

**ARTEMIO SANTOS, PACENCIA REYES, CATALINA PASCUAL,
TEODORA SANTOS, PETITIONERS, VS. THE COURT OF APPEALS, HON.
MARTIN S. VILLARAMA, JR. AND LOLITA DEOPANTE VDA. DE
SAAVEDRA, RESP...**

G.R. No. 100963. April 06, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This is a petition for review on certiorari of the decision* of the Court of Appeals dated July 11, 1991 in CA-G.R. SP No. 22669 entitled “Artemio Santos, Pacencia Reyes, Catalina Pascual, Teodora Santos, petitioners vs. Hon. Martin S. Villarama, Jr., Presiding Judge of the Regional Trial Court, Branch 156, Pasig, Metro Manila and Lolita Deopante Vda. De Saavedra, respondents” which modified the decision** of the Regional Trial Court by eliminating the reimbursement to petitioners of the improvements introduced by their predecessor-in-interest, Fortunato H. Santos.

The undisputed facts are as follows:

Sometime in July 1951, Margarita Tuason entered into a contract of lease over a parcel of land in favor of Fortunato H. Santos, predecessor-in-interest of herein petitioners, for a period of three (3) years or to expire in July 1954 with a monthly rental of P35.00. As a consequence of the lease contract, Fortunato H. Santos took possession of the leased premises, erected a residential house and a barber shop thereon.

In 1952 Margarita Tuason died. Fortunato H. Santos continued occupying the premises even after the lapse of the lease contract with the acquiescence of Asuncion Tuason, successor-in-interest of the late Margarita Tuason, this time at a monthly rental of P65.00.

In the meantime, Asuncion Tuason conveyed the property to private respondent Lolita Deopante Vda. de Saavedra to which Transfer Certificate of Title No. 30584 was issued in the latter's name.

Sometime in 1961, private respondent filed an ejectment case against Fortunato H. Santos for non-payment of rentals but the same was dismissed.

When Fortunato H. Santos died, petitioners continued their possession of the premises but failed to pay the monthly rentals covering the period from March 1961 to November 1989, prompting the private respondent to file an ejectment case against petitioners with the Metropolitan Trial Court of Pasig.

On March 30, 1990, the inferior court rendered its decision on the basis of the evidence adduced by private respondent ex-parte, petitioners having been declared in default. The dispositive portion of which reads as follows:

"Having therefore established, by preponderance of evidence, her cause against herein defendants, plaintiff is entitled to a favorable judgment. Accordingly, defendants and all persons claiming under them are hereby

ordered to vacate the premises in question, to pay plaintiff, jointly and severally, the amount of P22,425.00 representing unpaid rent from March, 1961 up to November, 1989, and thereafter until the time they shall have completely vacated the premises, to pay the sum of P1,500.00 a month as reasonable compensation for their continued occupancy of the premises, and to pay the costs of suit. No award of attorney's fees, the same not having been proved.

Defendants' counterclaim is hereby dismissed for want of basis.

SO ORDERED."[1]

Feeling aggrieved, petitioners appealed to the Regional Trial Court. On July 31, 1990, a decision was rendered affirming the decision of the inferior court, the dispositive portion of which reads:

"WHEREFORE, the Court hereby renders judgment affirming in toto the decision of the lower court but in addition declares reimbursement by plaintiff of improvements introduced to the lease premises by the late Fortunato H. Santos.

SO ORDERED."[2]

Within the reglementary period, petitioners appealed to the Court of Appeals. On the other hand, private respondent did not appeal.

On July 11, 1991, the Court of Appeals rendered its decision. The dispositive portion of which reads:

"WHEREFORE, the judgment under review is hereby modified with respect to the reimbursement by the private respondent of the improvements introduced to the leased premises by the late Fortunato H. Santos which is ordered eliminated.

SO ORDERED."[3]

Hence this petition.

Petitioners contend that the Court of Appeals has decided questions of substance contrary to law and the applicable jurisprudence and decisions of this Court:

1. In passing upon the question of reimbursement of the value of the improvements which was not raised in the petition for review;
2. In giving affirmative relief to private respondent despite the fact that she did not appeal the decision of the Regional Trial Court; and
3. In affirming the decision of the Regional Trial Court that petitioners are obligated to pay the rentals to private respondent.

We find the petition devoid of merit.

It is true that the rule is well-settled that a party cannot impugn the correctness of a judgment not appealed from by him, and while he may make counter-assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof for in such a case he must appeal. A party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court, if any, whose decision is brought up on appeal.[4] However, the Rules of Court and jurisprudence authorize a tribunal to consider errors, although unassigned, if they involve (1) errors affecting the lower court's jurisdiction over the subject matter, (2) plain errors not specified, and (3) clerical errors.[5]

In the case at bar, although the lessee is a lawful possessor because his entry into the premises is by virtue of the

lease contract, he is not a possessor in good faith as his possession is at the sufferance of the owner of the property whose title he recognizes by the lease contract. Hence, he cannot claim the right of reimbursement or retention to which a possessor in good faith is entitled. His rights are governed by Article 1678 of the Civil Code which allows reimbursement of lessees up to one-half of the value of their useful improvements.[6]

Under Article 1678, it is the lessor who has the option to pay for one-half of the value of the improvements which the lessee has made in good faith, which are suitable for the use for which the lease is intended and which have not altered the form and substance of the land.[7] The lessee cannot compel the lessor to appropriate and reimburse. His right is to remove the improvement even though it may suffer damage thereby.[8]

Hence, the award of reimbursement for improvements by the trial court in favor of petitioners amounts to a plain error which may be rectified on appeal although not specified in the appellee's brief.

Lastly, We find no reason to disturb the finding of the trial court, and affirmed by the Court of Appeals, that petitioners have been enjoying the possession of the property leased together with their father, Fortunato H. Santos and continued staying therein not only when their father was still alive but even after his death. That being the case, the petitioners' contention that the amount of P22,425.00 representing the alleged unpaid rentals was incurred not by them but by the late Fortunato H. Santos, the recognized lessee of the leased premises, deserves scant consideration. For the fact is that the petitioners still occupy the leased property. They derive benefit from such occupation. NEMO CUM ALTERIUS DETRIMENTO LOCUPLETARI POTEST. No one shall enrich himself at the expense of another.[9]

WHEREFORE, the decision of the respondent Court of Appeals dated July 11, 1991 is hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Nocon, JJ., concur.

* Penned by Justice Bonifacio A. Cacdac, Jr. and concurred in by Justices Nathanael P. De Pano, Jr. and Fortunato A. Vailoces.

** Penned by Judge Martin Villarama, Jr.

[1] Rollo, p. 15.

[2] Rollo, p. 16.

[3] Rollo, p. 18.

[4] De Lima vs. Laguna Tayabas Co., 160 SCRA 70 (1988).

[5] Section 7., Rule 51 of the Revised Rules of Court.

[6] Racaza vs. Susana Realty, Inc., 125 PHIL 307 (1966).

[7] De Laureano vs. Adil, 72 SCRA 148 (1976).

[8] PNB vs. Pineda, 29 SCRA 262 (1969).

[9] Francisco vs. Intermediate Appellate Court, 181 SCRA 731 (1990).

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