

SECOND DIVISION

[G.R. NO. 133638, April 15, 2005]

**PERPETUA VDA. DE APE, PETITIONER, VS. THE HONORABLE
COURT OF APPEALS AND GENOROSA CAWIT VDA. DE LUMAYNO,
RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals in CA-G.R. CV No. 45886 entitled, "Generosa Cawit de Lumayno, accompanied by her husband Braulio Lumayno v. Fortunato Ape, including his wife Perpetua de Ape."

The pertinent facts are as follows:

Cleopas Ape was the registered owner of a parcel of land particularly known as Lot No. 2319 of the Escalante Cadastre of Negros Occidental and covered by Original Certificate of Title (OCT) No. RP 1379 (RP-154 [300]).^[2] Upon Cleopas Ape's death sometime in 1950, the property passed on to his wife, Maria Ondoy, and their eleven (11) children, namely: Fortunato, Cornelio, Bernalda, Bienvenido, Encarnacion, Loreta, Lourdes, Felicidad, Adela, Dominador, and Angelina, all surnamed Ape.

On 15 March 1973, Generosa Cawit de Lumayno (private respondent herein), joined by her husband, Braulio,^[3] instituted a case for "Specific Performance of a Deed of Sale with Damages" against Fortunato and his wife Perpetua (petitioner herein) before the then Court of First Instance of Negros Occidental. It was alleged in the complaint that on 11 April 1971, private respondent and Fortunato entered into a contract of sale of land under which for a consideration of P5,000.00, Fortunato agreed to sell his share in Lot No. 2319 to private respondent. The agreement was contained in a receipt prepared by private respondent's son-in-law, Andres Flores, at her behest. Said receipt was attached to the complaint as Annex "A" thereof and later marked as Exhibit "G" for private respondent. The receipt states:

April 11, 1971

TO WHOM IT MAY CONCERN:

This date received from Mrs. Generosa Cawit de Lumayno the sum of THIRTY PESOS ONLY as Advance Payment of my share in Land Purchased, for FIVE THOUSAND PESOS – LOT #2319.

(Signed)
FORTUNATO APE

P30.00

WITNESS:

(Illegible) [4]

As private respondent wanted to register the claimed sale transaction, she supposedly demanded that Fortunato execute the corresponding deed of sale and to receive the balance of the consideration. However, Fortunato unjustifiably refused to heed her demands. Private respondent, therefore, prayed that Fortunato be ordered to execute and deliver to her "a sufficient and registrable deed of sale involving his one-eleventh (1/11) share or participation in Lot No. 2319 of the Escalante Cadastre; to pay P5,000.00 in damages; P500.00 reimbursement for litigation expenses as well as additional P500.00 for every appeal made; P2,000.00 for attorney's fees; and to pay the costs.[5]

Fortunato and petitioner denied the material allegations of the complaint and claimed that Fortunato never sold his share in Lot No. 2319 to private respondent and that his signature appearing on the purported receipt was forged. By way of counterclaim, the defendants below maintained having entered into a contract of lease with respondent involving Fortunato's portion of Lot No. 2319. This purported lease contract commenced in 1960 and was supposed to last until 1965 with an option for another five (5) years. The annual lease rental was P100.00 which private respondent and her husband allegedly paid on installment basis. Fortunato and petitioner also assailed private respondent and her husband's continued possession of the rest of Lot No. 2319 alleging that in the event they had acquired the shares of Fortunato's co-owners by way of sale, he was invoking his right to redeem the same. Finally, Fortunato and petitioner prayed that the lease contract between them and respondent be ordered annulled; and that respondent be ordered to pay them attorney's fees; moral damages; and exemplary damages.[6]

In their reply,[7] the private respondent and her husband alleged that they had purchased from Fortunato's co-owners, as evidenced by various written instruments, [8] their respective portions of Lot No. 2319. By virtue of these sales, they insisted that Fortunato was no longer a co-owner of Lot No. 2319 thus, his right of redemption no longer existed.

Prior to the resolution of this case at the trial court level, Fortunato died and was substituted in this action by his children named Salodada, Clarita, Narciso, Romeo, Rodrigo, Marieta, Fortunato, Jr., and Salvador, all surnamed Ape.[9]

During the trial, private respondent testified that she and her husband acquired the various portions of Lot No. 2319 belonging to Fortunato's co-owners. Thereafter, her husband caused the annotation of an adverse claim on the certificate of title of Lot No. 2319.[10] The annotation states:

Entry No. 123539 – Adverse claim filed by Braulio Lumayno. – Notice of adverse claim filed by Braulio Lumayno affecting the lot described in this title to the extent of 77511.93 square meters, more or less, the aggregate area of shares sold to him on the basis of (alleged) sales in his possession. Doc. No. 157, Page No. 33, Book No. XI, Series of 1967 of Alexander Cawit of Escalante, Neg. Occ. Date of instrument. – June 22, 1967 at 8:30 a.m. (SGD) FEDENCIORRAZ, Actg. Register of Deeds.[11]

In addition, private respondent claimed that after the acquisition of those shares, she and her husband had the whole Lot No. 2319 surveyed by a certain Oscar Mascada who came up with a technical description of said piece of land.^[12] Significantly, private respondent alleged that Fortunato was present when the survey was conducted.^[13]

Also presented as evidence for private respondent were pictures taken of some parts of Lot No. 2319 purportedly showing the land belonging to Fortunato being bounded by a row of banana plants thereby separating it from the rest of Lot No. 2319.^[14]

As regards the circumstances surrounding the sale of Fortunato's portion of the land, private respondent testified that Fortunato went to her store at the time when their lease contract was about to expire. He allegedly demanded the rental payment for his land but as she was no longer interested in renewing their lease agreement, they agreed instead to enter into a contract of sale which Fortunato acceded to provided private respondent bought his portion of Lot No. 2319 for P5,000.00. Thereafter, she asked her son-in-law Flores to prepare the aforementioned receipt. Flores read the document to Fortunato and asked the latter whether he had any objection thereto. Fortunato then went on to affix his signature on the receipt.

For her part, petitioner insisted that the entire Lot No. 2319 had not yet been formally subdivided;^[15] that on 11 April 1971 she and her husband went to private respondent's house to collect past rentals for their land then leased by the former, however, they managed to collect only thirty pesos;^[16] that private respondent made her (petitioner's) husband sign a receipt acknowledging the receipt of said amount of money;^[17] and that the contents of said receipt were never explained to them.^[18] She also stated in her testimony that her husband was an illiterate and only learned how to write his name in order to be employed in a sugar central.^[19] As for private respondent's purchase of the shares owned by Fortunato's co-owners, petitioner maintained that neither she nor her husband received any notice regarding those sales transactions.^[20] The testimony of petitioner was later on corroborated by her daughter-in-law, Marietta Ape Dino.^[21]

After due trial, the court *a quo* rendered a decision^[22] dismissing both the complaint and the counterclaim. The trial court likewise ordered that deeds or documents representing the sales of the shares previously owned by Fortunato's co-owners be registered and annotated on the existing certificate of title of Lot No. 2319. According to the trial court, private respondent failed to prove that she had actually paid the purchase price of P5,000.00 to Fortunato and petitioner. Applying, therefore, the provision of Article 1350 of the Civil Code,^[23] the trial court concluded that private respondent did not have the right to demand the delivery to her of the registrable deed of sale over Fortunato's portion of the Lot No. 2319.

The trial court also rejected Fortunato and petitioner's claim that they had the right of redemption over the shares previously sold to private respondent and the latter's husband, reasoning as follows:

Defendants in their counterclaim invoke their right of legal redemption under Article 1623 of the New Civil Code in view of the alleged sale of the undivided portions of the lot in question by their co-heirs and co-owners

as claimed by the plaintiffs in their complaint. They have been informed by the plaintiff about said sales upon the filing of the complaint in the instant case as far back as March 14, 1973. Defendant themselves presented as their very own exhibits copies of the respective deeds of sale or conveyance by their said co-heirs and co-owners in favor of the plaintiffs or their predecessors-in-interest way back on January 2, 1992 when they formally offered their exhibits in the instant case; meaning, they themselves acquired possession of said documentary exhibits even before they formally offered them in evidence. Under Art. 1623 of the New Civil Code, defendants have only THIRTY (30) DAYS counted from their actual knowledge of the exact terms and conditions of the deeds of sale or conveyance of their co-heirs' and co-owners' share within which to exercise their right of legal redemption.^[24]

Within the reglementary period, both parties filed their respective notices of appeal before the trial court with petitioner and her children taking exception to the finding of the trial court that the period within which they could invoke their right of redemption had already lapsed.^[25] For her part, private respondent raised as errors the trial court's ruling that there was no contract of sale between herself and Fortunato and the dismissal of their complaint for specific performance.^[26]

The Court of Appeals, in the decision now assailed before us, reversed and set aside the trial court's dismissal of the private respondent's complaint but upheld the portion of the court *a quo's* decision ordering the dismissal of petitioner and her children's counterclaim. The dispositive portion of the appellate court's decision reads:

WHEREFORE, the decision dated March 11, 1994, is hereby REVERSED and SET ASIDE insofar as the dismissal of plaintiffs-appellants' complaint is concerned, and another one is entered ordering the defendant-appellant Fortunato Ape and/or his wife Perpetua de Ape and successors-in-interest to execute in favor of plaintiff-appellant Generosa Cawit de Lumayno a Deed of Absolute Sale involving the one-eleventh (1/11) share or participation of Fortunato Ape in Lot No. 2319, Escalante Cadastre, containing an area of 12,527.19 square meters, more or less, within (30) days from finality of this decision, and in case of non-compliance with this Order, that the Clerk of Court of said court is ordered to execute the deed on behalf of the vendor. The decision is AFFIRMED insofar as the dismissal of defendants-appellants' counterclaim is concerned.

Without pronouncement as to costs.^[27]

The Court of Appeals upheld private respondent's position that Exhibit "G" had all the earmarks of a valid contract of sale, thus:

Exhibit G is the best proof that the P5,000.00 representing the purchase price of the 1/11th share of Fortunato Ape was not paid by the vendee on April 11, 1971, and/or up to the present, but that does not affect the binding force and effect of the document. The vendee having paid the vendor an advance payment of the agreed purchase price of the property, what the vendor can exact from the vendee is full payment upon his

execution of the final deed of sale. As is shown, the vendee precisely instituted this action to compel the vendor Fortunato Ape to execute the final document, after she was informed that he would execute the same upon arrival of his daughter "Bala" from Mindanao, but afterwards failed to live up to his contractual obligation (TSN, pp. 11-13, June 10, 1992).

It is not right for the trial court to expect plaintiff-appellant to pay the balance of the purchase price before the final deed is executed, or for her to deposit the equivalent amount in court in the form of consignation. Consignation comes into fore in the case of a creditor to whom tender of payment has been made and refuses without just cause to accept it (Arts. 1256 and 1252, N.C.C.; Querino vs. Pelarca, 29 SCRA 1). As vendee, plaintiff-appellant Generosa Cawit de Lumayno does not fall within the purview of a debtor.

We, therefore, find and so hold that the trial court should have found that exhibit G bears all the earmarks of a private deed of sale which is valid, binding and enforceable between the parties, and that as a consequence of the failure and refusal on the part of the vendor Fortunato Ape to live up to his contractual obligation, he and/or his heirs and successors-in-interest can be compelled to execute in favor of, and to deliver to the vendee, plaintiff-appellant Generosa Cawit de Lumayno a registerable deed of absolute sale involving his one-eleventh (1/11th) share or participation in Lot No. 2319, Escalante Cadastre, containing an area of 12,527.19 square meters, more or less, within 30 days from finality of this decision, and, in case of non-compliance within said period, this Court appoints the Clerk of Court of the trial court to execute on behalf of the vendor the said document.^[28]

The Court of Appeals, however, affirmed the trial court's ruling on the issue of petitioner and her children's right of redemption. It ruled that Fortunato's receipt of the Second Owner's Duplicate of OCT (RP) 1379 (RP-154 ([300])), containing the adverse claim of private respondent and her husband, constituted a sufficient compliance with the written notice requirement of Article 1623 of the Civil Code and the period of redemption under this provision had long lapsed.

Aggrieved by the decision of the appellate court, petitioner is now before us raising, essentially, the following issues: whether Fortunato was furnished with a written notice of sale of the shares of his co-owners as required by Article 1623 of the Civil Code; and whether the receipt signed by Fortunato proves the existence of a contract of sale between him and private respondent.

In her memorandum, petitioner claimed that the Court of Appeals erred in sustaining the court *a quo's* pronouncement that she could no longer redeem the portion of Lot No. 2319 already acquired by private respondent for no written notice of said sales was furnished them. According to her, the Court of Appeals unduly expanded the scope of the law by equating Fortunato's receipt of Second Owner's Duplicate of OCT (RP) 1379 (RP-154 ([300])) with the written notice requirement of Article 1623. In addition, she argued that Exhibit "G" could not possibly be a contract of sale of Fortunato's share in Lot No. 2319 as said document does not contain "(a) definite agreement on the manner of payment of the price."^[29] Even