

CRESENCIANO DE LA CRUZ, PLAINTIFF-APPELLANT, VS. JULIO CRUZ, ZENAIDA MONTES AND ALFONSO MIRANDA, DEFENDANTS-APPELLEES.

G.R. No. L-27759. April 17, 1970

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

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REYES, J.B.L., Acting C.J.:

Direct appeal from a summary judgment of the Court of First Instance of Rizal (Pasay City), in its Civil Case No. 2723-P, dismissing the plaintiff's complaint against the defendants for the pre-emption and legal redemption of a portion of registered land and granting, in the main, the letter's counterclaim for damages and attorneys' fees.

The undisputed facts are as follows.

The spouses Julio Cruz and Zenaida Montes were once the owners of a parcel of land covered by Transfer Certificate of Title No. 10680 of the Office of the Registry of Deeds for Pasay City, which parcel of land is more particularly described therein as follows:

"A PARCEL OF LAND (Lot 10 of the subdivision plan Psd-790, being a portion of the land described on plan Psu-2031-Amd. 2-A, LRC (G.L.R.O.) Record No. 2484, situated in the Barrio of Malibay, Municipality of Pasay, Province of Rizal. Bounded on the NE., by Lot 9 of the subdivision plan; on the SE., and SW., by tot 91 of the subdivision plan; containing an area of SIX HUNDRED SIXTY TWO (662) SQUARE METERS."

On 16 December 1965, Julio Cruz and Zenaida Montes sold a portion of the aforesaid parcel of land to the plaintiff-appellant, Ores-enciano de la Cruz. The deed, of absolute sale described the portion sold as -

" a portion with an area of Three Hundred and Thirty-One Square Meters (331 sq. m.) on the northern part. . . . "

Inserted in the deed was a stipulation, reading as follows:

"It is hereby agreed that a plan will be made on the whole parcel of land above-described showing the portion with an area of Three Hundred and Thirty-one Square Meters (331 sq. m.) hereby conveyed, and the remaining portion with an area of Three Hundred Thirty-One Square Meters (331 sq. m.), together with the technical description of each portion, that is, the portion hereby conveyed, and the portion remaining. "

On 28 February 1966, Julio Cruz and Zenaida Montes sold the re-maining portion of the land to Alfonso Miranda. The deed of sale described the portion sold as -

". that unsegregated portion with an area of THREE HUNDRED THIRTY ONE (331) SQUARE METERS bordering C. Jose and F. Francisco Streets, Malibay, Pasay City, which is at the southern part of the parcel of land covered by T.C.T. No. 10680 above-described."

Under date of 25 April 1966, Cresenciano de la Cruz filed a complaint against Julio Cruz, Zenaida Montes and Alfonso Miranda, praying the court to have himself (plaintiff-appellant Cresenciano de la Cruz) declared as

entitled to purchase, by way of pre-emption and legal redemption, the one-half (1/2) portion of the land that was sold to Miranda.

Upon joinder of issues, the parties agreed, during the pre-trial of the case, to submit the case for decision on the pleadings, and, on the basis thereof, the court below rendered judgment, as stated at the beginning of this decision.

Not satisfied with the court court's decision, plaintiff-appellant Cresenciano de la Cruz interposed the present direct appeal to the Supreme Court and assigns the following errors as having been committed by the lower court:

"1. The trial court erred in holding that plaintiff-appellant and defendants-appellees Julio Cruz and Zenaida Montes are not co-owners of the parcel of land embraced in Transfer Certificate of Title No. 10680 of the Office of the Register of Deeds for Pasay City.

"2. The trial court erred in concluding that plaintiff is not entitled to the right of pre-emption or legal redemption.

"3. The trial court erred in awarding damages in the amount of P2,000.00 in favor of defendants-appellees Julio Cruz and Zenaida Mantes, and "another P2,000.00 in favor of their co-defendant-appellee Alfonso Miranda.

"4. The trial court finally erred in ordering plaintiff-appellant to pay defendants -appellees the sum of P3,000.00 as attorney's fees."

Appellant's theory, under his first two assignments of error, is that, after he bought from the spouses Julio Cruz and Zenaida Montes the northern half of the parcel of land embraced by Transfer Certificate of Title No. 10680, he and the spouses became co-owners of the said parcel of land, "the plaintiff owning one-half (1/2) (northern part) and defend-dants Julio Cruz and Zenaida Montes owning the remaining one-half (1/2) portion (southern part)", or that," considering the situation or loca-tion of the parts being owned by plaintiff and defendants Julio Cruz and Zenaida Montes, respectively, ... the parts are adjacent to each other, and consequently, plaintiff and defendants Julio Cruz and Zenaida Montes are adjacent owners" , such that plaintiff has the right of pre-emption or legal redemption over the portion that was subsequently sold to Alfonso Miranda (Quoted portions taken from appellant's brief, pages 3-4).

The foregoing theory is untenable. Tested against the concept of co-ownership, as authoritatively expressed by the commentators, appel-lant is not a co-owner of the registered parcel of land, taken as a unit or subject of co-ownership, since he and the spouses do not "have a spiritual part of a thing which is not physically divided" (3 Sanchez Roman 162), nor is each of them an "owner of the whole, and over the whole he exercises the right of dominion, but, he is at the same time the owner of a portion which is truly abstract" (3 Manresa 405). The portions of appellant-plaintiff and of the defendant spouses are concretely determined and identifiable, for to the former belongs the northern half, and to the latter belongs the remaining southern half', of the land. That their respective portions are not technically described, or that said portions are still embraced in one and the same certificate of title, does not make said portions less determinable or identifiable, or distinguishable, one from the other, nor that dominion over each portion less exclusive, in their respective owners. 'Hence, no right of redemption among co-owners exists.

Nor is plaintiff-appellant entitled, as an adjoining owner, to the right of pre-emption or redemption over the southern portion of the parcel of land because he had not alleged in his complaint and has not proved (since the case was submitted for decision on the pleadings) that said portion is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation (Article 1622, Civil Code; Soriente vs. GA, L-17343, 31 August 1963, 62 O. G. 7013, 8 SCRA 750).

The third assignment of error is concerned with the defendants' counterclaim. The court a quo awarded damages of P2,000.00 to the spouses Cruz and another P2,000.00 to their co-defendant Alfonso Miranda because the court considered the allegations on two (2) causes of action in the counterclaim as not specifically denied by the plaintiff-appellant and, therefore, deemed to have admitted said allegations. The first cause of action, in brief, alleges that plaintiff had failed to cause the preparation and submission of a subdivision plan that Would serve as a basis for the issuance of separate titles for the northern and southern parts of the land, contrary to their agreement, and for the inaction and delay on the part of plaintiff had caused damages in the amount of P5, 000.00 to the counterclaimants. The second cause of action, in turn, alleges that the plaintiff had refused to surrender the certificate of title, despite demands, to the Register of Deeds for an-notation of a release of mortgage that said plaintiff had himself executed, thus preventing the dealing with the land, sans the encumbrance, with third persons and prejudicing the counterclaimants in the sum of P5,000.00. Appellant's argument that the court erred in awarding damages without proof of the amount of actual damage is well-taken, for even though the rule is that failure to deny specifically the material allegations in the complaint (or counterclaim) is deemed an admission of the said allegations, an exception is provided therefor, which is "other than those as to the amount of damage" (Section 1, Rule 9, Revised Rules of Court).

" Under section 8, Rule 9 [Sec. 1, Rule 9 of the Revised Rules of Court], however, allegations regarding the amount of dam-ages are not deemed admitted even if not specifically denied, and so must be duly proved. Appellants did not offer to present evidence to prove their dama-ges but merely asked for judgment on the pleadings. Hence, they must be considered to have waived or renounced their claim for damages. " (Rili, et al. vs. Chunaco, et al., L-6630, 29 February 1956, 98 Phil. 505, 507).

On his last assignment of error, appellant contests the award of attorney's fees on the ground that such fees do not accrue merely because of an adverse decision. On the other hand, he does not claim that the court below had abused its discretion in giving the award, which is a matter that is discretionary with it under Article 2208, Civil Code of the Philippines, specially since the action was clearly unfounded (Heirs of Justiva, et al. vs. Gustilo, et al., L-16396, 31 Jan-uary 1963, 7 SCRA 72; Lopez, et al. vs. Gonzaga, et al., L-18788, 31 January 1964, 10 SCRA 167).

FOR THE FOREGOING REASONS, the appealed decision is hereby affirmed, except insofar as it awarded damages to the appellees, which is hereby reversed. No pronouncement as to costs.

Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, and Villamor, JJ., concur.
Barredo, J., took no part.

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