

ALEJANDRO QUEMUEL AND RUPERTA SOLIS, PLAINTIFFS AND APPELLANTS, VS. ANGEL S. OLAES AND JULIANA PRUDENTE, DEFENDANTS AND APPELLEES.*G.R. No. 11084. April 29, 1961*

Ponente: PAREDES, J.

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Angel S. Olaes and his, wife, Juliana Prudente, defendants-appellees herein, were plaintiffs in another case (No. 5442 of the CFI of Cavite), wherein Alejandro Quemuel and his wife Euperta Solis, plaintiffs-appellants herein, were defendants. In that case No. 5442, the Olaes spouses, registered owners of lot 1095 of the San Francisco de Malabon Estate, located in Rosario, Cavite, sought the recovery of the possession of the said lot and rentals therefor, from the Quemuel spouses, who in their verified answer admitted plaintiffs ownership, but contended that their occupation was gratuitous. On March 16, 1954, the trial court ordered Quemuel and his wife to return the possession of lot 1095 to the Olaes spouses and to pay the latter P20.00 a month from January, 1954, until they shall have vacated the premises. Quemuel and his wife did not appeal from said decision which became final on April 22, 1954. Thereafter, the Olaes spouses sought the execution of the decision and to forestall ejectment, the Quemuel spouses, filed on July 1, 1954, the present complaint, docketed as Civil Case No. 5518, CFI of Cavite.

In the present complaint, the Quemuel spouses seek to reduce the monthly rental of P20.00 fixed in Civil Case No. 5442, and to compel the Olaes spouses to sell to them (Quemuels) the portion of the lot 1095 where their house is erected. Respondents, the Olaes spouses, filed a motion to dismiss dated July 9, 1964, alleging lack of cause of action, *res adjudicata*; prescription, and the cause of action, if any, is barred by plaintiffs' failure to set it up as a counter-claim in civil case No. 5442.

On September 17, 1954, the trial court dismissed the complaint, without pronouncement as to costs.

An appeal was taken by plaintiffs to the Court of Appeals (Case No. CA-G.E. No. 14837-R) which, by the agreement of the parties, certified the case to this Court. The *ex parte* petition filed by the plaintiffs-appellants in this Court on August 9, 1956, asking that a writ of preliminary injunction be issued to the Provincial Sheriff of Cavite and the defendants-appellees, enjoining them from demolishing the house of plaintiffs-appellants until there is a final decision in said case No. 14837, by the Supreme Court, was denied on August 14, 1956 by the latter court.

The lone assignment alleges that the trial court erred in dismissing the complaint without trial on the merits and in not granting the reliefs prayed for by the plaintiffs-appellants. Appellants stated in their brief that if there will be trial on the merits, they would be entitled to a decision in their favor, because they will establish by competent evidence the allegations in their complaint. And on the claim that they were builders in good faith, they based the right to buy the lot on which their house is built, upon the decision of *Belen Uy Tayag vs. Rosario Yuseco, et al.*, 97 Phil., 712; 51 Off. Gaz., 5140.

It should be recalled at the outset, that the trial court ordered the dismissal of the complaint, which must have been granted in all or any of the grounds therein alleged, to wit:

- The Complaint states no cause of action.—

The first cause of action of the present complaint alleges that in Civil Case No. 5442, the trial court rendered the decision of March 16, 1954, ordering the latter to vacate lot No. 1095 belonging to Olaes and his wife and to pay them a monthly rental of P20.00 from January, 1954, until they shall have vacated the premises; that plaintiffs believe that the portion they are occupying belonged to them; that they occupy only about one-half of the lot; that considering the purchase price of the land, its assessed value and the interest the price would have earned, the rental should not be more than 7½% or P5.60 monthly. Plaintiffs prayed that the rental be reduced to P5.60 a month.

Assuming the truth of the above allegations, the same do not constitute a cause of action. A cause of action presupposes a right of the plaintiff and a violation of such right by the defendant. According to the complaint itself, the rental of P20.00 monthly and the order to vacate, were provided in a prior judgment (Civil Case No. 5442) which is final and its validity is not assailed. There being no law that fixes the rental of the same land at 7½% of its alleged market value, the plaintiffs have no right thereto, or a right which could be violated. The defendants are not compelling the plaintiffs to rent the property but wanted them to vacate the premises (Civil Case No. 5442). If the rental determined by the trial court were excessive, the plaintiffs are free to vacate the property. For plaintiffs to insist on possessing the property and fixing the rentals themselves, would have no legal sanction at all.

In the second cause of action of the present complaint, the plaintiffs alleged: That they actually occupy about 384 square meters or one-half of lot 1095; of the said area they thought they own 256 square meters by inheritance from Romualdo Solis, father of plaintiff, Ruperta Solis, who became the owner thereof pursuant to a verba extrajudicial partition made in 1924; Agapita Solis who sold the entire lot 1095 to defendants, is a sister of Romualdo Solis, and there was an error in the inclusion of the 256 square meters in the Torrens Title and the sale; they acquired from Valentin Solis, brother of both Romualdo and Agapita, a part of the portion occupied by plaintiff's house and warehouse; their house has been there for almost 34 years and is worth P4,000; the defendants are rich, have a house and a lot of their own, and will not suffer any material or sentimental damage if they sell to the plaintiffs one-half of lot No. 1095; plaintiffs offered to pay P960 for the portion they are occupying or P1,920.00 for the whole lot.

On the assumption that the allegations of the second 3 cause of action are true, what would be the rights of the parties? The plaintiffs claim that their second cause of action is based on Article 448 in connection with Art. 546, of the new Civil Code. A cursory reading of the provisions, however, will show that they are not applicable to plaintiffs' case. Under Article 448, the right to appropriate the works or improvements or "to oblige the one who built or planted to pay the price of the land" belongs to the owner of the land. The only right given to the builder in good faith is the right to reimbursement for the improvements; the builder, cannot compel the owner of the land to sell such land to the former.

This is assuming that the plaintiffs are builders in good faith. But the plaintiffs are not builders in good faith. From the pleadings and the documentary evidence submitted, it is indisputable that the land in question originally belonged to the government as part of the Friar Lands Estate and the title thereto was in the name of the government until it was purchased by Agapita Solis who applied, thru the Bureau of Lands, to purchase the land by installments. The corresponding Sale Certificate No. 531, effective July 1, 1909 (Exhibit 2) was executed. In defendants' complaint (as plaintiff in civil case no. 6442), they alleged that they are the owners of lot 1095 and

that defendants (plaintiffs herein), "have been occupying southeastern half portion thereof, without any right thereto, except the tolerance of plaintiffs" (defendants herein), which were admitted, expressly and under oath, in the answer of plaintiffs herein. It would, therefore, appear that plaintiffs herein were not unaware of the flaw in their title, if any, and that their true relation with the herein defendants was that of tenant and landlord, and, that their rights are governed by Article 1573 in relation to article 487 of the old Civil Code, which reads as follows:—

"ART. 1573. A lessee shall have with respect to useful and voluntary improvements, the same right which are granted the usufructuaries."

"ART. 487. The usufructuary may make on the property held in usufruct any improvements, useful or recreative, which he may deem proper, provided he does not change its form or substance, but he shall have no right to be indemnified therefor. He may, however, remove such improvements, should it be possible to do so without injury to the property".

From the above provisions, it can clearly be inferred that plaintiff cannot even compel the defendants to pay for the improvements the former made in the property or to sell the latter's land. Plaintiffs' only right, is to remove the improvements, if it is possible to do so without damage to the land.

It should be noted that article 448 of the new Civil Code, (equivalent to Art. 361 of the old Civil Code), relied upon by plaintiffs, is intended to apply only to a case where one builds, or sows, or plants on land in which he believes himself to have a claim of title and not to lands wherein one's only interest is that of tenant, under a rental contract, which is the present case (*Alburo vs. Villanueva*, 7 Phil., 277); The tenant cannot be said to be a builder in good faith as he has no pretension to be owner (*Rivera vs. Thailand*, 48 Phil., 396; see also 3 *Manresa* 4th Ed. pp. 215-216).

The trial court, therefore, did not commit any error in dismissing the two causes of action.

- The first cause of action, if any, is barred by a prior judgment.

As plaintiffs in Civil Case No. 5442, the defendants alleged in their complaint that the reasonable rental value of the premises in question was P20.00 a month (par. 5). In said case No. 5442, the matter of the rental was in issue, and the same was considered and decided by the trial court, which ordered the defendants therein "to pay a reasonable compensation of P20.00 a month beginning with January, 1954, until they shall have left the premises". In the instant case, the parties are the identical parties in Civil Case No. 5442, the same lot 1095 is the subject matter of both cases; the same issue, namely, the amount of the rental is involved. Even assuming that appellants have a cause of action, the doctrine of *res judicata* already operates against them.

- The second cause of action, if any, is barred by the statute of limitations.

As shown by the documentary evidence submitted with the defendants' motion, to dismiss, lot No. 1095 was purchased by Agapita Solis from the Government on July 1, 1909. After full payment of the purchase price, T.C.T. No. 10771 covering said lot was issued to said Agapita Solis on June 8, 1933, (Exhibits 1 and 2). Assuming that plaintiffs or their alleged predecessor-in-interest, had a cause of action for claiming the ownership of portions of said lot, such cause of action accrued at the latest, on June 8, 1933. The plaintiffs or their predecessor had ten (10) years from said date, within which to file the corresponding action. They, however, filed the instant complaint only on July 1, 1954, or more than 21 years, after the accrual of the cause of action.

- The cause of action, if any, is barred by plaintiffs' failure to set it up as a counterclaim in Civil Case No. 5442.

Whether the cause of action is for recovery of ownership or for an alleged right to purchase ins property, or for reimbursement for some improvements, the herein plaintiffs as defendants in Civil Case No. 5442, should have

set it up as a counterclaim in said case, because same was necessarily connected with, or arose out of the transactions involved in said case No. 5442 (Sec. 6, Rule 10, Rules of Court).

It is alleged that plaintiffs-appellants' complaint should. not have been dismissed without trial on the merits, because in the case of *De Jesus, et al. vs. Belarmino, et al.* 95 Phil., 365; 50 Off. Gaz., 3064, it was held that "where the complaint was dismissed not because of any evidence presented by the parties, or as a result of a trial on the merits, but merely on a motion to dismiss filed by the defendants, the sufficiency of the motion should be tested. on the strength of the allegation of facts contained in the complaint and no other", which has been interpreted to apply to cases where the motion to dismiss is based solely on the ground of lack of cause of action. Considering the fact that (1) In the case at bar, documentary evidence and the records of the Civil Case No. 5442 were presented and considered by the trial court; and (2) in the *De Jesus* case, the only ground for dismissal was the lack of cause of action, while in the present case, aside from said ground, plaintiffs alleged other grounds, the said ruling finds no application.

In view hereof, we hereby affirm the order appealed from, with costs against the plaintiffs-appellants.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, and Dizon, JJ., concur.

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