

## **NINETEENTH DIVISION**

**[ CA-G.R. CV. NO. 04327, January 26, 2015 ]**

**HERMELINA A. RAMA AND BABY R. LAURON, PLAINTIFFS-  
APPELLEES, VS. SPS. MEDARDO NOGRA AND PURITA NOGRA,  
AND RICARDO RAMA AND MARILES RAMA, DEFENDANTS-  
APPELLANTS.**

### **D E C I S I O N**

**LOPEZ, J.:**

#### **The Case**

Before this Court is an appeal filed under Rule 41 of the 1997 Rules of Civil Procedure which seeks to reverse and set aside the Decision<sup>[1]</sup> of the Regional Trial Court, Branch 7 of Cebu City dated 25 October 2011, declaring that Plaintiff-Appellee Hermelina Rama is entitled to redeem the share of her co-heir, Ricardo Rama, in Lot No. 6034-C-2-H-4 which was sold to the Spouses Nogra and its Order<sup>[2]</sup> dated 20 January 2012 denying Defendants-Appellants' Motion for Reconsideration.

#### **FACTUAL ANTECEDENTS**

The present controversy concerns the right of a co-owner of a thing to redeem (legal redemption) the share of another co-owner in case the latter's share is sold to a third person pursuant to Articles 1620 and 1623 of the Civil Code.

Felix Rama is the registered owner of Lot No. 6034-C-2-H-4 with an area of 129 square meters and situated along V. Rama St., Barangay Guadalupe, Cebu City. He died intestate in October 1972. He is survived by his heirs namely: Plaintiff-Appellee Hermelina Rama (herein referred as "Hermelina"), Defendant-Appellant Ricardo Rama (herein referred as "Ricardo"), Lucena Rama Yamyamin (herein referred as "Lucena") and Victoria Rama Fajardo (herein referred as "Victoria"). The surviving heirs are the co-owners of Lot No. 6034-C-2-H-4 which remained undivided up to the present. On the other hand, Plaintiff-Appellee Baby R. Lauron is the daughter of Hermelina.

On 10 September 1992, Defendant-Appellant Ricardo sold his undivided share in the subject property on installment basis to the Spouses Nogra as evidenced by a Deed of Provisional Sale<sup>[3]</sup>. Upon full payment of the purchase price, the parties executed a Deed of Absolute Sale<sup>[4]</sup> on 13 July 2001.

Contending that she was not informed by Ricardo of the sale of the latter's undivided share in the subject property to the Spouses Nogra, Plaintiff-Appellee Hermelina took the matter to the Lupon Tagapamayapa of Barangay Guadalupe, Cebu City. The Lupon conducted its proceedings on two occasions, on 25 July 2007

and 9 September 2007. During the proceedings, Ricardo admitted, in the presence of Plaintiffs-Appellees, that he sold his share in the subject property to the Spouses Nogra. Likewise, Lucena, another co-owner, admitted that she also disposed of her share to the said spouses in the hearing of 9 September 2007. Their confrontation was properly recorded in the Minutes<sup>[5]</sup> of the said meetings.

Thereafter or on 26 September 2007, Plaintiffs-Appellees confronted Ricardo who again admitted the sale of his share to the Spouses Nogra. On the same occasion, Ricardo handed a copy of the Deed of Absolute Sale dated 13 July 2001 to Plaintiffs-Appellees.

Subsequently, Plaintiffs-Appellees filed a Complaint<sup>[6]</sup> with the trial court for Annulment of Deed of Sale, Redemption and Other Reliefs. They alleged that they came to know of the sale of Ricardo's share in the subject property to the Spouses Nogra from another person. Ricardo allegedly did not inform Hermelina of the said sale.<sup>[7]</sup> They added that they sought the assistance of the barangay authorities to verify the information and during the proceedings, they offered to redeem the share of Ricardo from the Spouses Nogra but the latter allegedly refused.<sup>[8]</sup>

Furthermore, they contended that they confronted Ricardo regarding the said sale and allegedly, for the first time he admitted that he sold his share to the Spouses Nogra.<sup>[9]</sup> Concurrently, he handed a copy of the deed of absolute sale to Plaintiffs-Appellees. On the basis of the said document, Plaintiffs-Appellees were able to confirm the fact of sale.<sup>[10]</sup>

To bolster their claim for legal redemption, they argued that pursuant to Article 1620 of the Civil Code, Plaintiff-Appellee Hermelina is legally entitled to redeem the share of Ricardo which was sold to the Spouses Nogra.<sup>[11]</sup> Moreover, they contended that the present action for legal redemption was brought well within the period provided for under Article 1623 of the Civil Code, which is thirty (30) days from written notice of sale.<sup>[12]</sup> According to them, they were furnished with a copy of the deed of absolute sale by Ricardo on 26 September 2007 and the present complaint was filed on 16 October 2007, hence, within the aforesaid thirty (30) day period.<sup>[13]</sup>

In their Answer with Counterclaim<sup>[14]</sup>, Defendants-Appellants Medardo and Purita Nogra through their attorney-in-fact, Naomi N. Duga, vehemently deny Plaintiffs-Appellees' assertion that Hermelina was not informed of the sale of Ricardo's share. They alleged that Ricardo served a written notice of sale to Hermelina sometime in August 1992 as evidenced by a postal delivery return slip.<sup>[15]</sup> Moreover, they contended that during the parties' confrontation with the Lupon, Ricardo made an open confirmation of the sale of his share to the former which was properly recorded in the minutes of the said meeting.<sup>[16]</sup> Evidently, according to Defendants-Appellants, these circumstances effectively belie Hermelina's claim that she was completely ignorant of the aforesaid sale not until 26 September 2007 when she was furnished a copy of the deed of absolute sale by Ricardo.<sup>[17]</sup>

Consequently, Hermelina's right of legal redemption is no longer available because said right was exercised way beyond the thirty (30) day period from notice in writing

as prescribed under Article 1623 of the Civil Code. On the other hand, before Defendant-Appellant Ricardo could file his answer, he passed away. No proper substitution of party was made.

On 6 December 2007, Plaintiffs-Appellees filed their Reply<sup>[18]</sup>. They countered that Hermelina did not receive any written notice from Ricardo with regard to the sale of the latter's share to the Spouses Nogra.<sup>[19]</sup> They added that Hermelina's signature appearing in the registry return card was falsified.<sup>[20]</sup> Moreover, they claimed that there was no hearing conducted by the Lupon Tagapamayapa of Barangay Guadalupe and the minutes of the alleged hearing was falsified as it was prepared at the behest of Defendant-Appellant Medardo Norga.<sup>[21]</sup>

Subsequently, trial on the merits ensued. Baby R. Lauron testified for Plaintiffs-Appellees. On the other hand, Defendants-Appellants presented two witnesses namely: Naomi Duga and Julieta Aquinde.

On 25 October 2011, the trial court rendered the assailed Decision<sup>[22]</sup> declaring that Hermelina is entitled to redeem Ricardo's share in Lot No. 6034-C-2-H-4 which he sold to the Spouses Nogra. The trial court gave more credence to the claim of Plaintiffs-Appellees that it was only on 26 September 2007 that they were notified in writing by Ricardo of the aforementioned sale when the latter handed them a copy of the deed of absolute sale. Thus, the filing of the present complaint for legal redemption on 16 October 2007 and the consignment of the amount of thirty five thousand pesos (P35,000.00) by Plaintiffs-Appellees representing the purchase price for Ricardo's share on 26 October 2007 was well within the thirty (30) day period provided for under Article 1623 of the Civil Code.

Defendants-Appellants filed a Motion for Reconsideration<sup>[23]</sup> of the trial court's decision on 25 November 2011. In an Order<sup>[24]</sup> dated 20 January 2012, the trial court denied Defendants-Appellants' motion.

Aggrieved, Defendants-Appellants interposed the present appeal. On 5 September 2012, they filed their Appellants Brief<sup>[25]</sup> raising several assignments of error which can be summarized into one pivotal issue, to wit:

WHETHER OR NOT PLAINTIFF-APPELLEE HERMELINA MAY STILL EXERCISE HER RIGHT OF LEGAL REDEMPTION WITH RESPECT TO RICARDO'S UNDIVIDED SHARE IN LOT NO. 6034-2-C-H-4 WHICH WAS SOLD TO THE SPOUSES NOGRA.

### **RULING**

We **GRANT** the present appeal.

Defendants-Appellants Medardo and Purita Nogra, through their attorney-in-fact Naomi N. Duga, maintained that Plaintiff-Appellee Hermelina had already acquired actual knowledge of the sale of Ricardo's share as early as the year 1992, the year when the aforesaid sale took place. They presented a postal delivery return slip to prove their claim that Hermelina received a written notice of the sale.

Moreover, they cite another instance wherein Hermelina allegedly acquired actual

knowledge of the sale. Sometime in the past, Defendants-Appellants filed an ejectment case against Lucena, one of the co-owners of the subject property. However, Hermelina intervened and was successful in parrying the writ of execution. Subsequently, she filed an action to annul the judgment on the ejectment case which is still pending up to the present. Evidently, these circumstances would have given Hermelina sufficient information on the conveyances made by her co-owners, Ricardo and Lucena, according to Defendants-Appellants.

Finally, Defendants-Appellants added that if the above circumstances do not suffice, Ricardo's admission during the conciliation proceedings with the barangay that he sold his share in the subject property to the former is more than enough to charge Hermelina with actual knowledge of the said sale. Thus, the thirty (30) day period within which to exercise Hermelina's right of legal redemption had already lapsed.

Plaintiffs-Appellees chose not to file their Appellees Brief hence, this case was deemed submitted for decision. Upon a careful consideration of all the evidence and the testimonies of witnesses presented by both parties, this Court finds the present appeal meritorious.

### ***Right of Legal Redemption***

Legal redemption (*retracto legal de comuneros*) is a privilege created by law, partly by reason of public policy and partly for the benefit of the redemptioner to afford him a way out of a disagreeable or inconvenient association into which he has been thrust.<sup>[26]</sup>

With respect a co-owner's right of legal redemption in case the share of another co-owner is sold to a third person, the governing law is Article 1620 of the Civil Code which provides:

"ART. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable rate.

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common."

The purpose behind Article 1620 is to provide a method for terminating the co-ownership and consolidating the dominion in one sole owner.<sup>[27]</sup>

Article 1623 of the Civil Code provides for the period within which to exercise the right of legal redemption, thus:

"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."