

NATY CASTILLO AND ISABELO CASTILLO, PETITIONERS, VS. HON. COURT OF APPEALS AND LAMBERTO L. MANALO, RESPONDENTS.*G.R. No. L-48290. September 29, 1983*

Ponente: GUERRERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/1a2353571748/>**GUERRERO, J.:**

This is an appeal by way of certiorari from the decision of respondent Court of Appeals, now Intermediate Appellate Court, dated January 31, 1978 and from its resolution dated May 16, 1979, reversing the judgment of the CFI of Manila, Branch XVI in an unlawful detainer case docketed as Civil Case No. 90719, and affirming the decision of the City Court of Manila, Branch II.

In the City Court of Manila, Branch II, private respondent Lamberto L. Manalo filed a complaint for unlawful detainer against the petitioners, Naty Castillo and Isabelo Castillo, in Civil Case No. 209267, plaintiff alleging that he is the true and lawful owner of a two-story house situated at 921-A R. Papa Extension, Sampaloc, Manila; that herein parties entered into an oral contract of lease whereby plaintiff leased unto defendants the ground floor and mezzanine of his aforementioned house for a monthly rental of P70.00; that on or about December 29, 1971, plaintiff personally and orally notified defendants that he is terminating the said contract of lease for the reason that he is going to make some repairs in said premises where he and his family will transfer and reside; that upon request of herein defendants, plaintiff allowed them and their family to stay and reside in the subject premises until January 31, 1972 so as to afford them time to look for another residence where they can transfer; that despite the lapse of the grace period and demands made upon them to vacate the subject premises, they failed and refused to vacate the premises to plaintiff's prejudice and damages at the rate of P70.00 a month, representing the fair rental value of the premises. He further prayed for moral damages, exemplary damages and attorney's fees.

On February 15, 1972, defendants Castillos filed their Answer with Affirmative Defenses and Counterclaim wherein defendants alleged that they have no knowledge sufficient to form a belief as to the truth of the material averments in par. 2 of the complaint and specifically deny the same, the truth of the matter is that plaintiff is not the owner of the two-story house as well as the lot where said house now stands, as the aforesaid house was built and constructed by defendants out of the loose materials and debris of the last World War II and made it fit for human habitation, till the present; the land is a public land under the Bureau of Buildings and Real Property Management of the government. They further alleged no knowledge sufficient to form a belief as to the truth of the material averments in par. 3, 4, 5, 6, 7, 8, 9 and 10 of the complaint and, therefore, specifically denied the same. The truth of the matter are stated in the affirmative defenses that plaintiff has misrepresented to the Bureau of Buildings and Real Property Management that he is the present occupant; that he bought his right from another person; and that he is qualified to acquire the same. They further claim that they have a preferential right to acquire the land and that the award to the plaintiff is under protest and investigation, hence the complaint is pre-mature. As counterclaim, defendants sought damages and attorney's fees.

After trial, the City Court made the following findings of facts:

"From the evidence adduced, it was shown that plaintiff is the owner of a two-storey house situated at 921-A R. Papa Extension, Sampaloc, Manila. The said house was erected on a lot identified as Lot No. 1-b-3 of the C. Lerma and R. Papa Subdivision, subdivision plan Psd-98921. Adjacent to the house of the plaintiff is another two-storey house belong-ing to Federico Verzosa and identified as No. 921 R. Papa Extension, Sampaloc, Manila. This house belonging to Federico Verzosa is situated on Lot No. 1-B-5 and at the same time encroaches on a portion of Lot No. 1-B-3 which is occupied by the plaintiff.

Then the Philippine Government awarded Lot 1-B-3 to the plaintiff. Federico Verzosa sold that portion of his house which encroached Lot 1-B-3 to the plaintiff as evidenced by Exhibit "A". Thereafter, that portion of Federico Verzosa's house which was sold to the plaintiff became part and parcel of that house owned by the plaintiff. Defendants came to occupy the ground floor, the mezzanine as well as the portion bought from Federico Verzosa by the plaintiff at a monthly rental of P70.00.

On December 29, 1971, plaintiff verbally notified the defendants that he wanted the premises leased to them vacated, because he wanted to make repairs, thereon preparatory to his moving in together with his family. Defendants pleaded to the plaintiff to allow them to stay until the end of January, 1972 to enable them to look for another place to transfer. Such request on the part of the defendants was granted by the plaintiff.

When January 31, 1972 came, however, de-fendants refused to vacate the aforesaid pre-mises as well as pay rentals thereon from January, 1972 up to the present. Hence, this case is filed before this Court thru counsel on whom plaintiff obligated himself to pay the amount of P1,000.00 as attorney's fees.

Upon the other hand, defendants claim that sometime in 1946, Federico Verzosa built a house on the one-half portion of his lot. The other half was left vacant. Sometime in 1957, they sought permission from Verzosa to build a house on the vacant lot. Verzosa consented to defendants' request to build on the vacant portion of his lot at a monthly rental of P20.00. Later on, this house constructed by the defendants was demolished as Mr. Verzosa made an extension which overlapped the house built by the defendants. The defendants contend that what they leased from Federico Verzosa was the use of the one-half vacant lot belonging to Verzosa while the house which they constructed thereon was theirs.

The Court cannot agree with the posture taken by the defendants. In the first place, Exhibit "A" clearly shows that what Federico Verzosa conveyed in favor of the plaintiff was that portion of the house 'encroaching on Lot No. 1-B-3 of subdivision plan Psd-98921, free from all liens and encumbrances,' (Vide: 1st par., page 2 of Exh. "A"). If so, and as claimed by the defendants that they were the owners of the house, why did they not charge Verzosa criminally in court? Why did they not hold Verzosa on his warranty against eviction?

In the second place, Federico Verzosa's testimony the first time he testified before this Court is very clear. Thus:

'ATTY. MANALO:

xxx xxx xxx

Q - And what portion of your house was being occupied by the defendants?

A - The ground floor and the mezzanine and also the extension of the house.

Q - And what is the relation of this house of yours, the ground floor, the mezzanine and the extension which are being occupied by the defendants, to that portion of your house which you sold to Mr. Lamberto Manalo?

xxx xxx xxx

COURT:

They are occupying the portion of the house sold to the plaintiff?

A - Yes.

COURT:

Is that clear?

A - Yes, very clear, Your Honor.'

(tsn, pp. 3-4; 12-13, Hearing of July 11, 1972).

So it is clear that the defendants were occupying that portion of the house belonging to Verzosa which the latter sold to the plaintiff per Exhibit "A".

In the third place - and this is quite important - the defendants waived the cross examination of the plaintiff! Why? Is it because the plaintiff was telling the truth and that cross-examination of the witness would prove damaging to the cause of the defendants?

In the fourth place, the turn-about made by the witness, Federico Verzosa, on July 13, 1972 weakens rather than strengthens the case for the defendants. For instance, note the surprising turn-about of the witness the second time he was placed on the witness stand. When asked, he answered thus -

'Q - Mr. and Mrs. Castillo, the defendants were occupying the ground floor of your 2-storey house?

A - Yes.

Q - And they are occupying the ground floor as your lessee?

A - Yes, of course.'

This later version of the witness could not be believed by this Court, as very probably that the witness had conferred with the defendants which actuated him to make a turnabout. Moreover, his testimony on July 11, 1972 was more in conformity and in consonance with Exhibit "A". (El Hogar Filipino vs. Olviga, 60 Phil. 17).

Again, the defendants interposed the defense that the house claimed by the plaintiff is theirs. However, there is the judicial admission of defendants that the lot whereon the house leased by them from the plaintiff has been awarded by the government to the herein plaintiff. (Answer, par. 2 of Affirmative Defenses). Moreover, the cogent and simple explanation of the plaintiff as to the ownership of the house belongs to the plaintiff."

Based on the above findings of facts, the City Court rendered judgment in favor of the plaintiff and against the defendants, in the following wise and manner:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiff and against the defendants, to wit:

(1) Ordering the defendants or any person claiming right under them to vacate the premises and restore possession of the same to the plaintiff;

2) Ordering the defendants to pay plaintiff the sum of P840.00 representing the accrued rentals from January to December, 1972 with legal rate of interest from the time said amount became due and demandable until the same is fully paid and satisfied; and the further sum of P700.00 a month thereafter until said defendants or any person or persons claiming right under them vacate the premises in question;

(3) Ordering the defendants to pay attorney's fees in the amount of P200.00 and to pay the costs of suit.

SO ORDERED.

Manila, January 17, 1973.

s/ Jose B. Herrera

t/ JOSE B. HERRERA

Judge"

On January 21, 1974, the Court of First Instance rendered its Decision dismissing plaintiff's case without finding as to damages and attorney's fees and costs. The Court said:

"There is no question that in a document executed between Federico Verzosa and the plaintiff, Lamberto L. Manalo, Verzosa sold his house to plaintiff. The records of this case show that the lot on which the house is located belongs to the government and that Verzosa was a lessee or an awardee from the government of said lot, the other portion remaining vacant.

On August 1957 the evidence shows that the defendant-spouses Castillos asked per-mission from Verzosa to build a barong--barong on the vacant portion. This was granted and the barong-barong was constructed with the help of a carpenter Pedro Peredo, and for the occupancy defendants were paying Federico Verzosa a monthly rental of P20.00.

During the trial of this case before the lower Court, Federico Verzosa was pre-sented as a witness for the plaintiff. He admitted having sold the house to the plain-tiff in accordance with the deed of sale exe-cuted on September 30, 1971.

Verzosa also was a witness for the de-fendants. In his testimony he clarified his declaration as plaintiff's witness to the effect that what he sold to the plaintiff was only the extension of his house that covered the roof of the barong-barong of the defendants. He described how, during the negotiations with Francisco Manalo, father of the plaintiff, he definitely indi-cated to the buyer the portion or the subject matter of the deed of sale which Verzosa was selling to Manalo.

In this connection, it should be mentioned that Verzosa extended his house over the roof-ing of the barong-barong constructed by the defendants. When this happened, the defendants demolished their barong-barong and constructed their own, the present groundfloor and the mezzanine. The same carpenter who testified constructing the barong-barong also testified that he constructed the mezzanine.

The plaintiff now claims that what he bought was part of the upper storey and the ground floor. The defendants claim that the groundfloor and the mezzanine belong to them and were not included in the transaction bet-ween Verzosa and Manalo.

The Court, after reviewing the records of this case including the transcript of steno-graphic notes and the memoranda submitted by the parties, is convinced that what was sold by Verzosa was only the upper second storey over hanging the barong-barong constructed by the Castillos. Verzosa made this very clear during his testimony as defendants' witness and even during the cross-examination when the first testified as plaintiff's witness that what he sold was just the portion of the extension of his house overwhelming the roof of the barong-barong of the defendants. He made it clear to Francisco Manalo, father of the plaintiff, that the groundfloor and the mezzanine did not belong to him but to the Castillos.

The Court, on reading the testimony of Verzosa, specifically the portion regarding his explanation as to the matter of the nego-tiation, sale and indication to the buyer of what he was selling, is convinced that the truth is that what he sold was only the exten-sion above the house and that the groundfloor and the mezzanine constructed by the defendants were not included."

Plaintiff moved to reconsider the decision which was opposed by the defendants. On March 20, 1974, the court denied the Motion for Reconsideration, the court saying:

"The Court is convinced that its con-clusion and findings in the decision men-tioned above are correct and

justified. The crucial testimony of Federico Verzosa, vendor of the one-half (1/2) portion of the house to Lamberto Manalo convinces this Court that what was sold by Verzosa was the other half of the house and the extension thereof under which the defendant Castillos had the ground floor and the mezzanine. That Verzosa first testified for the plain-tiff and made some statements upon which plaintiff relies very heavily was sufficiently clarified and explained by the said witness when he testified also for the defendant, stating that what he sold was only the half portion of his house and the extension, but not the land. He did not sell the groundfloor occupied by the Castillos because said groundfloor and the mezzanine do not belong to him. This was sufficiently and clearly conveyed to Francisco Manalo who was acting as representative of Lamberto Manalo during the several occasions of inspection before the execution of the deed of sale."

Plaintiff appealed to the Court of Appeals, assigning the following errors: I. The Court of First Instance of Manila, Branch XVI erred in disturbing the finding of facts of the trial court, the City Court of Manila, Branch II; II. The Court of First Instance of Manila, Branch XVI erred in holding that what was sold by F. Verzosa to plaintiff-appellant was only the upper second-storey overhanging the barong-barong constructed by the Castillos excluding the ground floor and mezzanine subject matter of this case; III. The Court of First Instance of Manila, Branch XVI erred in giving credence to the testimonies of F. Verzosa given on July 13, 1972.

After the respondent court considered the procedural deviation from the prescribed procedure for appeals under R.A. 6031 (which required petition for review) instead of the ordinary appeal taken by plaintiff-appellant Manalo in the case at bar, as waived since it was never questioned, the court said:

"The decisive issue is whether the premises in dispute which is the ground floor and mezzanine of a two storey house owned by Federico Verzosa was sold by the latter to the herein appellant, it being the claim of appellees that they own said premises and were therefore not included in the sale, evidenced by a deed of absolute sale (Exh. A) executed by Verzosa in favor of appellant Lamberto L. Manalo.

The main evidence of appellant consisted of the deed of sale (Exh. A), and the testimony of Federico Verzosa given on July 11, 1972.

The deed of sale contains the following stipulation:

'That for and in consideration of the sum of THREE THOUSAND EIGHT HUNDRED SEVENTY EIGHT PESOS & 20/100 (P3,878.20), Philippine Currency, receipt of which in full by herein VENDOR from the VENDEE is hereby acknowledged, the VENDOR hereby SELLS, TRANSFERS and CONVEYS, by way of absolute sale, unto and in favor of the VENDEE, his heirs, successors and assigns, all his rights, interests, and participations over the whole por-tion of his above-mentioned house en-croaching on Lot No. 1-B-3 of subdivi-sion plan Psd-98921 free from all liens and encumbrances.'

Relevant portions of the testimony of Federico Verzosa is quoted as follows:

'Q. And on September 13, 1971, do you remember having executed a deed of absolute sale, which I am showing to you which was marked as Exhibit 'A'?

A. Yes, I do.

Q. And this is the deed of absolute sale?

A. Yes.

ATTY. MANALO:

I would like to make of record, Your Honor, that this deed of absolute sale which was identified by Mr. Verzosa as the deed of absolute sale he executed on September 13, 1971 in favor of Lamberto Manalo, was already marked as Exhibit A, Your Honor, during the first hearing, Your Honor.

Q. And you own the house . . . the subject matter of this deed of absolute sale is a portion of the house situated at R. Papa, Manila?

A. One-half of my house.

Q. And that portion of your house is that which is as stated in this absolute sale is erected on Lot No. 1-B-3?

A. Yes.

Q. Plan Psd-98921?

A. Yes.

Q. Now, do you know defendants Mr. Isabelo Castillo and Mrs. Naty Castillo?

A. Yes, sir, I know them.

Q. And this Naty Castillo . . . How did you come to know them?

A. Well, they had been occupying my house for the last 15 years.

Q. And what portion of your house was being occupied by the defendants?

A. The ground floor and the mezzanine and also the extension of the house.

A. And what is the relation of this house of yours, the ground floor, the mezzanine and also the extension which are being occupied by the de-fendants to that portion of your house which you sold to Mr. Lamberto Manalo?

A. That is within the portion of the house I sold . . . inside of the portion of the house I sold to Lamberto Manalo.

x x x

COURT:

Did that make the ground floor the property of defendant-spouses?

A. No, I would like to clarify this matter, Your Honor. Since I own the house of course, the ground floor is mine, since I was the one who owned the house. Now later on, because these streets were flooded, Mr. & Mrs. Castillo elevated the ground floor by cementing them.

COURT:

And why were the spouses there at that time? Were they the tenants in the property?

A. Yes, they have been renting my house.

COURT:

You mean to say the house mentioned in this Exhibit "A"?

A. Yes, I am referring to this portion of the house which I sold to Mr. Lamberto Manalo. Now, that portion . . . For example my house is as big as this (referring to the entire session room or courtroom), it was divided into two. I sold the half portion of the house of Mr. Lamberto Manalo and I retained the ownership of the other part of the house. So what I was referring now, Your Honor, is this portion, not that one. This ground floor.

COURT:

They are occupying the portion of the house sold to the plaintiff?

A. Yes.

Is that clear?

A. Yes, very clear, Your Honor. (t.s.n., July 11, 1972, pp. 3-4, 8-9 and 12-13, Civil Case No. 209267, Lamberto Manalo vs. Naty Castillo, et al. City Court of Manila, Branch II)'

From the deed of sale and Verzosa's testimony, there can hardly be any doubt that the 'whole portion' of the house standing on Lot 1-B-3 the right to buy which was awarded to appellant by the Bureau of Buildings and Real Property Management, was sold by appellant. This means the entire two-storey house of Verzosa, the vendor, including the ground floor and mezzanine of said house which are the premises claimed by appellees as not included in the sale because they do not belong to the vendor but to them.

As may be seen from Verzosa's testimony, the premises in dispute, the ground floor mezzanine floor, has been occupied by appellees for the last 15 years, as tenants of Verzosa, paying rentals therefor. Verzosa referred to them as portions of his house. Thus -

'And what portions of your house was being occupied by the defendants?

'The ground floor and the mezzanine and also the extension of the house.'

That the parties to the sale knew the exact extent of the property sold, and the intent to sell the same, on the part of the vendor, and to buy it, on the part of the vendee, could also be easily inferred from the evident purpose of the vendee in buying the house, standing on the lot awarded to him by the Government. He could not have wished to buy only the upper portion, excluding the lower portions, as what appellees want the court to believe, through the sub-sequent testimony of Verzosa which was, in effect, a recantation of his earlier testimony given when called as appellant's witness. For in his testimony as defendant's witness, he disclaims ownership of the disputed premises, pointing to appellees as the owners, in direct contradiction to what he stated earlier that 'the ground floor and mezzanine' are portions of his house."

The court further noted that in their Answer, the Castillos did not deny directly and specifically par. 3 of the complaint wherein it is alleged that the parties entered into an oral contract of lease of the ground floor and mezzanine of the house for a monthly rental of P70.00 as they merely averred having "no knowledge sufficient to form as to the truth thereof". They should have made a specific denial of the lease contract with respect to the ground floor and mezzanine because they own said premises. This circumstance tends strongly to negate the Castillos' claim of ownership of the disputed premises, especially considering that when asked to vacate the premises, they asked for a grace period of more than a month, that is, up to January 31, 1972 for them to look for another residence, which the plaintiff Manalo granted. The appellate court further relied on the rule that where the witness makes two conflicting testimonies, the trial court's appraisal as to which is more credible is as a rule strongly persuasive upon the appellate court for having had the opportunity to personally observe the witness' demeanor and deportment while testifying, which appellate courts do not have.

Petitioners (defendants-appellees below) filed a Motion for Reconsideration on the following grounds: (1) The true and genuine issue is whether or not defendants-appellees are the owners of the premises in question which appears to have been included in the deed of sale (Exhibit A) and not whether or not the premises in question are included in said deed of sale (Exh. A) and (2) The testimony of Federico Verzosa when he testified as witness for the defendants-appellees is more credible and probable under the circumstances than the testimony of said Federico Verzosa when he testified as witness for plaintiff-appellant.

In a minute resolution dated April 25, 1978, respondent Court of Appeals denied the Motion for Reconsideration.

A Second Motion for Reconsideration was then filed May 22, 1978, followed with a Supplement and/or Addenda to the Second Motion for Reconsideration.

In the Resolution dated May 16, 1979, the respondent appellate court again denied the Second Motion for Reconsideration, and We quote the rationale of the Resolution, to wit:

"As stated in our decision, the decisive issue is whether the ground floor and mezzanine of a two storey house owned by Federico Verzosa was sold by him to the appellant. We held in the affirmative upon the following considerations: (1) from the deed of sale and Verzosa's testimony it is clear that the ground floor and mezzanine of Verzosa's house were included in the sale to the appellant; (2) Verzosa testified that the appellees have been his tenants on the ground floor and mezzanine for fifteen (15) years; (3) the parties to the sale knew the exact extent of the property sold, and the intent to sell the ground floor and the mezzanine, on the part of the vendor, and to buy it, on the part of the vendee, could also be easily inferred from the evident purpose of the vendee in buying the house, standing on the lot awarded to him by the Government; (4) in their answer appellees did not directly and specifically deny the allegation in the complaint that after the appellant had bought Verzosa's house they 'entered into an oral contract of lease whereby plaintiff leased unto defendants the ground floor and mezzanine of his aforementioned house for a monthly rental of seventy pesos (P70.00)'; (5) in their motion to dismiss filed after the filing of their answer, appellees admitted the existence of the oral contract of lease with the appellant; (6) the undenied allegation and proof show that when asked to vacate the premises, appellees asked for a grace period of more than a month, that is, up to January 31, 1972, for them to look for another residence, which appellant granted. Our decision rejected the testimony of Verzosa on July 13, 1972, recanting his testimony on July 11, 1972 and saying that he did not sell to the appellant the ground floor and mezzanine in question.

In their first motion for reconsideration, appellees urged upon this Court the discredited testimony of Verzosa to the effect that his sale to the appellant did not include the questioned ground floor and mezzanine. We rejected said testimony and denied the first motion for reconsideration. Appellees admit in their second motion for reconsideration that they are just repeating the arguments in their first motion for reconsideration, which is anchored on the twice-discredited testimony of Verzosa. No new argument is advanced to justify a reversal of our decision. The findings which are enumerated above, on which our decision was based, have not been assailed either in the first or in the second motion for reconsideration.

The view of the minority is that the decision of the Court of First Instance is irreviewable, and the same has attained finality, because it is presumably supported by substantial evidence. We cannot adopt this view. Substantial evidence has been defined to be such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (*Picardal vs. Lladas*, 21 SCRA 1483). The factual finding of the court below, which our decision reversed, is not supported by substantial evidence because the testimony on which it was based is untrue."

As indicated above, the minority view is articulated in the dissenting opinion of Justice Corazon Juliano Agrava with the concurrence of Justice Oscar R. Victoriano wherein two basic principles were set forth: (1) That even if the case is resolved by the court through a Record on Appeal, instead of by Petition for Review, still the appeal should be substantially considered as if it were a proceeding where plaintiff's petition for review has been given due course; and (2) That in accordance with the philosophy of R.A. 6031, the decision of the Court of First Instance should not be disturbed in the appellate tribunal if it is supported by substantial evidence and is not contrary to law.

We find the recital of the facts and issue and the evidence clearly and simply explained that it is well and useful in Our review to quote the pertinent dissent:

"3. FACTS AND ISSUE. - The factual background of this case may be explained as follow: In a subdivision in Manila owned by the Government, and which is to be sold to private citizens, there are two contiguous lots, 1-B-3 (Lot 3) and 1-B-5 (Lot 5). About 1957, Lot 5 had already been awarded to Federico Verzosa, and he had built a house of two stories thereon, one side of which was on the border line between Lot 5 and Lot 3. Lot 3 was then vacant, and had not yet been awarded to anybody. Defendants approached Verzosa and, with his permission, built a barong-barong on Lot 3 adjoining the side of Verzosa's house. The barong-barong did not rise beyond the first storey of Verzosa's house. Later on, Verzosa extended the second floor of his house into Lot 3 over the barong-barong. Still later on, defendants improved the barong-barong by cementing the ground floor and building a mezzanine (hereinafter called the STRUCTURE).

Lot 3 was subsequently awarded to plain-tiff, and on September 13, 1971, he purchased the part of the house built by Verzosa on Lot 3 (Exh. A). What was sold was the 'portion of (Verzosa's) house encroaching on (Lot 3)' (ROA, p. 48). On February 8, 1972, plaintiff filed suit for ejectment against defendants, alleging that he himself wanted to reside in what he had purchased from Verzosa.

The real issue between the parties was whether the STRUCTURE was owned by defendants and, hence, could not be sold by Verzosa to plaintiff.

4. THE EVIDENCE. - The evidence of defendants was to the effect that they are the owners of the STRUCTURE. On the other hand, plaintiff relied on the sale made to him by Verzosa of the part of the latter's house built on Lot 3.

Plaintiff, having the burden of proof in the unlawful detainer case, placed Verzosa on the witness stand and the latter testified on July 11, 1972 that what he had sold to plain-tiff was the entire part of his house built on Lot 3; that is, inclusive of the STRUCTURE. Two days afterwards, on July 13, 1972, when it came to defendants' turn to present evidence, they also presented Verzosa on the witness stand. This time, 'Verzosa declared that the STRUCTURE was really owned by defendants which he did not sell to plaintiff.

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6. BASIS OF THIS COURT'S JUDGMENT. - The writer believes that the decision of this Court of January 31, 1978 was erroneous, as Justice de Castro had finally realized, and it should be set aside. The judgment of the Court of First Instance is supported by substantial evidence and is not against the law.

The testimony of Verzosa in favor of plaintiff was as follow:

'Q. And what is the relation of this house of yours, the ground floor, the mezzanine and the extension which are being occupied by the defendants, to that portion of your house which you sold to Mr. Lamberto Manalo?

A. That is within the portion of the house I sold . . . inside of the portion of the house I sold to Lamberto Manalo.' (ROA, p. 31).

The testimony of Verzosa in favor of defendants was as follow:

'Q. Now, after those improvements in the ground floor, with the mezzanine, the extension of Mrs. Castillo, do you consider that portion still belongs to you?

A. Ever since 1957 I considered them the owner of this ground floor.

Q. How about the mezzanine?

A. Of course, and those improvements. (Tsn, p. 30, July 13, 1972, F. Verzosa)' (ROA, pp. 55-56).

A. Long before I signed the deed of sale, I have stated before, I had the occasion of meeting Mr. Francisco Manalo, pointing to him all those improvements made by the Castillos, that the ground floor, the mezzanine, the walling and the extension of the mezzanine in front below to the Castillos' ground floor and showed to him

per-sonally that these are not mine but belongs to the Castillos.' (ROA, p. 56).

Q. And you even mentioned this portion of Exh. 1-B. You testified before that Exhibit B-1 is the whole por-tion you sold to Mr. Lamberto Manalo is that true?

A. No. I was referring to the second floor.

Q. You mean to stay after two days, after testifying before this Honorable Court last July 11, now you are changing your stand after the lapse of 2 days?

Atty. Reyes:

I think there was no inconsistency.

A. I am not denying that I did not sell the house but I am referring that I only sold the second storey in the amount of P3,878.20. Other-wise, I would not have agreed to this amount had I sold all of the ground floor.' (Tsn, p. 35, Federico Verzosa, July 13, 1972).' (ROA, pp. 57-58).

Q. And as you testified before, what you sold to Lamberto Manalo is the 2 storey house occupying Lot 1-B-3, isn't it?

A. I am referring only, your Honor, to the upper portion. Because I have been pointing to him already before I signed the deed of sale, to Mr. Francisco Manalo that the ground floor does not belong to me. It belongs to the Castillos. So when I signed the deed of sale, I was referring to the whole upper portion of the second floor. How could I sell the thing which does not belong to me?' (Tsn, p. 37, F. Verzosa, July 13, 1972).' (ROA, p. 58).

In view of the above testimony of Verzosa, it cannot be said that the judgment of the Court of First Instance is not supported by substantial evidence. It is not for this appellate tribunal to re-weigh the conflicting evidence. And if We could re-weigh, We should find in favor of defendants.

Moreover, it should be clear that the testimony of Verzosa, as a witness for plaintiff, can be deemed as having been given on direct examination. Verzosa's testimony, as a witness for de-fendants, should be viewed as given on cross examination. Evidence given on direct examination as a rule, cannot prevail over that given on cross examination.

Defendants, as owners of the STRUCTURE can be proceeded against, not through unlawful detainer, but through an action against a possessor in good faith who has a right of retention until proper reimbursement is made."

Petitioners having appealed to Us by way of certiorari, We required comment from private respondents which was com-plied accordingly. Petitioners then filed their reply (Rollo, pp. 191-193), attaching thereto as Annex "A" a joint affidavit of Justice Corazon Juliano-Agrava and Justice Pacifico P. de Castro in connection with the comment of private respondent, which is self-explanatory, reading as follows:

"REPUBLIC OF THE PHILIPPINES) S.S.

CITY OF MANILA)

JOINT AFFIDAVIT

WE, Justice CORAZON JULIANO AGRAVA and Justice PACIFICO P. DE CASTRO, Filipinos, married and residents of Metro Manila, after haying been duly sworn to in accordance with law, herein-below depose and state:

1. We are executing this Joint Affidavit in connection with the Comment of private respondent in G.R. No.

L-48290, 'Naty Castillo, et al. vs. Court of Appeals, et al.' We refer in particular to that part of the Comment which reads as follows:

Petitioners likewise at the outset, kept on repeating the observation of Honorable Justice Corazon Juliano Agrava to the effect that Justice Pacifico de Castro, then one of the justices of the Court of Appeals, reconsiders his original stand in the case at bar. With due respect to Honorable Justice Agrava, it refers only to her own observation, not the stand itself of Justice de Castro. Justice de Castro never positively stated that he is reconsidering his position on the case. It was Justice Agrava who said that Justice de Castro changed his stand, not Justice de Castro himself.

Thus, it becomes necessary to set the record straight and affirm the truth as to the positions taken by Justice Pacifico P. de Castro while the Castillo case was still in the Court of Appeals.

2. Justice Pacifico P. de Castro was the ponente in CA-G. R. No. 55692-R, "Manalo vs. Castillo, et al.", in the Court of Appeals. At first, Justice de Castro took the position that the judgment of the Court of First Instance of Manila may and should be reversed, and that the decision of the City Court may and should be affirmed, which position of Justice de Castro is reflected in the Decision of January 31, 1978 in CA-G.R. No. 55692-R.

3. However, on second motion for reconsideration of defendants-appellees in CA-G.R. No. 55692-R, Justice de Castro changed his previous position. In fact, he prepared a draft opinion in favor of granting such second motion for reconsideration, upon the premise, among others, that the judgment of the Court of First Instance is supported by substantial evidence and is not against the law. Justice de Castro's aforementioned draft opinion was accordingly attached to the rollo or expediente of CA-G.R. No. 55692-R. Justice Corazon Juliano Agrava (who had taken the place of Justice Vicente M. Santiago, Jr.) concurred with Justice de Castro, but Presiding Justice Reyes dissented. A Division of Five was created with Associate Justices Crisolito Pascual and Mariano Serrano being selected to be the additional Justices. When Justice de Castro was elevated to the Supreme Court, he was substituted in the Division of Five by Justice Oscar R. Victoriano. It then turned out that Justices Andres Reyes, Mariano Serrano and Crisolito Pascual were in favor of denying the second motion for reconsideration, as reflected in the Resolution of May 16, 1979. Justice Victoriano voted, along with Justice Agrava, to grant the second motion for reconsideration. Necessarily, Justice Agrava had to write her own separate dissenting opinion with which Justice Victoriano concurred. As for the draft opinion of Justice de Castro which he had prepared before the creation of the Division of Five and before he was elevated to the Supreme Court, it seems that the same could no longer be found in the rollo or expediente of CA-G.R. No. 55692-R in the Court of Appeals.

4. It is clear, therefore, that Justice de Castro reconsidered his original stand in the Court of Appeals in CA-G.R. No. 55692-R, and the observations of Justice Agrava on the history of the case, as set forth in the Dissenting Opinion, are true and correct.

AFFIANTS FURTHER SAYETH NAUGHT.

(Sgd.) PACIFICO P. DE CASTRO

Affiant

(Sgd.) CORAZON JULIANO AGRAVA

Affiant"

(Subscription omitted)

In Our Resolution of June 18, 1980, We gave due course to the petition and required both parties to submit simultaneous memoranda and thereafter, We resolved to declare the case submitted for decision.

In their appeal to Us, petitioners submit the following assignment of error:

I

THE COURT OF APPEALS ERRED GRAVELY IN ASSUMING AND EXERCISING APPELLATE JURISDICTION OVER THE CASE DESPITE THE FACT THAT NO APPEAL WAS PROPERLY TAKEN TO IT.

II

THE MAJORITY OF THREE OF THE SPECIAL DIVISION OF FIVE OF THE COURT OF APPEALS ERRED GRAVELY IN HOLDING THAT THE DECISION OF THE COURT OF FIRST INSTANCE IN FAVOR OF PETITIONERS IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

III

ASSUMING ARGUENDO THAT THE EVIDENCE IN THE CASE AT BAR COULD BE REWEIGHED, THE MAJORITY OF THREE ERRED GRAVELY IN NOT FINDING IN FAVOR OF DEFENDANTS-APPELLEES IN CA-G.R. NO. 55692-R, PETITIONERS HEREIN.

Since the third assigned error goes into the merits of the case, We accord to it preferential attention and resolution first.

We agree with petitioners that respondent appellate court committed grave misapprehension of the evidence and facts on record in reversing the decision of the Court of First Instance of Manila, which error warrants and justifies the Supreme Court to review said evidence, it being an exception to the general rule that only questions of law may be raised in an appeal by certiorari proceedings. In holding that "there can hardly any doubt that the 'whole portion' of the house standing on Lot 1-B-3 the right to buy which was awarded to appellant by the Bureau of Buildings and Real Property Management, was sold by appellant. This means the entire two-storey house of Verzosa, the vendor, including the ground floor and mezzanine of said house which are the premises claimed by appellees as not included in the sale because they do not belong to the vendor but to them," the appellate court gravely erred and abused its discretion. The conclusion of respondent Court of Appeals that private respondent was the owner of the disputed premises because he bought the same from Francisco Verzosa is not correct in the light of the latter's clarification that the ground floor and the mezzanine were not included in the sale as petitioners had built these improvements and were the owners thereof.

The evidence on record fully establish that petitioners built their barong-barong on Lot 3 with the permission from Verzosa. The barong-barong was constructed with the help of a carpenter, Pedro Peredo, and for the occupancy, petitioners were paying Verzosa a monthly rental of P20.00. This was in August, 1957. When Verzosa extended the house over the roofing of the barong-barong constructed by the petitioners, the latter demolished their barong-barong and constructed their own, the present ground floor and the mezzanine. The same carpenter who testified constructing the barong-barong also testified that he constructed the mezzanine. These facts are not disputed, and to Us this evidence is the most vital and material evidence in determining the ownership of the disputed premises because they prove petitioners' right or title by virtue of manual construction and fabrication.

It may be true that Verzosa in his first testimony as witness for private respondent declared that the ground floor was his because he own the house but his reasoning and conclusion was not correct since petitioners were the ones who constructed or caused the construction of these improvements with their own funds.

It may also be true that Verzosa in his reply to the question: "What is the relation of this house of yours, the

ground floor, the mezzanine and also the extension which are being occupied by the defendants to that portion which you sold to Mr. Lamberto Manalo?" gave this answer: "This is within the portion of the house I sold . . . inside of the portion of the house I sold to Lamberto Manalo." From this testimony, the respondent Court of Appeals ruled that "the 'whole portion' of the house standing on Lot 1-B-3 was sold by appellant."

Again this is a grave error of misapprehension of the evidence because Verzosa's answer is vague, for it may refer to the physical fact that indeed the disputed premises are inside or within the portion of the house sold, which is, of course, true. Moreover, Verzosa had declared in his testimony that before the execution of the deed of sale and in the inspection of the premises, he explained to Manalo's representative that the ground floor and mezzanine were not his and that they were excluded from the sale since they belong to the Castillos, petitioners herein, and which declaration is not disputed or denied. Finally, respondent court simply rejected the clarification made by Verzosa without attempting to reconcile his two testimonies which are not entirely inconsistent. Indeed, it is the duty of the court to reconcile discrepancies or differences in the statements of a witness, or where one statement is plainly a correction of the other. Contradictory statements should be considered in the light of explanations and attending circumstances, and it should be considered whether inconsistencies or incongruities result from misconception of an innocent witness or wilful and corrupt misrepresentation. (The Revised Rules of Court, Evidence, Vol. VII, p. 613, by Vicente J. Francisco).

We rule that petitioners are the owners of the disputed premises and being builders in good faith, are entitled to payment of the indemnity under Article 448 and the right of retention under Article 546 of the New Civil Code.

Having resolved the question of ownership in favor of petitioners, We find it pointless and without any useful purpose to discuss and resolve the other assignments of errors.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the decision appealed from is hereby REVERSED and SET ASIDE. The judgment of the defunct Court of First Instance of Manila, Branch XVI in Civil Case No. 90719, now Regional Trial Court, National Capital Judicial Region, is hereby reinstated.

Costs against private respondent.

Petition granted.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., and Escolin, JJ., concur.

Aquino, J., see concurring opinion.

Abad Santos, J., vote for the affirmance of the decision.

De Castro, J., no part.

Castillo vs Court of Appeals : L-48290 : September 29, 1983 : J. Aquino : Second Division : Concurring Opinion
6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING OPINION

AQUINO, J.:

This ejectment case involving the ground floor and mezzanine of a small two-storey house in the G. Lerma and R. Papa Subdivision, Sampaloc, Manila has unjustifiably and needlessly occupied the time, energy and attention of the city court of Manila, its Court of First Instance, the Court of Appeals and this Court for more than ten years due to the failure of the lawyers to get the facts from their clients and to present those facts to the courts, the failure of the city court to ascertain the truth as to ownership of the said premises and the ambivalent testimonies of Federico Verzosa, a law graduate and customs employee, who testified on July 11, 1972 for the plaintiff and, two days later, testified for the defendants, thus making confusion worse than confounded. An ocular inspection and photo-graphs could have been useful.

In 1946, Federico Verzosa built a two-storey house on the one-half portion of Lot 1-B-5 (Lot 5) of the G. Lerma and R. Papa Subdivision. The lot had an area of 35 square meters. In August, 1957, Verzosa allowed the spouses Naty Castillo and Isabelo Castillo to construct a barong-barong- on the other vacant one-half portion of Lot 1-B-5. The barong-barong encroached on the adjoining lot, Lot 1-B-3 (Lot 3) also with an area of 35 square meters, which was later awarded to Lamberto L. Manalo.

Verzosa extended his two-storey building to cover the barong-barong of the Castillos who then renovated the barong-barong into a ground floor and mezzanine of Verzosa's two-storey house (28 tsn July 13, 1972, City Court). Pedro Perido, the carpenter, corroborated Verzosa's testimony on this point.

On September 13, 1971, Verzosa sold to Lamberto L. Manalo for P3,878.20 (after making negotiations with Francisco Manalo, Lamberto's father, another contributory cause of the confusion) "the whole portion of his" two-storey house which was built on Lot No. 1-B-5 but "encroaching on Lot No. 1-B-3", which, as already stated, was awarded to Manalo Exh. A).

Note, however, that in the notarial acknowledgment, the notary stated that the deed of absolute sale refers to a "parcel of land situated in Sampaloc, Manila". The deed of sale (Exh. A) is erroneous. The notary did not ascertain what was being sold. Exhibit A is not trustworthy evidence for Manalo.

When Manalo sued the Castillo spouses for ejectment, the lawyer of the Castillos did not ascertain the facts from his clients. He did not plead the correct facts in his answer for the Castillos. The answer is not trustworthy.

It was only during the trial in the city court that the facts, not stated in the answer, were revealed by the Castillo spouses and by Verzosa, the vendor who did not read carefully the deed of sale and the witness who in 48 hours testified for the opposing parties, Manalo and the Castillo spouses, and made a spectacle of himself by giving contradictory testimonies.

Judge Jose B. Herrera of the city court believed the first testimony of Verzosa and the deed of sale which, as already stated, was erroneous. Hence, he decided in favor of plaintiff Manalo and ejected the Castillos.

Judge Juan L. Bocar of the Court of First Instance believed the second testimony of Verzosa for the Castillos that he sold only the second story of his house and that the Castillos owned the ground floor and mezzanine portion from which they were being ejected. Hence, the Court of First Instance decided for the Castillo spouses.

Judge Bocar correctly found that Verzosa sold to Manalo "the upper second story overhanging the barong-barong" and Verzosa did not sell the ground floor occupied by the Castillos because said ground floor did not belong to Verzosa, but Judge Bocar failed to state that, as shown in Exhibit 1 of the Castillos, the ground floor and mezzanine (the original barong-barong) were constructed on Lot 1-B-3 (Lot 3) which was awarded to Manalo as indicated in the deed of sale, Exhibit A.

On appeal, the Court of Appeals, in a decision dated January 31, 1978, reversed Judge Bocar's decision and affirmed that of City Judge Herrera. That decision was reiterated in the denial of the Castillos' first and second motions for reconsideration.

Justice Juliano-Agrava in her dissent found that the Castillos constructed their barong-barong and later their ground floor and mezzanine on Lot 1-B-3 (Lot 3) awarded to Manalo (p. 134, Rollo). The decision of the Court of Appeals should be reversed.

Since this is an ejectment case wherein the city court decided the ownership of the ground floor and mezzanine, the appeal from the decision should have been made directly to the Court of Appeals (Secs. 3[c] and 5, Republic Act 5967, enlarging the jurisdiction of city courts).

What is the correct and just solution of the case? The Castillos cannot be ejected from the ground floor and mezzanine because they own those portions of the house but certainly they are builders in bad faith and should lose what they had built (Art. 449, Civil Code). They cannot remove the ground floor and mezzanine because that would destroy Manalo's second floor. Even as bona fide lessees, they are not entitled to reimbursement for the value of the ground floor and mezzanine (Art. 1678, Civil Code).

Since they had been staying in Manalo's Lot 1-B-3 (Lot 3) for more than ten years or during the pendency of this case, the rentals or the accumulated reasonable value of the use and occupation thereof should be waived by Manalo but the Castillos must vacate the ground floor and mezzanine which can now be regarded as Manalo's property.

The result is the same if they had been ejected therefrom but they need not pay the rentals or the reasonable value of the use and occupation thereof.

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