

44 Phil. 1

[G. R. No. 19372. November 01, 1922]

**JOSE SEMPIO, PLAINTIFF AND APPELLEE, VS. TIMOTEO DEL ROSARIO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MALCOLM, J.:

The issue in this case, as agreed upon by the parties and as stated by the trial court, narrows down to a determination of whether the provisions of article 1524. of the Civil Code providing a period of nine days within which the right of legal redemption can be exercised, is still in force, or whether said article 1524 has been impliedly repealed by the portions of the Code of Civil Procedure dealing with prescription of actions.

Jose Sempio and Irineo G. Bernabe were formerly co-owners of a fishery located in the municipality of Malolos, Bulacan, and registered under the Torrens system in their names. On November 22, 1920, Bernabe sold his undivided interest of the fishery to Timoteo del Rosario for the sum of P5,000. On the same date, the deed of sale was duly noted on the Torrens title.

On March 28, 1921, that is, subsequent to the expiration of the nine-day period fixed by article 1524 of the Civil Code, but within the ten-year period fixed by the Code of Civil Procedure, Sempio brought action in the Court of First Instance of Bulacan against Del Rosario for the repurchase of the share of the defendant, making offer at the same time to recompense Del Rosario in the amount which he had paid Bernabe for the land. The defendant in his answer alleged that the right of action of plaintiff had not been exercised in due time. The trial court found with the plaintiff and rendered judgment accordingly, without special finding as to costs.

Article 1524 of the Civil Code is found in section 2 of chapter 6 of title 4 of Book 4 of the Code. Said chapter 6 treats of rescission of the sale, and section 1 thereunder, of conventional redemption, and section 2 of legal redemption. Article 1524 is of the following

tenor:

“The right of legal redemption can be exercised only within nine days, counted from the date of the record of the transfer in the Registry of Deeds, or in default thereof, from the time the redemptioner may have had knowledge of the sale.

“The right of redemption of co-owners excludes that of adjacent owners.”

Justice Willard in his notes to the Spanish Civil Code, in considering article 1524, expressed the following opinion: “Repealed as to the limitation. The period now would probably be ten years under section 40 of the new Code, and that time would commence to run from the sale.” The decision of this court in the case of *Conspecto vs. Fruto* ([1915], 31 Phil., 144), is also relied upon by the trial court, and by counsel for appellee, as bearing out this thesis, but on examination is found to deal only with the general subject of limitation of actions, and to contain no special reference to the point we have under consideration.

Other articles found in section 1, Conventional Redemption, in the above-mentioned chapter 6 of the Civil Code, have been given effect in numerous decisions of this court. One leading example is, that when the vendor reserves to himself the right to repurchase the thing sold (*pacto de retro*), in default of an express agreement, the right shall endure for four years. (See cases cited under article 1508 of Fisher’s Civil Code.) Articles 1521, 1522, and 1523 of section 2, Legal Redemption, have been recognized as in force in the following decisions: *United States vs. Caballero*, per Arellano, *C. J.* ([1913], 25 Phil., 356); *Estrada vs. Reyes*, per Torres, *J.* ([1915], 33 Phil., 31) ; and *Del Pilar vs. Catindig*, per Araullo, *J.* ([1916], 35 Phil., 263).

The only decision which has given any attention at all to article 1524 is that of *Lim Tuico vs. Cu-Unjieng* ([1912], 21 Phil., 493). There the fact was that “* * * the last day but one before the expiration of the period of the nine days after notice prescribed by article 1524 of the Civil Code relative to the exercise of the right of redemption in such cases, the appellee purchased the property from the appellant, paying therefor the sum of P60,000.” In contrast with the facts at bar, the right of legal redemption in the *Lim Tuico vs. Cu-Unjieng* case was exercised within the nine-day period while here it has not been so exercised.

Placing to one side the authorities, a convincing reason of a fundamental nature leading to the conclusion that article 1524 is still in force, is that the right of legal redemption and the

right to commence actions, are of an entirely different nature. The first creates a substantive right which, in the absence of the article, would never exist; the second restricts the period in which a cause of action may be asserted. Repeals by implication are not favored.

Our holding is, that article 1524 of the Civil Code has not been repealed by the Code of Civil Procedure, and that it should be given effect. Accordingly, judgment is reversed, and the complaint is dismissed, without special finding as to costs in either instance. So ordered.

Araullo, C. J., Johnson, Street, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.