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SECOND DIVISION

[G.R. No. 122047. October 12, 2000]

SPOUSES SERAFIN SI AND ANITA BONODE SI, *petitioners, vs.* **COURT OF APPEALS, SPOUSES JOSE ARMADA and REMEDIOS ALMANZOR (deceased, and substituted by heirs: Cynthia Armada, Danilo Armada and Vicente Armada),** *respondents.*

SYNOPSIS

Questioned in this petition is the Decision of the Court of Appeals in CA-G.R. CV No. 30727. The Court of Appeals reversed the decision of the Regional Trial Court of Pasig City and nullified the sale of the subject lot by spouses Crisostomo and Cresenciana Armada to spouses Serafin and Anita Si. Basically, this action stemmed from a complaint for Annulment of Deed of Sale and Reconveyance of Title with Damages filed by respondent spouses Jose Armada and Remedios Almanzor against the spouses Si. Allegedly, the lot sold was part of an undivided parcel of land owned in common by Crisostomo, Jose and another. Jose Armada claimed his right of redemption. The trial court found that the disputed land was not part of an undivided estate. It held that the deeds of absolute sale technically described the portion sold to each son. The Court of Appeals found otherwise and ruled: "A careful examination of TCT No. 16007 x x x shows that the portion sold by virtue of the Deeds of Sale x x x to the Armada brothers do not appear in the said title, neither does it indicate the particular area sold."

The trial court was correct when it found that the lot in question had already been partitioned when Escolastica Armada executed three (3) deeds of sale in favor of her sons, all surnamed Armada. Every portion conveyed to the three sons was definitely described and segregated. This situation makes inapplicable, the provisions on the right of redemption of a co-owner in the Civil Code.

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SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI*; REVIEW OF EVIDENCE PROPER WHEN FACTUAL FINDINGS OF THE COURT OF APPEALS CONFLICT WITH THOSE OF THE TRIAL COURT.** — In instances when the findings of fact of the Court of Appeals are at variance with those of the trial court, or when the inference drawn by the Court of Appeals from the facts is manifestly mistaken, this Court will not hesitate to review the evidence in order to arrive at the correct factual conclusion.

2. **CIVIL LAW; CO-OWNERSHIP; DEFINITION.** — Under Art. 484 of the Civil Code, there is co-ownership whenever the ownership of an undivided thing or right belongs to different persons.

3. **ID.; ID.; RIGHT OF REDEMPTION; WHEN INAPPLICABLE.** — There is no co-ownership when the different portions owned by different people are already concretely determined and separately identifiable, even if not yet technically described. This situation makes inapplicable the provision on the right of redemption of a co-owner in the Civil Code.

4. **ID.; ID.; ID.; WRITTEN NOTICE OF SALE IS NOT NECESSARY WHEN PARTIES HAVE ACTUAL NOTICE THEREOF.** — Co-owners with actual notice of the sale are not entitled to written notice. A written notice is a formal requisite to make certain that the co-owners have actual notice of the sale to enable them to exercise their right of redemption within the limited period of thirty days. But where the co-owners had actual notice of the sale at the time thereof and/or afterwards, a written notice of a fact already known to them, would be superfluous.

APPEARANCES OF COUNSEL

Randolph Dacanay for petitioners.
Ceferino Padua Law Office for private respondents.

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DECISION

QUISUMBING, *J.*:

This petition for *certiorari* under Rule 45 assails the Decision[1] dated March 25, 1994, of the Court of Appeals and its Resolutions[2] dated March 24, 1995 and September 6, 1995 in CA-G.R. CV No. 30727. The Court of Appeals reversed the decision of the Regional Trial Court of Pasig City, Branch 113, and nullified the sale of the subject lot by the spouses Crisostomo and Cresenciana Armada to spouses Serafin and Anita Si. The dispositive portion of the respondent court's decision reads:

"WHEREFORE, in view of the foregoing, the decision appealed from is hereby REVERSED, and a new one is rendered:

1. Annulling and declaring as invalid the registration of the Deed of Absolute Sale dated March 27, 1979 executed by Cresenciana V. Alejo in favor of Anita Bonode Si.

2. Ordering the Register of Deeds of Pasay City to annul and cancel Transfer Certificate of Title No. 24751, issued in the name of Anita Bonode Si, married to Serafin D. Si., Jose R. Armada, married to Remedios Almanzor and Dr. Severo R. Armada Jr., single.

3) Ordering the Register of Deeds of Pasay City to reconstitute and revive Transfer Certificate of Title No. 16007 in the names of Jose, Crisostomo and Severo, Jr.

4) That plaintiffs be allowed to repurchase or redeem the share corresponding to the share of Crisostomo Armada within thirty (30) days from notice in writing by Crisostomo Armada.

5) The defendants-appellees are jointly and severally ordered to pay the plaintiffs-appellants the sum of ₱100,000.00 as moral damages.

6) The defendants-appellees are jointly and severally ordered to pay the plaintiff-appellants the sum of ₱10,000.00 as attorney's fees and litigation expenses and costs of suit.

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[1] *Rollo*, pp. 29-36.

[2] *Id.* at 39-42.

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SO ORDERED."[3]

The factual background of the case is as follows:

The 340 square meters of land, situated in San Jose District, Pasay City, the property in dispute, originally belonged to Escolastica, wife of Severo Armada, Sr. This was covered by Transfer Certificate of Title (TCT) No. (17345) 2460. During the lifetime of the spouses, the property was transferred to their children and the Registry of Deeds, Pasay City, issued TCT No. 16007 in the names of the three sons, as follows: "DR. CRISOSTOMO R. ARMADA, married to Cresenciana V. Alejo, 113.34 Square Meters; JOSE R. ARMADA, married to Remedios Almanzor, 113.33 Square Meters; and DR. SEVERO R. ARMADA, Jr., single, all of legal age, Filipinos."[4] Annotated also in the title is the total cancellation of said title ". . . by virtue of the Deed of Sale, (P.E. 77952/T-24751), dated March 28, 1979, executed by CRESENCIANA V. ALEJO, as attorney-in-fact of CRISOSTOMO R. ARMADA, conveying 113.34 square meters of the property herein, in favor of ANITA BONODE SI, married to Serafin D. Si, for the sum of ₱75,000.00, issuing in lieu thereof Transfer Certificate of Title No. 24751, Reg. Book T-102. (Doc. No. 17, Page No. 5, Book No. 253 of Notary Public of Pasay City, Manila, Julian Florentino)."[5]

On April 15, 1980, herein spouses Jose Armada and Remedios Almanzor, filed a complaint for Annulment of Deed of Sale and Reconveyance of Title with Damages, against herein petitioners Anita and Serafin Si and Conrado Isada, brother-in-law of Cresenciana. Isada brokered the sale.

The complaint alleged that Conrado Isada sold Crisostomo's share by making it appear that Cresenciana, the attorney-in-fact of her husband, is a Filipino citizen, residing with Isada at No. 13-4th Camarilla Street, Murphy, Cubao, Quezon City. By

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[3] *Id.* at 35.

[4] *Id.* at 47.

[5] *Id.* at 48.

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this time, Crisostomo and Cresenciana had migrated and were already citizens of the United States of America. It also stated that when petitioners registered the deed of absolute sale they inserted the phrase ". . . and that the co-owners are not interested in buying the same in spite of notice to them," and that petitioners knew of the misrepresentations of Conrado. Further, the complaint alleged that the other owners, Jose and Severo, Jr., had no written notice of the sale; and that all upon learning of the sale to the spouses Si, private respondents filed a complaint for annulment of sale and reconveyance of title with damages, claiming they had a right of redemption.

Petitioners, on the other hand, alleged that on October 2, 1954, Escolastica, with the consent of her husband executed three separate deeds of sale (Exhibits 1, 2, and 3)[6] conveying 113.34 square meters of the property to Severo, and 113.33 square meters each to Crisostomo and Jose. The three deeds of sale particularly described the portion conveyed to each son in metes and bounds. Petitioners contend that since the property was already three distinct parcels of land, there was no longer co-ownership among the brothers. Hence, Jose and Severo, Jr. had no right of redemption when Crisostomo sold his share to the spouses Si. Petitioners point out that it was only because the Armada brothers failed to submit the necessary subdivision plan to the Office of the Register of Deeds in Pasay City that separate titles were not issued and TCT No. 16007 was issued and registered in the names of Jose, Crisostomo, and Severo, Jr.

After trial on the merits, the court ruled for petitioners:

"IN VIEW OF ALL THE FOREGOING, the complaint is hereby DISMISSED. With costs against the plaintiffs."[7]

Private respondents appealed to the Court of Appeals. On March 25, 1994, the appellate court issued the decision now assailed by petitioners. In reversing the decision of the trial

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[6] CA *Rollo*, pp. 186-192.

[7] *Rollo*, p. 46.

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court and ruling for private respondents, the Court of Appeals found that:

"A careful examination of TCT No. 16007 (Exh. 'A') shows that the portion sold by virtue of the Deeds of Sale (Exh. 1, 2, & 3) to the Armada brothers do not appear in the said title, neither does it indicate the particular area sold. Moreover, no evidence was presented to show that the Register of Deeds issued TCT No. 16007 (Exh. 'A') on the basis of the said deeds of Sale. In fact, TCT No. 16007 (Exh. 'A') shows that the lot is co-owned by Jose, Crisostomo and Severo, Jr. in the proportion of 113.33, 113.34 and 113.33 sq. m. respectively.

Furthermore, the evidence on record shows that the Deed of Absolute Sale (Exh. 'B'), executed by Cresencia Armada in favor of defendants Si, stated that the portion sold was the 'undivided one hundred thirteen & 34/100 (113.34) square meters' of the parcel of land covered by TCT NO. 16007 of the Registry of Deeds for Pasay City, which means that what was sold to defendants are still undetermined and unidentifiable, as the area sold remains a portion of the whole.

Moreover, plaintiff Remedi[o]s Armada testified that on March 27, 1979, Crisostomo Armada, thru his attorney-in-fact and co-defendant, Cresenciana Alejo, sold his undivided 113.34 share to defendants, Sps. Si as evidenced by a Deed of Absolute Sale (Exh. 'B'), and presented for registration with the Register of Deeds (Exh. 'B-1') without notifying plaintiffs of the sale (TSN, pp. 6-8, December 20, 1988). Instead, it appears that the phrase 'and that the co-owners are not interested in buying the same inspite of notice to them,' was inserted in the Deed of Sale (Exh. 'B').

xxx xxx xxx

Otherwise stated, the sale by a (*sic*) co-owner of his share in the undivided property is not invalid, but shall not be recorded in the Registry Property, unless accompanied by an affidavit of the Vendor that he has given written notice thereof to all possible redemptioners."[8]

On August 29, 1994, petitioners' counsel on record, Atty. Roberto B. Yam received a copy of the CA decision. On October 14, 1994, he filed a motion for reconsideration, but it was denied

[8] *Id.* at 32-33.

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by the Court of Appeals on November 21, 1994, for being filed out of time.

On December 5, 1994, petitioners filed their motion for new trial under Section 1, Rule 53 of the Revised Rules of Court.[9] Petitioners presented new evidence, TCT No. (17345) 2460, registered in the name of Escolastica de la Rosa, married to Severo Armada, Sr., with annotation at the back stating that the cancellation was by virtue of three deeds of sale in favor of Escolastica's sons. On March 24, 1995, respondent court denied the motion, reasoning that when the motion was filed, the reglementary period had lapsed and the decision had become final and executory. Petitioners' motion for reconsideration of said resolution was denied.

Hence, the present petition, alleging that:

"1. Respondent Court of Appeals committed a reversible error in ruling that a co-ownership still existed.

"2. Respondent Court of Appeals committed a reversible error in denying the Motion for Reconsideration of its Decision of 25 March 1994 on purely technical grounds.

"3. Respondent Court of Appeals committed a reversible error in denying the Motion for New Trial.

"4. Respondent Court of Appeals committed a reversible error in ordering petitioners to pay moral damages, attorney's fees, litigation expenses and the costs of the suit."[10]

In essence, this Court is asked to resolve: (1) whether respondent court erred in denying petitioners' motion for reconsideration and/or the Motion for New Trial; (2) whether

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[9] SECTION 1. *Petition.* — Before a final order or judgment rendered by the Court of Appeals becomes executory, a motion for a new trial may be filed on the ground of newly discovered evidence which could not have been discovered prior to the trial in the court below by the exercise of due diligence and which is of such a character as would probably change the result. The motion shall be accompanied by affidavits showing the facts constituting the grounds therefor and the newly discovered evidence.

[10] *Id.* at 16.

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private respondents are co-owners who are legally entitled to redeem the lot under Article 1623 of the Civil Code;[11] and (3) whether the award of moral damages, attorney's fees and costs of suit is correct.

The pivotal issue is whether private respondents may claim the right of redemption under Art. 1623 of the Civil Code. The trial court found that the disputed land was not part of an undivided estate. It held that the three deeds of absolute sale[12] technically described the portion sold to each son. The portions belonging to the three sons were separately declared for taxation purposes with the Assessor's Office of Pasay City on September 21, 1970.[13] Jose's testimony that the land was undivided was contradicted by his wife when she said they had been receiving rent from the property specifically allotted to Jose.[14] More significantly, on January 9, 1995, the Registry of Deeds of Pasay City cancelled TCT 24751 and issued three new titles as follows: (1) TCT 134594[15] in favor of Severo Armada, Jr.; (2) TCT 134595[16] under the name of Anita Bonode Si, married to Serafin Si; and (3) TCT 134596[17] owned by Jose Armada, married to Remedios Almanzor. All these are on record.

However, the Court of Appeals' decision contradicted the trial court's findings.[18]

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[11] ART. 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 adjoining owners.

[12] CA *Rollo*, pp. 186-192.

[13] *Id.* at 13.

[14] TSN, February 28, 1989, p. 6.

[15] *Rollo*, p. 114.

[16] *Id.* at 116-117 (with *lis pendens* annotated at the back of the title).

[17] *Id.* at 118-120.

[18] *Id.* at 35.

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In instances when the findings of fact of the Court of Appeals are at variance with those of the trial court, or when the inference drawn by the Court of Appeals from the facts is manifestly mistaken, this Court will not hesitate to review the evidence in order to arrive at the correct factual conclusion.[19] This we have done in this case. It is our considered view now, that the trial court is correct when it found that:

"Rightfully, as early as October 2, 1954, the lot in question had already been partitioned when their parents executed three (3) deed of sales (*sic*) in favor of Jose, Crisostomo and Severo, all surnamed Armada (Exh. 1, 2, & 3), which documents purports to have been registered with the Register of Deeds of Pasay City, on September 18, 1970, and as a consequence TCT No. 16007 (Exh. A) was issued. Notably, every portion conveyed and transferred to the three sons was definitely described and segregated and with the corresponding technical description (*sic*). In short, this is what we call extrajudicial partition. Moreover, every portion belonging to the three sons has been declared for taxation purposes with the Assessor's Office of Pasay City on September 21, 1970. These are the unblinkable facts that the portion sold to defendant spouses Si by defendants Crisostomo Armada and Cresenciana Armada was concretely determined and identifiable. The fact that the three portions are embraced in one certificate of title does not make said portions less determinable or identifiable or distinguishable, one from the other, nor that dominion over each portion less exclusive, in their respective owners. Hence, no right of redemption among co-owners exists."[20] (citation omitted)

". . . [T]he herein plaintiffs cannot deny the fact that they did not have knowledge about the impending sale of this portion. The truth of the matter is that they were properly notified. Reacting to such knowledge and notification they wrote defendant Dr. Crisostomo Armada on February 22, 1979, a portion of said letter is revealing: 'Well you are the king of yourselves, and you can sell your share of Levereza."[21] (emphasis omitted)

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[19] *Ferrer vs. Court of Appeals,* 219 SCRA 302, 305 (1993).

[20] *Rollo*, p. 45.

[21] *Ibid.*

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After the physical division of the lot among the brothers, the community ownership terminated, and the right of preemption or redemption for each brother was no longer available.[22]

Under Art. 484 of the Civil Code,[23] there is co-ownership whenever the ownership of an undivided thing or right belongs to different persons. There is no co-ownership when the different portions owned by different people are already concretely determined and separately identifiable, even if not yet technically described.[24] This situation makes inapplicable the provision on the right of redemption of a co-owner in the Civil Code, as follows:

"Art. 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."

Moreover, we note that private respondent Jose Armada was well informed of the impending sale of Crisostomo's share in the land. In a letter dated February 22, 1979, Jose told his brother Crisostomo: "Well you are the king of yourselves, and you can sell your share of Leveriza."[25] Co-owners with actual notice of the sale are not entitled to written notice. A written notice is a formal requisite to make certain that the co-owners

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[22] *Del Rosario vs. Bansil,* 179 SCRA 662, 666 (1989); *Caro vs. Court of Appeals*, 113 SCRA 10, 17 (1982); *Caram vs. Court of Appeals,* 101 Phil. 315, 319 (1957).

[23] Art. 484 of the Civil Code. "There is co-ownership whenever the ownership of an undivided thing or right belongs to different persons.

In default of contracts, or of special provisions, co-ownership shall be governed by the provisions of this Title."

[24] *De la Cruz vs. Cruz*, 32 SCRA 307, 311 (1970).

[25] CA *Rollo*, p. 74.

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have actual notice of the sale to enable them to exercise their right of redemption within the limited period of thirty days. But where the co-owners had actual notice of the sale at the time thereof and/or afterwards, a written notice of a fact already known to them, would be superfluous. The statute does not demand what is unnecessary.[26]

Considering that respondent Court of Appeals erred in holding that herein private respondent could redeem the lot bought by petitioners, the issue of whether the appellate court erred in denying petitioners' motions for reconsideration and new trial need not be delved into. The same is true with respect to the questioned award of damages and attorney's fees. Petitioners filed their complaint in good faith and as repeatedly held, we cannot put a premium on the right to litigate.

WHEREFORE, the petition is *GRANTED*, the Decision of the Court of Appeals dated March 25, 1994 and its Resolutions dated March 24, 1995 and September 6, 1995 in CA-G.R. CV No. 30727 are *ANNULLED* and *SET ASIDE*. Civil Case No. 8023-P is *DISMISSED* for lack of merit. The decision of the Regional Trial Court of Pasay City, Branch 113, promulgated on August 29, 1989, is *REINSTATED*.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.*, concur.

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[26] 1988 Revised Edition, *Registration of Land Titles and Deeds,* Peña, pp. 151-152.