

RUFINO M. CORTEZ, PLAINTIFF AND APPELLEE, VS. FLORENTINO MANIMBO, DEFENDANT AND APPELLANT. RUFINO M. CORTEZ, PLAINTIFF AND APPELLEE, VS. TOMAS MANIMBO, DEFENDANT APPELLANT.

G.R. No. L-15596-97. October 31, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

Defendant Florentino Manimbo and Tomas Manimbo were lessees, on a month to month basis, of portion of a parcel of land located at Juan Luna Street, corner of Pavia, Tondo, Manila, formerly belonging to Pedro Cruz, who sometime in 1952 sold it to plaintiff Rufino M. Cortez. At the time of the sale, plaintiff knew that defendants' houses (of the barong-barong type, allegedly valued at P2,000.00, and P500.00, respectively), were on the land. In 1956, plaintiff filed separate complaints against defendants in the Municipal Court of Manila, for ejectment and recovery of rentals in arrears. After joint trial, the municipal court found for the plaintiff and against defendants. Upon appeal, CFI of Manila rendered a single decision in the two cases, ordering defendants to remove their improvements, vacate the premises and further ordered defendant Florentino Manimbo to pay rent of P6.00 a month from January 19, 1956 and defendant Tomas Manimbo, P8.00 a month from January, 1956, until they actually vacate the premises. The decision was subsequently amended with respect to the amount of rentals in arrears. The trial court also dismissed the counterclaims. Defendants appealed, but the questions raised being purely of law, the Court of Appeals on March 23, 1959, issued a resolution certifying the cases to us. Pending appeal in the Court of Appeals, however, the latter ordered the execution of the judgment, for failure of the defendants to deposit the monthly rentals adjudged by the lower court and to file the required *su-persedeas* bond. An order of demolition was issued by the Court of Appeals. Certiorari proceedings with preliminary injunction presented by defendants before this tribunal against said Order, was dismissed on November 8, 1957, for lack of merit (Manimbo, et al. vs. Court of Appeals, G.R. No. L-13078-79).

On April 3, 1959, however, plaintiff-appellee moved for the reconsideration of the resolution certifying the cases to this Court, on the ground that the issue raised in the appeal had become moot, in view of the fact that during the pendency of the appeal, sometime in April, 1958, the defendants removed their respective houses, of which fact the lower court was duly informed on June 30, 1958. It further averred in the motion that it would serve no practical or useful purpose, to certify the cases to this Court. The motion was denied.

The appellants do not dispute the right of the appellee to eject them from the land in question; and they have not assigned as error in their brief or made any assertion that the trial court erred in ordering them to vacate the land; they do not dispute that they have failed in the payment of their monthly rentals to the appellee and that they have been in default in the payment of the agreed monthly rentals from February, 1955 with respect to Florentino and from December, 1954, with respect to Tomas. Admittedly, the filing of the ejectment cases by the appellee against the appellants was justified.

Appellants submit, these facts notwithstanding, that the lower court should not have dismissed their counterclaims and that they should be indemnified of the value of their houses, having built them in good faith and were already there when the appellee bought the land from Pedro Cruz, a fact known to appellee. Appellants claim that the right of the owner of the lot in question to possess and have the lots returned to him "must be subordinated to the right of the appellants to be indemnified because of the violation of the appellee of an alleged verbal agreement." "We contend", they say, "that this violation of this agreement constitutes a violation of a lien, which we may call it implied equitable lien. Equitable lien may be established by verbal agreement (Jackman vs. Newbold [CCA 8th] 28 F (2nd) 107; 62 ALE, 727), quoted in 33 Am. Jur. 428, par. 19). A lien may also be created by contract, express or implied, with the owner of the property or by some statute or fixed rule of law; it cannot be created by the court merely from a sense of justice (53 CJS, 833, par. 2)". And "that for the violation of the agreement the appellants became entitled to receive not only the compensatory but the nominal and exemplary damages". This contention is unmeritorious. The supposed verbal agreement, as alleged by appellants, seems to be that appellee would respect the improvements and appellants could stay on the land, as long as they wanted to, provided they pay the rentals. The lower court did not make any finding sustaining this allegation. It stated "there was no basis for this claim"(counterclaim), which simply shows that the pretensions of the appellants regarding the verbal agreement was discredited by the lower court, and credited the appellee who denied the existence thereof. The Court of Appeals did not make any findings on this point. The cases raised purely questions of law. Having admitted the fact that they were tenants of the land on a verbal month to month contract, and failed to pay rentals, it follows that appellants could legally be ejected at the end of each month, subject to the provisions of law and jurisprudence on the matter. In this jurisdiction, as has been well commented by the lower court, "it is the law that the lessee is not entitled to reimbursement for the useful expenses or improvements that he may have incorporated in the premises where the lessor does not chose to appropriate the same; the only right of the lessee being to take them away". If the rule were otherwise, "it would always be in the power of the tenant to improve his landlord out of his property" (Alburo vs. Villanueva, 7 Phil., 277).

"Indemnity for Improvements.—The right of a tenant in regard to improvements (mejoras) is expressly provided for in article 1573 read in connection with article 487 where it is provided that the tenant may make such improvements, either useful or convenient, as he considers advantageous, provided he does not alter the form and substance of the thing rented, but that he will have no right for indemnification therefore though he can take away such improvements if it is possible to do so without injury or damage to the thing rented (Alburo vs. Villanueva, 7 Phil. 277; In re Building & Loan Association vs. Penalosa, 13 Phil., 575; Rivera vs. Trinidad, 48 Phil., 396; Cortes vs. Ramos, 46 Phil., 184; Montinola vs. Bantug, Off. Gaz., Aug. 16, 1941, p. 1484; Pineda vs. Liwanag, Off. Gaz., Supp. Nov. 1, 1941 p. 97)" (Tolentino's Commentaries and Jurisprudence on the Civil Code, Vol. II, p. 930, 1947 Ed.)

"* * * This principle of possession in good faith, naturally cannot apply to a lessee because as such lessee he knows that he is not the owner of the leased premises. Neither can he deny the ownership or title of his lessor. Knowing that his occupation of the premises continues only during the life of the lease contract and that he must vacate the property upon termination of the lease or upon violation by him of any of its terms, he introduces improvements on said property at his own risk in the sense that he cannot recover their value from the lessor, much less retain the premises until such reimbursement. His right to improvements introduced by him is expressly governed by Article 1573 and 487 of the old Civil Code * * *" (Lopez Inc. vs. Philippine & Eastern Trading Co., Inc. 98 Phil., 348, 52 Off. Gaz., [3] 1452).

"* * * 'Article 361 and 453 of the Civil Code, which define the rights between the owner of the land and builders of improvements thereon in good faith, are not applicable as between landlord and tenant, since the Code supplies specific provisions designed to cover their rights. Besides the tenant cannot be said to be a builder in good faith as he has no pretension to be owner (Manresa Com. ed. Vol. V, p. 445) * * *" (Lopez Inc. vs. Philippine & Eastern Trading Co., Inc supra).

Under the facts obtaining in these cases, nominal or exemplary damages, as prayed for by the appellants, cannot be awarded.

Moreover, the appellants, sometime in the month of April, 1958, vacated the land in question and removed their respective houses to a place and have been possessing and enjoying them since then. There is, therefore, no improvement or any part of the appellants' houses left on the land which they may ask the appellee to pay for. They should not be permitted to eat their cake and have it too.

In view hereof, the appeal is dismissed and the judgment appealed from is affirmed, with costs against the appellants.

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

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