

SECOND DIVISION

[G.R. No. 165287, September 14, 2011]

**ARMANDO BARCELLANO, PETITIONER, VS. DOLORES BAÑAS,
REPRESENTED BY HER SON AND ATTORNEY-IN-FACT CRISPINO
BERMILLO, RESPONDENT.**

D E C I S I O N

PEREZ, J.:

Before the Court is an appeal by *certiorari*^[1] from the Decision^[2] of the Fifteenth Division of the Court of Appeals in CA-G.R. CV No. 67702 dated 26 February 2004, granting the petition of Dolores Bañas, herein respondent, to reverse and set aside the Decision^[3] of the lower court.

The dispositive portion of the assailed decision reads:

WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The decision of the court a quo is hereby REVERSED AND SET ASIDE and in its stead another one is rendered GRANTING to petitioner-appellants the right to redeem the subject property for the amount of Php 60,000.00 within thirty (30) days from the finality of this decision.

The facts as gathered by the court follow:

Respondent Bañas is an heir of Bartolome Bañas who owns in fee simple Lot 4485, PLS-722-D situated in Hindi, Bacacay, Albay. Adjoining the said lot is the property of Vicente Medina (Medina), covered by Original Certificate of Title No. VH-9094, with an area of 1,877 square meters. On 17 March 1997, Medina offered his lot for sale to the adjoining owners of the property, the heirs of Bartolome Bañas, including herein respondent Dolores Bañas, Crispino Bermillo (Bermillo) and Isabela Bermillo-Beruela (Beruela)^[4] Crispino Bermillo, as the representative of his family, agreed to the offer of Medina, the sale to take place after the harvest season.^[5]

On 3 April 1997, Medina sold the property to herein petitioner Armando Barcellano for P60,000.00. The following day, the heirs of Bañas learned about the sale and went to the house of Medina to inquire about it.^[6] Medina confirmed that the lot was sold to Barcellano. The heirs conveyed their intention to redeem the property but Medina replied that there was already a deed of sale executed between the parties.^[7] Also, the Bañas heirs failed to tender the P60,000.00 redemption amount to Medina.^[8]

Aggrieved, the heirs went to the Office of the *Barangay* Council on 5 April 1997.^[9]

Medina sent only his tenant to attend the proceeding. On 9 April 1997, the Bañas heirs and Barcellano, with neither Medina nor his tenant in attendance, went to the Office of the *Barangay* Council to settle the dispute. According to one of the Bañas heirs, Barcellano told them that he would be willing to sell the property but for a higher price of P90,000.00.^[10] Because the parties could not agree on the price and for failure to settle the dispute, the *Lupon* issued a Certification to File Action.^[11]

On 24 October 1997, Dolores Bañas filed an action for Legal Redemption before the Regional Trial Court. However, on 5 February 1998, the petition was withdrawn on the ground that:

xxx considering the present worse economic situation in the country, petitioner opted that the amount they are supposed to pay for the redemption be readily available for their immediate and emergency needs.

On 11 March 1998, Dolores Bañas, as represented by Bermillo, filed another action^[12] for Legal Redemption. It was opposed by Barcellano insisting that he complied with the provisions of Art. 1623 of the New Civil Code but Bañas failed to exercise her right within the period provided by law.

Trial ensued. On 15 March 2000, the trial court dismissed the complaint of the Bañas heirs for their failure to comply with the condition precedent of making a formal offer to redeem and for failure to file an action in court together with the consignation of the redemption price within the reglementary period of 30 days.^[13] The dispositive portion reads:

WHEREFORE, premises considered, the complaint is hereby ordered
DISMISSED.

On appeal, the Court of Appeals reversed and set aside the ruling of the lower court and granted the heirs the right to redeem the subject property. The appellate court ruled that the filing of a complaint before the *Katarungang Pambarangay* should be considered as a notice to Barcellano and Medina that the heirs were exercising their right of redemption over the subject property; and as having set in motion the judicial process of legal redemption.^[14] Further, the appellate court ruled that a formal offer to redeem, coupled with a tender of payment of the redemption price, and consignation are proper only if the redemptioner wishes to avail himself of his right of redemption in the future. The tender of payment and consignation become inconsequential when the redemptioner files a case to redeem the property within the 30-day period.^[15]

Hence, this Petition for Review on *Certiorari*.

In this petition, Barcellano questions the ruling of the appellate court for being contrary to the admitted facts on record and applicable jurisprudence.

The Court's Ruling

Barcellano maintains that the written notice required under Art. 1623 to be given to adjoining owner was no longer necessary because there was already actual notice. Further, he asserts that the appellate court erred in ruling that the tender of payment of the redemption price and consignment are not required in this case, effectively affirming that the respondents had validly exercised their right of redemption. Lastly, he questions as erroneous the application of Presidential Decree No. 1508, otherwise known as "*Establishing a System of Amicably Settling Disputes at the Barangay Level*," thereby ruling that the filing by the heirs of the complaint before the *Barangay* was an exercise of right of redemption.

We need only to discuss the requirement of notice under Art. 1623 of the New Civil Code, which provides that:

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.

Nothing in the records and pleadings submitted by the parties shows that there was a written notice sent to the respondents. Without a written notice, the period of thirty days within which the right of legal pre-emption may be exercised, does not start.

The indispensability of a written notice had long been discussed in the early case of *Conejero v. Court of Appeals*,^[16] penned by Justice J.B.L. Reyes:

With regard to the written notice, we agree with petitioners that such notice is indispensable, and that, in view of the terms in which Article of the Philippine Civil Code is couched, mere knowledge of the sale, acquired in some other manner by the redemptioner, does not satisfy the statute. The written notice was obviously exacted by the Code to remove all uncertainty as to the sale, its terms and its validity, and to quiet any doubts that the alienation is not definitive. The statute not having provided for any alternative, the method of notification prescribed remains exclusive.

This is the same ruling in *Verdad v. Court of Appeals*:^[17]

The written notice of sale is mandatory. This Court has long established the rule that notwithstanding actual knowledge of a co-owner, the latter is still entitled to a written notice from the selling co-owner in order to remove all uncertainties about the sale, its terms and conditions, as well as its efficacy and status.

Lately, in *Gosiengfiao Guillen v. the Court of Appeals*,^[18] this Court again

emphasized the mandatory character of a written notice in legal redemption:

From these premises, we ruled that "[P]etitioner-heirs have not lost their right to redeem, for in the absence of a written notification of the sale by the vendors, the 30-day period has not even begun to run." These premises and conclusion leave no doubt about the thrust of *Mariano*: **The right of the petitioner-heirs to exercise their right of legal redemption exists, and the running of the period for its exercise has not even been triggered because they have not been notified in writing of the fact of sale.** (Emphasis supplied)

The petitioner argues that the only purpose behind Art. 1623 of the New Civil Code is to ensure that the owner of the adjoining land is actually notified of the intention of the owner to sell his property. To advance their argument, they cited *Destrito v. Court of Appeals* as cited in *Alonzo v. Intermediate Appellate Court*,^[19] where this Court pronounced that written notice is no longer necessary in case of actual notice of the sale of property.

The *Alonzo* case does not apply to this case. There, we pronounced that the disregard of the mandatory written rule was an exception due to the peculiar circumstance of the case. Thus:

In the face of the established facts, we cannot accept the private respondents' pretense that they were unaware of the sales made by their brother and sister in 1963 and 1964. By requiring written proof of such notice, we would be closing our eyes to the obvious truth in favor of their palpably false claim of ignorance, thus exalting the letter of the law over its purpose. The purpose is clear enough: to make sure that the redemptioners are duly notified. We are satisfied that in this case the other brothers and sisters were actually informed, although not in writing, of the sales made in 1963 and 1964, and that such notice was sufficient.

Now, when did the 30-day period of redemption begin?

While we do not here declare that this period started from the dates of such sales in 1963 and 1964, we do say that sometime between those years and 1976, when the first complaint for redemption was filed, the other co-heirs were actually informed of the sale and that thereafter the 30-day period started running and ultimately expired. This could have happened any time during the interval of thirteen years, when none of the co-heirs made a move to redeem the properties sold. By 1977, in other words, when Tecla Padua filed her complaint, the right of redemption had already been extinguished because the period for its exercise had already expired.

The following doctrine is also worth noting:

While the general rule is, that to charge a party with laches in the