

VICENTE M. COLEONGCO, PETITIONER, VS. PEDRO F. REGALADO AND LEONOR MONTILLA, RESPONDENTS.

G.R. No. L-4529. December 29, 1952

Ponente: JUGO, J.

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JUGO, J.:

The Court of Appeals (5th Division) rendered the following decision, the facts of which cannot be reviewed by this court:

"DECISION

"FELIX, J. :

"Antecedents.—Prior to September of 1944, Pedro F. Regalado was the owner of lot No. 1205-A of plan Psd. 12393, G.L.R.O. cadastral record No. 55, situated at barrio Mandalagan, municipality of Bacolod, Province of Negros Occidental, of which lot No. 157 of the subdivision plan Psd. 12395 was a portion. In this, lot there was erected a building which in September of 1944, was being occupied by the forces of the Japanese Army. In that month of September Pedro F. Regalado sold lot No. 157 to Vicente M. Coleongco who thus became the owner of the lot, covered by transfer certificate of title No. 663 of the Land Records of Negros Occidental. The total area of the lot was 1,000 square meters, and the land occupied by the house was 245 square meters. Until the year of 1947, the assessed value of the whole lot and the house was P1,156 and P4,500, respectively.

"It appears from the records that Vicente M. Coleongco contended that the house erected on lot 157 was included in the sale to him of this property, and when the City of Bacolod was liberated by the American Forces that succeeded the Japanese and occupied said house for about two months, Coleongco received from the local office of the AFWESPAC as rentals for such occupation the sum of \$93.75 or P137.50. It so happened, however, that after the American Forces vacated the house, Pedro F. Regalado occupied the same, so Vicente M. Coleongco instituted Civil Case No. 185 of the Court of First Instance of Negros Occidental, which on March 21, 1947, decided that the improvement of lot No. 157, consisting of a residential house, was the property of the defendant therein Pedro F. Regalado. From that decision Coleongco appealed to the Court of Appeals, but on August 28, 1947, this tribunal declared the appeal abandoned.

"The case.—One month before this outcome in the Court of Appeals of said case No. 185, or on July 21, 1947, Vicente M. Goleongco filed the complaint that gave rise to the present action. On September 20, 1947, Pedro F. Regalado, in consideration of the sum of P3,500, deeded and sold said house to Leonor Montilla Vda. de Pena, who was duly apprised of the present case that was pending against the vendor (Annex A). This transaction was supplemented by contract Annex B, dated October 3, 1947, wherein the vendee Leonor Montilla expressly admitted that she had knowledge of the existence of this civil case (docket No. 718 of the Court of First Instance of Negros Occidental) concerning the house object of the sale, assumed whatever rights, and obligations might arise with respect to such civil case, and freed and liberated the vendor Regalado from the result of the case. Because of these transactions between Regalado and Mrs. Montilla, on or about October 22, 1947, the plaintiff amended his complaint including Leonor Montilla as party defendant. In the amended complaint it is prayed that after due hearing the defendants be condemned:

"1. To pay unto the plaintiff the monthly rental of sixty pesos (P60) for his premises during the period occupied by said defendants;

"2. To order the defendants to remove or clear the house from the plaintiff's premises;

"3. To pay the costs of the suit; and

"4. To grant such relief or other remedies which the court may consider just and equitable.

"On November 3, 1947, Atty. Vivencio T. Ibrado, signing over the title of 'Attorney for the Defendant', filed an answer to the amended complaint with counterclaim; praying the court that:

"1. The complaint of the plaintiff be dismissed, with costs against the plaintiff;

"2. That the Honorable Court fix the rental for the occupation of the 245 square meters of the lot in question and that said rental be made effective only from August 28, 1947;

"3. That the plaintiff be ordered to pay to the defendant the sum of ninety-three dollars and seventy-five cents (\$93.75);

"4. That the Honorable Court fix the value of the lot in question and order the plaintiff to sell the lot to the defendant;

"5. To grant such other remedies as this Honorable Court may deem just and equitable in the premises;

"Defendant Leonor Montilla did not file a separate answer to the amended complaint, and on motion of the plaintiff the court, by order of February 11, 1948, declared Leonor Montilla in default over the objection of both defendants who claimed that the answer to the amended complaint filed by Attorney Ibrado on November 3, 1947, used the word 'defendants' in various parts of the answer, and that it was intended to be the answer for both.

"After proper proceedings and hearing, on January 3, 1949, the court rendered judgment, the dispositive part of which, translated into English, is as follows:

" 'In view of the foregoing, the court renders judgment in this case, sentencing the defendants to pay the plaintiff the monthly sum of P14.06 from September, 1945, as rents, with legal interest thereon from the date of the filing of the complaint in this case, and providing that the sum of \$93.75 or P187.50, its equivalent in Philippine currency, be deducted from the total sum of said rents.

" 'Defendants are ordered to vacate the building from the portion of the lot on which it is erected within the period of two months from the date this decision becomes final, and to that end they are ordered to remove the building from the said portion of the lot within the aforementioned period.

" 'The costs are taxed against the defendants.'

"From this decision both defendants appealed, and in this instance their counsel maintains that the lower court erred:

"1. In declaring the appellant Leonor Montilla in default;

"2. In sentencing the defendants to pay the plaintiff the monthly rental of P14.06 for the portion of lot No. 157 of subdivision plan Psd-12395 from the month of September, 1945, with legal interest from the date of the presentation of the complaint;

"3. In ordering the appellants to remove their house from the portion of the lot occupied by the same within the period of two months from the date its decision becomes final; and

"4. In not absolving the defendants from the complaint and in sentencing them to pay the costs of this suit.

"Discussion of the controversy.—Before the presentation of evidence at the hearing, the parties entered into the following stipulation of facts, to wit:

" '1. That the parties are all of legal age and residents of the City of Bacolod, Philippines;

" '2. That since the month of September, 1944, the plaintiff became the registered owner of lot No. 157 of the subdivision plan Psd-12395, which is a portion of lot No. 1205-A of subdivision plan Psd-12393, G. L. R. O. cadastral record No. 55, situated in the City of Bacolod and described in transfer certificate of title No. 663 (P.R.);

" '3. That by decision rendered in civil case No. 185 by this same court and which is now final, defendant Pedro F. Eegalado was declared the owner of the building of strong materials erected on said lot;

" '4. That actual assessed value of said lot is P5,625;

" '5. That said building is also assessed at P4,500;

" '6. That on October 30, 1946, the lot in question was assessed at P1,312.50;

" '7. That said lot has an area of 1,000 square meters;

" '8. That the portion of the same occupied by the building existing thereon is of an area of 245 square meters;

" '9. That in the month of September of 1947, defendant Pedro F. Regalado sold said building to his co-defendant Leonor Montilla for the sum of P3,500, of which amount the vendee paid the vendor, at the time of the execution of the deed of sale, the sum of P2,000, binding herself to pay the balance of P1,500 on or before October 31, 1947. Defendants Pedro F. Regalado and Leonor Montilla have executed a contract supplementary to the previous deed of sale, by virtue of which said Leonor Montilla acknowledged the existence of the present ease and assumed the obligation of paying whatever rents and of complying with whatever obligations the court would impose on the defendant Pedro F. Regalado.'

"Aside from this stipulation and the facts appearing in the preceding narration of the antecedents and of the statement of the case, plaintiff-appellee declared that he desired to take possession of the portion of the lot occupied by the questioned building because he intended to construct his own house, as he was then paying rents for the lease of his residence at a rate higher than the amount he is entitled to receive as rents from the portion of the land occupied by the building of the defendants.

"A perusal of the record discloses that the present action for ejectment was instituted on July 21, 1947, before plaintiff's appeal in Case No. 185 was finally declared abandoned in the Court of Appeals, and the fact that in said case Coleongco unsuccessfully claimed to be the owner of the house in litigation does not preclude his right to depart from his former contention, and to institute these ejectment proceedings to compel the defendants to vacate his lot and to remove therefrom the building which at first he maintained to be his, and to further demand payment of the corresponding rentals for the occupancy of the lot by said building from September, 1944, when he bought the property, up to the time said building is actually removed, except, of course, for the period that he might have occupied or used that building. But the record is silent about such use and all indications are that from September of 1944, the house was first occupied by the Japanese, then by the American Forces, after liberation, and right afterwards in September of 1945 by defendant Regalado himself and by his successors in interest. The lower court, however, sentenced the defendants to pay rents from September, 1945, only, and as plaintiff has not appealed from that ruling, We can only consider the adequacy of the amount fixed by the court as rentals from September, 1945.

"With regard to defendant Leonor Montilla's alleged default, and despite the considerations made by the lower court in its order of February 11, 1948, we are of the opinion that the answer with the counterclaim filed by

Attorney Ibrado on November 3, 1947, should have been considered as submitted for both defendants: firstly, because the attorney that filed that answer specifically so stated; and, secondly, because the grammatical errors in the use of the verbs in connection with the word 'defendants', as for example in the expression of 'defendants alleges', should not be charged against any of them who did not prepare that pleading and, under the circumstances, should not be deprived of any right on account of the careless preparation thereof. Notwithstanding this opinion, we hold that the ruling of the lower court on this point is of no sequence, because both defendants had common interests and the same defenses, and the rights of appellant Leonor Montilla have been properly attended to by her co-appellant Pedro F. Regalado.

"The action which originally was instituted as an ejectment case for the main purpose of causing the removal of defendants' building from plaintiff's lot—and was filed directly in the Court of First Instance of Occidental Negros because the right of action had accrued since September of 1944—was enlarged by defendants counterclaim to include plaintiff's right of accession prescribed in article 361 of the old Civil Code. In passing upon the merits of the controversy On this question at issue, we may state that it is not disputed that the building in litigation was formerly the property of Pedro F. Regalado and presently of Leonor Montilla, that this building was constructed in good faith, and, consequently, that the enjoyment and possession thereof must be considered to have been always in good faith. Our Civil Code provides:

" 'ART. 358. What is built, planted or sown on another's land and any improvements or repair made on it, belongs to the owner of the land, subject to the provisions of the following articles.

" 'ART. 361. The owner of land on which anything has been built, sown or planted, in good faith, shall be entitled to appropriate the thing so built, sown, or planted, upon paying the compensation mentioned in articles 453 and 456, or to compel the person who has built or planted to pay him the value of the land, and the person who sowed thereon to pay the proper rent therefor.

" 'ART. 453. Necessary expenditures shall be refunded to every possessor; but only the possessor in good faith may retain the thing until they are repaid to him.

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

" 'ART. 454. Expenditures purely for ostentation or mere pleasure shall not be repaid the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it does not suffer injury thereby and if the successor in the possession does not prefer to refund the amount expended.

"In view of these legal provisions, we have to declare that the right of the owner of a lot to have the same vacated or cleared from any construction or improvement belonging to another which built it in good faith, is to be subordinated to and without prejudice of whatever rights the owner and builder in good faith of the improvement may have. We, therefore, cannot now act favorably on plaintiff's complaint for ejectment disregarding defendants' rights either to pay for the acquisition of lot No. 157 or of being paid the value of the building erected thereon, at the option of the plaintiff.

"As regards the amount of monthly rents that appellants were condemned to pay the plaintiff, the following considerations must be taken into account, to wit: (a) that although the portion of lot 157 actually occupied by the building is of an area of 245 square meters, for the purpose of fixing the rent in this case the assessed value of the whole lot should be had in mind, as there is no evidence that the occupied portion of said lot had been devoted to any use other than as site of the house in question; (b) that the amount of the rent that defendants should have been sentenced to pay for the period of from September, 1945, to the end of 1946 should have been fixed in accordance with its former assessed value of P1,312.50; (c) that from January of 1947, the assessed value of P5,625 should be the one determining the proper amount of the rents; (d) that section 3 of Commonwealth Act No. 689 promulgated October 15, 1945, prescribes that 'in the case of the lease for the

occupation of a lot, the rents shall be presumed unjust and unreasonable if the amount thereof per annum likewise exceeds twenty per centum of the annual assessment value of said lot'; (e) that although Executive Order No. 62, issued on June 21, 1947, reduced the annual rent demandable to an amount not exceeding twelve per centum of the assessed value, said Executive Order was declared null and void for having been issued without authority of law (*Araneta vs. Dinglasan*,[*] 45 Off. Gaz., No. 10, p. 4411); (f) that on the strength of the provisions of law just quoted, the amount of the rent that ought to have been fixed as monthly rent in this case is P21.875 from September, 1944, up to December, 1946, and P93.75 from January of 1947, up to the time of the actual removal of the building from the lot, or to the time when the parties would come to an agreement as per article 361 of the old Civil Code; (g) that the aggregate sum of such rents being greater than the amount fixed by the lower court, and even greater than the amount that plaintiff prayed for in the complaint, and as plaintiff has not appealed from the amount fixed in this decision of the lower court, we are not in a position to increase or modify the amount of the rents the defendants have been sentenced to pay to the plaintiff.

"Wherefore, the decision appealed from is hereby affirmed in so far as it condemns the defendants to pay to the plaintiff, as monthly rents the sum of P14.06 from September, 1945, with legal interest thereon from the date of the filing of the complaint (July 21, 1947), from the total of which the sum of P187.50 should be deducted. The decision is reversed as to the rest and this case is returned to the lower court, with instructions to give the plaintiff an opportunity to exercise his right of option granted to him by article 361 of the old Civil Code, without pronouncement as to cost. It is so ordered.

"ALFONSO FELIX
Associate Justice

"We concur:

"M. L. DE LA ROSA EMILIO PEÑA
Associate Justice" Associate Justice"

Coleongco contended that in September, 1944, he bought not only the lot above-mentioned but also the house erected thereon. He instituted an action in civil case No. 185 of the Court of First Instance of Occidental Negros, in order to be declared the owner of the house. However, the Court of First Instance, on March 21, 1947, decided that said house was the property of the defendant Pedro F. Regalado, not sold to Coleongco. Coleongco appealed to the Court of Appeals but later on said Court declared the appeal abandoned and the decision of the Court of First Instance became final. This decision is to the effect that Regalado, being the owner of both the lot and the house, sold only the lot to Coleongco, retaining ownership of the house. Consequently, Regalado or his successor Leonor Montilla should remove said house from the lot without any compensation from Coleongco.

Article 361 of the old Civil Code is not applicable in this case, for Regalado constructed the house on his own land before he sold said land to Coleongco. Article 361 applies only in cases where a person constructs a building on the land of another in good or in bad faith, as the case may be. It does not apply to a case where a person constructs a building on his own land, for then there can be no question as to good or bad faith on the part of the builder.

In view of the foregoing, the decision of the Court of Appeals is modified by ordering Regalado and his successor Leonor Montilla to remove the above-mentioned house from the lot of Coleongco, without any obligation on the part of the latter to pay any compensation to Regalado or his successor Montilla. In all other respects, the decision of the Court of Appeals is affirmed with costs against respondents Regalado and Montilla. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Bautista Angelo, and Labrador, JJ., concur.

* 84 Phil., 368.

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