

AUGUSTO COSIO AND BEATRIZ COSIO DE RAMA, PETITIONERS, VS. CHERIE PALILEO, RESPONDENT.

G. R. No. L-18452. May 31, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is an action to recover the possession of a house. It was filed following our decision in *Palileo vs. Cosio*, 97 Phil., 919; 51 Off. Gaz., 6181, in which We ruled that the house in question had not been sold but had merely been given as security for a debt the pacto de retro sale between the parties being in reality a loan with an equitable mortgage. In a sense, therefore, this case is a sequel to *Palileo vs. Cosio*. The parties are here this time to litigate on the issue of possession and its effects.

The house in this case, a two-story building, was formerly owned by Felicisima Vda. de Barza. It is located at 25 (formerly 6) Antipolo Street, Pasay City, on a lot belonging to the Hospicio de San Juan de Dios. On October 4, 1950, this house and the leasehold right to the lot were bought by respondent Cherie Palileo who paid part of the purchase price and mortgaged the house to secure the payment of the balance.

It appears that respondent Palileo defaulted in her obligation, because of which the mortgage was foreclosed and the house was advertised for sale. Fortunately for her, however, respondent Palileo was able to raise money on December 18, 1951 before the house could be sold at public auction. On this date, respondent Palileo received from petitioner Beatriz Cosio de Rama the sum of P12,000 in consideration of which she signed a document entitled "Conditional Sale of Residential Building," purporting to convey to petitioner Cosio de Rama the house in question. Under this document, the right to repurchase the house within one year was reserved to respondent Palileo the same day, the parties entered into an agreement by which respondent Palileo remained in possession of the house as tenant, paying petitioner Cosio de Rama a monthly rental of P250.

Petitioner Cosio de Rama subsequently insured the house against fire with the Associated Insurance & Surety Co., Inc. On October 25, 1952, fire broke out in the house and partly destroyed the same. For the loss, petitioner Cosio de Rama was paid P13,107 by the insurance company.

At the instance of his sister, petitioner Cosio de Rama, the other petitioner Augusto Cosio entered the premises and began the repair of the house. Soon after an action was filed by respondent Palileo against Cosio de Rama for the reformation of the deed of pacto de retro sale into a loan with an equitable mortgage. This case was filed in the Court of First Instance of Rizal on December 4, 1952. One week after (December 11), respondent Palileo filed another action in the Municipal Court of Pasay City, this time seeking the ejectment of petitioner Cosio who, it was alleged, had entered and occupied the house without the knowledge and consent of respondent Palileo. Just the same, however, repair work went on and although at times interrupted it was finally completed in 1953 at a cost of P12,000.

Meanwhile the ejectment suit was dismissed by the Municipal Court. Respondent Palileo appealed to the Court of First Instance of Pasig, but the case was again dismissed, this time for failure of respondent Palileo to prosecute.

The dismissal of the case was subsequently made "without Prejudice."

In the other case, respondent Palileo was successful. Both the lower court and this Court declared the transaction of the parties to be a loan with an equitable mortgage and not a conditional sale. It was found that the amount of P12,000, which purported to be the price, was in fact a loan; that the amount of P250 paid every month as rent was in reality interest; and that the house allegedly sold was intended to be a security for the loan. Accordingly, this Court directed petitioner Cosio de Rama to return to respondent Palileo the sum of P810 which she had collected as interest in excess of that allowed by law. This Court likewise ruled that petitioner Cosio de Rama could keep the proceeds of the fire insurance but that her claim against respondent Palileo under the loan was to be deemed assigned to the insurance company.

As earlier stated, this suit was instituted to recover the possession of the house as a consequence of our decision that it had not really been sold but had merely been given as security for a loan. It was originally brought against petitioner Cosio who asked that the action be dismissed on the ground that it was barred by the judgment of the Municipal Court which dismissed the ejectment case against him. The court denied the motion to dismiss. And so petitioner Cosio filed his answer. He was later joined by petitioner Cosio de Rama who was allowed to intervene in the action.

Thereafter the lower court rendered judgment finding petitioner Cosio de Rama to be a possessor in good faith with a right to retain possession until reimbursed for her expenses in repairing the house. The dispositive portion of its decision reads:

"In view of the foregoing, the Court hereby renders judgment declaring plaintiff Palileo as the lawful owner of the house No. 25 Antipolo Street, Pasay City and entitled to the possession thereof" upon her paying to intervenor defendant Beatriz Cosio de Rama the sum of TWELVE THOUSAND (P12,000.00) PESOS with interest at the legal rate from December 22, 1946 which is the date of the filing of intervenor-defendant's counterclaim until paid. There's no judgment for costs."

Not satisfied, respondent Palileo appealed to the Com of Appeals and succeeded in having the lower court's decision modified. The appellate court ruled that—

"by virtue of the pacto de retro sale intervenor-appellee (Beatriz , Cosio de Rama) became the temporary owner of the house as such she was entitled to the possession thereof from the date of such conditional sale although appellant (Cherie Palileo) was its actual occupant as intervenor-appellee's tenant. * * * However, when appellant instituted the ejectment case against appellee (Augusto Cosio) and intervenor-appellee (Cosio de Rama) as early as December 1952, when the latter had just started to reconstruct the house, and she likewise commenced the action against intervenor-appellee in the same month of December, 1952, to have the deed of pacto de retro sale declared as one of loan with equitable mortgage, said appellee and intervenor-appellee's title to the house suffered from a flaw. From that time both appellee and intervenor-appellee ceased to be considered possessors in good faith. (Art. 528, new Civil Code; Tacas vs. Tobon, 53 Phil. 356; Lopez. Inc. vs. Phil. Eastern Trading Co., Inc., 52 Off. Gaz. 1452). And if they chose to continue reconstructing the house even after they were apprised of a flaw on their title they did so as builders in bad faith."

Accordingly, it rendered judgment as follows:

"Wherefore, with the modification that appellant (Cherie Palileo) is hereby declared the lawful owner of the house known as No. 25 Antipolo Street, Pasay City, and entitled to the possession thereof, without reimbursing intervenor-appellee (Beatriz Cosio de Rama) the sum of P12,000 allegedly spent for the reconstruction of the same, and appellee (Augusto Cosio) and intervenor-appellee (Cosio de Rama) are hereby ordered to pay appellant a monthly rental of P300 during the time they actually occupied the house just mentioned as possessors in bad faith, the decision appealed from is hereby affirmed in all other respects. Without any

pronouncement as to costs."

Petitioners Cosio and Cosio de Rama have appealed to Court by certiorari, citing Article 526 of the Civil Code which states as follows:

"He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it,

"He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.

Mistake upon a doubtful or difficult question of law may be the basis of good faith."

They contend that they were not only possessors in good faith from the beginning but that they continue to be such even after this Court's declaration that their transaction was a loan with a mortgage and not a sale with a right of repurchase, because, as a matter of fact, this Court did not invalidate, but merely reformed, the supposed deed of sale. Petitioners likewise aver that neither can the ejectment suit be considered to be notice of any defect or flaw in their mode of acquisition because that case was after all dismissed.

We believe that both the petitioners and the Court of Appeals are in error in saying that the former had a right to the possession of the house under the deed of pacto de retro sale. Petitioners did not have such a right at any time and they knew this.

In reforming instruments, courts do not make another contract for the parties (See Civil Code arts. 1359-1369 and the Report of the Code Commission 56). They merely inquire into the intention of the parties and, having found it, reform the written instrument (not the contract) in order that it may express the real intention of the parties (See *Id.*, arts. 1365 and 1602). This is what was done in the earlier case between the parties. In holding that the document entitled "Conditional Sale of Residential Building" was in fact a mortgage, this Court said: "This document did not express the true intention of the parties which was merely to place said property (the house) as security for the payment of the loan." (*Palileo vs. Cosio* 97 Phil., 919; 51 Off. Gaz. 6181 at 6184).

If that was the intention of the parties (to conform to which their written instrument was reformed) then petitioner Cosio de Rama knew from the beginning that was a mere mortgagee. For the same reason, she could not have been mistaken as to the true nature of their agreement. Hence, in bidding her brother, petitioner Cosio enter the premises and make repairs and in later occupying the house herself, petitioner Cosio de Rama with this knowledge.

As possessors in bad faith, petitioners are jointly liable for the payment of rental, the reasonable value of was found by the appellate court is P300 a month. (Art. 549. See *Lerma vs. de la Cruz*, 7 Phil. 581). This finding is supported by the evidence and we find no reason to disturb it.

But even as we hold petitioner Cosio de Rama to be a possessor in bad faith we nevertheless believe that she is entitled to be reimbursed for her expenses in restoring the house to its original condition after it had been partly damaged by fire, because such expenses are necessary (*Angeles vs. Lozada*, 54 Phil. 184) and, under Article 546, are to be refunded even to possessors in bad faith. As already stated, petitioner Cosio de Rama spent P12,000 for the repair work.

The error of the appellate court lies in its failure to appreciate the distinction that while petitioner Cosio de Rama is a possessor in bad faith, she is not a builder in bad faith. Thus in describing petitioners as "builders in bad faith" and, consequently, in holding that they have no right to be reimbursed, the court obviously applied Article 449 which states that "he who builds, plants or sows in bad faith on the land of another loses what is built, planted or sown without right to indemnity." But article 449 is a rule of accession and we are not here concerned with

accession. There is here no reason for the application of the principle *accessio cedit principali*, such as is contemplated in cases of accession continua of which article 449 is a rule. For what petitioners did in this case was not to build a new house on the land of another. Rather, what they did was merely to make repairs on a house that had been partly destroyed by fire and we are asked whether they have a right to be refunded for what they spent in repairs. The land on which the house is built is not even owned by respondent Palileo, that land being the property of the Hospicio de San Juan de Dios. This case comes under article 546 which, as we have already indicated, provides for the refund of necessary expenses "to every possessor."

And now we come to the last point in petitioners' assignment of errors. It is contended that the present action is barred by the judgment of the Municipal Court which dismissed the ejectment case filed by respondent Palileo against petitioner Cosio. It is said that although that judgment was vacated when it was appealed to the Court of First Instance, the subsequent dismissal of the case was equivalent to the withdrawal of the appeal and therefore to a revival of the judgment of the Municipal Court. That judgment, to repeat, dismissed the ejectment case against petitioner Cosio.

We note that this point, though raised in the Court of First Instance, was not properly assigned as error in the Court of Appeals. It was there taken up only in the "preliminary remarks" in the brief. Although petitioners were appellees in the Court of Appeals, they should have assigned this alleged error if only to maintain the decision of the lower court.

Apart from this consideration, we believe that this action is not barred by the prior judgment in the ejectment case. The pertinent provisions of the Rules of Court state:

"Effect of appeals. A perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court and the action when duly docketed in the Court of First Instance, shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried before and had been originally there commenced. the appeal is withdrawn, or dismissed for failure to prosecute, the judgment shall be deemed revived and shall forthwith remanded to the justice of the peace or municipal court for executive." (Rule 40, sec. 9, Rules of Court.)

The following comment answers squarely petitioners' arguments:

"The case shall stand in the Court of First Instance as though the same 'had been originally there commenced.' Thus, if action is filed in an inferior court, and the plaintiff fails to appear and the case is dismissed, may the plaintiff file another complaint for the same cause? The Supreme Court hold that, since the appeal had the effect of vacating the judgment of the inferior court and, therefore, the case, when dismissed, wan in the Court of First Instance as if the same 'had been originally there commenced' and since dismissals on the ground aforementioned, of cases coming within the original jurisdiction of the Court of First Instance, are without prejudice, the conclusion is that the plaintiff may file a new complaint for the same cause. (Marco vs. Hashim, 40 Phil. 592) This ruling however, is affected to a certain extent by Rule 17, section 3, which provides that the dismissal of a case on the ground of plaintiff's failure to appear at the trial, is a final adjudication upon the merits, unless the court otherwise provides." (2 Moran, Comments' on the Rules of Court, 344-345 1963).

Here the dismissal of the ejectment case for failure of respondent Palileo to prosecute was expressly made to be without prejudice. That judgment, therefore, cannot be a bar to the filing of another action like the present.

Wherefore, with the modification that petitioner Cosio de Rama should be reimbursed her necessary expenses »ft the amount of P12,000 by respondent Palileo, the judgment of the Court of Appeals is affirmed in all other respects, without any pronouncement as to costs.

Bengzon, C. J., Bautista Angelo and Zaldivar, JJ., concur.

Reyes, J. B. L., J., concurs in the result.

Paredes, J., concurs in the result.

Makalintal, J., concurs in the result.

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