

PEDRO P. PECSON, PETITIONER, VS. COURT OF APPEALS, SPOUSES JUAN NUGUID AND ERLINDA NUGUID, RESPONDENTS.*G.R. No. 115814. May 26, 1995*

Ponente: DAVIDE, JR., J.

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This petition for review on certiorari seeks to set aside the decision[1] of the Court of Appeals in CA-G.R. SP No. 32679 affirming in part the order[2] of the Regional Trial Court (RTC) of Quezon City, Branch 101, in Civil Case No. Q-41470.

The factual and procedural antecedents of this case as gathered from the record are as follows:

Petitioner Pedro P. Pecson was the owner of a commercial lot located in Kamias Street, Quezon City, on which he built a four-door two-storey apartment building. For his failure to pay realty taxes amounting to twelve thousand pesos (P12,000.00), the lot was sold at public auction by the City Treasurer of Quezon City to Mamerto Nepomuceno who in turn sold it on 12 October 1983 to the private respondents, the spouses Juan Nuguid and Erlinda Tan-Nuguid, for one hundred three thousand pesos (P103,000.00).

The petitioner challenged the validity of the auction sale in Civil Case No. Q-41470 before the RTC of Quezon City. In its decision of 8 February 1989, the RTC dismissed the complaint, but as to the private respondents' claim that the sale included the apartment building, it held that the issue concerning it was "not a subject of the . . . litigation." In resolving the private respondents' motion to reconsider this issue, the trial court held that there was no legal basis for the contention that the apartment building was included in the sale.[3]

Both parties then appealed the decision to the Court of Appeals. The case was docketed as CA-G.R. CV No. 2931. In its decision of 30 April 1992,[4] the Court of Appeals affirmed in toto the assailed decision. It also agreed with the trial court that the apartment building was not included in the auction sale of the commercial lot. Thus:

Indeed, examining the record we are fully convinced that it was only the land -- without the apartment building -- which was sold at the auction sale, for plaintiff's failure to pay the taxes due thereon. Thus, in the Certificate of Sale of Delinquent Property To Purchaser (Exh. K, p. 352, Record) the property subject of the auction sale at which Mamerto Nepomuceno was the purchaser is referred to as Lot No. 21-A, Block No. K-34, at Kamias, Barangay Piñahan, with an area of 256.3 sq.m., with no mention whatsoever, of the building thereon. The same description of the subject property appears in the Final Notice To Exercise The Right of Redemption (over subject property) dated September 14, 1981 (Exh. L, p. 353, Record) and in the Final Bill of Sale over the same property dated April 19, 1982 (Exh. P, p. 357, Record). Needless to say, as it was only the land without any building which Nepomuceno had acquired at the auction sale, it was also only that land without any building which he could have legally sold to the Nuguids. Verily, in the Deed of Absolute Sale of Registered Land executed by Mamerto Nepomuceno in favor of the Nuguids on October 25, 1983 (Exh. U, p. 366, Record) it clearly appears that the property subject of the sale for P103,000.00 was only the parcel of land, Lot 21-A, Blk. K-34 containing an area of 256.3 sq. meters, without any mention of any improvement, much less any building thereon. (*Italics supplied*)

The petition to review the said decision was subsequently denied by this Court.[5] Entry of judgment was made on 23 June 1993.[6]

On November 1993, the private respondents filed with the trial court a motion for delivery of possession of the lot and the apartment building, citing Article 546 of the Civil Code.[7] Acting thereon, the trial court issued on 15 November 1993 the challenged order[8] which reads as follows:

Submitted for resolution before this Court is an uncontroverted [sic] for the Delivery of Possession filed by defendants Erlinda Tan, Juan Nuguid, et al. considering that despite personal service of the Order for plaintiff to file within five (5) days his opposition to said motion, he did not file any.

In support of defendant's motion, movant cites the law in point as Article 546 of the Civil Code ...

Movant agrees to comply with the provisions of the law considering that plaintiff is a builder in good faith and he has in fact, opted to pay the cost of the construction spent by plaintiff. From the complaint itself the plaintiff stated that the construction cost of the apartment is much more than the lot, which apartment he constructed at a cost of P53,000.00 in 1965 (par. 8 complaint). This amount of P53,000.00 is what the movant is supposed to pay under the law before a writ of possession placing him in possession of both the lot and apartment would be issued.

However, the complaint alleges in paragraph 9 that three doors of the apartment are being leased. This is further confirmed by the affidavit of the movant presented in support of the motion that said three doors are being leased at a rental of P7,000.00 a month each. The movant further alleges in his said affidavit that the present commercial value of the lot is P10,000.00 per square meter or P2,500,000.00 and the reasonable rental value of said lot is no less than P21,000.00 per month.

The decision having become final as per Entry of Judgment dated June 23, 1993 and from this date on, being the uncontested owner of the property, the rents should be paid to him instead of the plaintiff collecting them. From June 23, 1993, the rents collected by plaintiff amounting to more than P53,000.00 from tenants should be offset from the rents due to the lot which according to movant's affidavit is more than P21,000.00 a month.

WHEREFORE, finding merit in the Motion, the Court hereby grants the following prayer that:

- The movant shall reimburse plaintiff the construction cost of P53,000.00.
- The payment of P53,000.00 as reimbursement for the construction cost, movant Juan Nuguid is hereby entitled to immediate issuance of a writ of possession over the lot and improvements thereon.
- The movant having been declared as the uncontested owner of the lot in question as per Entry of Judgment of the Supreme Court dated June 23, 1993, the plaintiff should pay rent to the movant of no less than P21,000.00 per month from said date as this is the very same amount paid monthly by the tenants occupying the lot.
- The amount of P53,000.00 due from the movant is hereby offset against the amount of rents collected by the plaintiff from June 23, 1993, to September 23, 1993."

SO ORDERED.

The petitioner moved for the reconsideration of the order but it was not acted upon by the trial court. Instead, on 18 November 1993, it issued a writ of possession directing the deputy sheriff "to place said movant Juan Nuguid in possession of subject property located at No. 79 Kamias Road, Quezon City, with all the improvements thereon and to eject therefrom all occupants therein, their agents, assignees, heirs and representatives." [9]

The petitioner then filed with the Court of Appeals a special civil action for certiorari and prohibition assailing the order of 15 November 1993, which was docketed as CA-G.R. SP No. 32679.[10] In its decision of 7 June 1994,

the Court of Appeals affirmed in part the order of the trial court citing Article 448 of the Civil Code. In disposing of the issues, it stated:

As earlier pointed out, private respondent opted to appropriate the improvement introduced by petitioner on the subject lot, giving rise to the right of petitioner to be reimbursed of the cost of constructing said apartment building, in accordance with Article 546 of the ... Civil Code, and of the right to retain the improvements until he is reimbursed of the cost of the improvements, because, basically, the right to retain the improvement while the corresponding indemnity is not paid implies the tenancy or possession in fact of the land on which they are built [2 TOLENTINO, CIVIL CODE OF THE PHILIPPINES (1992) p. 112]. With the facts extant and the settled principle as guides, we agree with petitioner that respondent judge erred in ordering that "the movant having been declared as the uncontested owner of the lot in question as per Entry of Judgment of the Supreme Court dated June 23, 1993, the plaintiff should pay rent to the movant of no less than P21,000 per month from said date as this is the very same amount paid monthly by the tenants occupying the lot."

We, however, agree with the finding of respondent judge that the amount of P53,000.00 earlier admitted as the cost of constructing the apartment building can be offset from the amount of rents collected by petitioner from June 23, 1993 up to September 23, 1993 which was fixed at P7,000.00 per month for each of the three doors. Our underlying reason is that during the period of retention, petitioner as such possessor and receiving the fruits from the property, is obliged to account for such fruits, so that the amount thereof may be deducted from the amount of indemnity to be paid to him by the owner of the land, in line with *Mendoza vs. De Guzman*, 52 Phil. 164....

The Court of Appeals then ruled as follows:

WHEREFORE, while it appears that private respondents have not yet indemnified petitioner with the cost of the improvements, since Annex I shows that the Deputy Sheriff has enforced the Writ of Possession and the premises have been turned over to the possession of private respondents, the quest of petitioner that he be restored in possession of the premises is rendered moot and academic, although it is but fair and just that private respondents pay petitioner the construction cost of P53,000.00; and that petitioner be ordered to account for any and all fruits of the improvements received by him starting on June 23, 1993, with the amount of P53,000.00 to be offset therefrom.

IT IS SO ORDERED.[11]

Aggrieved by the Court of Appeals' decision, the petitioner filed the instant petition.

The parties agree that the petitioner was a builder in good faith of the apartment building on the theory that he constructed it at the time when he was still the owner of the lot, and that the key issue in this case is the application of Articles 448 and 456 of the Civil Code.

The trial court and the Court of Appeals, as well as the parties, concerned themselves with the application of Articles 448 and 546 of the Civil Code. These articles read as follows:

ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (361a)

.....

ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only 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 of paying the increase in value which the thing may have acquired by reason thereof. (453a)

By its clear language, Article 448 refers to a land whose ownership is claimed by two or more parties, one of whom has built some works, or sown or planted something. The building, sowing or planting may have been made in good faith or in bad faith. The rule on good faith laid down in Article 526 of the Civil Code shall be applied in determining whether a builder, sower or planter had acted in good faith.[12]

Article 448 does not apply to a case where the owner of the land is the builder, sower, or planter who then later loses ownership of the land by sale or donation. This Court said so in *Coleongco vs. Regalado*: [13]

Article 361 of the old Civil Code is not applicable in this case, for Regalado constructed the house on his own land before he sold said land to Coleongco. Article 361 applies only in cases where a person constructs a building on the land of another in good or in bad faith, as the case may be. It does not apply to a case where a person constructs a building on his own land, for then there can be no question as to good or bad faith on the part of the builder.

Elsewise stated, where the true owner himself is the builder of works on his own land, the issue of good faith or bad faith is entirely irrelevant.

Thus in strict point of law, Article 448 is not apposite to the case at bar. Nevertheless, we believe that the provision therein on indemnity may be applied by analogy considering that the primary intent of Article 448 is to avoid a state of forced co-ownership and that the parties, including the two courts below, in the main agree that Articles 448 and 546 of the Civil Code are applicable and indemnity for the improvements may be paid although they differ as to the basis of the indemnity.

Article 546 does not specifically state how the value of the useful improvements should be determined. The respondent court and the private respondents espouse the belief that the cost of construction of the apartment building in 1965, and not its current market value, is sufficient reimbursement for necessary and useful improvements made by the petitioner. This position is, however, not in consonance with previous rulings of this Court in similar cases. In *Javier vs. Concepcion, Jr.*, [14] this Court pegged the value of the useful improvements consisting of various fruits, bamboos, a house and camarin made of strong material based on the market value of the said improvements. In *Sarmiento vs. Agana*, [15] despite the finding that the useful improvement, a residential house, was built in 1967 at a cost of between eight thousand pesos (P8,000.00) to ten thousand pesos (P10,000.00), the landowner was ordered to reimburse the builder in the amount of forty thousand pesos (P40,000.00), the value of the house at the time of the trial. In the same way, the landowner was required to pay the "present value" of the house, a useful improvement, in the case of *De Guzman vs. De la Fuente*, [16] cited by the petitioner.

The objective of Article 546 of the Civil Code is to administer justice between the parties involved. In this regard, this Court had long ago stated in *Rivera vs. Roman Catholic Archbishop of Manila* [17] that the said provision was formulated in trying to adjust the rights of the owner and possessor in good faith of a piece of land, to administer complete justice to both of them in such a way as neither one nor the other may enrich himself of that which does not belong to him. Guided by this precept, it is therefore the current market value of the improvements which should be made the basis of reimbursement. A contrary ruling would unjustly enrich the private respondents who

would otherwise be allowed to acquire a highly valued income-yielding four-unit apartment building for a measly amount. Consequently, the parties should therefore be allowed to adduce evidence on the present market value of the apartment building upon which the trial court should base its finding as to the amount of reimbursement to be paid by the landowner.

The trial court also erred in ordering the petitioner to pay monthly rentals equal to the aggregate rentals paid by the lessees of the apartment building. Since the private respondents have opted to appropriate the apartment building, the petitioner is thus entitled to the possession and enjoyment of the apartment building, until he is paid the proper indemnity, as well as of the portion of the lot where the building has been constructed. This is so because the right to retain the improvements while the corresponding indemnity is not paid implies the tenancy or possession in fact of the land on which it is built, planted or sown.[18] The petitioner not having been so paid, he was entitled to retain ownership of the building and, necessarily, the income therefrom.

It follows, too, that the Court of Appeals erred not only in upholding the trial court's determination of the indemnity, but also in ordering the petitioner to account for the rentals of the apartment building from 23 June 1993 to 23 September 1993.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. SP No. 32679 and the Order of 15 November 1993 of the Regional Trial Court, Branch 101, Quezon City in Civil Case No. Q-41470 are hereby SET ASIDE.

The case is hereby remanded to the trial court for it to determine the current market value of the apartment building on the lot. For this purpose, the parties shall be allowed to adduce evidence on the current market value of the apartment building. The value so determined shall be forthwith paid by the private respondents to the petitioner otherwise the petitioner shall be restored to the possession of the apartment building until payment of the required indemnity.

No costs.

SO ORDERED.

Padilla, (Chairman), Bellosillo, and Kapunan, JJ., concur.

Quiason, J., on official leave.

[1] Annex "A" of Petition; Rollo, 12-21. Per Associate Justice Artemon D. Luna, with the concurrence of Associate Justices Manuel C. Herrera and Ruben T. Reyes.

[2] Id., 40-42. Per Judge Pedro T. Santiago.

[3] Rollo, 34.

[4] Annex "A" of the Petition in CA-G.R. SP No. 32679; Id., 31-39. Per Associate Justice Lorna S. Lombos-De la Fuente, with the concurrence of Associate Justices Eduardo R. Bengzon and Quirino D. Abad Santos, Jr.

[5] Memorandum For Petitioners, 2; Rollo, 70.

[6] Rollo, 70.

[7] It provides:

ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only 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 of paying the increase in value which the thing may have acquired by reason thereof.

[8] Annex "B" of Petition; Rollo, 40-42.

[9] Rollo, 17-18.

[10] Annex "B" of Petition; Id., 22-30.

[11] Rollo, 19-21.

[12] ARTURO M. TOLENTINO, Commentaries and Jurisprudence on the Civil Code of the Philippines, vol. II, 1983 ed., 103.

[13] 92 Phil. 387, 395 [1952]. See EDGARDO L. PARAS, Civil Code of the Philippines Annotated, vol. Two, Eleventh ed. [1984], 192.

[14] 94 SCRA 212 [1979].

[15] 129 SCRA 122 [1984].

[16] 55 Phil. 501 [1930].

[17] 40 Phil. 717 [1920].

[18] TOLENTINO, op. cit., 104.

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