

**D. ANNIE TAN, PETITIONER, VS. COURT OF APPEALS, CHINA
BANKING CORPORATION, GEORGE LAUREL TAN, TEODORA TAN
ONG, ROSA TAN, ROSITA TAN, AND MAURO UMALI TAN,
RESPONDENTS.**

G.R. No. 79899. April 24, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Tan Tiong Tick, married to Tan Ong Hun, was the registered owner of a 178 square meters parcel of land and its improvements located at Lot No. 5, Block. No. 2021 of the Cadastral Survey of Manila, Carvajal Street, Binondo, Manila.

Mr. and Mrs. Tan had six children -- respondents George Laurel Tan, Teodora Tan Ong, Rosa Tan, Rosita Tan, Mauro Umali Tan, and the petitioner, D. Annie Tan.

On February 6, 1963, in order to secure payment of various obligations with respondent China Banking Corporation or China Bank for short, Mr. and Mrs. Tan Tiong Tick mortgaged the disputed property to the bank. Tan Tiong Tick died on December 22, 1969 without having paid his obligations.

On June 27, 1972, China Bank foreclosed the mortgage and purchased the property at public auction as the highest bidder for the sum of P186,100.00.

On August 31, 1972, the widow and children of Tan Tiong Tick filed a complaint against China Bank with the Court of First Instance of Manila praying for the nullity of the real estate mortgage executed by the spouses Tan and the foreclosure sale conducted by the Sheriff. They also asked that the redemption period be suspended.

The one year period for redemption expired on July 6, 1973 without the Tan heirs having exercised the right to redeem the property. The widow Tan Ong Hun having died, only the children were left to redeem the lot and building. China Bank consolidated its ownership over the land and improvements and a new title, Transfer Certificate Title No. 112924 was issued in the name of the bank on August 16, 1973.

About two weeks earlier, however, the heirs of Tan and China Bank agreed to amicably settle the action for nullity of mortgage before the Court of First Instance of Manila. The parties filed a joint motion to dismiss.

The verbal agreement regarding the disposition of the property was confirmed in a letter of China Bank signed by four of the children and one daughter-in-law on August 3, 1973. The heirs were given the right to repurchase the property for P180,000.00 provided it was done on or before August 31, 1974. The agreement reads in part:

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"It is understood, that should you fail to pay to us in full the aforesaid sum of P180,000.00 on or before August 31, 1974, your right to repurchase the property shall terminate and we shall be free to dispose of the property to any other party." (p. 81, Folder of Exhibits; Exhibit 2, CEC)

There are allegations that some of the heirs tried to buy the property in the ensuing one year period but for one reason or another, were unable to do so.

Finally, on August 30, 1974, or one day before the end of, the period to buy back, petitioner D. Annie Tan went to the office of Mr. Dee K. Chiong of China Bank and tendered her China Bank Manager's Check for P180,000.00 as payment. Upon the insistence of the bank official, the deed of sale returning the property to the heirs was executed in favor, not of D. Annie Tan who alone paid for the property but of all the six heirs of Tan Tiong Tick who would, therefore, share and share alike.

This led to the filing of the action by D. Annie Tan against her brothers and sisters and the China Banking Corporation, now respondents in this petition. The petitioner prayed the trial court to order the respondents – (1) to reconvey the disputed property to her and (2) to pay actual damages in the amount of P300,000.00, moral damages in the amount of P100,000.00, exemplary damages in the amount of P50,000.00, and attorney's fees in the amount of P10,000.00.

On September 1, 1980, the Court of First Instance of Manila rendered a decision, the dispositive portion of which reads:

"ACCORDINGLY, judgment is hereby rendered as follows:

"(1) Dismissing the complaint as well as defendants' counterclaim;

"(2) Ordering each of the defendants, namely George Laurel Tan, Teodora Tan Ong, Rosa Tan and Rosita Tan to reimburse the plaintiff the sum of P30,000.00 plus 12% interest from August 30, 1974 until the whole amount is fully paid;

"(3) Ordering the defendant Mauro Umali Tan who had been ordered in default to execute the deed of sale of his rights and interests over the property covered in Transfer Certificate of Title No. 64806 in favor of the plaintiff in accordance with his instrument of waiver dated June 25, 1974, and

"(4) Without pronouncement as to costs." (Annex B, Rollo, pp. 43-44)

On October 17, 1986, the Court of Appeals affirmed the decision of the trial court. On September 7, 1987, a motion for reconsideration was denied. Hence this petition.

The petitioner gives the following grounds why her petition should be given due course:

1. RESPONDENT COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT ORDERING REIMBURSEMENT TO THE PETITIONER INSPITE OF THE FACT THAT THE LEGAL BASIS FOR THE REIMBURSEMENT, WHICH WAS NOT CLEARLY EXPLAINED IN THE DECISION, MAY HAVE BEEN THE ALLEGED EXISTENCE OF (1) A CO-OWNERSHIP AMONG THE HEIRS, AND (2) CREDITOR-DEBTOR RELATIONSHIP BETWEEN THE HEIRS AND THE BANK, WHICH HAVE NOT BEEN FULLY ESTABLISHED BY EVIDENCE.

2. ASSUMING, WITHOUT ADMITTING, THE EXISTENCE AMONG THE HEIRS OF A CO-OWNERSHIP AND/OR A CREDITOR/ DEBTOR RELATIONSHIP BETWEEN THE RESPONDENT BANK AND THE HEIRS, RESPONDENT COURT GRAVELY ERRED IN NOT HOLDING THAT THE CO-HEIRS OF PETITIONER, THE PRIVATE RESPONDENTS HEREIN, HAVE IMPLIEDLY WAIVED THEIR RIGHT TO BUY BACK THE PROPERTY BY THEIR FAILURE TO RAISE THE MONEY FOR THEIR RESPECTIVE SHARES UP TO THE LAST DAY GIVEN THEM BY THE RESPONDENT BANK ON AUGUST 31, 1974, THUS WHEN PETITIONER BOUGHT THE PROPERTY BY HER EXCLUSIVE FUNDS, IT BENEFITED HER ALONE AND NOT HER CO-HEIRS.

3. RESPONDENT COURT OF APPEALS, GRAVELY ERRED IN NOT HOLDING THAT THE

LETTER-AGREEMENT DATED AUGUST 3, 1973, FOR WHICH THE RIGHTS OF THE PETITIONER AND HER CO-HEIRS TO BUY BACK THE FORECLOSED PROPERTY AROSE, IS ACTUALLY NOT A RIGHT TO REPURCHASE BUT IS AN OPTION TO BUY BACK THE PROPERTY WHICH MAY BE EXERCISED BY THE HEIRS SINGLY OR COLLECTIVELY. (Rollo, pp. 21-22)

The decision of the trial court, affirmed by the Court of Appeals, is based on the principle that the heirs of Mr. and Mrs. Tan Tiong Tick being co-owners of the fore-closed property, a repurchase or reconveyance effected by only one of those heirs redounds to the co-ownership. This explains why the courts below ordered four of the heirs -- George Laurel Tan, Teodora Tan Ong, Rosa Tan, and Rosita Tan -- to reimburse D. Annie Tan the sum of P30,000.00 each plus 12% interests while the share of the fifth heir who was in default and who had waived his interest would go to the petitioner.

The petitioner contends that there was no co-ownership and no creditor-debtor relationship between her and the other children.

The petitioner states:

"This controversy addresses itself to the question of whether or not the co-ownership among the heirs over a parcel of land formerly belonging to their parents had been dissolved by the foreclosure and consolidation of title by a bank after the redemption period of one (1) year had expired, such that a unilateral obligation given by the bank to the heirs to buy back the foreclosed property out of liberality is actually an option to buy given to the heirs as group of persons singly or collectively, and not strictly a right of re-purchase to be exercised by the heirs as co-owners. If it is admitted that the co-ownership of the heirs over the foreclosed property of their parents had been dissolved by the consolidation of the title in the mortgagee's name, which in this case is respondent Bank, and that there exists no creditor-debtor relationship between respondent Bank and the heirs, then the bank may not impose an obligation to the heirs that they should purchase back the property only as former co-owners or as solidary debtors, but as groups of persons, singly or collectively. The bank would then be imposing an onerous condition upon the heirs of going back to the dissolved co-ownership which the law frowns upon. To settle this case once and for all, herein petitioner anchors her claim on the theory that when the respondent Bank foreclosed the property and consolidated its title on August 16, 1973 and T.C.T. No. 112924 was issued in its name, the co-ownership of the heirs of the deceased parents of petitioner and private respondents over the pro-property in question have been dissolved. In this wise, the decision of the respondent court premised on the existence of a co-ownership or in a creditor-debtor relationship, and ordering the reimbursement to petitioner of the money for the purchase of the property in question which allegedly redounded to the benefits of her co-heirs as co-owners or solidary debtors has no leg to stand on. It is this erroneous decision of respondent court based on a misapprehension of facts and contrary to settled jurisprudence that petitioner comes to this Honorable Court, for relief. (Sese v. Intermediate Appellate Court, G.R. No. 66186, July 31, 1987; Moran, Jr. v. Court of Appeals, 133 SCRA 88; Manero v. Court of Appeals, 102 SCRA 817; Carolina Industries v. CMS Brokerage, 97 SCRA 734; Sacay v. Sandiganbayan, 142 SCRA 593)." Rollo, pp. 7-9)

The first question which arises is the correctness of the assumption that there was a co-ownership among the children of Tan Tiong Tick and Tan Ong Hun when the petitioner purchased the property.

Since the lot and its improvement were mortgaged by the deceased parents, there can be no question that a co-ownership existed among the heirs during the period given by law to redeem the foreclosed property. Redemption by one during this period would have inured to the benefit of all. (Adille v. Court of Appeals, G.R. No. 44546, 157 SCRA 455 [1988]; and De Guzman v. Court of Appeals, G.R. No. 47378, 148 SCRA 75 [1987]).

The records show, however, that when the petitioner purchased the disputed property on August 30, 1974, any co-ownership among the brothers and sisters no longer existed. The period to redeem had expired more than one

year earlier, on July 6, 1973. The respondent China Bank consolidated its ownership and a new title was issued in the bank's name. When the heirs allowed the one year redemption period to expire without redeeming their parents' former property and permitted the consolidation of ownership and the issuance of a new title, the co-ownership was extinguished. The challenged ruling of the respondent court is, therefore, based on erroneous premises.

Under Section 63-B of Presidential Decree No. 1529, the Property Registration Decree, in case of non-redemption, the purchaser at the foreclosure sale, meaning the respondent Bank in this case, is entitled to a new certificate of title in its name after filing the necessary papers with the Register of Deeds, (*Spouses Teofisto and Eulalia Verceles v. Court of First Instance of Rizal, et al*, G.R. No. 62219, February 28, 1989) It becomes a ministerial duty to place the buyer in possession of the property he now owns. (*Banco Filipino v. Intermediate Appellate Court*, G.R. No. 68878, 142 SCRA 44 (1986)). Ownership, therefore, passed to China Bank and there was no more co-ownership among the heirs.

The non-existence of a common inheritance of the Tan children at the time the disputed property was purchased from China Bank is moreover supported by the evidence showing that there was no more inheritance to divide. It had already been divided. Tan Tiong Tick left other properties in addition to the property disputed in this petition. The eldest son, George Laurel Tan, inherited practically all the properties consisting of several hectares of real estate in Novaliches, Metro Manila; a furnished house in Greenhills, Mandaluyong; and a cigar factory. (t.s.n., November 18, 1976, p. 24) The petitioner also claims that stock certificates went to another sister, Teodora Tan Ong because she "forced" the other heirs to sign a deed of sale in her favor.

May the heirs be considered as debtors in common, substituting for their parents in liquidating the latter's obligations?

The answer is again, No.

Upon the foreclosure of the mortgaged property and its purchase by China Bank as the highest bidder, the proceeds of the auction sale were applied to the various debts of the Tan spouses. The parents' debts were paid. The obligation having been extinguished, there was no more common debt and no legal subrogation arising when one pays the debts properly accruing to several others.

Respondent China Bank contends that the letter agreement dated August 3, 1973 called for the reconveyance of the land and improvements to all the heirs "in equal undivided shares."

There is no such stipulation in the letter. There is reference to a verbal agreement to reconvey to the "heirs of your late father" but no requirement that every-body must share in the purchase or the offer would be withdrawn.

What is clear is that the bank's general manager, Mr. Dee K. Chiong tried to impose the above requirement when the one year period to buy back was about to expire. Mr. Dee rejected the offer of D. Annie, Tan to buy the property for herself alone. He insisted that the money brought by the petitioner would be considered a joint fund of all the heirs and ordered the same annotated on the back of the check given as payment for the pro-erty.

This attitude of Mr. Dee K. Chiong is in sharp con-trast to the bank's official stand embodied in a letter to the Central Bank.

Asked to comment on a letter-complaint filed by D. Annie Tan with Malacanang and forwarded to the Central Bank, the respondent bank through its Legal Officer wrote the Director, Department of Commercial and Savings Bank, Central Bank an explanation, part of which states:

"To our mind, the dispute is not between the Bank and the heirs or any one of them, but among the heirs

themselves, for as far as the Bank is concerned, it makes no difference whether the property is reconveyed to all the heirs or to any one of them alone as they may agree. As a matter of fact the complainant has already filed a Petition under the Cadastral Case now pending in the CFI, Manila, involving the property and all the heirs, (Copy of the Petition is hereto attached as Annex "10").

"At any rate, it is our honest conviction that the charges filed by the complainant and the interpretation Articles 1302 and 1303 of the New Civil Code properly belong to the Courts where the complainant can always have her right, if any, vindicated, and if only to re-solve the issue, we shall welcome any court action to clear the matter." (Folder of Exhibits, pp. 97-98)

The petitioner questions the unusual interest shown by China Bank in the case when its stand should be one of neutrality. She claims that there is an orchestrated alliance between the bank and the other private respondents as shown by the fact that the bank seems to be more eager and vigorous than the other heirs to win the case. (Rollo, p. 310).

As earlier stated, there is nothing in the August 3, 1973 letter-agreement which called for either a purchase by all the heirs or no purchase at all. But could not Mr. Dee K. Chiong validly impose such a requirement at the time the tender of money to buy the property was made?

Again, the answer is in the negative.

We agree with the petitioner that her agreeing to sign an annotation at the back of the check was a case of vitiated consent. She states that her conformity was null and void because it was made under duress. The records show that up to the last hour the petitioner was pleading with Mr. Dee K. Chiong to buy the property for herself alone as the money she had raised was not in any way owned by the other heirs. Since the period was expiring, the petitioner had no choice. It was a case of either agreeing to the bank executive's requirement or losing the family property forever to strangers.

Mr. Dee could not impose a new co-ownership upon the petitioner, her brothers and sisters. Co-ownership is discouraged by law.

As held in the case of *Basa v. Aguilar* (G.R. No. L-30994, 117 SCRA 128, 130-131 [1982]):

"Legal redemption is in the nature of a privilege created by law partly for reasons of public policy and partly for the benefit and convenience of the redemptioner, to afford him a way out of what might be a disagreeable or inconvenient association into which he has thrust. (10 Manresa, 4th Ed., 317.) It is intended to minimize co-ownership. The law grants a co-owner the exercise of the said right of redemption when the shares of the other owners are sold to a third person. A third person, within the meaning of this Article, is anyone who is not a co-owner. (Sentencia of February 7, 1944 as cited in Tolentino, Comments on the Civil Code, Vol. V, p. 160.)" (Emphasis supplied)

The records show that the annotation at the back of the P180,000.00 manager's check that the funds were contributed by all the heirs was made by a China Bank representative and that D. Annie Tan was told by Dee K. Chiong that if she would not sign it, he would not accept the manager's check and she would lose her right to buy the lot within the period offered by the bank. The petitioner, at first, refused but being placed between the difficulty of agreeing to the condition or losing the property, she decided to agree. (t.s.n., September 27, 1976, pp. 24-25; t.s.n., November 18, 1976, p. 36) The petitioner was also aware that a certain Mr. Ang who operated a travel agency in the next door building was eager to buy the property at double the price stated in the letter-agreement executed more than a year earlier. (Court of Appeals Rollo, Brief for Plaintiff-Appellant, p. 77)

The petitioner further argues:

"The insistence by respondent Bank that the said letter-agreement is a right to re-purchase given to all the heirs of the late Tan Tiong Tick to be exercised only collectively cannot legally stand considering the following circumstances:

" 'a) What will happen if one of the heirs of the late Tan Tiong Tick refuses or fails to exercise his right to purchase for whatever reason? Cannot any of the other heirs, but all, raise sufficient funds for the full amount of the purchase price because the other heirs could not let him or her borrow money to cover his or her share? Would such refusal then pre-judice the other heirs?

" 'b) Cannot two or more heirs, but not all, who have sufficient funds exercise the right of purchase?

" 'c) Would all the heirs then who signed the letter-agreement as in the case at bar lose their right to purchase the property because of the refusal of one heir?

" 'd) If only one of the heirs has sufficient funds to purchase the property and the others do not have, and this particular heir does not want to lend her or his money to the other heirs who have none, can the offer of the other heir to exercise the option to buy in her or his own name alone be legally refused?

" 'e) Finally, can the buying back of the property by one heir alone be disallowed considering that she is the one who has enough or sufficient funds and that her action will prevent the property from going to third persons; like respondent Bank, for failure to pay the purchase price on the last day of the period given by respondent Bank?

"It is petitioner's submission that to follow the arguments of respondent Bank that the letter-agreement can only be exercised collectively and not singly would render the said agreement a useless piece of paper, and gravely prejudicial to the property itself.

"What is more, even the respondent bank's legal officer, Atty. Arsenio Sy Santos, when asked to comment on the case of the petitioner, admitted that indeed the letter-agreement of August 3, 1973 is actually an option to buy. Said legal officer gave the following observations and comments, to wit:

""x x x

Observations and comments -

It may be interesting to note that the provisions of Articles 1302 and 1303 which reads as follows:

Art. 1302. It is presumed that there is legal subrogation:

- (1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge;
- (2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;
- (3) When even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share.

Art. 1303. Subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third person, be they guarantors or possessors of mortgages, subject to stipulated in a conventional subrogations (sic).' refer to cases where the creditor-debtor relationship exists among the parties.) (Rollo, pp. 243-246)

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There was no creditor-debtor relationship existing among the heirs and Mr. Dee had no legal authority to create one.

China Bank contends that when it told the petitioner that the property could not be reconveyed to her alone, she was likewise informed that a similar offer from some of the other co-heirs had also been politely turned down. (Exhibit 7, China Bank, Folder of Exhibits, p. 87)

The petitioner disputes this claim. She states that there was no such offer by her co-heirs because she was the only one willing to buy back the lot and the only one with the means to do so at that time. It was only on September 12, 1974 that the individual respondents offered to repurchase. By that time, D. Annie Tan had already paid for the lot and was already insisting on a conveyance of the property in her name alone.

The petitioner states:

"There is, therefore, no doubt that the money used in buying back the property belongs exclusively to the petitioner. Private respondents' inaction in not contributing the necessary money up to the last day of the buy back period is fatal to their cause. To paraphrase one case decided by this Honorable Court, courts cannot look with favor at parties who, by their silence, delay and inaction, knowingly induce another to spend time, effort and expense in protecting their interests over the property by paying the buy back money only to spring from ambush and claim title or interest over the property when the land and building value have become higher. (See *Lola v. Court of Appeals*, G.R. No. 46575, November 13, 1986). Moreover, the laws aid the vigilant, not those who slumber on their rights. (*Miraflor v. Court of Appeals*, G. R. Nos. 40151-52, April 8, 1986).

"Definitely, the effects of a waiver militates against the private respondents. Having forfeited, abandoned and/or waived their rights, private respondents are now estopped from taking an inconsistent position. They cannot now assert that they are still co-owners of the property with the petitioner. (Sec. 65, Rule 123, Rules of Court; *Hernaez v. Hernaez*, 32 Phil. 214) (See also *Banco de Oro Savings & Mortgage Bank v. Equitable Banking Corporation*, G.R. No. 74917, January 20, 1988, citing *Saura Import and Export Co. v. Court of Appeals*, 24 SCRA 974). All the elements of a valid waiver (1) the existence of a right; (2) the knowledge of the existence thereof; and (3) the intention to relinquish such right, either expressly or impliedly are present. (*Director of Lands v. Abiertas*, 44 O.G. 928). x x x." (Rollo, pp. 238-239)

The claim of the respondents Tan in their memorandum that they gave their individual contributions to the petitioner to raise the P180,000.00 is not worthy of credence. At the time of the repurchase, the petitioner was already estranged from the respondents Tan and they would not have given her any money without corresponding receipts or given her money under any circumstance, for that matter. In fact, there is no reason why the petitioner should be the one to collect the money of the heirs and bring it to China Bank. She was neither a son nor the eldest. Neither did the others feel kindly towards her. The petitioner had called for a conference on July 23, 1974 at 619 Carvajal Street, Binondo, Manila to discuss compliance with the letter-agreement considering the fast approaching deadline. Not one showed up. (Rollo, pp. 44-45), The money was raised by D. Annie Tan through her connections with Jardine Davies because of her construction business.

The decision of the respondent court confirmed the factual findings of the trial court. It declared that the respondents Tan became debtors of petitioner Tan and ordered them to reimburse the P30,000.00 each which were advanced by the petitioner. There was no pooling of resources up to August 30, 1974 when at 4:00 in the afternoon, D. Annie Tan went to Mr. Dee K. Chiong with the China Bank manager's check for P180,000.00.

The equities of this case also favor the grant of the petition. D. Annie Tan went to plenty of trouble in her effort to buy back the property formerly owned by her parents. There is nothing in the records to show that, beyond making some perfunctory allegations, the respondents Tan did anything to save the property from falling into the hands of other persons. The petitioner states that she has now spent substantial sums to pay for real estate taxes and to renovate, and improve the premises. According to her she has "spent her little fortunes to preserve the patrimony left by her parents. She alone deserves to be entitled to the property, in law and equity." (Rollo, p. 317)

WHEREFORE, the petition is hereby GRANTED. The questioned decision of the Court of Appeals is REVERSED and SET ASIDE. The respondent China Banking Corporation is ordered to execute the deed of sale over the disputed property in favor of the petitioner alone.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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