

MAGDALENA BERENGUER DE PASCUAL, ASISTIDA DE SU ESPOSO ANICIO PASCUAL, PETITIONER VS. POTENCIANO LESACA, COMO ADMINISTRADORES DEL INTESTADO DEL FINADO POTENCIANO LESACA, RESPONDE...

G.R. No. L-4536. May 30, 1952

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal by certiorari from a decision of the 5th Division of the Court of Appeals. The facts of the case as found by the Appellate Court and the questions raised in said Court were as follows:

"On October 9, 1935, the late Potenciano Lesaca, for and in consideration of the sum of P700, sold and conveyed in favor of Magdalena Berenguer two parcels of land situated in barrio Palaginan, Iba, Zambales, and covered by Original Certificate of Title No. 104 of the Office of the Register of Deeds of Zambales in the name of Marciano Venzon de la Llana, the original owner who sued both the seller and buyer for the annulment of the aforesaid sale and the recovery of said two parcels of land. This Court (CA-G. R. No. 8057), reversing the Judgment of the lower court, annulled said sale and ordered Potenciano Lesaca to execute a deed of resale of said two parcels of land in question in favor of the heirs of the deceased Marciano Venzon de la Llana.

"In August, 1943, Magdalena Berenguer filed her claim in the intestate estate of Potenciano Lesaca in the sum of P7,500 with interest thereon from the date of its filing, plus the sum of P1,000 for expenses of litigation to be incurred by her, to which opposition was duly entered by the then judicial administratrix of said intestate estate based mostly on legal grounds.

"On the hearing of said claim the facts above set forth were established by means of duly reconstituted documentary evidence and, through the testimony of Anicio Pascual, the claimant sought to prove that she planted and built improvements on said two parcels of land consisting of 'coconuts, mangoes, nancas, oranges, bananas, pili and siniguelas, all of which are living', and for which she spent P3,233, and a house worth P3,500 and paid around P67 for assessment taxes. She has also claimed damages for the sum of P1,000 for expenses she expected to incur in connection with this litigation. No vouchers, receipts, or other documentary evidence were produced to prove the expenses incurred for the building and planting of said improvements, on the ground that said documents were all destroyed during the war. Plaintiff relies, however, that an ocular inspection would prove her assertion.

"On December 30, 1947, the lower court ordered the administratrix of the intestate estate of the late Potenciano Lesaca to pay to the claimant Magdalena Berenguer de Pascual the following sums:

For the purchase of the land

700,00

For the improvements introduced in the land

3,233.00

For the construction of the house

3,500.00

Cost of litigation

500.00

Land taxes

67.00

Total

P8,000.00

From said order the administratrix appealed and contends that the lower court erred:

- In acting on the claim notwithstanding that it had no Jurisdiction over the subject-matter;
- In not deciding that the claimant, because of her failure to set up said claim in the form of counterclaim or cross-claim in the first civil case instituted by the heirs of Marciano Venson de la Llana against Potenciano Lesaca, et al. the same is now barred; and
- In ordering the appellants to pay the claimant-appellee the sum of P8,000, notwithstanding the fact that the evidence presented by her is utterly insufficient to enforce said order."

On the first assignment of error, the Court of Appeals upheld the jurisdiction of the probate court to entertain the appellee's claim, holding that the same comes within the purview of Section 5 of Rule 87 of the Rules of Court.

The second ground of appeal, except as to the purchase price of the land, and the third were sustained.

The Appellate Court ruled, on the authority of *Beltran vs. Valbuena*, 53 Phil. 697, that in an action for ejectment, claim for compensation for improvements made on the land should be presented as a counterclaim or it would be barred. In other words, the claim in question, in the opinion of the Court of Appeals, should have been set up in the case for eviction in which the claimant was defendant. Accordingly this claim was dismissed, "except in so far as the sum of P700 which should be reimbursed to the claimant," "on the ground that the parties have already agreed on it and in fact payment was tendered by the former administratrix but not accepted by the claimant

unless made as settlement pro tanto."

An analogous question was presented in *Dilag & Co., Inc. vs. Vicente Merced and Sixto Zanduet*a, 45 No. 12 Off. Gaz., 5536. In that case the Court observed that in accordance with the decision of the Supreme Court of Spain of September 27, 1906, "Manresa seems to be inclined to the opinion that the vendee, after notice to the vendor, may ask in the same action that in case the eviction is realized the said vendor be liable to him on the warranty against eviction;" and "conformably with that above view and considering that the law does not favor multiplicity of suits," the Court came to the conclusion that the appellants' cross-complaint for breach of implied warranty against eviction should be upheld and the vendor ordered to return to the vendee the value of the truck at the time he was actually deprived of his possession with the proper damages under Article 1478 of the Civil Code.

Quite apart from the aforecited decision, upon the facts of the present case the vendee, petitioner herein, whether upon a cross-claim or in a separate action, would not be entitled to a judgment from Lesaca's estate beyond the restitution of the price she had paid for the land, an amount which has been adjudged in her favor by the Court of Appeals. The right of the vendee to demand of the vendor under Article 1478 "damages and interest and all voluntary expenditures, or expenditures made merely for recreation or ornamentation," is qualified by the condition that the sale was made in bad faith. Good faith is presumed, and there is no allegation or hint to the contrary.

The Court of Appeals in reversing the lower court's decision on the matter of damages, declared that the evidence was insufficient to justify the award. The vendee, in the present petition for certiorari, complains that the transcript of the evidence had not been sent up to the Appellate Court and so that Court was not in a position to make the finding of fact it did.

This error, however, is not prejudicial. It was superfluous to consider the amount of damages in view of the conclusion that the vendee was not entitled to claim any from the vendor. The Court of Appeals could properly have brushed aside this branch of the controversy, as we hereby do, for the reasons already stated.

The decision of the Court of Appeals under review is, therefore, affirmed and the present petition for certiorari denied, without costs.

Paras, Feria, Pablo, Bengzon, Montemayor, and Labrador, JJ., concur.

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