking to be declared entitled to redeem was filed after the expiration of the statutory period of redemption. What was proper for determination then in said cases was whether or not the right of redemption sans judicial action was validly exercised. In said cases, the Court applied the general rule that bona fide redemption necessarily imports a reasonable and valid tender of the entire purchase price. The respondent Court of Appeals thus erred in citing *Tolentino vs. Court of Appeals* out of context and in applying the doctrine in *Uy Lee vs. Court of Appeals*, and *Conejero vs. Court of Appeals*, *supra* where the circumstances of said cases are different from the case at bar. The respondent Court of Appeals likewise erred in holding that the action is barred by long inaction. The right of redemption under Commonwealth Act 141 legally began to accrue only on July 22, 1972. Certainly, an action for Repurchase of Homestead filed on January 9, 1975 cannot be held to be barred.

ACCORDINGLY, the decision of the Court of Appeals in the instant case is hereby REVERSED and SET ASIDE. Judgment is hereby rendered authorizing petitioners to redeem the property subject matter hereof, within thirty (30) days from entry of judgment, and ordering private respondent Cabrera to execute a deed of absolute conveyance thereof in favor of the petitioners upon payment by the latter of the purchase price thereof at the auction sale, with 1% per month interest thereon in addition, up to the time of redemption, together with the amount of any taxes or assessments which respondent Cabrera may have paid thereon after purchase, if any, minus the P5,000.00 consigned in the court a quo. No pronouncement as to costs at this instance.

SO ORDERED.

Narvasa, Cruz, and Grino-Aquino, JJ., concur.

Gancayco, J., on leave.

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