

MARIANO DISTRITO, LUISA DISTRITO, MARIANO CIMA FRANCA, EDUARDO DOMICIANO DISTRITO, ELIZABETH DISTRITO AND SEGUNDINO CATIPAY, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, PEDR...

G.R. No. 95256. May 28, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This petition involves the legal redemption of real property.

Private respondents seek to redeem as co-owner's from petitioners a parcel of land more particularly described as follows:

"Lot No. 716-B-2 of the Dumaguete Cadastre, bounded on the North by Colon St., 13.75 meters; on the South by Lot 716-A, 14.76 meters; on the East by Cervantes St., and on the West by Lot No. 716-B, 19.09 meters, containing an area of 374 square meters, and covered by Tax Declaration No. 0-2536, with assessed value at P11,664." [1]

The evidence of the parties is concisely related by the respondent court as follows:

"Plaintiff-appellants evidence tend to establish that the property in question was originally owned by Simeona Amistad now deceased, their predecessor-in-interest. The heirs of the late Simeona Amistad are Eufrocina Potenciana, Librada, Catalina, Gabina and Anecito all surnamed Villamil. The lot in question is within the heart of the City of Dumaguete City [sic] and Librada's house was constructed thereat, where Librada's husband and children are presently staying after Librada's death. Plaintiff Pacita Miquiabas-Samson who is working in Dumaguete City together with her children who are studying also in Dumaguete City are also [sic] living in Librada's house. Pedro Miquiabas also stays in the house when he visits Dumaguete City coming from the island of Siquijor.

Appellant Pacita Miquiabas-Samson testified that she had bought the share of Librada Villamil and agreed with the heirs of Gabina Villamil to buy their respective shares and would like to redeem the shares of Catalina and Anecito both surnamed Villamil to preserve the family lot for sentimental reasons.

Plaintiff-appellants claim that they only came to know about the sale of the lot in question in July 1984, when Eduardo Distrito, one of the defendant-appellee [sic] notified them that the defendants were constructing a building on the portion they bought from Catalina Villamil and Anecito Villamil. However, appellant Pacita Miquiabas-Samson refused as the shares of Catalina Villamil and Anecito Villamil has [sic] not yet been segregated as there was no partition over the lot in question.

Plaintiffs-appellants offered to redeem the land in the amount of P4,566.00, but the defendants-appellees refused. Hence a tender of payment was made (Exh. B), with the court, and notice of consignment was sent to the defendants-appellees. (Exhibit C).

On the other hand, the evidence of the defendant-appellees tends to prove that the whole lot 716 of the

Dumaguete Cadastre was the subject of a civil case in the Court of First Instance of Negros Oriental, and the said court adjudicated to the six (6) heirs of Simeona Amistad Lot No. 716-B-2, the land in litigation with the one sixth (1 /6) pro-indiviso shares.

On April 16, 1976 the defendant-appellees acquired by purchase one-half (1/2) portion pro-indiviso of Lot No. 716-B-3, from Atty. Marcelo Flores which the latter acquired as payment of his attorney's fees in the Civil Case. (Exhibit 3).

Subsequently, upon representation of Plaintiff-Appellant Pedro Miquiabas, who acted as middle-man, defendant-appellant bought the shares of Catalina and Anecito Villamil. On April 30, 1975, the instrument of sale was notarized by Juan A. Lapisan, Jr. who testified that Pedro Miquiabas accompanied Eduardo Distrito and himself to Siaton, Negros Oriental where Catalina Villamil is living in order for the latter to sign the document as Catalina was too old to travel to Dumaguete City.

Appellant Pedro Miquiabas also offered to sell his share and that of his sister to the defendant-appellee but the latter hesitated.

Appellee Eduardo Distrito testified that his co-defendant and himself also bought the share of Eusebio Amistad who owns the adjoining lot through the representations of appellant Pedro Miquiabas. (Exh. 4).[2]

The lone issue is whether or not the private respondents are entitled to redeem the land in question.

In a decision dated June 19, 1987, the Regional Trial Court at Dumaguete City, before which the action was originally brought found that private respondents have lost their right of redemption so the complaint was dismissed with costs against private respondents. On appeal to the Court of Appeals, the said judgment was reversed in a decision dated April 26, 1990, the dispositive part of which reads:

"WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE, and another one is entered:

- (a) Declaring the consignment of the P4,588.85 made by the appellants properly made.
- (b) Declaring that the plaintiff-appellants can exercise the right of legal redemption to the portions sold pro-indiviso by Catalina Villamil and Anecito Villamil to the defendant-appellees as evidenced by Exhibit 2;
- (c) Ordering all the appellees to accept the consigned price and to convey to the plaintiff-appellants the undivided portion of the land in litigation, within 30 days from the time our decision becomes final; and
- (d) Ordering the defendant-appellees to pay the proportionate costs." [3]

Hence this petition for review on certiorari.

Article 1623 of the Civil Code provides:

"Art. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty 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."

When a vendor sells real property, he must notify in writing his co-owners who may redeem the same within thirty (30) days from notice. The deed of sale must be accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners before it may be recorded in the Registry of Property.

This method was deemed as exclusive in a decision penned by then Justice J. B.L. Reyes.[4] However, the law does not prescribe any particular form of written notice, nor any distinctive method for notifying the

redemptioner.[5] So long as the redemptioner was informed in writing he has no cause to complain. In *De Conejero vs. Court of Appeals*[6] this Court ruled that the furnishing of a copy of the disputed deed of sale to the redemptioner was equivalent to the giving of written notice required by law. In the recent case of *Alonzo vs. Intermediate Appellate Court*,[7] this Court held that as an exception to the general rule the co-heirs who lived with the purchasers in the same lot are deemed to have received actual notice of the sale.

In this case, it appears that private respondent Pedro Miquiabas acted as middleman and was present when the vendor signed the deed of sale. It is obvious that he had actual knowledge of the sale. Thus, a written notice to him as required by Article No. 1623 of the Civil Code is not necessary. The only purpose of such written notice is to insure that all the co-owners shall be actually notified of the sale and to remove all doubt as to the perfection of the sale.[8]

When as in this case the co-owner was actually present and was even an active intermediary in the consummation of the sale of the property he is and must be considered to have had actual notice of the sale. A written notice is no longer necessary.

As to private respondent Pacita Miquiabas she was not present when the aforesaid sale of the property was undertaken. There is no evidence that she was informed or that she ever learned about the sale soon thereafter. It was only in July, 1984 that she was notified by petitioners of their intention to construct a building on a portion of the property in question which they bought. Within thirty (30) days thereafter, that is, on August 3, 1984, said private respondent filed a complaint for legal redemption in court and at the same time deposited the amount of P4,588.85 with the court as the purchase price.

As the law requires a written notice of such sale to the co-owners, such actual notice to private respondent Pacita Miquiabas is not sufficient compliance with the requirement. Moreover, said respondent filed the complaint for legal redemption within thirty (30) days from the time she was verbally notified thereof by petitioners. Hence, her right to redeem the property as co-owner must be sustained.

WHEREFORE, with the modification that the complaint is dismissed as to private respondent Pedro Miquiabas who had lost his right to redeem, the judgment appealed from is affirmed in all other respects. No pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 17, rollo.

[2] Pages 18 to 20, rollo; Mr. Justice Bonifacio A. Cacedac, Jr. wrote the decision. Justices Gloria C. Paras and Serafin V. C. Guingona concurred.

[3] Pages 23 to 24, rollo.

[4] *Butte vs. Manuel Uy & Sons, Inc.*, 4 SCRA 526, 533 (1962).

[5] *Etcuban vs. Court of Appeals*, 148 SCRA 507 (1983).

[6] 16 SCRA 775 (1966).

[7] 150 SCRA 259 (1987).

[8] Butte vs. Uy, *supra*.

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