

MAMERTA CABRAL, ET AL., PETITIONERS, VS. HONORABLE FIDEL IBAÑEZ, ETC, ET AL., RESPONDENTS.

G.R. No. L-8555. December 20, 1955

Ponente: JUGO, J.

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JUGO, J.:

On April 30, 1948, Judge Emilio Peña of the Court of First Instance of Manila rendered in Civil Case No. 2731 of that court a decision which in substance is to the following effect:

The plaintiffs Geronima Zabala assisted by her husband Justiniano Bernardo filed a complaint in which' she prayed that the defendants, Fernando, Mamerta, and Francisco all surnamed Cabral, petitioners herein, be required to execute a deed of sale covering a portion of land having an area of 14 square meters or to pay damages in the sum of P10,500. The facts as stated by Judge Peña are: in November, 1946, the plaintiffs obtained a building permit from the City Engineer to construct a house at 1005 Fulgueras Street, Tondo, Manila, and began the building of said house. However, in January, 1947, a surveyor of the United States Army made a relocation and found that the house of the plaintiffs was partly occupying a portion of the defendants' property of 14 square meters in area. The plaintiffs made efforts to purchase from the defendants, petitioners herein, said 14 square meters. The transaction fell off because the consent of the co-owner Mamerta, sister of Fernando, could not be obtained. However, the plaintiffs advanced the sum of P560 which was received by defendant Fernando Cabral. Judge Peña dismissed the complaint and directed the plaintiffs to remove that part of their. house which occupied a portion of 14 square meters of the lot of the defendants and ordered the plaintiffs to pay a rental of P5 per month from December, 1946 until the said portion is vacated, and ordering Fernanda Cabral to return to the plaintiffs the sum of P560.

The Court of Appeals on August 17, 1950, rendered a decision affirming that of Judge Peña.

The defendants Mamerta Cabral, et al., petitioners herein, filed a petition with this Court to review the decision of the Court of Appeals. This Court on October 2, 1950, passed the following resolution:

"The petition for certiorari in L—4151, Geronima Zabala, et al., vs. Fernando Cabral, et al., is dismissed. The only question submitted to and decided by the Court of Appeals is whether or not the plaintiffs, the respondents herein, have the right to occupy the lot (in question) 14 square meters in area because defendant Fernando Cabral could not bind his co-heirs by the. issuance of Exhibit E. The Court of Appeals in deciding the case held that, according to the evidence, Exhibit E does not represent the true intention of the parties or, it is not a real promise to sell but a receipt of the amount of 660 pesos handed to said Fernando Cabral to facilitate in convincing his co-heirs to accede to the desire of plaintiffs-appellants to buy the land in question. We cannot now review this finding of fact of the Court of Appeals. The question of accession of good or bad faith of the builders of the house on said lot was not raised in the court below, and, for that reason, the Court of Appeals did not make any finding on that question."

Relying on the last sentence of the above resolution which says the question of good or bad faith of the builders of the house on said lot was not raised in the court below, and for that reason, the Court of Appeals did not make any

finding on that question, a complaint was filed by the plaintiffs Geronima Zabala, et al., in Civil Case No. 12463 in order to determine whether they had possession in good faith of the 14 square meters area. The parties submitted a stipulation of facts, paragraph 4 of which reads as follows:

"That the construction of the building of the plaintiffs was begun in November, 1946 and when the lot was relocated during the period January 2 to 7, 1947, the plaintiffs' building was almost finished;"

Judge Ibañez in his decision of March 19, 1953, regarding the good faith of the plaintiffs Zabala, et al., made the following finding:

"From the facts agreed upon by the parties, and from other facts not disputed by them in their pleadings, the court concludes that, the herein plaintiffs Geronima Zabala and her husband Justino Bernardo, constructed their house in the belief that it was entirely within the area of their own land without knowing at that time that part of their house was occupying a 14-square meter portion of the adjoining lot belonging to the defendants, and that the defendants Bernardo M. Cabral and Mamerta M. Cabral were likewise unaware of the fact that portion of plaintiffs' house was extending and occupying a portion of their lot with an area of 14 square meters. The parties came to know of the fact that part of plaintiffs' house was occupying part of defendants' land when the construction of plaintiffs' house was about to be finished, after a relocation of the monuments of the two properties had been made by the U. S. Army through the Bureau of Lands, according to their 'Stipulation of Facts,' dated August 17, 1951.

"The Court, therefore, concludes that the plaintiffs are builders in good faith and the relative rights of the defendant Mamerta Cabral as owner of the land and of the plaintiffs as owners of the building is governed by Article 361 of the Civil Code (Co Tao vs. Joaquin Chan Chico, 46 Off. Gaz. 5514). Article 361 of the old Civil Code has been reproduced with an additional provision in Article 448 of the new Civil Code, approved June 18, 1949."

We do not find any reason for disturbing the above finding of Judge Ibañez.

The dispositive part of his decision, is as follows:

"Wherefore, judgment is hereby rendered giving the defendant Mamerta Cabral as owner of the land the right to elect, either to purchase that portion of plaintiffs' house which protrudes into her land, or to sell to the plaintiffs that portion of her land upon which the said portion of plaintiffs' house is built, without pronouncement as to costs. After the defendant Mamerta Cabral as owner of the land shall have made the election as above provided "within a period of thirty (30) days, this case will be reset for the admission of evidence on the value of the improvement in case the defendant Mamerta Cabral elects to buy the same, or the value of the land in case she elects to sell it."

In view of the foregoing, the judgment rendered in Civil Case No. 12463 of the Court of First Instance of Manila is hereby affirmed, without costs. With regard to the thirty days fixed by Judge Ibañez, it should be counted from the time this decision becomes final.

This case is returned to the court below in accordance with this decision for further proceedings. It is so ordered.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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