

SPOUSES CONCEPCION FERNANDEZ DEL CAMPO AND ESTANISLAO DEL CAMPO, PLAINTIFFS-APPELLEES, VS. BERNARDA FERNANDEZ ABESIA, DEFENDANT-APPELLANT.

G.R. No. L-49219. April 15, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In this appeal from the decision of the Court of First Instance (CFI) of Cebu, certified to this Court by the Court of Appeals on account of the question of law involved, the sole issue is the applicability of the provisions of Article 448 of the Civil Code relating to a builder in good faith when the property involved is owned in common.

This case involves a parcel of land, Lot No. 1161 of the Cadastral Survey of Cebu, with an area of only about 45 square meters, situated at the corner of F. Flores and Cavan Streets, Cebu City covered by TCT No. 61850. An action for partition was filed by plaintiffs in the CFI of Cebu. Plaintiffs and defendants are co-owners pro indiviso of this lot in the proportion of 2/3 and 1/3 share each, respectively. The trial court appointed a commissioner in accordance with the agreement of the parties. The said commissioner conducted a survey, prepared a sketch plan and submitted a report to the trial court on May 29, 1976, recommending that the property be divided into two lots: Lot 1161-A with an area of 30 square meters for plaintiffs and Lot No. 1161-B with an area of 15 square meters for the defendants. The houses of plaintiffs and defendants were surveyed and shown on the sketch plan. The house of defendants occupied the portion with an area of 5 square meters of Lot 1161-A of plaintiffs. The parties manifested their conformity to the report and asked the trial court to finally settle and adjudicate who among the parties should take possession of the 5 square meters of the land in question.

Resolving the issue the trial court held as follows:

"The Court believed that the plaintiffs cannot be obliged to pay for the value of the portion of the defendants' house which has encroached an area of five (5) sq. meters of the land allotted to them. The defendants cannot also be obliged to pay for the price of the said five (5) square meters. The rights of a builder in good faith under Article 448 of the New Civil Code does (sic) not apply to a case where one co-owner has built, planted or sown on the land owned in common. 'Manresa agreeing with Sanchez Roman, says that as a general rule this article is not applicable because the matter should be governed more by the provisions on co-ownership than on accession. Planiol and Ripert are also of the opinion that this article is not applicable to a co-owner who constructs, plants or sows on the community property, even if the land where the construction, planting or sowing is made is later allotted to another co-owner in the partition. The co-owner is not a third person under the circumstances, and the situation is governed by the rules of co-ownership. Our Court of Appeals has held that this article cannot be invoked by one co-owner against another who builds, plants or sows upon their land, since the latter does not do so on land not belonging to him.' (Tolentino, Civil Code of the Philippines, Vol. II, p. 102, citing 3 Manresa 215, 3 Planiol and Ripert 245, and Viuda de Arias vs. Aguilar, (C.A.), O.G. Supp., Aug. 30, 1941, p. 126). In the light of the foregoing authorities and considering that the defendants have expressed their conformity to the partition that was made by the commissioner as shown in the sketch plan attached to the commissioner's report, said defendants have no other alternative except to remove and demolish

part of their house that has encroached an area of five (5) sq. meters of the land allotted to the plaintiffs.

"WHEREFORE, judgment is hereby rendered assigning Lot 1161-A with an area of thirty (30) sq. meters to the plaintiffs spouses Concepcion Fernandez del Campo and Estanislao del Campo and Lot 1161-B with an area of fifteen (15) sq. meters to the defendants Bernarda Fernandez Abesia, Lourdes Fernandez Rodil, Genaro Fernandez and Dominga A. Fernandez, in the respective metes and bounds as shown in the subdivision sketch plan attached to the Commissioner's Report dated May 29, 1976 prepared by the Commissioner, Geodetic Engineer Espiritu Bunagan. Further, the defendants are hereby ordered at their expense to remove and demolish part of their house which has encroached an area of five (5) square meters from Lot 1161-A of the plaintiffs; within sixty (60) days from date hereof and to deliver the possession of the same to the plaintiffs. For the Commissioner's fee of P400.00, the defendants are ordered to pay, jointly and severally, the sum of P133.33 and the balance thereof to be paid by the plaintiffs. The costs of suit shall be paid by the plaintiffs and the defendants in the proportion of two-thirds (2/3) and one-third (1/3) shares respectively. A certified copy of this judgment shall be recorded in the office of the Register of Deeds of the City of Cebu and the expense of such recording shall be taxed as a part of the costs of the action."

Hence, this appeal interposed by the defendants with the following assignment of errors:

"I

THE TRIAL COURT ERRED IN NOT APPLYING THE RIGHTS OF A BUILDER IN GOOD FAITH UNDER ART. 448 OF THE NEW CIVIL CODE TO DEFENDANTS-APPELLANTS WITH RESPECT TO THAT PART OF THEIR HOUSE OCCUPYING A PORTION OF THE LOT ASSIGNED TO PLAINTIFFS-APPELLEES.

II

THE TRIAL COURT ERRED IN ORDERING DEFENDANTS-APPELLANTS TO REMOVE AND DEMOLISH AT THEIR EXPENSE, THAT PART OF THEIR HOUSE WHICH HAS ENCROACHED ON AN AREA OF FIVE SQUARE METERS OF LOT 1161-A OF PLAINTIFFS-APPELLEES."

Article 448 of the New Civil Code provides as follows:

"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 built 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 the lease and in case of disagreement, the court shall fix the terms thereof."

The court a quo correctly held that Article 448 of the Civil Code cannot apply where a co-owner builds, plants or sows on the land owned in common for then he did not build, plant or sow upon land that exclusively belongs to another but of which he is a co-owner. The co-owner is not a third person under the circumstances, and the situation is governed by the rules of co-ownership.[1]

However, when, as in this case, the co-ownership is terminated by the partition and it appears that the house of defendants overlaps or occupies a portion of 5 square meters of the land pertaining to plaintiffs which the defendants obviously built in good faith, then the provisions of Article 448 of the new Civil Code should apply. Manresa and Navarro Amandi agree that the said provision of the Civil Code may apply even when there was co-ownership if good faith has been established.[2]

Applying the afore-said provision of the Civil Code, the plaintiffs have the right to appropriate said portion of the

house of defendants upon payment of indemnity to defendants as provided for in Article 546 of the Civil Code. Otherwise, the plaintiffs may oblige the defendants to pay the price of the land occupied by their house. However, if the price asked for is considerably much more than the value of the portion of the house of defendants built thereon, then the latter cannot be obliged to buy the land. The defendants shall then pay the reasonable rent to the plaintiffs upon such terms and conditions that they may agree. In case of disagreement, the trial court shall fix the terms thereof. Of course, defendants may demolish or remove the said portion of their house, at their own expense, if they so decide.

WHEREFORE, the decision appealed from is hereby MODIFIED by ordering plaintiffs to indemnify defendants for the value of the said portion of the house of defendants in accordance with Article 546 of the Civil Code, if plaintiffs elect to appropriate the same. Otherwise, the defendants shall pay the value of the 5 square meters of land occupied by their house at such price as may be agreed upon with plaintiffs and if its value exceeds the portion of the house that defendants built thereon, the defendants may choose not to buy the land but defendants must pay a reasonable rental for the use of the portion of the land of plaintiffs as may be agreed upon between the parties. In case of disagreement, the rate of rental shall be determined by the trial court. Otherwise, defendants may remove or demolish at their own expense the said portion of their house. No costs.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Griño-Aquino, JJ., concur.

[1] 3 Planiol & Ripert 245; Page 108, Civil Code by Tolentino, Vol. II; See also Viuda de Arias vs. Aguilar, (C.A.) O.G. Supp., Aug. 30, 1941, Page 126, 40 O.G. 15th series, Page 126.

[2] Page 108, Civil Code, Tolentino, 3 Manresa 215.

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