

MARIANO FLOREZA, PETITIONER, VS. MARIA D. DE EVANGELISTA AND SERGIO EVANGELISTA, RESPONDENTS.

G.R. No. L-25462. February 21, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Review on Certiorari of the Decision of the Court of Appeals (CA-G.R. No. 23516-R) promulgated on November 4, 1965, entitled "Maria de Evangelista and Sergio Evangelista, (now the respondents) vs. Mariano Floreza (petitioner herein), reversing the judgment of the Court of First Instance of Rizal rendered on July 17, 1957, and instead ordering petitioner to vacate respondents' residential lot, to remove his house at his own ex-pense and to pay rental from May 5, 1956.

The factual background of the case follows:

Plaintiffs Maria de Evangelista and Sergio Evangelista, who are mother and son, (the EVANGELISTAS, for short) are the owners of a residential lot located at Sumilang St., Tanay, Rizal, with an area of 204.08 sq. ms., assessed at P410.00.

In May 1945, the EVANGELISTAS borrowed from FLOREZA the amount of P100.00. On or about November 1945, with the consent of the EVANGELISTAS, FLOREZA occupied the above residential lot and built thereon a house of light materials (barong-barong) without any agreement as to payment for the use of said residential lot owing to the fact that the EVANGELISTAS had then a standing loan of P100.00 in favor of FLOREZA.[1]

On the following dates, the EVANGELISTAS again borrowed the indicated amounts: September 16, 1946 - P100.00;[2] August 17, 1947 - P200.00;[3] January 30, 1949 - P200.00;[4] April 1, 1949 - P140.00,[5] or a total of P740.00 including the first loan. The last three items are evidenced by private documents stating that the residential lot stands as security therefor and that the amounts covered thereunder are payable within six years from date, without mention of interest. The document executed on September 16, 1946 stated specifically that the loan was without interest "walang anumang patubo."

On January 10, 1949, FLOREZA demolished this house of light materials and in its place constructed one of strong materials assessed in his name at P1,410.00 under Tax Declaration No. 4448. FLOREZA paid no rental as before.[6]

On August 1, 1949, the EVANGELISTAS, for and in consideration of P1,000.00 representing the total outstanding loan of P740.00 plus P260.00 in cash, sold their residential lot to FLOREZA, with a right to repurchase within a period of 6 years from date, or up to August 1, 1955, as evidenced by a notarial document, Exh. B, registered under Act 3344 on December 6, 1949, as Inscription No. 2147.[7]

On January 2, 1955, or seven months before the expiry of the repurchase period, the EVANGELISTAS paid in full the repurchase price of P1,000.00.

On April 25, 1956, the EVANGELISTAS, through their counsel, wrote FLOREZA a letter[8] asking him to vacate the premises as they wanted to make use of their residential lot besides the fact that FLOREZA had already been given by them more than one year within which to move his house to another site. On May 4, 1956, the EVANGELISTAS made a formal written demand to vacate, within five days from notice, explaining that they had already fully paid the consideration for the repurchase of the lot.[9] FLOREZA refused to vacate unless he was first reimbursed the value of his house. Hence, the filing of this Complaint on May 18, 1956 by the EVANGELISTAS.

The EVANGELISTAS prayed that: 1) they be declared the owners of the house of strong materials built by FLOREZA on their residential lot, without payment of indemnity; or, in the alternative to order FLOREZA to remove said house; 2) that FLOREZA pay them the sum of P10.00 per month as the reasonable value for the use and occupation of the same from January 2, 1955 (the date the repurchase price was paid) until FLOREZA removes the house and delivers the lot to them; and 3) to declare the transaction between them and FLOREZA as one of mortgage and not of pacto de retro.

In his Answer, FLOREZA admitted the repurchase but controverted by stating that he would execute a deed of repurchase and leave the premises upon payment to him of the reasonable value of the house worth P7,000.00.

In a Decision dated July 17, 1957, the Court of First Instance of Rizal opined that the question of whether the transaction between the parties is one of mortgage or pacto de retro is no longer material as the indebtedness of P1,000.00 of the EVANGELISTAS to FLOREZA had already been fully paid. And, applying Article 448 of the Civil Code,[10] it rendered a decision dispositively decreeing:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment granting the plaintiffs the right to elect, as owners of the land, to purchase the house built on the said lot in question by the defendant for P2,500 or to sell their said land to the defendant for P1,500. In the event that the plaintiffs shall decide not to purchase the house in question, the defendant should be allowed to remain in plaintiffs' premises by paying a monthly rental of P10.00 which is the reasonable value for the use of the same per month as alleged by plaintiffs in their complaint. The Court also orders the defendant to pay a monthly rental of P10.00 for the use of the land in question from May 18, 1956, the date of the commencement of this action. The counterclaim of the defendant is hereby ordered dismissed. Without pronouncement as to costs.

"SO ORDERED." [11]

Both parties appealed to the Court of Appeals.

On November 4, 1965, the Court of Appeals concluded that Article 448 of the Civil Code, *supra*, was inapplicable; that FLOREZA was not entitled to reimbursement for his house but that he could remove the same at his expense; and accordingly rendered judgment thus:

"WHEREFORE, judgment is hereby rendered: (1) adjudging the defendant-appellant Mariano Floreza to vacate plaintiffs' residential lot described in the complaint and to pay rental of P10.00 a month from May 5, 1956, until he (defendant) shall have vacated the premises; (2) ordering defendant to remove his house from the land in question within 30 days from the time this decision becomes final and executory; (3) ordering the Register of Deeds of Rizal to cancel inscription No. 2147, Page 210, Vol. 36, in the Registration Book under Act 3344 upon payment of his lawful fees; and (4) taxing the costs in both instances against defendant-appellant Mariano Floreza." [12]

Hence, this Petition for Review on Certiorari by FLOREZA, seeking a reversal of the aforesaid judgment and ascribing the following errors:

1)

That the Court of Appeals erred in holding that petitioner Floreza was a builder in bad faith without likewise holding that respondents as owners of the land in dispute, were likewise in bad faith and therefore both parties should in accordance with Art. 453 of the New Civil Code be considered as having acted in good faith.

2)

That the Court of Appeals erred in completely ignoring the issue raised on appeal as to whether or not respondents as owners of the questioned lot, were in bad faith in the sense that they had knowledge of and acquiesced to the construction of the house of petitioner on their lot.

3)

That the Court of Appeals erred in not applying Art. 448 of the New Civil Code in the adjudication of the rights of petitioner and respondent.

4)

That the Court of Appeals erred in declaring that petitioner is not entitled to reimbursement for the value of his house and that he should instead remove the same at his expense.

5)

That the Court of Appeals erred in adjudging petitioner to vacate respondents' lot in question and to pay rentals commencing from May 5, 1956, until he shall have vacated the premises, notwithstanding that petitioner is entitled under Art. 448 and 546 of the New Civil Code, to retention without payment of rental while the corresponding indemnity of his house had not been paid.

6)

That the Court of Appeals erred in taxing costs against petitioner.

7)

That the Court of Appeals erred in not awarding petitioner's counterclaim.

During the pendency of this appeal, petitioner Maria D. de Evangelista died and was ordered substituted by her son, petitioner Sergio, as her legal representative, in a Resolution dated May 14, 1976.

On October 20, 1978, the EVANGELISTAS filed a Motion to Dismiss stating that FLOREZA had since died and that his heirs had voluntarily vacated the residential lot in question. The date FLOREZA passed away and the date his heirs had voluntarily vacated the property has not been stated. Required to comment, "petitioner (represented by his heirs)", through counsel, confirmed his death and the removal of the house and manifested that thereby the question of reimbursement had become moot and academic. He objected to the dismissal of the case, however, on the ground that the issue of rentals still pends. On January 21, 1980, complying with a Resolution of this Court, the EVANGELISTAS clarified that the dismissal they were praying for was not of the entire case but only of this Petition for Review on Certiorari.

We are not in agreement that the question of reimbursement of the value of the improvement erected on the subject property has become moot. Petitioner's right of retention of subject property until he is reimbursed for the value of his house, as he had demanded, is inextricably linked with the question of rentals. For if petitioner has the right to indemnity, he has the right of retention and no rentals need be paid. Conversely, if no right of retention exists, damages in the form of rentals for the continued use and occupation of the property should be allowed.

We uphold the Court of Appeals in its conclusion that Article 448 of the Civil Code is inapplicable to the factual milieu herein. Said codal provision applies only when the builder, planter, or sower believes he has the right so to

build, plant or sow because he thinks he owns the land or believes himself to have a claim of title.[13] In this case, petitioner makes no pretensions of ownership whatsoever.

Petitioner concedes that he was a builder in bad faith but maintains that the EVANGELISTAS should also be held in bad faith, so that both of them being in bad faith, Article 453 of the Civil Code[14] should apply. By the same token, however, that Article 448 of the same Code is not applicable, neither is Article 453 under the ambiance of this case.

Would petitioner, as vendee a retro, then be entitled to the rights granted in Article 1616 of the Civil Code (Art. 1518 of the old Code)? To quote:

"Art. 1616. The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition:

- (1) The expenses of the contract, and any other legitimate payments made by reason of the sale;
- (2) The necessary and useful expenses made on the thing sold."

The question again calls for a negative answer. It should be noted that petitioner did not construct his house as a vendee a retro. The house had already been constructed as far back as 1949 (1945 for the house of light materials) even before the pacto de retro sale in 1949. Petitioner incurred no useful expense, therefore, after that sale. The house was already there at the tolerance of the EVANGELISTAS in consideration of the several loans extended to them. Since petitioner cannot be classified as a builder in good faith within the purview of Article 448 of the Civil Code, nor as a vendee a retro, who made useful improvements during the lifetime of the pacto de retro, petitioner has no right to reimbursement of the value of the house which he had erected on the residential lot of the EVANGELISTAS, much less to retention of the premises until he is reimbursed. The rights of petitioner are more akin to those of a usufructuary who, under Article 579 of the Civil Code (Art. 487 of the old Code), may make on the property useful improvements but with no right to be indemnified therefor. He may, however, remove such improvements should it be possible to do so without damage to the property. For if the improvements made by the usufructuary were subject to indemnity, we would have a dangerous and unjust situation in which the usufructuary could dis-possess of the owner's funds by compelling him to pay for improvements which perhaps he would not have made.[15]

We come now to the issue of rentals. It is clear that from the date that the redemption price had been paid by the EVANGELISTAS on January 2, 1955, petitioner's right to the use of the residential lot without charge had ceased. Having retained the property although a redemption had been made, he should be held liable for damages in the form of rentals for the continued use of the subject residential lot[16] at the rate of P10.00 monthly from January 3, 1955, and not merely from the date of demand on May 4, 1956, as held by the Court of Appeals, until the house was removed and the property vacated by petitioner or his heirs.

WHEREFORE, the judgment appealed from is hereby affirmed, with the modification that payment of rentals by the heirs of Mariano Floreza, who are hereby ordered substituted for him, shall commence on January 3, 1955 until the date that the residential lot in question was vacated.

Costs against petitioner.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

[1] Exh. A, p. 1, Record of Exhibits.

[2] Exh. 9, p. 29, *ibid*.

[3] Exh. 10, p. 30, *ibid*.

[4] Exh. 2, p. 24, *ibid*.

[5] Exh. 3, p. 25, *ibid*.

[6] Exh. 11, p. 31, *ibid*.

[7] Pp. 3-4, *ibid*.

[8] Exh. 5, p. 27, *ibid*.

[9] Exh. 6, p. 28, *ibid*.

[10] "ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who build or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of lease and in case of disagreement, the court shall fix the terms thereof."

[11] Amended Record on Appeal, p. 22.

[12] Decision, pp. 9-10.

[13] *Alburo vs. Villanueva*, 7 Phil. 277 (1907); *Quemuel vs. Olaes*, 1 SCRA 1159 (1961); *Racaza vs. Susana Realty, Inc.*, 18 SCRA 1172 (1966).

[14] "ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

"It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part."

[15] Tolentino, *Civil Code*, citing Castan 237, citing de Diego Vol. II, pp. 315-316, 1972 ed.

[16] *Cho Chun Chac vs. Garcia*, 47 Phil. 530 (1925).

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