

THIRD DIVISION

[G.R. No. 132102, May 19, 1999]

**SPS. AMADO & MILAGROS TINIO AND ROLANDO TINIO,
PETITIONERS, VS. NELLIE MANZANO, RESPONDENT.**

DECISION

GONZAGA-REYES, J.:

This petition for review on *certiorari* seeks to reverse the decision of the Court of Appeals^[1] in CA-G.R. CV No. 48567 affirming in *toto* the decision of the Regional Trial Court, Branch XXI, Santiago City, Isabela, in an action by private respondent against petitioners for legal redemption of real property pursuant to Articles 1620 and 1621 of the New Civil Code (Civil Case No. 21-0948).

The material antecedents as taken from the decision of the respondent Court of Appeals are:

Private respondent Nellie A. Manzano is a co-owner, together with her brothers and sisters Ernesto Manzano, Roland Manzano, Pamela Manzano and Edna Manzano of Lot No. 113, CCs-167, situated in Victory Norte, Santiago, Isabela. On or about April 12, 1988, while private respondent was abroad, her brothers and sisters sold the aforesaid property to petitioner Rolando Tinio, the son of the other petitioners, spouses Amado and Milagros Tinio, for the price of P100,000.00. In a forged "Affidavit of Waiver of Rights, Claim and Interest", private respondent was made to appear as having waived her rights over Lot No. 113 in favor of Rolando Tinio. Subsequently, on April 19, 1991, Rolando Tinio obtained a Miscellaneous Sales Patent over a portion of Lot No. 113, denominated as Lot No. 113-B, with an area of 105 square meters, from the Bureau of Lands. The patent was registered in the Registry of Deeds for the Province of Isabela, which issued Original Certificate of Title No. P-55907 in the name of Rolando Tinio. Upon private respondent's return to the Philippines in 1994, the plaintiff-appellee offered to redeem the shares of her co-owners pursuant to Articles 1620 and 1621 of the New Civil Code. Receiving no reply, private respondent filed an action for legal redemption before the trial court.

After trial, a decision was rendered by the court *a quo* in favor of private respondent, to wit:

- "1. DECLARING that the plaintiff has the right of redemption over the shares of her co-owners to the properties which they sold to the defendants;
2. ORDERING the defendant Rolando Tinio to execute the necessary deed of sale of the properties in favor of the plaintiff Nellie Manzano;
3. AUTHORIZING the defendant Rolando Tinio to withdraw the amount of

One Hundred Thousand Pesos (P100,000.00) which was deposited by the plaintiff representing the redemption price of the properties;

So Ordered."^[2]

On appeal, the aforesaid judgment was affirmed in *toto* by the Court of Appeals. With the denial of their motion for reconsideration, petitioners filed the instant petition for review, on the grounds that the Court of Appeals:

1. (Has) Decided a Question of Substance Not Heretofore Been Decided By The Honorable Supreme Court And Decided It On Mere Technicality By Declaring That Petitioners Could Not Raise The Issue That There Is No Legal Redemption Over A Land Of The Public Domain Because It Was Raised For The First Time On Appeal;
2. Gravely Erred In Not Considering The Letters of Respondent Nellie Manzano, Exhibits 1,2, and 3, Which Patently Prove That She Is Fully Aware Of The Sale Of The Land;
3. Grievously Erred In Not Admitting The RECEIPT, Annex 2 of the Motion for Reconsideration, As Newly Discovered Evidence Proving The Full Awareness of Nellie Manzano Of The Sale Of The Subject Land And Having Benefited Therefrom Is Estopped From Asserting Her Alleged Right Of Legal Redemption;
4. Gravely Erred In Ruling That The Trial Court Had Jurisdiction Over The Subject Land Which Under Existing Jurisprudence Lie Within The Exclusive Authority Of The Director Of Lands Under the Executive Department."^[3]

The petition is not impressed with merit.

In the interrelated first and fourth grounds, petitioners fault the respondent Court for its refusal to resolve the issue that the subject property is part of the public domain, hence, under the exclusive authority of the Director of Lands. Further, petitioners contend that a finding that the subject property is part of the public domain would negate co-ownership; sale by a private individual; and the right of legal redemption.

The Court of Appeals ruled in this wise:

"The argument that the land involved is land of the public domain is an issue being raised for the first time. Section 18, Rule 46 of the Revised Rules of Court (Sec. 15, Rule 44 of the 1997 Rules of Civil procedure) provides that the "appellant may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties." It is well-settled that issues not raised and/or ventilated in the lower court cannot be raised for the first time on appeal (*Redodos v. WCC*, 6 SCRA 7171, *DBP v. CA*, 116 SCRA 636, *Galicia v. Polo*, 179 SCRA 372). A look at the issues agreed upon by the parties in the lower court (*supra*) readily shows that the character of the land, whether of public domain or private ownership, is not among such issues.

Besides, having purchased the land from the brothers and sisters of the

plaintiff-appellee, Rolando Tinio is now estopped from claiming that the latter had no rights over it."^[4]

We note that at the pre-trial of the case, the parties agreed among other matters that "the plaintiff is co-owner in equal shares with her brothers Ernesto Manzano and Roland Manzano and sisters Pamela Manzano and Edna Manzano of the properties enumerated in paragraph 2 of the second amended complaint"; and that "the co-owners of the plaintiff sold their share of the properties in favor of Rolando Tinio."

Likewise, the following issues were agreed upon during the pre-trial:

1. Whether or not the plaintiff can exercise her right of legal redemption of the properties of her co-owners under Article 1619 and 1620 of the New Civil Code;
2. Whether or not plaintiff's right to redeem expired;
3. Whether or not the plaintiff is in estoppel;
4. Whether there was a valid tender of payment;
5. Damages and attorney's fees."^[5]

Evidently, the petitioners having admitted that respondent Nellie Manzano along with her brothers and sisters were co-owners of the subject property; and that the former acquired it by sale from the brothers and sisters, banked on the lapse of the prescriptive period to exercise the right of legal redemption and the alleged knowledge and participation by respondent Nellie Manzano in the consummation of the sale including receipt of partial payment, as precluding her from exercising said right. Petitioners cannot now be allowed to escape the adverse effects of their defense by belatedly raising a new theory that the land is part of the public domain as this would be offensive to the fundamental tenets of fair play.

It is worthy of mention that:

"A pre-trial is meant to serve as a device to clarify and narrow down the basic issues between the parties, to ascertain the facts relative to those issues and to enable the parties to obtain the fullest possible knowledge of the issues and facts before civil trials and thus prevent that said trial are carried on in the dark. Pre-trial is primarily intended to make certain that all issues necessary to the disposition of a case are properly raised. Thus, to obviate the element of surprise, parties are expected to disclose at a pre-trial conference all issues of law and fact which they intend to raise at the trial, except such as may involve privileged or impeaching matters. The determination of issues at a pre-trial conference bars the consideration of other questions on appeal."^[6]

Further, the applicable and well-settled principle is that "a party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on