

CIPRIANO B. MOTOS, PLAINTIFF-APPELLANT, VS. ROBERTO SOLER ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-11329. May 31, 1961

Ponente: DIZON, J.

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DIZON, J.:

Before us is appellees' second motion for the reconsideration of our resolutions dated November 25, 1960 and February 10, 1961.

The resolution of November 25, 1960 denied appellees' motion for the modification of the dispositive part of the decision rendered in this case, on the ground that the same was filed out of time. We agree with appellees that said resolution should be, as it is hereby, reconsidered, because the record shows that their aforesaid motion was timely filed. It appears in this connection that appellees received notice of the decision on October 13, 1960. On the 26th of the same month they filed a motion for extension of the time to file a motion for reconsideration, and two days thereafter this Court granted them an extension of 20 days from October 28 for the aforesaid purpose, which extension expired on November 17, 1960. On November 16 they mailed, by registered special delivery, their motion to secure a modification of the dispositive part of the decision - which was actually received by the Clerk of Court on the 18th of the same month. But as, according to the Rules, the date of mailing in this case should be considered as the date of filing, the said motion must be deemed to have been filed on time.

In connection with the resolution of February 10, 1961, it appears that a copy of the former resolution dated November 25, 1960 was received by Rogelio Tobias, a clerk in the law-office of Atty. Oriño on December 3, 1960; Tobias placed it in a folder kept in a locked drawer of his desk, intending to bring it to the attention of Atty. Oriño - who was then already out of the office - the following Monday, December 5; it happened, however, that Tobias was taken ill and was hospitalized from December 4 to December 23 and reported back to the law-office of Atty. Oriño only on December 27, and it was only then that he was able to deliver the notice referred to to Atty. Oriño, who, in turn, delivered it to Atty. Pardalis. Two days thereafter the latter filed the motion for reconsideration dated December 28, 1960, which was denied by our resolution of February 10, 1961, notice of this denial having been received by appellees' counsel on February 23 of the same year.

In view of the setting aside of our Resolution of November 25, 1960, and the fact that appellees' motion for reconsideration dated December 28, 1960 was verified and duly accompanied by affidavits of merit, our Resolution of February 10, 1961 is also set aside.

The main question now before us, therefore, is whether the dispositive part of our decision should be modified as prayed for by appellees in their motion of November 11, 1960. It is alleged therein that while the decision rendered in this case granted appellant the right to repurchase the property in question for the sum of ₱ 119.92, it did not provide - and go they asked - for the remanding of the case to the lower court for further proceedings to enable appellees to present evidence bearing upon the value of the improvements that they had made on the aforesaid property since acquiring the same from appellant in August, 1955 - a right they claim to be entitled to as

possessors in good faith.

The motion is without merit. The present action was instituted by Cipriano B. Motos to compel appellees to allow him to repurchase the property described in his complaint. In the latter's answer they denied Motos' right to repurchase under the Public Land Act and, further alleged that, if he ever had such right, the same had already prescribed.

In view of the issue involved, we believe that the value of whatever improvements may have been introduced in the property by appellees during the time they were in possession should have been litigated below by setting up the corresponding counterclaim. Appellees' failure to do so now bars their claim (*Berses vs. Villanueva*, 25 Phil. 473; *Beltran vs. Valbuena*, 53 Phil. 697; *Pascual vs. Lesaca*, L-4336, May 30, 1952).

WHEREFORE, appellees' motion for the modification of the dispositive part of the decision of this Court is hereby denied.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, and Paredes, JJ., concur.

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