

**CATALINA M. DE LEON, AND ELEUTERIO LIMCACO, PETITIONERS,
VS. HON. HERMOGENES CALUAG, JUDGE, COURT OF FIRST
INSTANCE OF RIZAL, BRANCH IV, AND PETRONILO CASTAÑEDA,
RESPONDENTS.**

G.R. No. L-18722. September 14, 1967

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

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REYES, J. B. L., J.:

Appeal from a decision of the Court of Appeals.

On July 11, 1949, Perfecta Roque and Aurelio Bautista sold a piece of land (Lot No. 11, Block K-19 of the Diliman Estate Subdivision) purchased on installment basis from the People's Homesite and Housing Corporation, to the spouses Rosario B. de Leon and Francisco de Leon for P2,000.00 of which P900.00 was received by them and the balance to be paid within sixty days. When the rest of the price was tendered, the vendors refused to accept it on the ground that it was not offered within the stipulated period of sixty days. Thereupon, Rosario B. de Leon and Francisco de Leon filed a case in the Court of First Instance of Manila (Case No. 9366) for specific performance to compel the vendors Roque and Bautista to receive the balance of the purchase price. The defendant vendors countered with a plea for rescission (or rather resolution of the sale), averring that the entirety of the price had not been paid within the time agreed upon. The Court declared the contract rescinded and ordered the vendors to return the P900.00 they had originally received.

As it turned out, as early as October 3, 1949, Perfecta Roque and Aurelio Bautista had sold the same land to Petronilo Castañeda respondent herein, while on October 5, 1949, Rosario de Leon and Francisco de Leon sold one-half of the land which they had acquired from Perfecta Roque for P2,000.00 to Catalina de Leon, petitioner herein, who paid the price in full and built houses and made improve-ments on the land, all assessed at P12,900.00.

On October 17, 1949, respondent Petronilo Castañeda brought an action to restrain Rosario de Leon and Francisco de Leon from fencing and making constructions on the lot in question. Judgment was rendered in favor of Castañeda and a writ of execution was issued on February 6, 1952, directing Rosario de Leon and Francisco de Leon to demolish the house and other improvements erected on the land. The writ was served on Catalina de Leon who claimed to be the owner of the house and improvements. On appeal (Castañeda vs. De Leon, 102 Phil. 689), however, the order of demolition was set aside and an entirely new action was directed.

"The problem that has arisen proceeds from the fact that Perfecta Roque had sold the residential land to two vendees, first to Rosario B. de Leon and later to Petronilo Castañeda. If justice is to be done to the rights of Rosario B. de Leon's vendee, Catalina de Leon, who had constructed two houses and a fence on one-half of the residential lot in question, complicated questions of fact and good faith will have to be investigated and decided and certainly this can not be done in the proceedings for execution. The question can be decided fairly and justly only in an ordinary suit between the parties, as the correlative rights and obligations of owner and

builder were never at issue in civil case No. Q-64 because Catalina de Leon was not allowed to be a party to the suit.

"For the foregoing considerations, the decision of the Court of Appeals is hereby affirmed insofar as it sets aside the order of demolition issued by respondent judge, Hon. Hermogenes Caluag, on August 30, 1952, but that portion thereof which directs the case to be remanded to the trial court for determination if Catalina de Leon may be considered a privy to Rosario de Leon, is hereby set aside; and it is hereby declared and ordered that the correlative rights of Petronilo Castañeda and Catalina de Leon to the land and the improvements thereon be decided in a separate action. No costs in the appeal."

In 1950, Catalina de Leon in turn sued the spouses Rosario and Francisco de Leon, Petronilo Castañeda, Perfecta Roque and the People's Homesite and Housing Corporation, in the Court of First Instance of Rizal to make effective the purchase she made of the one-half of the subject parcel of land from spouses Rosario and Francisco de Leon. Petronilo Castañeda filed a Motion to Dismiss alleging that in Civil Case No. 9366, a judgment was rendered on December 22, 1950 whereby the transfer of the land made by Perfecta Roque and Aurelio Bautista to spouses Rosario and Francisco de Leon was rescinded and, therefore, the spouses could not have transferred any right to Catalina de Leon. The court dismissed the case but, on appeal (*De Leon vs. De Leon*, 98 Phil. 589), this Court set aside the order of dismissal and remanded the case for further proceedings, ruling that the decision of the Court of First Instance Manila rescinding the sale by Roque and Bautista to the De Leons (Francisco and Rosario) was not binding on Catalina de Leon, who purchased one-half of the land from Francisco and Rosario de Leon prior to the institution of the rescission suit.

After the case was remanded in 1956, however, the plaintiff Catalina de Leon remained quiescent for more than four years, until on September 30, 1960, the Court of First Instance of Rizal dismissed her complaint for failure to prosecute. The order of dismissal became final.

In 1958, Petronilo Castañeda obtained a certificate of title covering the land in question, upon full payment to the PHHC of all the amounts due thereon. On the strength of this certificate, Petronilo Castañeda instituted another action on August 7, 1958 for "Reivindicacion de posesion y cobro de daños perjuicios. In their answer, petitioners claimed ownership of the land in question and the improvements thereon erected.

On September 12, 1960, the trial court rendered judgment for Petronilo Castañeda:

"EN SU VIRTUD, el Juzgado dicta sentencia declarando que el demandante Petronilo Castañeda es el legitimo dueño del terreno descrito en el parrafo de la demanda enmendada y ordena a los demandados Catalina M. de Leon y Eleuterio Limcaco para que desalojen dicho terreno y entreguen la posesion del mismo el demandante.

"Asimismo, el Juzgado condena a dichos de- demandados para que paguen mancomunada y solidariamente las siguientes cantidades; (1) P2,000.00 que al demandante ha pagado al contratista Chua Guay Huat, como daños liquidados; (2) P1,000.00 como honorarios de sus abogados en la Causa Civil No. Q-64; (3) P2,000.00 como honorarios de sus abogados en la presente causa; (4), P3,600.00 como alquileras que ha estado pagando el demandante por espacio de 20 meses desde el mes de Enero de 1950 a razon de P180.00 al mes; y (5) P50.00 al mes como alquiler justo y razonable del terreno en cuestion desde el Marzo de 1952 en que el Sheriff de esta Ciudad no pudo poner en posesion del mismo al demandante por la oposicion de las demandados, hasta que se le reponga al demandante en posesion de dicho terreno, mas las costas del juicio."

On October 31, 1960, petitioners perfected their appeal to the Court of Appeals, by filing within the reglementary period, their notice of appeal, surety appeal bond in the sum of P60.00 and the record on appeal. Even so, respondent Castañeda asked, on October 21, 1960, for the immediate execution of the decision pending appeal on the grounds that (1) the petitioners have been ordered to pay him around P13,000.00; (2) he has title to the land; and (3) petitioners have been in possession of the land since 1949. The trial court on February 22, 1962, ordered

execution of its decision pending appeal, unless defendant Catalina de Leon should file a supersedeas bond for P15,000.00. The following reasons were given by the Court in ordering execution pending appeal:

"(The Court) has taken judicial notice of the fact that the property involved in this case has been the subject of several litigations, but for some reason or another, the defendants, who are in possession of the property were able to resort to some technical grounds to frustrate the rights of the plaintiff to possess the property in question."

Failing to secure a reconsideration of this order, petitioners filed a petition for certiorari and injunction in the Court of Appeals, but the appellate court sustained the trial court's order, adding to the reasons given in the trial Court's order that --

"The record also shows that under the judgment rendered against the petitioners, they were ordered to pay several sums of money aggregating P14,000.00 and this amount is bound to increase so long as defendants continue in possession of the property, and in the event the judgment appealed from is affirmed, the petitioners may not be possessed of sufficient properties for the satisfaction of the judgment." (Decision, Court of Appeals, p. 8).

A subsequent motion for reconsideration was denied and so this case was appealed to this court by petitioners.

The issue now before us is whether or not the Court of Appeals acted within its jurisdiction and in accordance with sound discretion when it sustained the trial court's order for immediate execution of its (trial court's) decision pending appeal.

We see no reason to disturb either of the resolutions brought to us for review. As can be seen from the long history of this litigation, the basis for petitioner Catalina de Leon's claims disappeared since 1950, when the title of her vendor was annihilated by the final decision of the Court of First Instance of Manila in its case No. 9366, - rescinding or resolving the original sale of Perfecta Roque to Rosario and Francisco de Leon, Catalina's predecessors-in-interest. While she was not directly bound by that judgment, the fact remains that her right to the disputed property can not rise higher than that of her "causantes", who were ousted by the decision aforementioned. Since then, sixteen years have elapsed and yet the rightful owner, Castañeda is still unable to enjoy what is legally his. To this circumstance should be added the fact that this petitioner's own suit to confirm her pretended title, Civil Case No. Q-198 of the Court of First Instance of Rizal, has been unconditionally dismissed (after the remand ordered by us, in 98 Phil. 589) for lack of prosecution, a dismissal that under the Rules of Court "shall have the effect of an adjudication on the merits, unless otherwise provided."^[1] Thus, her lack of title becomes more evident, and that she has bent all efforts to drag out these litigations as far as possible.

Petitioner seeks refuge in her alleged character as builder in good faith, entitled to retain possession until indemnified (Civil Code of the Philippines, Art. 448). But, this pretense of hers was belied by the decision of the Court of First Instance of Rizal in case Q-3239 wherein she was found to be in bad faith, and that decision is presumably correct until reversed. Catalina de Leon, of course, argues that the execution would render her appeal nugatory, but the order of the Court authorizes her to avoid such untoward effect by filing a supersedeas bond in the sum of P15,000.00. Upon the other hand, as pointed out by the Court of Appeals, should the appealed judgment in favor of respondent Castañeda be affirmed, there is likelihood of his being unable to collect in full what would be due him.

Under the circumstances, the order of execution by the Court a quo, now under attack, appears fully justified.

Catalina de Leon insists that her good faith has already been recognized by this Court in *Castañeda vs. De Leon*, 102 Phil. 689. This is not correct. In fact, we said in that case (p. 694) --

"If justice is to be done to Rosario B. de Leon's vendee, Catalina de Leon, x x x complicated questions of fact and good faith will have to be investigated and decided, and this cannot be done in the proceedings for execution." (Emphasis supplied)

for which reason, this Court

"ordered that the correlative rights of Petronilo Castañeda and Catalina de Leon to the land and the improvements thereon be decided in a separate action."

All of the foregoing would be useless had we already decided in said case that Catalina was actually a builder in good faith.

WHEREFORE, the petition for review on certiorari is denied and the orders complained of are affirmed. Costs against petitioners.

Concepcion, C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Revised Rule 17, sec. 3; old Rule 30, sec. 3.

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