

JUAN MORTOS, PETITIONER VS. VICTOR ELLO AND LT. OSCAR GONZALES, RESPONDENTS.

G. R. No. L-5089. May 15, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

Victor Ello found his jeep missing in the place where he parked it on the night of October 2, 1947, in Tambo, Paranaque, Rizal. On October 28, 1947, it was found in the possession of Juan Mortos in Lucena, Quezon, from whom Victor Ello recovered the jeep through Lt. Oscar Gonzales of the Military Police. It turned out that Juan Mortos bought the vehicle from Marcelino Felipe, Vicente Santos Pañganiban and Alejandro Gregorio, one of whom posed as Victor Ello. On November 18, 1947, Juan Mortos instituted the present replevin suit against Victor Ello and Lt. Oscar Gonzales in the Court of First Instance of Quezon, for the delivery of the jeep. The defendant Victor Ello filed an answer, alleging that he is the owner of said jeep which was stolen on October 2, 1947, and sold to the plaintiff by the thieves, and setting up a counterclaim for damages.

For his failure to file an answer, the defendant Oscar Gonzales was declared in default. After trial, the Court of First Instance of Quezon rendered a decision, ordering the plaintiff to return and deliver the jeep in question to the defendant Victor Ello, reserving to the plaintiff the right to proceed against the persons who sold said jeep to him.

In the meantime, or while the replevin suit was pending, Victor Ello caused a criminal prosecution for theft to be commenced on February 24, 1948 against Marcelino Felipe, Vicente Santos Pañganiban, Alejandro Gregorio and Juan Mortos in the Court of First Instance of Rizal. The information was subsequently dismissed as to Juan Mortos who was found by the fiscal to have bought the jeep without knowing that it was stolen, and as to Alejandro Gregorio in view of his willingness to testify as a witness for the Government. Marcelino Felipe and Vicente Santos Pañganiban were found guilty and sentenced to an indeterminate penalty of from 6 years and 1 day to 8 years, 8 months and 1 day of prision mayor, and to indemnify Victor Ello in the sum of P1,200.

The plaintiff Juan Mortos, appealed to the Court of Appeals which affirmed the judgment of the Court of First Instance of Quezon, with the only modification that if he should fail to deliver the jeep in question to the defendant Victor Ello, its value (P1,200.00) should be paid to the latter. The plaintiff has appealed by way of certiorari.

Petitioner-appellant's main contention is that, because of the failure of the respondent-appellee, Victor Ello to expressly waive or reserve his right to institute it separately, the action for recovery of civil liability was impliedly instituted with the criminal case for theft, in which the information was dismissed as to the appellant, and Marcelino Felipe and Vicente Santos Panganiban alone were found guilty and, in addition to the penalty of imprisonment, were ordered to pay an indemnity of P1,200 to the appellee, Victor Ello. The appellant thus insists that the Court of First Instance of Quezon had no jurisdiction to proceed with the present replevin suit, or that it was at least improper for said court to order the delivery of the jeep in question to Victor Ello who had already been awarded indemnity in the sum of P1,200 in the criminal case against Marcelino Felipe and Vicente Santos

Pañganiban.

Appellant's contention is untenable, because the replevin suit was instituted by him and the appellee Victor Ello merely assumed a defensive position; and it was indeed unnecessary for the latter to make the necessary reservation in the criminal case for the reason, as correctly stated by the Court of Appeals, that he was legally in possession of the jeep. Although Victor Ello set up a counterclaim for damages, his answer alleged ownership in himself, and both the trial court and the Court of Appeals properly awarded the possession of the jeep to said appellee, inasmuch as section 9, Rule 62, of the Rules of Court provides that possession of the disputed property should be adjudicated to the one entitled thereto.

Moreover, although in the criminal case the defendants Marcelino Felipe and Vicente Santos Pañganiban were sentenced to indemnify Victor Ello in the sum of P1,200, the latter as found by the Court of Appeals, has not received or tried to enforce that indemnity,-not to mention the fact that, under Article 105 of the Revised Penal Code, the owner of stolen property is entitled to its restitution.

Of course, the right of the appellee Victor Ello to the possession of the jeep in question, is predicated upon article 464 of the old Civil Code, which provides that one who has lost any movable property may recover it from whomsoever possesses it, and the possessor is entitled to reimbursement of any price paid by him for the lost or stolen property if he has acquired it in good faith at a public sale, which is admittedly not true in the case at bar. The appealed decision awarding in favor of Victor Ello the possession of the jeep or its value (P1,200.00) is correct, because section 9 of Rule 62 authorizes "judgment in the alternative for the delivery thereof to the party entitled to the same, or for the value in case delivery cannot be made."

Wherefore, the appealed decision is affirmed with costs against the petitioner-appellant. So ordered.

Feria, Pablo, Bengzon, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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