

**PETRONILO CASTAÑEDA, PETITIONER VS. CATALINA M. DE LEON,
AND THE COURT OF APPEALS, RESPONDENTS.***G. R. No. L-7805. December 24, 1957*

Ponente: LABRADOR, J.

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Certiorari against the decision of the Court of Appeals, 3rd Division, which, reads as follows:

"WHEREFORE, premises considered, the order of August 30, 1952 of the respondent judge, the Hon. Hermogenes Caluag. (Appendix B) is hereby set aside. The Court of First Instance of Quezon decision in Civil Case No. Q-64 is not enforceable against her alleged rights to one-half of the property involved in said case. Let evidence be presented to determine solely the question of whether or not petitioner Catalina M. de Leon is a successor in interest by title subsequent to the commencement of the action in Civil Case No. Q-64 as contemplated by Rule 39, sec. 44 (b), Thereafter let the proper action be taken by the court a quo as its findings after the hearing herein ordered may warrant. It is so checked."

In civil case No. Q-64, a complaint for injunction was instituted by Petronilo Castañeda against Rosario B. de Leon and her husband, Francisco de Leon, to restrain the latter from fencing the lot known as Lot No. 11, Block K-19 of the Diliman Estate Subdivision and from making construction thereon and to pay damages. Q-64 was filed on October 17, 1949, and judgment in favor of the plaintiff having been rendered a writ of execution was issued on February 6, 1952, directing the defendants to demolish a house and other improvements erected on the land. This writ of execution was served upon Catalina de Leon, who claims to be the owner of the house and the other improvements on the land. As Catalina de Leon refused to remove the house and the other improvements, the judge issued an order requiring her to appear and explain why the building and the other improvements should not be demolished. Complying with this order, Catalina de Leon filed a written explanation in which she claims that she was not a party in civil case No. Q-64; that she acquired right to one-half of the land from the spouses Rosario de Leon and Francisco de Leon for P1,000, and that the latter in turn acquired the whole parcel from Perfecta Roque and Aurelio Bautista on July 11, 1949; that Catalina de Leon caused the portion sold to her to be fenced and order the erection of two houses of strong materials with the consent of her predecessors-in-interest, Rosario de Leon and Perfecta Roque; that after the first sale of the property in July, 1949 to Rosario B. de Leon and Francisco de Leon, Perfecta Roque and her husband again sold the land to Petronilo Castañeda, who offered to buy the same for a higher price, but that this second sale by Perfecta Roque was executed without first rescinding the former sale to Rosario B. de Leon and Francisco de Leon; that previous to the sale by Perfecta Roque of the land to Petronilo Castañeda, Rosario B. de Leon and Francisco de Leon brought an action in the Court of First Instance of Manila for specific performance (No. 9386), and this case resulted in a decision of December 22, 1950, ordering Perfecta Roque to return P900 to plaintiff therein, Rosario B. de Leon, but that the spouses Rosario de Leon and Francisco de Leon, having had some family trouble with Catalina de Leon, connived with Perfecta Roque and Petronilo Castañeda to have the case dismissed to the prejudice of Catalina de Leon; and that before the final disposition of the action in said civil case No. 9366 Perfecta Roque had sold the property to another buyer, Petronilo Castañeda, on October 3, 1949; that in the subsequent suit that Castañeda brought against

Rosario B. de Leon, No. Q-64, Catalina de Leon asked for permission to intervene but the court denied the same.

Upon the submission of the above explanation, Petronilo Castañeda filed an opposition alleging that it is not true that Catalina de Leon was not aware of the proceedings between Rosario B. de Leon and Petronilo Castañeda. Upon the filing of this opposition, the Court of First Instance declared that the claim of Catalina de Leon on the property was a contingent one based upon the ultimate consummation of the sale between Francisco and Rosario de Leon on one hand, and Perfecta Roque and Aurelio Bautista on the other; that as the action that Rosario B. de Leon and her husband brought against Perfecta Roque terminated in a dismissal, no right whatsoever has been acquired by the claimant Catalina de Leon. In consequence that court found the explanation of Catalina de Leon without merit and ordered the removal of the house and the improvements that Catalina de Leon had constructed on the property. It is against this order that the case was brought to the Court of Appeals, in which the court finally decided the controversy in its order above quoted.

It will be seen from the order under consideration that the only issue directed to be determined upon the return of the case to the court below is whether or not Catalina de Leon may be considered as a privy to the rights of the defendants Rosario B. de Leon and Francisco de Leon in civil case No. Q-64, in which Petronilo Castañeda is plaintiff. Upon the resolution of that issue the question as to whether or not the improvements of Catalina de Leon would be removed would be decided, according to the decision appealed from. It is true that Catalina de Leon would be bound by the judgment in Q-64 if she is a privy to Rosario de Leon and Francisco de Leon, defendants in the action. But the facts and circumstances disclosed in the explanation of Catalina de Leon show that she had purchased the one-half portion of the land in good faith and also constructed her two houses and the fence surrounding the lot also in good faith. And we can not agree that the limited issue remanded to the trial court for determination would and can finally determine fully and completely the correlative rights and obligations of Petronilo Castañeda, the apparent owner of the land, and Catalina de Leon, the owner of the house and the other improvements thereon. The order of the Court of Appeals, while not containing any statement to the effect that the correlative rights of the said parties have to be decided in an independent suit, may be interpreted to mean that the decision of the issue as to whether Catalina de Leon is a privy would also determine said correlative rights. Catalina de Leon is not a party to the action instituted by Petronilo Castañeda against Rosario de Leon and her husband, and her attempt to intervene was denied by the court. The explanation filed by Catalina de Leon in the court below seems to show that she acquired her rights to the properties, consisting of one-half of the land and two houses and other improvements built thereon, prior to the acquisition of the land by Petronilo Castañeda. Anyway, Catalina de Leon bought one-half of the land on October 5, 1949 and the action that Castaneda against Rosario de Leon was subsequent thereto, i.e., on October 17, 1949. Furthermore, it does not appear that any notice of lis pendens was ever noted on the title of the property before Catalina de Leon built the house and made the improvements on the land.

The problem that has arisen proceeds from the fact that Perfecta Roque had sold the residential land to two vendees, first to Rosario B. de Leon and later to Petronilo Castañeda. If justice is to be done to the rights of Rosario B. de Leon's vendee, Catalina de Leon, who had constructed two houses and a fence on one-half of the residential lot in question, complicated questions of fact and good faith will have to be investigated and decided and certainly this can not be done in the proceedings for execution. The question can be decided fairly and justly only in an ordinary suit between the parties, as the correlative rights and obligations of owner and builder were never at issue in civil case No. Q-64 because Catalina de Leon was not allowed to be a party to the suit.

For the foregoing considerations, the decision of the Court of Appeals is hereby affirmed insofar as it sets aside the order of demolition issued by respondent judge, Hon. Hermogenes Caluag, on August 30, 1952, but that portion thereof which directs the case to be remanded to the trial court for determination if Catalina de Leon may

be considered a privy to Rosario de Leon, is hereby set aside; and it is hereby declared and ordered that the correlative rights of Petronilo Castaneda and Catalina de Leon to the land and the improvements thereon be decided in a separate action. No costs in the appeal.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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