

## THIRD DIVISION

[ G.R. No. 143868, November 14, 2002 ]

**OSCAR C. FERNANDEZ, GIL C. FERNANDEZ AND ARMANDO C. FERNANDEZ, PETITIONERS, VS. SPOUSES CARLOS AND NARCISA TARUN, RESPONDENTS.**

### DECISION

#### **PANGANIBAN, J.:**

The right of redemption may be exercised by a co-owner, only when part of the community property is sold to a stranger. When the portion is sold to a co-owner, the right does not arise because a new participant is not added to the co-ownership.

#### The Case

The Petition for Review on Certiorari before us challenges the July 7, 2000 Decision of the Court of Appeals (CA)<sup>[1]</sup> in CA-GR CV No. 55264, which reversed the Regional Trial Court (RTC) of Dagupan City (Branch 44) in Civil Case No. D-3815.<sup>[2]</sup> The assailed Decision disposed as follows:

"WHEREFORE, the appealed decision is REVERSED and a NEW ONE is entered:

"1. Ordering the partition of Lot 2991 in the proportion stated in Transfer Certificate of Title No. 24440, that is: Angel Fernandez, married to Corazon Cabal – 7,114.46 sqm; spouses Carlos Tarun and Narcisa Zareno – 1094.54 sqm.

"The costs of the subdivision shall be equitably shared by plaintiffs-appellants and defendants-appellees.

"2. Ordering the Register of Deeds of Dagupan City to issue a separate transfer certificate of title each to plaintiffs-appellants and defendants-appellees corresponding to their respective shares upon completion of the partition."<sup>[3]</sup>

#### The Facts

The antecedent facts of the case are narrated in the assailed CA Decision as follows:

"An 8,209-square meter fishpond situated at Arellano-Bani, Dagupan City is disputed by [Respondents] Carlos Tarun and Narcisa Zareno, and [Petitioners] Corazon Cabal vda. de Fernandez and her children Oscar, Gil and Armando, all surnamed Fernandez.

"The property is known as Lot No. 2991 of the Cadastral Survey of Dagupan. It was originally covered by OCT No. 43099, subsequently cancelled by TCT No. 24440. The brothers Antonio, Santiago, Demetria

and Angel Fernandez, together with their uncle Armando, co-owned this property to the extent of 1/6 thereof.<sup>[4]</sup> It was subsequently increased to 1/5 on account of the 1/6 share of Armando, who died single and without issue, which accrued in favor of the five remaining co-owners.

"On June 4, 1967, Antonio Fernandez sold his share of about 547.27 square meters to [the Spouses] Tarun (Exh. I).<sup>[5]</sup> On June 18, 1967, Demetria Fernandez, also sold her share on the same fishpond consisting of 547.27 square meters to [respondents].<sup>[6]</sup> Thus, the total area sold to [respondents] is 1094.54 square meters, more or less. The two sales were registered and annotated on OCT No. 43099.

"On November 14, 1969, the co-owners of the subject fishpond and another fishpond covered by TCT No. 10944 executed a Deed of Extrajudicial Partition of two parcels of registered land with exchange of shares. Among the parties to the deed are Antonio, Santiago, Demetria and Angel, all surnamed Fernandez.

"It was stipulated in the deed that the parties recognize and respect the sale of a portion of Lot 2991 consisting of 1094.54 square meters previously sold by Antonio and Demetria Fernandez in favor of [respondents]. This portion was excluded in the partition.

"Likewise, by virtue of the Deed of Extrajudicial Partition, Angel B. Fernandez exchanged his share on the other fishpond covered by TCT No. 10944 to the shares of his co-owners on the remaining portion of [L]ot No. 2991 covered by TCT No. 10945, making Angel B. Fernandez and [respondents] as co-owners of Lot No. 2991.

"By virtue of the terms and conditions set forth in the Deed, TCT No. 24440 of the Registry of Deed[s] of Dagupan City, (Exh. 'A') was issued in favor of Angel B. Fernandez and [respondents]. From the time the latter bought the 1094.54-square meter portion of the fishpond, they had been paying the realty taxes thereon. However, it was Angel B. Fernandez and later on his heirs, [petitioners], who remained in possession of the entire fishpond.

"When Angel B. Fernandez was still alive, [respondents] sought the partition of the property and their share of its income. Angel Fernandez refused to heed their demand. After the death of Angel Fernandez, [respondents] wrote [petitioners] of their desire for partition but this was rejected by [petitioners]. Hence, this suit for partition and damages."<sup>[7]</sup>

#### Ruling of the RTC

On August 1, 1996, the RTC rendered judgment in favor of petitioners, ruling that, under Articles 1620 and 1621 of the Civil Code, they were entitled to redeem the property that they had sold to respondents. It further held that the sale was highly iniquitous and void for respondent's failure to comply with Article 1623 of the same code.

#### Ruling of the Court of Appeals

Reversing the RTC, the CA held that petitioners were not entitled to redeem the controversial property for several reasons. First, it was Angel Fernandez who was its co-owner at the time of the sale; hence, he was the one entitled to receive notice and to redeem the property, but he did not choose to exercise that right. Second, the execution of the Deed of Extrajudicial Partition was a substantial compliance with the notice requirement under that law. Finally, it was too late in the day to declare the exchange highly iniquitous, when Angel Fernandez had not complained about it. As his successors-in-interest, petitioners were bound by the terms of the agreement.

Hence, this Petition.<sup>[8]</sup>

## Issues

In their Memorandum,<sup>[9]</sup> petitioners raise the following issues:

- "1. Whether or not petitioners are entitled to exercise their right of legal redemption.
- "2. Whether or not the transaction is one of equitable mortgage.
- "3. Whether or not the deed of extra-judicial partition is void and inefficacious.
- "4. Whether or not petitioners are entitled to damages, attorney's fees and costs.
- "5. Whether or not the lower court committed grave abuse of discretion amounting to lack of jurisdiction when it substituted its surmises, conjectures and guesswork in place of the trial court's findings of fact borne by the evidence on record."<sup>[10]</sup>

## This Court's Ruling

The Petition is not meritorious.

### First Issue:

#### *Entitlement to Legal Redemption*

Petitioners aver that the sale to respondents is void, because it did not comply with the requirements of the Civil Code. According to them, they were not notified of the sale, but learned about it only when they received the summons for the partition case. They claim their right to redeem the property under the following provisions of the Civil Code:

"Article 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 one.

"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."

"Article 1621. The owners of adjoining lands shall also have the right of

redemption when a piece of rural land, the area of which does not exceed one hectare, is alienated, unless the grantee does not own any rural land.

"The right is not applicable to adjacent lands which are separated by brooks, drains, ravines, roads and other apparent servitudes for the benefit of other estates.

"If two or more adjoining owners desire to exercise the right of redemption at the same time, the owner of the adjoining land of smaller area shall be preferred; and should both lands have the same area, the one who first requested the redemption."

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"Article 1623. 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.

"The right of redemption of co-owners excludes that of adjoining owners."

We disagree with petitioners. True, the right to redeem is granted not only to the original co-owners, but also to all those who subsequently acquire their respective shares while the community subsists.<sup>[11]</sup> However, it must be stressed that this right of redemption is available only when part of the co-owned property is sold to a third person. Otherwise put, the right to redeem referred to in Article 1620 applies only when a portion is sold to a non-co-owner.

In this case, it is quite clear that respondents are petitioners' co-owners. The sale of the contested property to Spouses Tarun had long been consummated before petitioners succeeded their predecessor, Angel Fernandez. By the time petitioners entered into the co-ownership, respondents were no longer "third persons," but had already become co-owners of the whole property. A third person, within the meaning of Article 1620, is anyone who is not a co-owner.<sup>[12]</sup>

In *Basa v. Aguilar*,<sup>[13]</sup> this Court has unequivocally ruled that the right of redemption may be availed of by a co-owner, only when the shares of the other owners are sold to a third person. "Legal redemption is in the nature of a privilege created by law partly for reasons of public policy and partly for the benefit and convenience of the redemptioner, to afford him a way out of what might be a disagreeable or [an] inconvenient association into which he has been thrust. (10 *Manresa*, 4th. Ed., 317.) It is intended to minimize co-ownership. The law grants a co-owner the exercise of the said right of redemption when the shares of the other owners are sold to a 'third person.'"<sup>[14]</sup> There is no legal redemption, either in case of a mere lease<sup>[15]</sup> and if the purchaser is also a tenant.<sup>[16]</sup>

Equally unavailing is petitioners' contention that the sale was void, because the vendor had not sent any notice in writing to the other co-owners as required under Article 1625 of the Code. Indeed, the Code merely provides that a deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit that