

ERLINDA O. CABRERA, PETITIONER, VS. VICTORIANA E. VILLANUEVA AND INTERMEDIATE APPELLATE COURT, RESPONDENTS.

G.R. No. 75069. April 15, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review by way of appeal by certiorari of the judgment[1] of the Intermediate Appellate Court (now known as the Court of Appeals), dated June 20, 1986, reversing the judgment[2] of the Regional Trial Court, of Manila dated January 25, 1985 in a civil action for Legal Redemption of real property entitled "Erlinda O. Cabrera vs. Victoriana E. Villanueva."

Petitioner is a co-owner of a real property situated in Manila, originally covered by TCT No. 64950 of the Registry of Deeds of Manila. On March 12, 1968, by way of a Deed of Absolute Sale, Feliciano Oropesa and Antonio Oropesa, co-owners of said property, sold their shares of 14/112 each pro indiviso or 28/112 share, for and in consideration of the sum of P6,000.00 each or a total of P12,000.00 to Victoriana E. Villanueva (private respondent herein). The following year, in 1969, by reason of said sale TCT No. 64950 was cancelled and in lieu thereof, TCT No. 96437, was issued by the Registry of Deeds of Manila wherein the buyer was constituted as a co-owner pro indiviso of the entire parcel, to the extent of the 28/112 share. This was after the former owners Feliciano and Antonio, both surnamed Oropesa, had executed a Joint Affidavit dated April 1, 1968 attesting to the fact that they had notified in writing the co-owners of the property in question and said co-owners did not and could not offer any objection thereto. Several years after, the buyer Victoriana E. Villanueva as the new co-owner, sent a letter dated September 23, 1980 thru her counsel, to Erlinda O. Cabrera, the other co-owner, proposing to her the partition of the property in question. The latter did not agree to such proposal; instead, in her letter, dated October 30, 1980, addressed to Villanueva, she offered to redeem the 28/112 share of the latter in the property. Villanueva refused such proposal, hence the filing of an action for legal redemption by the former. Both parties admitted the aforementioned facts by stating them in their Stipulation of Facts submitted to the trial court.

After due trial, the lower court rendered judgment in favor of plaintiff, its dispositive portion reading as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff[3] ordering the defendant[4] to re-sell to plaintiff by way of legal redemption the 28/112 share pro indiviso of the property described in Transfer Certificate of Title No. 964557 of the Registry of Deeds of Manila, upon the plaintiff paying the defendant the sum of P12,000.00, the defendant to execute necessary Deed of Conveyance and the Register of Deeds of the City of Manila to register said Deed of Conveyance in said transfer certificate of title; ordering defendant to pay to plaintiff the sum of P5,000.00 for and as attorney's fees. No pronouncement as to costs." (Rollo, p. 17)

Defendant appealed from said decision to the respondent appellate court assigning the following errors:

"I. The trial court committed grave and reversible error in holding that there was no written notice to the co-owners regarding the sale of the subject property to herein defendant-appellant;

“II. The trial court committed an error in holding that plaintiff-appellee has tendered redemption within the reglementary period.”

Ruling on these issues, the respondent appellate court held that the plaintiff-appellee was duly notified in writing of the sale to defendant-appellant and that the former failed to exercise this right of redemption within the period provided by law as its basis in reversing the judgment of the lower court and in entering a new judgment declaring defendant-appellant the lawful co-owner of the 28/112 share of the property in question barring any right of the plaintiff-appellee to redeem.

Plaintiff-appellee now appeals to Us by way of a petition for certiorari submitting the following issues:

- Did the Intermediate Appellate Court resolve the issue on whether or not the petitioner was legally and duly notified of the sale of the 28/112 share of the property in question in the light of Art. 1623 of the New Civil Code?
- If such notice was served on the petitioner, whether she has exercised her right of legal redemption within the prescribed 30-day period.

Petitioner's contentions hold no water. Petitioner anchors her claim on Art. 1623 of the Civil Code which reads:

"The right of legal pre-emption or redemption shall not be exercised except within 30 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."

"xxx xxx xxx."

For the legal and effective exercise of the right of legal redemption one must make the offer within the period set down in Art. 1623. In other words, if no claim or offer is made within said period, no action will be allowed to enforce the right of redemption. It is necessary however to determine first if and when the written notice of sale was duly served by the vendors to their co-owner.

Petitioner alleges that she never received any written notice of the sale from her co-owners or the vendors of their respective shares to the private respondent herein. Petitioner claims that she came to know only of such sale when she received on September 30, 1980 a letter from the private respondent, dated September 23, 1980, proposing the partition of the property in question. She rejected the proposal and offered instead to redeem the property in her letter, dated and posted on October 30, 1980 and received by the private respondent through registered mail on November 6, 1980.

We have no doubt that petitioner had actual knowledge of the sale, she having been informed verbally by the private respondent herself as they were neighbors (t.s.n. *Umali-Ozaeta*, p. 14, June 25, 1984). It may be also inferred from the fact that private respondent, as the present co-owner, receives her monthly share of the rentals collected from the tenants of the property owned in common and that her share of the real estate tax is also being deducted from said rentals every 3 months from and by the same person, Mrs. Rosita Oropesa Panopio, an aunt of the petitioner who is the collector of the rentals due and who was also a witness to the deed of absolute sale executed by the previous co-owners in favor of private respondent. But We have adhered to the principle that notwithstanding the actual knowledge of a co-owner, he or she is still entitled to a written notice from the vendor-co-owner in order to remove all uncertainty as to the sale, its terms and validity and to quiet any doubts that the alienation is not definitive (*Conejero v. Court of Appeals* 16 SCRA 775).

The law however does not require a specific form of written notice to the redemptioner. A reading of the Joint Affidavit, (Exhs. "A" & "4") executed by the vendors Feliciano and Antonio both surnamed Oropesa, affirms the

fact that a written notice of the sale was really sent by them to their co-owner petitioner herein, to wit:

"That sometime ago we notified in writing our co-owners that we are selling our respective shares to Miss Victoriana Villanueva and that we further informed them that they have preference to purchase our shares;

"That our co-owners offered no objection in selling our respective shares to Miss Victoriana Villanueva."

When confronted with the affidavit in open court affiant Feliciano Oropesa repudiated it stating that the signature appearing at the bottom appears like his signature but that he did not sign it. As he is impugning a notarial document mere denial is not enough. A notarial document is evidence of the facts in clear unequivocal manner therein expressed. It has in its favor the presumption of regularity. To contradict all these, there must be evidence that is clear, convincing and more than merely preponderant (*Yturralde v. Aganon* 28 SCRA 407). Their denial of having allegedly executed said Joint Affidavit is belied by their own Deed of Absolute Sale in favor of private respondent (p. 71, Records CFI, CC#136506, Exhibits "A" & "I"), a document both parties admit as genuine and true, acknowledged before the same notary public before the execution of the Joint Affidavit. A comparison of the 2 deeds shows that the signatories in both are one and the same persons. His denial is belied by his having signed the deed of sale, the authenticity of which is admitted by both parties in this case.

Another important consideration is the fact that previous to this denial both parties submitted in court their Stipulation of Facts, the pertinent portion of which reads as follows:

"That on 1 April 1968 Feliciano and Antonio, both surnamed Oropesa, have executed an affidavit attesting to the fact that they have notified in writing the other co-owner of the property question that they were selling their respective shares on the said property to the defendant and said co-owner did not offer any objection thereto."

On appeal to Us, petitioner now argues that though it was stipulated (par. 3, Stipulation of Facts) that the vendors executed the Joint Affidavit in question, the same was only made to admit its existence as an instrument to be used by private respondent and thereby allow it to be put in argument or as an evidence to be evaluated in the trial itself but never an admission of its probative value per se that it amounted to an actual notice or written notice to petitioner of the sale of the shares of her co-owners in the property under co-ownership and that the said Joint Affidavit was executed merely and solely for the purpose of meeting and satisfying the legal requirements under Art. 1623 New Civil Code but not the substantial spirit of the law of notifying or giving notice to the other co-owner as a possible redemptioner, like petitioner herein, so as to apprise them of their right under Art. 1623 of legal pre-emption or redemption. (pp. 3 & 4, Memorandum for Petitioner, underscoring Ours).

We agree with petitioner that the Joint Affidavit does not amount to that written notice required by law. However, it is clearly a written affirmation under oath that the required written notice of sale was given to the other co-owner. Against affiants' own sworn written admission that indeed the required written notice of sale was duly served upon their co-owners, the oral denials thereof should not be given much credence. Written admissions, especially those stipulated in court and certified to by the seal of a notary public, have always been considered as evidence of the highest order against those making them. (*Valencia v. Tantoco* 99 Phil. 824, *Adiso v. Guzman*, 37 Phil. 652). No person in his right sense or in the full possession of his faculties would make an admission unless the same were true. "A man's acts, conduct and declarations, whenever made, and provided they are voluntary, are admissible against him, for the reason that it is fair to presume that they correspond to the truth, and it is his fault if they do not." (*U.S. vs. Ching Po*, 23 Phil. 578). One can only guess what impelled them to do so, but Feliciano and Antonio Oropesa, could not just simply testify away what both had, way back in 1968, solemnly sworn to as true in said Joint Affidavit; that they had first offered in writing their shares in the property to petitioner who, apparently not interested therein, did not object to their selling the same to private respondent thereafter. Said

written sworn statement was executed by them ante litem motum, (the original case having been filed only in 1980) when no motive for them to falsify the same existed. On the other hand, their credibility in disowning said statement several years later, with the controversy on the matter already raging in court, is open to serious question. And the fact that they are the uncles of the petitioner cannot but create doubts as to their present veracity. Since there is no evidence on record as to when the written notice of the sale referred to in the Joint Affidavit was given to petitioner, We can only assume that it was made before April 1, 1968, the date of the Joint Affidavit. Counting therefore from this date, petitioner has already lost her right to redeem the property under Art. 1623 when she made her offer to redeem from private respondent in her letter dated October 30, 1980.

Furthermore, on April 21, 1969, T.C.T. No. 96437 was issued by the Registry of Deeds of Manila. In said title it is already reflected that private respondent Victoriana Villanueva is a co-owner (to the extent of a 28/112 portion) of the property in question. It can be safely assumed that copy of the title reflecting private respondent as a co-owner was also issued to petitioner in 1969. Moreover Section 50 of the LRC expressly provides that the registration of the deed is the only operational act to bind or affect the property. From that time on, petitioner was already in full and actual knowledge of the fact that private respondent had acquired the shares of Antonio and Feliciano Oropesa. For more than ten years, petitioner remained unperturbed by the fact that private respondent was already registered as a co-owner and her uncles were no longer co-owners. It was only several years later when the value of the property considerably increased that petitioner asserted her claim re the right to redeem under Art. 1623. Petitioner has thus slept on her rights and is now estopped from questioning the validity of the sale. We may even regard the receipt of a copy of the transfer certificate of title, indicating private respondent as one of the co-owners, as service of the written notice required by Art. 1623. Clearly, petitioner's right to redeem expired a long time ago.

Finally, We should not lose sight of the fact that the letter of private respondent (thru counsel) dated September 23, 1980 to petitioner informing the latter of the acquisition of a portion of the property is by ITSELF a written notice of the purchase. Since the 30-day period expired by October 30, 1980 without redemption being exercised it follows that the right to redeem has already been lost.

WHEREFORE, premises considered, the assailed decision of the appellate court is AFFIRMED, in all respects and the instant petition is DENIED.

SO ORDERED.

Yap (Chairman) and Sarmiento, JJ., concur.

Melencio-Herrera, J., joins the concurring opinion of Justice Padilla.

Padilla, J., see separate concurring opinion.

[1] Penned by Justice Floreliana Castro-Bartolome concurred in by Justices Jorge R. Coquia and Bienvenido C. Ejercito.

[2] Penned by Judge Conrado T. Limcaoco.

[3] Erlinda O. Cabrera, petitioner herein.

[4] Victoriana E. Villanueva, private respondent herein.

CONCURRING OPINION

PADILLA, J.:

I concur with the decision's holding that petitioner lost her right of legal redemption, because, in accordance with Article 1623, Civil Code, she had been notified in writing by her previous co-owners that they were selling their interest in the property in question, and yet, she allowed thirty (30) days from receipt of such notice in writing to expire, without making any offer to purchase the interest of her selling co-owners.

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