

GIL SAN DIEGO AND RUFINA SAN DIEGO, PETITIONERS, VS. THE HON. AGUSTIN P. MONTESA, JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, ET AL., RESPONDENTS.

G.R. No. L-17985. September 29, 1962

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Presented before us in this petition for mandamus is the peculiar case of party-defendants insisting on, and prevailing party-plaintiffs resisting, the execution of a final and executory decision.

To understand this peculiarity, we will state briefly the facts leading to the controversy.

After trial in Civil Case No. 770 of the Court of First Instance of Bulacan, on complaint of Jose, Maria, and Urbano, all surnamed "de la Cruz", to recover a parcel of land and damages from Gil San Diego and Rufina San Diego, the Court (Hon. Jesus Y. Perez, presiding) rendered a decision, the dispositive portion of which reads as follows:

"IN VIEW OF THE FOREGOING, the court hereby renders judgment as follows:

"(a) Declaring the deed of sale, Exhibit 3, null and void;

"(b) Ordering the defendants and third-party plaintiffs to vacate the Land in question upon payment to them by the plaintiffs and third-party defendants, within thirty (30) days after this decision has become final, of the sum of THREE THOUSAND FIVE HUNDRED PESOS (P3,500.00);

"(c) Dismissing the counterclaim of the third-party defendants; and

"(d) No pronouncement as to costs."

The court found that the disputed portion of a parcel of land belonged to the plaintiffs through hereditary succession; that the defendants built a house on the land in good faith, having acquired the land from Catalina Anastacio, mother of the plaintiffs, by purchase for P1,000.00. During the proceedings, the defendants filed a third-party complaint against said vendor. The vendor (mother of plaintiffs) subsequently died; hence, herein respondents, who were the plaintiffs, became at the same time third-party defendants in substitution of their deceased mother. The court voided the sale on the ground that the vendor had no right to the land, but upheld the defense of defendants as builders in good faith.

On appeal by the plaintiffs and third-party defendants, the Court of Appeals affirmed in toto the lower court's decision, and the same, thereafter, became final and executory. Over two years later, the defendants and third-party plaintiffs, who were in possession of the parcel of land in litigation, moved to execute paragraph (b) of the aforementioned dispositive portion of the decision in order to collect the sum of P3,500.00 and thereafter to vacate the premises. The motion was denied by the court (Hon. Agustin P. Montesa, presiding), and a motion for reconsideration was likewise of no avail. Hence, the instant petition for mandamus was filed to compel the

respondent Judge to issue the writ applied for.

Petitioners' argument is that the pertinent part of the dispositive portion of the decision ordains, first, that they vacate the land, and second, that the plaintiff pay P3,500.00 within 30 days after this decision becomes final,

"with the connecting preposition 'upon' unmistakably denoting that the second (payment of indemnity) is a condition precedent to the first (vacation of the premises)." (Memorandum for Petitioners, p. 5)

They hold the view that the respondents should pay them first before they vacate, and not vice-versa; and that they are entitled now to insist on the payment through a writ of execution.

Respondents, upon the other hand, contend:

(1) That petitioners have no right to the writ of execution, because as absolute owners of the land, the respondents have the right, under Article 448 to exercise the option to either pay the value of improvements or demand reasonable rent if respondents do not choose to appropriate the building;

(2) That in fact respondents have elected to demand payment of rentals on land actually occupied by petitioner's building at TEN PESOS a month, and made a demand therefor immediately after the finality of the Court of Appeals decision, because the amount of P3,500.00 is exorbitant, so that the land owners chose to allow petitioners to remain on the land;

(3) That respondents have long suggested to petitioners that a commissioner be appointed to assess the present fair market value of the building, taking depreciation into account; and

(4) That the denial of the motion for execution is justified because it is premature and has no legal basis.

We find the petition meritorious. The judgment affirmed by the Court of Appeals, and now final, explicitly ordains the payment by the respondents de la Cruz of the amount of P3,500.00 "within 30 days after this decision becomes final" to petitioners San Diego. If it also orders petitioners to vacate only upon such payment, it did so in recognition of the right of retention granted to possessors in good faith by Article 546 of the Civil Code of the Philippines. This provision is expressly made applicable to builders in good faith (Article 448). The right of retention thus granted is merely a security for the enforcement of the possessor's right to indemnity for the improvements made by him. As a result, the possessor in good faith, in retaining the land and its improvements pending reimbursement of his useful expenditure, is not bound to pay any rental during the period of retention; otherwise, the value of his security would be impaired (cf. *Tufexis vs. Chunaco* (C. A.) 36 Off. Gaz. 2455).

Normally, of course, the landowner has the option to either appropriate the improvement or to sell the land to the possessor. This option is no longer open to the respondent landowners because the decision in the former suit limits them to the first alternative by requiring the petitioners to vacate the land (and surrender the improvements) upon payment of P3,500.00. Evidently, the Courts of First Instance and of Appeals opined that the respondents' suit to recover the property was an exercise of their right to choose to appropriate the improvements and pay the indemnity fixed by law. The respondents acquiesced in this view, since they did not ask for a modification of the judgment and allowed it to become final. Consequently, they can no longer insist on selecting another alternative; nor can they be heard now to urge that the value of the indemnity, set at P3,500.00, is exorbitant, for the same reason that the judgment fixing that amount is no longer subject to alteration.

The judgment ordering payment to petitioners of P3,500.00, by way of indemnity, having become final, and the 30 days for its payment having elapsed, the court of first instance has the ministerial duty to order its execution (*Zulueta vs. Paredes*, 62 Phil. 5; *Buenaventura vs. Garcia*, 78 Phil. 759; *Amor vs. Jugo*, 17 Phil. 703; *Viquiera vs. Baraña*, 78 Phil. 456). That duty is compilable by mandamus; and the execution is leviable on any property of

respondents de la Cruz, including the land now in question and its improvements.

Wherefore, the writ prayed for is granted, and the Court of First Instance of Bulacan is ordered to issue the writ of execution in favor of petitioners. Costs against respondents de la Cruz.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, and Makalintal, JJ., concur.

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