

**DAMIAN IGNACIO, FRANCISCO IGNACIO AND LUIS IGNACIO,
PETITIONERS, VS. ELIAS HILARIO AND WIFE DIONISIA DRES, AND
FELIPE NATIVIDAD, JUDGE OF THE COURT OF FIRST INSTANCE OF
PANGASIN...**

G.R. No. L-175. April 30, 1946

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a petition for certiorari arising from a case in the Court of First Instance of Pangasinan between the herein respondents Elias Hilario and his wife Dionisia Dres as plaintiffs, and the herein petitioners Damian, Francisco and Luis, surnamed Ignacio; as defendants, concerning the ownership of a parcel of land, partly rice-land and partly residential. After the trial of the case, the lower Court presided over by Honorable Alfonso Felix, rendered judgment holding plaintiffs as the legal owners of the whole property but conceding to defendants the ownership of the houses and granaries built by them on the residential portion with the rights of a possessor in good faith, in accordance with article 361 of the Civil Code. The dispositive part of the decision, hub of this controversy, follows:

"WHEREFORE, judgment is hereby rendered declaring:

"(1) That the plaintiffs are the owners of the whole property described in transfer certificate of title No. 12872 (Exh. A) issued in their name, and entitled to the possession of the same:

"(2) That the defendants are entitled to hold the possession of the residential lot until after they are paid the actual market value of their houses and granaries erected thereon, unless the plaintiffs prefer to sell them said residential lot, in which case defendants shall pay the plaintiffs the proportionate value of said residential lot taking as a basis the price paid for the whole land according to Exh. B; and

"(3) That upon defendants' failure to purchase the residential lot in question, said defendants shall remove their houses and granaries after this decision becomes final and within the period of sixty (60) days from the date that the court is informed in writing of the attitude of the parties in this respect.

"No pronouncement is made as to damages and costs.

"Once this decision becomes final, the plaintiffs and defendants may appear again before this court for the purpose of determining their respective rights under article 361 of the Civil Code, if they cannot come to an extra-judicial settlement with regard to said rights."

Subsequently, in a motion filed in the same Court of First Instance but now presided over by the herein respondent Judge Honorable Felipe Natividad, the plaintiffs prayed "for an order of execution alleging that since they chose neither to pay defendants for the buildings nor to sell to them the residential lot, said defendants should be "ordered to remove the structure at their own expense and to restore plaintiffs in the possession of said lot. Defendants objected to this motion which, after hearing," was granted by Judge Natividad. Hence, this petition by

defendants praying for (a) a restraint and annulment of the order of execution issued by Judge Natividad: (b) an order to compel plaintiffs to pay them the sum of P2,000 for the buildings, or sell to them the residential lot for P45; or (c), a rehearing of the case for a determination of the rights of the parties upon failure of extra-judicial settlement.

The judgment rendered by Judge Felix is founded on articles 361 and 453 of the Civil Code which are as follows:

"Art. 361. The owner of land on which anything has been built, sown or planted in good faith; shall have the right to appropriate as his own the work, sowing or planting, after the payment of the indemnity stated in Articles 453 and 454, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent.

"Art. 453. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until such expenses are made good to him.

"Useful expenses shall be refunded 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 paying the increase in value which the thing may have acquired in consequence thereof."

The owner of the building erected in good faith on a land owned by another, is entitled to retain the possession of the land until he is paid the value of his building, under article 453. The owner of the land, upon the other hand, has the option, under article 361, either to pay for the building or to sell his land to the owner of the building. But he cannot, as respondents here did, refuse both to pay for the building and to sell the land and compel the owner of the building to remove it from the land where it is erected. He is entitled to such removal only when, after having chosen to sell his land, the other party fails to pay for the same. But this is not the case before us.

We hold, therefore, that the order of Judge Natividad compelling defendants-petitioners to remove their buildings from the land belonging to plaintiffs-respondents only because the latter chose neither to pay for such buildings nor to sell the land, is null and void, for it amends substantially the judgment sought to be executed and is, furthermore, offensive to articles 361 and 453 of the Civil Code.

There is, however, in the decision of Judge Felix, a question of procedure which calls for clarification, to avoid uncertainty and delay in the disposition of cases. In that decision, the rights of both parties are well defined under articles 361 and 453 of the Civil Code, but it fails to determine the value of the buildings and of the lot where they are erected as well as the periods of time within which the option may be exercised and payment should be made, these particulars having been left for determination apparently after the judgment has become final. This procedure is erroneous, for after the judgment has become final, no additions can be made thereto and nothing can be done therewith except its execution. And execution cannot be had, the sheriff being ignorant to how, for how much, and within what time may the option be exercised, and certainly no authority is vested in him to settle these matters which involve exercise of judicial discretion. Thus the judgment rendered by Judge Felix has never become final, it having left matters to be settled for its completion in a subsequent proceeding, matters which remained unsettled up to the time the petition is filed in the instant case.

For all the foregoing, the writ of execution issued, by Judge Natividad is hereby set aside and the lower court ordered to hold a hearing in the principal case wherein it must determine the prices of the buildings and of the residential lot where they are erected, as well as the period of time within which the plaintiffs-respondents may exercise their option either to pay for the buildings or to sell their land, and, in the last instance, the period of time within which the defendants-petitioners may pay for the land, all these periods to be counted from the date of judgment becomes executory or unappealable. After such hearing, the court shall render a final judgment according to the evidence presented by the parties.

The costs shall be paid by plaintiffs-respondents.

Ozaeta, Paras, Jaranilla, Feria, De Joya, Pablo, Perfecto, Hilado, Bengzon, and Briones, JJ., concur.

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