

**AUGUSTO COSIO AUGUSTO COSIO AND BEATRIZ COSIO DE RAMA,
PETITIONERS, VS. CHERIE PALILEO, RESPONDENT.***G. R. No. L-18452. November 28, 1966*

Ponente: REGALA, J.

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Petitioners have filed a second motion for reconsideration based on substantially the same grounds advanced by them in their first motion for reconsideration, grounds which were already considered in both the resolution of May 20, 1966 and in the dissenting opinion of Mr. Justice Makalintal. Thus, the following circumstances are cited as basis for petitioners' claim of good faith in taking possession of the house.

1. The agreement of the parties whereby respondent Palileo was allowed to remain in possession of the house, ostensibly as lessee, after it was allegedly sold to petitioner Cosio de Rama.
2. The alleged impression of the parties that their transaction was one of conditional sale, by virtue of which petitioner Cosio de Rama became the "temporary owner" of the house, evident in the act of petitioner Cosio de Rama of insuring the house against fire, renewing the lease of the land on which it was built and repairing the house when it was partly destroyed by fire.

But, as already stated in the prior case of *Palileo v. Cosio*, 97 Phil. 919 (1955), as well as in the main decision in this case, the agreement to permit respondent Palileo to remain in possession of the house as lessee thereof was merely a device to enable the collection of excessive interests in the guise of monthly rentals. It is precisely schemes such as these which the law presumes to be equitable mortgages (Civil Code art. 1606 [2]) and it was on this score that this Court declared the parties' contract to be a mortgage.

The second point has already been answered also in the resolution of May 20, 1966. Consistently with the design to conceal the true nature of their agreement which they styled a "Conditional Sale of a Residential House," it was not unlikely for the parties to act the way parties to a real sale might act. This probably explains why petitioner Cosio de Rama renewed the lease on the land when it expired, although, with respect to the insurance which she took, it might be said that even a mere mortgagee has an insurable interest in the thing mortgaged. This is the ruling in the first case of *Palileo v. Cosio*, supra, and it was on the basis of this ruling that petitioner Cosio de Rama's right to the proceeds of the fire insurance was upheld.

However, realizing that the issues in this case are such that even members of the Court are divided and considering that mistake upon difficult questions of law may be the basis of good faith (Civil Code art. 526), we have decided to give petitioners the benefit of the doubt. For this reason, petitioners must now be deemed to have taken possession of the house in good faith, in the honest belief that they were entitled to do so, and that it was only after the decision in *Palileo v. Cosio*, supra, became final on December 15, 1955 that petitioners' bad faith started, because it was from that date only that they became aware of the flaw in their title (art. 528). Petitioners' liability for rent must accordingly be deemed to begin from Dec. 15, 1955 only but their right to reimbursement for necessary expenses as declared in our original decision in this case, is reaffirmed. Such reimbursement, in the

amount of P12,000 may be deducted from the rents due the respondent

WHEREFORE, the dispositive portion of the original decision is hereby modified to read as follows:

"WHEREFORE, with the modification that petitioner Cosio de Rama should be reimbursed her necessary expenses in the amount of P12,000 by respondent Palileo, and that petitioners, for their possession of the house, are ordered to pay respondent Palileo a monthly rental of :P300 starting from the time the decision in Palileo v. Cosio. 97 Phil, 919 [1955] became final on December 15, 1955 the judgment of the Court of Appeals is affirmed in all other respects, without any pronouncement as to costs."

Reyes, J. B. L., Dizon and Zaldivar, JJ., concur.

Bengzon, J. P., Sanchez and Ruiz Castro, JJ., no part.

DISSENTING OPINION

MAKALINTAL, J.:

I have set forth, in ray dissent from this Court's resolution denying petitioners' first motion for reconsideration, the reasons why they should not be held liable for rents on the house in question, which under the decision would now aggregate approximately P50,000.00, at P300.00 a month since December 1952. The resolution on petitioners' second motion for reconsideration now modifies the judgment in the sense that their liability for such rents should start only from December 15, 1955, when our decision in the parent case of Palileo v. Cosio, 97 Phil. 919, became final. The modification is based on the proposition that "petitioners must be deemed to have taken possession of the house in good faith, in the honest belief that they were entitled to do so,[[1]] and that it was only after the decision in Palileo v. Cosio, supra, became final on December 15, 1955 that petitioners' bad faith started, because it was from that date only that they became aware of the flaw in their title (Art. 528)."

I am still unable to accept this new development. If petitioners' original possession of the house was in good faith - and I am convinced it was and has since continued to be so - even the alleged change in the character of that possession by virtue of the 1955 decision would not render them liable for rents thereafter. As possessors in good faith they incurred necessary expenses on the house when they reconstructed it after the fire in 1952, spending the amount of P12,000.00 for that purpose. And under Article 546 of the Civil Code a possessor in good faith has the right of retention until such necessary expenses have been refunded. I believe, under the facts and circumstances of this case, that to grant respondent Palileo's claim for rents without her having made reimbursement - not to say without having paid her original indebtedness, which has been assigned back to the petitioners by the insurance company - would be to allow said respondent to enrich herself unjustly at petitioners' expense. For petitioners could very well have put the P12,000 to some other lucrative use than the reconstruction of the mortgaged house and received, by way of income, the equivalent of the rental value thereof. As it is, however, under the present resolution of this Court respondent would in effect receive the income from capital which she has not invested; and petitioners in turn would be virtually penalized for having spent their money in reconstructing the house, because if they had not done so the house would hardly command any rental value, having been almost totally destroyed. I do not think the whole setup is equitable and just.

Concepcion, C.J., concur in the foregoing dissent.

[1] That was in 1952, under the contract of "conditional sale" between the parties.

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