

PERPETUA GARGOLLO, PLAINTIFF AND APPELLEE, VS. ALFREDO DUERO AND JOSEFINA ESPEJO, DEFENDANTS AND APPELLANTS.

G.R. No. L-15973. April 29, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

Defendants Alfredo Duero and Josefina Espejo appeal from the decision of the Court of First Instance of Iloilo (in Civil Case No. 5042) ordering them to vacate and deliver to plaintiff Perpetua Gargollo, a parcel of land (Lot No. 3016 of the Cadastral, Survey of Cabatuan, Iloilo).

The facts of the case are briefly stated in the decision of the lower court, in this manner:

"From the pleadings of the parties, it clearly appears that on May 20, 1953, the plaintiff sold to the defendants with pacto de retro a parcel of land known as Lot No. 3016 of the Cadastral Survey of Cabatuan, Iloilo, with the improvements thereon, for the sum of P400.00 which was subsequently increased to P750.00; that according to the deed of sale with pacto de retro, the plaintiff could redeem said lot on or before the year 1962; that sometime in September, 1958, the plaintiff verbally notified the defendants that she would redeem the property in the following October, and on October 18, 1958, she, thru her attorney, gave the defendants written notice to accept the redemption amount of P750.00, but the defendants refused to accept the payment; that on October 29, 1958, the plaintiff deposited the said amount of P750.00 with the Clerk of Court under official receipt No. 12474, advising the defendants to withdraw the said amount; that the defendants refused to withdraw the said amount, for the reason that, because of the promise of the plaintiff to definitely sell the land to them for the sum of P1,000.00, which promise was not carried out, they made improvements on the land by planting bananas and other fruit trees and converting a portion of the land into rice paddies, thereby incurring expenses in the amount of not less than P200.00, aside from planting seasonal crops of rice, corn, etc., which were not yet ready for harvest, and paying delinquent taxes in the amount of P25.00.

"Upon pre-trial on January 24, 1959, the defendants, thru Atty. Caspe, agreed to turn over the property in question to the plaintiff upon payment by the latter of the purchase price of P750.00 deposited with the Clerk of Court, plus the sum of P25.00 as reimbursement for real estate tax paid by the defendants on the land prior to the time they took possession thereof, plus the value of the improvements they introduced in the land to be assessed by a person whom the defendants and the plaintiff would appoint, the said plaintiff and defendants agreeing to abide by the finding of said person they would appoint as to the value of the improvements introduced by the defendants in the land while the same was in their possession.

"For one reason or another, the plaintiff, and the defendants failed to agree as to the person to undertake said assessment, much less, as to the value of the said improvements. Consequently, in its order dated February 14, 1959, the Court set the case for bearing on February 21, 1959, at 10:00 o'clock a.m., solely for the reception of the evidence of the parties regarding the value of said improvements. The hearing was accordingly started, but, for lack of material time, it was scheduled to be continued on June 1, 1959, at 8:30 o'clock a.m. On June 1, 1959, however, the parties manifested in open court that they had agreed to submit a written amicable settlement, for which reason the hearing of the case was postponed indefinitely.

"On June 8, 1959, however, the counsel for the plaintiff filed a motion, stating that the proposed amicable settlement failed and that in view thereof he advised his client, the plaintiff, to manifest, as in Tact, in her attached affidavit, she manifested her intention not to exercise the option to refund the defendants' expenses or pay the increase in value of the land in question as provided in paragraph 2 of Article 546 of the Civil Code, thereby claiming the right given her by Article 547 of the same code. The counsel for the plaintiff consequently prayed that judgment be rendered (1) declaring the land in question as already redeemed in view of the deposit in Court of the redemption price of P750.00; (2) ordering the defendants to remove all her improvements on the land and to vacate the same; and (3) ordering the defendants to pay the costs of the suit.

"On June 13, 1959, the defendants filed a written reply to the aforesaid motion, stating among other things, that according to the provisions of Article 1616 of the Civil Code, 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.'

"As may be seen, however, at the pre-trial of the case held on January 24, 1959, the parties reduced the question at issue to only one, to wit: the value of the improvements introduced by the defendants in the land in question. Although the purchase price appearing in the deed of purchase with pacto de retro entered into between the plaintiff and the defendants was only P400.00, it was agreed at said pre-trial that it should be P750.00, together with the sum of P25.00 as reimbursement for delinquent real estate taxes paid by the defendants on the land prior to the time they took possession thereof and the value of the improvements, there being; no necessity of any expense whatsoever for the preservation of the land. * * *."

On the basis of the foregoing facts, the lower court, on June 15, 1955, rendered a decision in favor of plaintiff and against defendants, stating:

"In view of the express manifestation of the plaintiff of her intention not to exercise the option given her by paragraph 2 of Article 546 of the Civil Code, the Court believes that the continuation of the hearing of this case for the sole purpose of determining the value of the useful improvements introduced by the defendants in the land in question has become unnecessary, for the reason that, according to the new provision embodied in Article 547 of the Civil Code, the defendants, as possessors in good faith are not entitled to retain the land, but only to remove the said improvements therefrom if the same can be done without damage thereto.

"WHEREFORE, judgment is hereby rendered—

"(a) Ordering the Clerk of this Court to turn over to the defendants the sum of P750.00 deposited with him by the plaintiff as repurchase price of the land in question (Lot No, 3016 of the Cadastral Survey of Cabatuan, Iloilo);

"(b) Ordering the defendants to forthwith vacate and deliver the aforesaid land to the plaintiff;

"(c) Ordering the plaintiff to allow the defendants and his laborers to enter the land at reasonable hours of the day and remove all the useful improvements introduced by them therein within the period of ninety (90) days from the date hereof;

"(d) Ordering the plaintiff to pay the defendants the sum of P25.00 as reimbursement for the delinquent real estate taxes paid by them prior to the time they took possession thereof upon delivery to the plaintiff by the defendants of the corresponding official receipts evidencing said payments.

"Without pronouncement as to costs.

"SO ORDERED."

Their motion for reconsideration of said decision having been denied by the court, defendants appealed directly to

us.

The appeal is meritorious. It appears that the judgment of the trial court requiring, among other things, defendants (vendees a retro) to vacate and deliver the land in question to plaintiff (vendor a retro), is predicated on the ground that, according to Article 547[1] in relation to Article 546[2] of the Civil Code, defendants "are not entitled to retain the land, but only to remove the said improvements therefrom, if the same can be done without damage thereto."

The trial court has, clearly, committed a reversible error, because the provision applicable to the instant case is not the aforecited Article 547 of the Civil Code, which treats of possession, but Article 1616 of the same Code, which deals specifically with conventional redemption, to wit:

"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."

It seems quite clear from this provisions, that for a vendor a retro to be entitled to exercise his right of redemption, he must reimburse the vendee a retro, not only (1) the price of the sale, but also (2) the expenses of the contract and any other legitimate payments made by reason of the sale, and (3) the necessary and useful expenses made on the thing sold. Note that the vendor a retro is given no option to require the vendee a retro to remove the useful improvements on the land subject of the sale a retro, unlike that granted the owner of a land under Articles 546 and 547 of the Civil Code. Under said Article 1616, the vendor a retro must pay for the useful improvements introduced by the vendee a retro; otherwise, the latter may retain possession of the land until reimbursement is made.

Since, in the instant case, plaintiff (vendor a retro) is unwilling to reimburse defendants (vendees a retro) the value of the useful improvements introduced by the latter on the land in question, as agreed upon by them at the pre-trial held on January 24, 1959, it stands to reason that defendants may not lawfully be ordered nor compelled to vacate and deliver said land to plaintiff.

Wherefore, the decision of the trial court appealed from is reversed and set aside, and the case is remanded to said court, which is hereby directed to continue with the hearing of the same, for the purpose of determining the value of the useful improvements introduced by defendants on the land in question and, thereafter, render judgment in accordance with law. Without pronouncement as to costs. So ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, and Dizon, JJ., concur.

[1] "ART. 547. If the useful improvements can be removed without damage to the principal thing, the possessor in good faith may remove them, unless the person who recovers the possession exercises the option under paragraph 2 of the preceding article."

[2] "ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

"Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof."

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