

FILIPINAS COLLEGES, INC., PLAINTIFF AND APPELLEE, VS. MARIA GARCIA TIMBANG, ET AL., DEFENDANTS.*G.R. No. 12812. September 29, 1959*

Ponente: BARRERA, J.

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This is an appeal taken from an order of the Court of First Instance of Manila dated May 10, 1957 (a) declaring the Sheriff's certificate of sale covering a school building sold at public auction null and void unless within 15 days from notice of said order the successful bidders, defendants-appellants spouses Maria Garcia Timbang and Marcelino Timbang, shall pay to appellee Maria Gervacio Bias directly or through the Sheriff of Manila the sum of P5,750.00 that the spouses Timbang had bid for the building at the Sheriff's sale; (6) declaring the other appellee Filipinas Colleges, Inc. owner of 24,500/3,285,934 undivided interest in Lot No. 2-a covered by certificate of title No. 45970, on which the building sold in the auction sale is situated; and (c) ordering the sale in public auction of the said undivided interest of the Filipinas Colleges, Inc. in lot No. 2-a aforementioned to satisfy the unpaid portion of the judgment in favor of appellee Bias and against Filipinas Colleges, Inc. in the amount of P8,200.00 minus the sum of P5,750.00 mentioned in (a) above.

The order appealed from is the result of three motions filed, in the court a quo in the course of the execution of a final judgment of the Court of Appeals rendered in 2 cases appealed to it in which the spouses Timbang, the Filipinas Colleges, Inc. and Maria Gervacio Bias were the parties. In that judgment of the Court of Appeals, the respective rights of the litigants have been adjudicated as follows:

(1) Filipinas Colleges, Inc. was declared to have acquired the rights of the spouses Timbang in and to lot No. 2-a mentioned above and in consideration thereof, Filipinas Colleges, Inc. was ordered to pay the spouses Timbang the amount of P15,807.90 plus such other amounts which said spouses might have paid or had to pay after February, 1953, to Hoskins & Co., Inc., agent of the Urban Estates, Inc., original vendor of the lot. Filipinas Colleges, Inc. was required to deposit the total amount with the court within 90 days after the decision shall have become final.

(2) Maria Gervacio Bias was declared to be a builder in good faith of the school building constructed on the lot in question and entitled to be paid the amount of P19,000.00 for the same. Filipinas Colleges, Inc., purchaser of the said building was ordered to deliver to Bias stock certificate (Exh. C) for 108 shares of Filipinas Colleges, Inc. with a par value of P10,800.00 and to pay Blas the sum of P8,200.00 representing the unpaid balance of the purchase price of the house.

(3) In case Filipinas Colleges, Inc. failed to deposit the value of the land, which after liquidation was fixed at P32,859.34, within the 90-day period set by the court, Filipinas Colleges would lose all its rights to the land and the spouses Timbang would then become the owners thereof. In that eventuality, the Timbangs would make known to the court their option under Art. 448 of the Civil Code whether they would appropriate the building in question, in which even they would have to pay Filipinas Colleges, Inc. the sum of P19,000.00, or would compel

the latter to acquire the land and pay the price thereof.

Filipinas Colleges, Inc. having failed to pay or deposit the sum of P32,859.34 within the time prescribed, the spouses Timbang, in compliance with the judgment of the Court of Appeals, on September 28, 1956, made known to the court their decision that they had chosen not to appropriate the building but to compel Filipinas Colleges, Inc., to acquire the land and pay them the value thereof. Consequently, on December 29, 1956, the Timbang spouses asked for an order of execution against Filipinas Colleges, Inc. for the payment of the sum of P32,859.34. The motion having been granted, a writ of execution was issued on January 8, 1957.

On January 16, 1957, appellee Bias in turn filed a motion for execution of her judgment of P8,200.00 representing the unpaid portion of the price of the house sold to Filipinas Colleges, Inc. Over the objection of the Timbangs, the court granted the motion and the corresponding writ of execution was issued on January 30, 1957. Even before the actual issuance of this writ, or on January 19, 1957, date of the granting of the motion for execution, Bias through counsel, sent a letter to the Sheriff of Manila advising him of her preferential claim or lien on the house to satisfy the unpaid balance of the purchase price thereof under Article 2242 of the Civil Code, and to withhold from the proceed of the auction sale the sum of P8,200.00. Levy having been made on the house in virtue of the writs of execution, the Sheriff of Manila on March 5, 1957, sold the building in public auction in favor of the spouses Timbang, as the highest bidders, in the amount of P5,750.00. Personal properties of Filipinas Colleges, Inc. were also auctioned for P245.00 in favor of the spouses Timbang.

As a result of these actuations, three motions were subsequently filed before the lower court:

- (1) By appellee Bias, praying that the Sheriff of Manila and/or the Timbang spouses be ordered to pay and deliver to her the sum of P5,750.00 representing the proceeds of the auction sale of the building of Filipinas Colleges, Inc. over which she has a lien of P8,200.00 for the unpaid balance of the purchase price thereof;
- (2) Also by the appellee Blas, praying that there being still two unsatisfied executions, one for the sum of P32,859.34 in favor of the Timbang spouses, and another, for the sum of P8,200.00 in her favor, the land involved, Lot No. 2-a, be sold at public auction; and
- (3) By Filipinas Colleges, Inc., praying that because its properties, the house and some personal properties, have been auctioned for P5,750.00 and P245.00 respectively in favor of the Timbang spouses who applied the proceeds to the partial payment of the sum of P32,859.34, value of the land, Lot No. 2-a, it (Filipinas Colleges, Inc.) be declared part owner of said lot to the extent of the total amount realized from the execution sales of its properties.

The Timbang spouses presented their opposition to each and all of these motions. After due hearing the lower court rendered its resolution in the manner indicated at the beginning of this decision, from which the Timbangs alone have appealed.

In assailing the order of the court a quo directing the appellants to pay appelle Bias the amount of their bid (P5,750.00) made at the public auction, appellants' counsel has presented a novel, albeit ingenious, argument. It is contended that because the builder in good faith has failed to pay the price of the land after the owners thereof exercised their option under Article 448 of the Civil Code, the builder lost his right of retention provided in Article 546 and by operation of Article 445, the appellants as owners of the land automatically became the owners of the building. And since they are the owners ipso facto, the execution sale of the house in their favor was superfluous. Consequently, they are not bound to make good their bid of P5,750.00 as that would be to compel them to pay for their own property. By the same token, Bias' claim for preference on account of the unpaid balance of the purchase price of the house does not apply because preference applies only with respect to the property of the debtor, and the Timbangs, owners of the house, are not the debtors of Blas.

This Court cannot accept this oversimplification of appellants' position. Articles 448 and 546 of the Civil Code, denning the rights of the parties in case a person in good faith builds, sows or plants on the land of another, respectively provides:

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.

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.

Under the terms of these articles, it is true that the owner of the land has the right to choose between appropriating the building by reimbursing the builder of the value thereof or compelling the builder in good faith to pay for his land. Even this second right cannot be exercised if the value of the land is considerably more than that of the building. In addition to the right of the builder to be paid the value of his improvement, Article 546 gives him the corollary right of retention of the property until he is indemnified by the owner of the land. There is nothing in the language of these two articles, 448 and 546, which would justify the conclusion of appellants that, upon the failure of the builder to pay the value of the land, when such is demanded by the land-owner, the latter becomes automatically the owner of the improvement under Article 445. The case of *Bernardo vs. Bataclan*, 66 Phil., 590 cited by appellants is no authority for this conclusion. Although it is true it was declared therein that in the event of the failure of the builder to pay the land, after the owner thereof has chosen this alternative, the builder's right of retention provided in Article 546 is lost, nevertheless there was nothing said that as a consequence thereof, the builder loses entirely all rights over his own building. The question is: what is the recourse or remedy left to the parties in such eventuality where the builder fails to pay the value of the land? While the Code is silent on this point, guidance may be derived from the decisions of this Court in the cases of *Miranda vs. Fadullon, et al.*, 97 Phil., 801; 51 Off. Gaz., [12] 6226; *Ignacio vs. Hilario*, 76 Phil., 605 and the cited case of *Bernardo vs. Bataclan, supra*.

In the first case, this Court has said:

"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. Possibly he might be made to pay rental only when the owner of the land chooses not to appropriate the improvement and requires the builder in good faith to pay for the land but that the builder is unwilling or unable to pay the land, and then they decide to leave things as they are and assume the relation of lessor and lessee, and should they disagree as to the amount of rental then they can go to the court to fix that amount". (Italics supplied).

Should the parties not agree to leave things as they are and to assume the relation of lessor and lessee, another remedy is suggested in the case of *Ignacio vs. Hilario, supra*, wherein the court has ruled that the owner of the land is entitled to have the improvement removed when after having chosen to sell his land to the other party, i.e., the builder in good faith fails to pay for the same.

A further remedy is indicated in the case of *Bernardo vs. Bataclan, supra*, where this. Court approved the sale of

the land and the improvement in a public auction applying the proceeds thereof first to the payment of the value of the land and the excess, if any, to be delivered to the owner of the house in payment thereof.

The appellants herein, owners of the land, instead of electing any of the alternatives above indicated chose to seek recovery of the value of their land by asking for a writ of execution; levying on the house of the builder; and selling the same in public auction. And because they are the highest bidder in their own auction sale, they now claim they acquired title to the building without necessity of paying in cash, on account of their bid. In other words, they in effect pretend to retain their land and acquire the house without paying a cent therefor.

This contention is without merit. This Court has already held in *Matias vs. The Provincial Sheriff of Nueva Ecija* (74 Phil., 326) that while it is the invariable practice, dictated by common sense, that where the successful bidder is the execution creditor himself, he need not pay down the amount of the bid if it does not exceed the amount of his judgment, nevertheless, when there is a claim by a third-party, to the proceeds of the sale superior to his judgment credit, the execution creditor, as successful bidder, must pay in cash the amount of his bid as a condition precedent to the issuance to him of the certificate of sale. In the instant case, the Court of Appeals has already adjudged that appellee Blas is entitled to the payment of the unpaid balance of the purchase price of the school building. Blas claim is therefore not a mere preferred credit, but is actually a lien on the school building as specifically provided in Article 2242 of the new Civil Code. As such, it is superior to the claim of the Timbangs insofar as the proceeds of the sale of said school building are concerned. The order of the lower court directing the Timbang spouses, as successful bidders, to pay in cash the amount of their bid in the sum of P5,750.00 is therefore correct.

With respect to the order of the court declaring appellee Filipinas Colleges, Inc. part owner of the land to the extent of the value of its personal properties sold at public auction in favor of the Timbangs, this Court likewise finds the same as justified, for such amount represents, in effect, a partial payment of the value of the land. If this resulted, in the continuation of the so-called involuntary partnership questioned by the appellants, it was due to their own action. As appellee Blas still has an unsatisfied judgment representing the difference between P8,200.00—the unpaid balance of the purchase price of the building and the sum of P5,750.00—amount to be paid by the Timbangs, the order of the court directing the sale of such undivided interest of the Filipinas Colleges, Inc. is likewise justified to satisfy the claim of the appellee Blas.

Considering that the appellant spouses Marcelino Timbang and Maria Garcia Timbang may not voluntarily pay the sum of P5,750.00 as ordered, thereby further delaying the final termination of this case, the first part of the dispositive portion of the order appealed from is modified in the sense that upon failure of the Timbang spouses to pay to the sheriff or to Maria Gervacio Blas said sum of P5,750.00 within fifteen (15) days from notice of the final judgment, an order of execution shall issue in favor of Maria Gervacio Blas to be levied upon all properties of the Timbang spouses not exempt from execution for the satisfaction of the said amount.

In all other respects, the appealed order of the court a quo is hereby affirmed, with costs against the appellants.

It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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