

LEONOR GRANA AND JULIETA TORRALBA, PETITIONERS, VS. THE COURT OF APPEALS, AURORA BONGATO AND JARDENIO SANCHEZ, RESPONDENTS.*G.R. No. 12486. August 31, 1960*

Ponente: GUTIERREZ DAVID, J.

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This is a petition to review on certiorari a decision of the Court of Appeals.

Leonor Grana and Julieta Torralba, defendants below and herein petitioners, were on April 13, 1951 sued by Aurora Bongato and Jardenio Sanchez, respondents herein, before the Court of First Instance of Agusan, for the recovery of 87 square meters of residential land. After trial, the court rendered judgment declaring the plaintiffs, herein respondents, owners of the land in controversy and ordering petitioners to vacate and deliver it to said respondents and to pay a monthly rental of P10.00 from the filing of the complaint until they actually vacate the same, plus attorney's fees and costs. The decision, on appeal, having been affirmed by the Court of Appeals with the only modification of disallowing the award for attorney's fees, petitioners brought the case to this Court through the present petition for review.

The record discloses that sometime in 1909 a cadastral survey of Butuan, Agusan, was made by the Bureau of Lands. In that survey, the parcel of land here in question was included as part of the lot belonging to Gregorio Bongato and Clara Botcon for which Original Certificate of Title No. RO-72 (138) was issued in their favor on February 12, 1923. On November 25, 1933, this lot was purchased by the spouses Marcos Bongato and Eusebia More, and upon their death, the land was inherited by the respondents Aurora Bongato and Jardenio Sanchez, the former being the daughter of Marcos Bongato by his first marriage while the latter is the son of Eusebia More also by her first marriage.

Petitioners claim that the lands in Butuan were subsequently resurveyed due to conflicts and overlapping of boundaries. In that resurvey (TS-65 Butuan Cadastre), Gregorio Bongato's lot, according to petitioners, was identified as Lot No. 311 and that of Isidaria Trillo, their predecessor in interest, as Lot No. 310. Citing the fact that Original Certificate of Title No. RO-72 (138) covers 295 square meters of land, while the sketch plan of the second cadastral survey of Butuan shows that Lot No. 311 has only 230 square meters, petitioners maintain that it is the latter area that properly belongs to respondents and that the land in question is part of the adjoining land, Lot No. 310, which belonged to their predecessor in interest.

Petitioners' stand is untenable. No proof was presented to show that the first survey was erroneous or that it included part of the contiguous land of petitioners' predecessor in interest as part of the lot now covered by Original Certificate of Title No. RG-72 (138). Note that the difference in area between the land covered by said title and Lot No. 311 of the resurvey plan is 65 square meters while the area of the land in dispute is 87 square meters. And what is more, the alleged sketch plan of the resurvey was not presented in evidence.

Upon the other hand, it is not disputed that the land in question is part of the lot covered by the Torrens title issued

way back in 1923 in the name of respondents' predecessors in interest. Said title has not been contested up to the present, and, therefore, has become incontrovertible evidence of the ownership of the land covered by it. Well settled is the rule that a Torrens certificate of title becomes conclusive and indefeasible after the lapse of the period within which it may be impugned (Reyes, et al. vs. Borbon, et al., 50 Phil., 791; Yumul vs. Rivera, et al., 64 Phil., 13).

Petitioners' contention that the Court of Appeals erred in not granting their motion for new trial on the ground of newly discovered evidence, likewise, cannot be sustained. The new evidence sought to be introduced was the sketch plan of the second survey, which, with the employment of reasonable diligence would have easily been discovered and produced at the trial. Anyway, even if presented at the trial, it would not have altered the result of the case. If a subsequent certificate of title cannot be permitted to prevail over a previous Torrens title (Reyes, et al. vs. Borbon, et al., supra) with more reason should a resurvey plan not be allowed to alter or modify such title so as to make the area of the land therein described agree with that given in the plan. (See *Government of the Philippines vs. Arias*, 36 Phil., 195).

Although without any legal and valid claim over the land in question, petitioners, however, were found by the Court of Appeals to have constructed a portion of their house thereon in good faith. Under Article 361 of the old Civil Code (Article 448 of the new), the owner of the land on which anything has been built in good faith shall have the right to appropriate as his own the building, after payment to the builder of necessary and useful expenses, and in the proper case, expenses for pure luxury or mere pleasure, or to oblige the builder to pay the price of the land. Respondents, as owners of the land, have therefore the choice of either appropriating the portion of petitioners' house which is on their land upon payment of the proper indemnity to petitioners, or selling to petitioners that part of their land on which stands the improvement. It may here be pointed out that it would be impractical for respondents to choose to exercise the first alternative, i.e., buy that portion of the house standing on their land, for in that event the whole building might be rendered useless. The more workable solution, it would seem, is for respondents to sell to petitioners that part of their land on which was constructed a portion of the latter's house. If petitioners are unwilling or unable to buy, then they must vacate the land and must pay rentals until they do so. Of course, respondents cannot oblige petitioners to buy the land if its value is considerably more than that of the aforementioned portion of the house. If such be the case, then petitioners must pay reasonable rent. The parties must come to an agreement as to the conditions of the lease, and should they fail to do so, then the court shall fix the same. (Article 361, old Civil Code; Article 448 of the new).

In this connection, the appellate court erred in ordering petitioners to pay monthly rentals of P10.00 from the date of filing of the complaint until they actually vacate said land. A builder in good faith may not be required to pay rentals. He has a right to retain the land on which he has built in good faith until he is reimbursed the expenses incurred by him. (*Miranda vs. Fadullon, et al.*, 97 Phil., 801; 51 Off. Gaz., 6226, see also *Martinez vs. Baganus*, 38 Phil., 500; *De Guzman vs. De la Fuente*, 55 Phil., 501; *Kasilag vs. Rodriguez*, Off. Gaz., Supp., August 16, 1941, p. 247).

Petitioners further contend that the complaint should have been dismissed for nonjoinder of an indispensable party, it being alleged that their mother Maria Cupin, who owns the land in question as part of her Lot No. 310, has not been made a party defendant in the case. This contention, which was not raised in the trial court, deserves scant consideration. Petitioners clearly asserted ownership over the land in dispute as well as over Lot No. 310 in their answer to the complaint. They are consequently estopped from alleging otherwise.

As to petitioners' assertion that they should have been awarded damages alleged to have been suffered by them in their counterclaim because of respondents' bad faith in filing their complaint, suffice it to say that petitioners failed to prove that they suffered any damage at all by reason of the filing of the complaint. Indeed, in the light of

the view we have taken of the case, they could not have substantiated their claim for damages.

In view of the foregoing, the appealed decision is modified in the sense that respondents are hereby directed to exercise within 30 days from this decision their option to either buy the portion of the petitioners' house on their land or sell to said petitioners the portion of their land on which it stands. If respondents choose to sell the land and petitioners are unwilling or unable to buy, then they must vacate the same and must pay reasonable rent of P10.00 monthly from the time respondents made their choice up to the time they actually vacate the premises. But if the value of the land is considerably more than the value of the improvement, then petitioners may elect to rent the land, in which case the parties shall agree upon the terms of a lease. Should they disagree, the court of origin is hereby instructed to intervene and fix the terms thereof. Petitioners shall pay reasonable rent of P10.00 monthly from the moment respondents exercised their option up to the time the parties agree on the terms of the lease or until the court fixes such terms.

So ordered without pronouncement as to costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Dizon, JJ., concur.
Padilla, J., took no part.

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