

PERSHING TAN QUETO, PETITIONER, VS. COURT OF APPEALS, JUAN POMBUENA AND RESTITUTA TACALINAR GUANGCO DE POMBUENA, RESPONDENTS.

G.R. No. L-35648. February 27, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a Motion for Reconsideration of the decision dated May 16, 1983 of this Court[*] in the above-entitled case, asking for the reversal of said decision on the following grounds:

- The Decision erred in disregarding the fact that Lot No. 304-B was registered in the name of the husband, Juan Pombuena, as per OCT No. 0-1160 issued pursuant to the November 22, 1938 Decision (Exh. 3) of the Cadastral Court in Cadastral Case No. 12, G.L.R.O. Cad. Rec. No. 1638, and that petitioner had the right to rely on said OCT;
- The Decision erred in misinterpreting the admission in Answer of petitioner to the complaint in the unlawful detainer Case No. 448 (City Court of Ozamiz City) as his admission that Lot 304-B is the paraphernal property of the wife, Restituta Tacalinar;
- The Decision erred in reforming the Contract of Sale (Exh. B) of Lot 304-B from Basilides Tacalinar (mother) to the respondent, Restituta Tacalinar Guangco de Pombuena, from a sale to a conveyance of the share of the wife Restituta Tacalinar (daughter) in the future hereditary estate of her parents;
- The Decision erred in overlooking that the barter agreement is an onerous contract of exchange, whereby private respondents-spouses received valuable consideration, concessions and other benefits therefor and in concluding that 'the barter agreement has no effect';
- The Decision erred in disregarding the fact that petitioner constructed his concrete building on Lot No. 304-B in good faith relying OCT No. 0-1160, after the dismissal of the ejectment case and only after the execution of said barter agreement;
- The Decision erred in confusing the conclusion of law that petitioner is a builder in bad faith with a finding of fact. The rule is that questions of law are reviewable on appeal or by certiorari. Moreover, the rule on finding of fact is subject to well-settled exceptions. (pp. 257-258, Rollo)

It will be recalled that the undisputed relevant facts indicate:

- (1) that Restituta Tagalinar Guangco de Pombuena (RESTITUTA, for short) received the questioned lot (no. 304-B), of the Cadastre Survey of the Municipality of Centro, Misamis Occidental, either as a purported donation or by way of purchase on (February 11, 1927) (with P50.00) as the alleged consideration thereof;
- (2) that the transaction took place during her mother's lifetime, her father having predeceased the mother;

- (3) that the donation or sale was consummated while RESTITUTA was already married to her husband Juan Pombuena (JUAN, for short);
- (4) that on January 22, 1935, JUAN filed for himself and his supposed co-owner RESTITUTA an application for a Torrens Title over the land;
- (5) that under date of November 22, 1938 a decision was promulgated in G. L. R. C. No. 1638 (Cadastral Case No. 12) pronouncing JUAN ('married to RESTITUTA') as the owner of the land;
- (6) that on September 22, 1949 a contract of lease over the lot was entered into between Pershing Tan Queto (TAN QUETO, for short, the herein petitioner) and RESTITUTA (with the consent of her husband JUAN) for a period of ten (10) years;
- (7) that on December 27, 1960 RESTITUTA sued TAN QUETO for unlawful detainer (the lease contract having expired) before the Municipal Court of Ozamis City;
- (8) that as a consequence of the cadastral case, an Original Certificate of Title (Exh. 10) was issued in JUAN's name ("married to RESTITUTA") on April 23, 1962;
- (9) that the unlawful detainer case was won by the spouses in the Municipal Court; but on appeal in the Court of First Instance, the entire case was DISMISSED because of an understanding (barter) whereby TAN QUETO became the owner of the disputed lot, and the spouses RESTITUTA and JUAN in turn became the owners of a parcel of land (with the house constructed thereon) previously owned (that is, before the barter) by TAN QUETO;
- (10) that after the barter agreement dated October 10, 1962 between JUAN and TAN QUETO, the latter constructed (See p. 257, Rollo, Vol. II) on the disputed land a concrete building, without any objection on the part of RESTITUTA;
- (11) that later, RESTITUTA sued both JUAN and TAN QUETO for reconveyance of the title over the registered but disputed lot, for annulment of the barter, and for recovery of the land with damages.

The two principal issues are clearly the following:

- (1) Is the questioned lot paraphernal or conjugal?
- (2) In having constructed the building on the lot, should TAN QUETO be regarded as a builder in good faith (and hence entitled to reimbursement) or a builder in bad faith (with no right to reimbursement)?

The finding by both the Court of First Instance and the Court of Appeals that the disputed lot is paraphernal and that TAN QUETO is a builder in bad faith were regarded by Us in Our assailed decision as findings of facts and thus ordinarily conclusive on Us. Assuming they are factual findings, still if they are erroneous inferences from certain facts, they cannot bind this Court.

A second hard look at the circumstances of the case has constrained Us to rule as follows:

- (1) The land is conjugal, not paraphernal. How was ownership transferred, if at all, from her mother to RESTITUTA? The oral donation of the lot cannot be a valid donation *intervivos* because it was not executed in a public instrument (Art. 749, Civil Code), nor as a valid donation *mortis causa* for the formalities of a will were not complied with. The allegation that the transfer was a conveyance to RESTITUTA of her hereditary share in the estate of her mother (or parents) cannot be sustained for the contractual transmission of future inheritance is generally prohibited.

The fact is ownership was acquired by both JUAN and RESTITUTA by tradition (delivery) as a consequence of the contract of sale (See Art. 712, Civil Code) with P50.00 (then a considerable amount) as the cause or

consideration of the transaction. The lot is therefore conjugal, having been acquired by the spouses thru onerous title (the money used being presumably conjugal, there being no proof that RESTITUTA had paraphernal funds of her own). The contention that the sale was fictitious or simulated (and therefore void) is bankrupt. Firstly, there was a valid consideration therefor. Secondly, assuming that there had indeed been a simulation, the parties thereto cannot use said simulation to prejudice a stranger to said stragem (like petitioner herein).

One nagging question has been posed. But did not TAN QUETO admit in his Answer that RESTITUTA was the owner of the lot. This is not so. He admitted RESTITUTA was "an owner" (not the owner) of the lot, and this is true, for she was a co-owner (with JUAN, and therefore "an owner". Surely, there is no admission of RESTITUTA's exclusive ownership. And yet this is the basis of the trial court's conclusion that the lot was indeed paraphernal.

(2) Was Tan Queto a possessor and builder in good faith or in bad faith?

Even assuming that despite registration of the lot as conjugal, Tan Queto nursed the belief that the lot was actually RESTITUTA's (making him in bad faith), still RESTITUTA's failure to prohibit him from building despite her knowledge that construction was actually being done, makes her also in bad faith. The net resultant of mutual bad faith would entitle TAN QUETO to the rights of a builder in good faith (Art. 448, Civil Code), ergo, reimbursement should be given him if RESTITUTA decides to appropriate the building for herself (Art. 448, Civil Code).

However, as already previously intimated, TAN QUETO having bartered his own lot and small house with the questioned lot with JUAN (who has been adverted to by a court decision and by the OCT a conjugal owner) may be said to be the OWNER-POSSESSOR of the lot. Certainly he is not merely a possessor or builder in good faith (this phrase presupposes ownership in another); much less is he a builder in bad faith. He is a builder-possessor (jus possidendi) because he is the OWNER himself. Please note that the Chapter on Possession (jus possessionis, not jus possidendi) in the Civil Code refers to a possessor other than the owner. Please note further that the difference between a builder (or possessor) in good faith and one in bad faith is that the former is NOT AWARE of the defect or flaw in his title or mode of acquisition while the latter is AWARE of such defect or flaw (Art. 526, Civil Code). But in either case there is a flaw or defect. In the case of TAN QUETO there is no such flaw or defect because it is he himself (not somebody else) who is the owner of the property.

WHEREFORE, Our decision promulgated on May 16, 1983 is hereby SET ASIDE, and a new one is hereby rendered declaring the questioned lot together with the building thereon, as TAN QUETO's exclusive property. No costs.

SO ORDERED.

Tehankee, C.J., Yap, Fernan, Narvasa, Alampay, Cruz, Feliciano, Gancayco, Bidin, and Sarmiento, JJ., concur.

Melencio-Herrera, J., vote to uphold the decision of May 16, 1983 and to deny reconsideration.

Gutierrez, Jr., J., reiterate his vote in the decision sought to be reconsidered and dissent herein.

Padilla and Cortes, JJ., no part.

[*] Affirming the Decision of the Court of Appeals in G.R. No. 39492-R penned by Justice Ramon C. Fernandez concurred in by Justices Hermogenes Concepcion, Jr. and Cecilia Munoz Palma which affirmed the Decision of the Trial Judge Geronimo R. Marave.

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