

SPOUSES REYNALDO AND EDITHA LOPEZ, PETITIONERS, VS. MARGARITA SARABIA, RESPONDENT.*G.R. No. 140357. September 24, 2004*

Ponente: CALLEJO, SR., J.

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This is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) dated June 11, 1999 and the Resolution dated October 5, 1999 denying the motion for reconsideration thereof in CA-G.R. CV No. 50656 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 6.

Case for the Respondent

Margarita Sarabia owned two (2) lots with a residential house built on one of the lots in Poblacion, Kalibo, Aklan. Spouses Reynaldo and Editha Lopez were renting the second floor of the house for P300.00 per month. On the other lot was a building rented by Dr. Nilda Tambong for P600.00 a month, with two (2) boarders upstairs paying P440.00 a month.[3] Sometime in March 1984, the Spouses Lopez approached Margarita and asked her if they could construct additional rooms for their growing children. Margarita told them that she did not have the money for such construction project. They then proposed that they could apply for a Pag-ibig Housing Loan from the Development Bank of the Philippines (DBP) and use Margarita's property as collateral. Margarita, however, informed them that her property had already been mortgaged to the Philippine National Bank (PNB) in 1978 in the amount of P20,000.00,[4] and was, in fact, in danger of being foreclosed for non-payment of amortization. Her outstanding loan balance as of March 1984 had already ballooned to about P63,000.00.

The Spouses Lopez tried to convince Margarita that it was better to transfer the mortgage to the DBP where interest rates were lower; Editha Lopez was a public school teacher and the monthly amortization could easily be deducted from her salary. They told Margarita that the PNB loan balance could be paid off from the proceeds of the loan from the DBP, and the excess could be used for the construction of the rooms. In order to facilitate the loan, it was, however, necessary that the property be in the name of the Spouses Lopez.

Relying on the couple's good faith and assurances that they would religiously pay the amortization, Margarita agreed to their proposition. A document was thus executed denominated as "Assumption of Mortgage with Quitclaim." [5] In said document, the Register of Deeds was authorized to cancel TCT No. T-4471 and TCT No. T-4474 over the two (2) parcels of land and issue new TCT's [6] under the name of the Spouses Lopez covering the two lots. The Spouses Lopez then mortgaged the properties to DBP where they obtained a loan in the amount of P163,000.00. They paid the PNB, which then released the mortgage of Margarita. The Spouses Lopez ceased paying rentals to Margarita and even collected the rentals from the other lot as part of the payment of the monthly amortization.

Sometime in October 1987, Reynaldo Lopez approached Margarita and informed her that he needed P30,000.00 to update their loan payments. Margarita gave him the amount as part of the refund to the payment of the PNB loan. She expected Reynaldo to give her an official receipt from the DBP, but did not receive any. Sensing

something irregular, she went to the DBP to inquire about the status of the loan. She was aghast to find out that the loan amortization had not been paid and that her property was again in danger of being foreclosed.

Margarita was constrained to file an action with the RTC against the Spouses Lopez for annulment of document, specific performance and reconveyance with damages. The DBP was included as party-defendant. In her complaint, Margarita prayed for the following:

- Declaring the Assumption of Mortgage with Quitclaim null and void;
- Ordering the defendants Lopezes to redeem the parcels of land and residential house presently mortgaged to the Development Bank of the Philippines;
- Ordering the defendants to reconvey the certificates of title as well as the tax declarations of the said parcels of land and the house in favor of plaintiff;
- Ordering the defendants to pay the plaintiff the amount of P10,000.00 as attorney's fee; litigation expenses in the amount of P10,000.00, and as actual damage to the value of the property mentioned above to be determined by this Honorable Court, and monthly rental of P300.00 from 1984 up to actual payment.[7]

Case for the Petitioners

In their Answer[8] to the Complaint, the Spouses Lopez averred that it was Margarita who approached them to help her redeem her property from the PNB because it was going to be foreclosed. She was aware that the couple wanted to buy a house and lot of their own, and offered her property to them instead. The Spouses Lopez told her that they did not have the money to redeem the property, but if Margarita was certain in selling her house to them, they could arrange for a loan from the DBP, the proceeds of which the PNB loan could be paid in full and would form part of the purchase price. The balance would also be taken from the proceeds of the DBP loan. Pursuant to their mutual and verbal agreement, Margarita executed a Deed of Assumption of Mortgage with Quitclaim,[9] authorizing the couple to assume her loan with the PNB over the two lots, together with all the improvements thereon and renouncing all her rights over the property. The same document authorized the Register of Deeds of Aklan to cancel TCT Nos. T-4471 and T-4474 and issue two (2) new certificates of title in the name of the Spouses Reynaldo and Editha Lopez. In April 1984, Margarita asked for partial payment from the Spouses Lopez and was given the amount of P6,700.00 which the former acknowledged.[10] On May 8, 1984, Margarita executed a Special Power of Attorney[11] appointing the DBP to be her attorney-in-fact, where the latter would issue a check in favor of the PNB covering the amount of P63,307.34 as payment of the outstanding loan balance. Another check in the amount of P89,992.66 was also issued in the name of Margarita, as per the Distribution of Proceeds and Release Guide of the DBP.[12] The couple has introduced improvements on the land since then, which cost them about P300,000.00. The Spouses Lopez claim and assert ownership over the subject properties, as evidenced by the TCTs issued in their names.

On the part of DBP, it alleged in its answer with cross-claim that it had no knowledge of the agreement between Margarita and the Spouses Lopez. It granted a loan to the spouses in the amount of P163,500.00 and accepted the certificates of title presented to it by the Spouses Lopez over the two parcels of land as security/collateral. It had the right to rely on the certificates of title presented to it, which were free from all liens and encumbrances. The DBP was an innocent mortgagee for value. As cross-claim, DBP demanded payment from the Spouses Lopez the amount of the loan granted to them, plus damages for misrepresenting to the bank that they were the owners in fee simple of the subject properties which they mortgaged to the bank.[13]

The Findings of the RTC

On November 29, 1994, the RTC rendered judgment in favor of Margarita. The trial court found that it was

Margarita who sought the help of the Spouses Lopez so that she could redeem her property which was on the verge of being foreclosed by the PNB for non-payment of the loan amortization. By virtue of the documents executed by Margarita in favor of the Spouses Lopez, viz, Deed of Assumption and Quitclaim dated March 6, 1984,[14] Offer to Sell dated March 20, 1984,[15] and Release of Real Estate Mortgage dated May 9, 1984,[16] the titles to the land were transferred and registered in the names of the latter. The Spouses Lopez applied for a Pag-ibig Housing Loan from the DBP using Margarita's property as security, and was granted thereof in the amount of P163,500.00. The PNB loan was paid pursuant to the special power of attorney. Although another check in the amount of P87,000.00 was issued to Margarita and later endorsed by her for encashment, she testified that she never received the money.[17] The Spouses Lopez ceased paying rentals and even collected the rentals of the other tenants which were supposed to be applied to the monthly amortization.

The trial court found that the true intentions of the parties were not really embodied in the documents/instruments. The documentary, as well as parol evidence, clearly showed that Margarita did not really intend to convey her property to the petitioners. She merely agreed to lend her titles so that the Spouses Lopez could procure a bigger loan which she could not possibly obtain, considering her age and meager salary as Supervising Accounting Clerk in the Municipality of Kalibo. She agreed to sign the pertinent documents with the understanding that they were requirements of the bank in processing the loan applied for by the Spouses Lopez. The trial court continued to rule that the Spouses Lopez were in bad faith, so whatever improvements were made on the land were forfeited in favor of Margarita.[18]

The dispositive portion of the decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- Declaring the Deed of Assumption and Quitclaim executed by the plaintiff in favor of the defendant spouses, Exhibit "G" of the plaintiff and Exhibit "4" of defendants a relatively simulated contract;
- Declaring the conveyance of title in favor of the defendant spouses under TCT No. T-13472 and TCT No. T-13473, as a simulated or fictitious transfer, and therefore void; and that said spouses merely hold legal title in trust and for the benefit of the plaintiff;
- Declaring the assumption by the defendant spouses of plaintiff's loan valid;
- Declaring the loan obtained by the defendant spouses from the defendant bank valid and subsisting, but declaring the mortgage, giving the properties in question as a security for the payment thereof, null and void;
- Ordering that the properties in question with all the existing improvements thereon, covered by TCT No. T-13472 and TCT No. T-13473 in the names of the defendant spouses, be conveyed in the name of the plaintiff upon payment of proper fees; and for the purpose, ordering the defendant bank to return the owner's duplicate of said certificates of title to the plaintiff;
- Ordering the defendant spouses to vacate the premises and return possession over the same to the plaintiff;
- Ordering the defendant spouses to pay Ten Thousand Pesos (P10,000.00) as attorney's fees, and litigation expenses, and to pay the costs.[19]

The Spouses Lopez appealed to the Court of Appeals. The CA affirmed the RTC finding that the nature of the transaction between Margarita and the Spouses Lopez was, verily, an equitable mortgage and not a sale. The CA, however, declared that the petitioners were builders in good faith. According to the CA, Margarita was aware and approved the construction/improvements undertaken by the Spouses Lopez; thus, forfeiture of the improvements in favor of Margarita was unwarranted. The fallo of the decision reads:

WHEREFORE, the decision appealed from is AFFIRMED with the modification that, defendant-appellant Lopez spouses being considered builders in good faith, the improvements they introduced after the transaction in question be either purchased by plaintiff-appellee Margarita Sarabia or removed at defendant-appellants' own expense. [20]

The Spouses Lopez are now before the Court raising the following:

(1)

THAT WHILE THE COURT OF APPEALS HAS CORRECTLY REVERSED THE FINDING OF THE TRIAL COURT THAT THE DEFENDANTS-APPELLANTS (HEREIN PETITIONERS) WERE NOT BUILDERS IN BAD FAITH AND CATEGORICALLY DECLARED THEM TO BE BUILDERS IN GOOD FAITH, IT FAILED TO APPLY CORRECTLY THE RULES ON BUILDER IN GOOD FAITH UNDER ART. 448 OF THE NEW CIVIL CODE ON THE OPTIONS OF THE OWNER OF THE LAND AND THE RIGHTS OF THE BUILDER IN GOOD FAITH; and

(2)

THAT WHILE THE HONORABLE COURT OF APPEALS HAS AFFIRMED THE RULING OF THE TRIAL COURT THAT THE REAL AGREEMENT BETWEEN THE PARTIES WAS A FORM OF EQUITABLE MORTGAGE AND NOT A SALE, IT FAILED TO DEFINE AND ADJUDICATE WITH CERTAINTY THE RELATIVE RIGHTS AND RECIPROCAL OBLIGATIONS OF THE PARTIES UNDER ART. 1616 OF THE NEW CIVIL CODE.[21]

Ruling of the Court

There is no dispute that the transaction between the parties is one of equitable mortgage and not a sale as maintained by the petitioners. This was a finding correctly made by the trial court and the appellate court, which we find no cogent reason to disturb.

No matter what nomenclature is given to a document, Article 1602 of the New Civil Code provides that the contract is presumed to be an equitable mortgage in any of the following cases:

1)

When the price of a sale with right to repurchase is usually inadequate;

2)

When the vendor remains in possession as lessee or otherwise;

3)

When upon the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

4)

When the purchaser retains for himself a part of the purchase price;

5)

When the vendor binds himself to pay the taxes on the thing sold;

6)

In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation;

In any of the foregoing cases, any money, fruits or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

The pertinent document which is subject to scrutiny in this case is the Deed of Assumption of Mortgage with Quitclaim^[22] executed by Margarita in favor of the Spouses Lopez. The said document empowered the Spouses Lopez to assume the loan of Margarita with the PNB. And in consideration for such assumption of indebtedness, Margarita was considered to have waived all her rights and participation over the two parcels of land, together with all the improvements thereon, and that such titles were transferred to the Spouses Lopez. This document was followed by a Deed of Offer to Sell signed by Margarita bearing the value of the subject property which was P160,000.00, since the Deed of Assumption of Mortgage did not contain the amount of the purchase price of the property.^[23] In line with the basic requirement in our laws that the mortgagor be the absolute owner of the property sought to be mortgaged,^[24] it was, thus, made to appear that Margarita sold her property to the Spouses Lopez so that they could declare the same as collateral for the housing loan. While under the Deed of Assumption of Mortgage, Margarita allowed the transfer of title over the subject property in the name of the Spouses Lopez, the evidence showed that ownership thereof was not intended to be conveyed to them. Margarita was firm in her testimony that she merely allowed the Spouses Lopez to apply for a loan using her titles as collateral, so that the couple could help her redeem her property from PNB. She never made any offer to sell and never thought of such.^[25] Unfortunately, she signed the Deed of Assumption of Mortgage with Quitclaim and the Offer to Sell without actually reading and understanding the contents thereof.^[26] The real agreement was for the Spouses Lopez to apply for a loan in order to pay Margarita's indebtedness with the PNB. Margarita, in turn, would pay the Spouses Lopez by installment.^[27] The trial court correctly found that the Deed of Assumption of Mortgage did not actually contain all the matters agreed upon by the parties prior to its execution.^[28]

In the case of *Lorbes v. Court of Appeals*,^[29] the Court held that:

The decisive factor in evaluating such agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situation of the parties at that time, the attitude, acts, conduct, declarations of the parties, the negotiations between them leading to the deed, and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding. As such, documentary and parol evidence may be submitted and admitted to prove the intention of the parties.^[30]

The trial and appellate courts did not find the version of the petitioners credible, considering that the subsequent acts and conditions of the parties were more leaning to the presumption of an equitable mortgage and not of sale.

First. The owner, Margarita, remained in possession of the house. If she really intended to sell her house, then she would have looked for another place to live.

Second. It was inconceivable that Margarita would sell her house and the two lots just to pay the PNB loan. She would have necessarily retained one parcel of land which she could have called her own.

Third. The acknowledgement receipt^[31] signed by Reynaldo Lopez showing that they were paid by Margarita the sum of P30,000.00 is quite telling. The said receipt states:

This is to acknowledge from MISS MARGARITA SARABIA, of Mabini Street, Kalibo, Aklan, the amount of THIRTY THOUSAND PESOS (P30,000.00) as partial refund of the previous loan assumed by Engr. Reynaldo L. Lopez from the Philippine National Bank to be paid to the Development Bank of the Philippines.^[32]

If it were a sale in favor of the couple, it behooved the Spouses Lopez to show why Margarita should pay them the amount, when it should be the other way around.

Fourth. The Spouses Lopez never paid the monthly amortization. If they were truly the owner, then they would have protected their own property from being foreclosed.

It bears stressing that the law favors the least transmission of rights and interests over a property in controversy. The purpose of the law is to prevent circumvention of the law on usury and the prohibition against a creditor appropriating the mortgaged property. Additionally, it is aimed to end unjust or oppressive transactions or violations in connection with the sale of the property. The wisdom of these provisions cannot be doubted, considering many cases of unlettered persons or even those with average intelligence invariably finding themselves in no position whatsoever to bargain fairly with their creditors.[33]

No doubt in this case, the Spouses Lopez took advantage of Margarita's advanced age and urgent necessity for money, which explains why she agreed to sign the documents without being fully aware of their meaning and contents. "Necessitous men are not, truly speaking, free men; but to answer a present emergency, will submit to any terms that the crafty may impose upon them." [34] What was intended to be a mere loan so as to enjoin the foreclosure by the bank of her property, ended up as a transfer of property to the Spouses Lopez, which was not the real intention and agreement of the parties in the first place. This is a fact which the Spouses Lopez cannot deny. From all indications, the Spouses Lopez were quite dishonest in attempting to appropriate the property as their own when this was not their agreement with Margarita.

Conceding that the transaction was not really a sale of the subject property, the Spouses Lopez now demand their rights for reimbursement for expenses and improvements made on the land under Articles 448 and 1616 of the Civil Code. This leads us to the pivotal question: Can the Spouses Lopez invoke Article 448 and claim the benefits of this provision as builders in good faith when they constructed improvements on the subject property?

The trial court found the Spouses Lopez in bad faith and ordered the forfeiture of the improvements in Margarita's favor. The CA disagreed with the trial court as it ruled:

... Construction of the improvements went on without the objections of Margarita. It can thus be safely concluded that, absent any objections, the Lopez spouses sincerely believed that as lessees, they had Margarita's approval to construct such improvements. Forfeiture of the improvements in Margarita's favor is thus not warranted.[35]

The petitioners allege that Article 448 applies in this case because they constructed the building on one of the lots in the concept of owner, after the title over the two lots had already been transferred in their names and out of the proceeds of their Pag-ibig loan. They believed that they have a right to build because they thought that they owned the land or believed themselves to have claim or title.[36]

The contention is untenable.

Articles 448[37] and 546[38] of the New Civil Code, which allow full reimbursement of useful improvements and retention of the premises until reimbursement is made, apply only to a possessor in good faith, i.e., one who builds on land with the belief that he is the owner thereof. A builder in good faith is one who is unaware of any flaw in his title to the land at the time he builds on it.[39] In this case, the petitioners cannot claim that they were not aware of any flaw in their title or were under the belief that they were owners of the subject properties. It was the agreement and intention that Margarita's titles would only be lent to them in order to secure the Pag-ibig Housing Loan, in which Margarita had a direct interest since the proceeds thereof were to be immediately applied to her mortgage obligation with the PNB. There was no agreement or intention to transfer ownership of the subject

properties. The petitioners cannot claim to be owners. Hence, they cannot be considered builders in good faith. Article 448 is not applicable.

More importantly, however, it must be remembered that the Spouses Lopez were lessees of Margarita who were renting the place for P300.00 a month. Such fact was never controverted. The CA unmistakably did not overlook this relationship but apparently erred in defining the rights of the lessor and/or lessee with regard to indemnity for improvements made on the land. Article 448 does not apply to a case where one builds, plants, or sows on land where the only interest of the builder, planter, or sower is that of a holder, such as a tenant or a lessee.[40] Thus, whether or not Margarita gave her consent to the construction so as to be considered builders in good faith, as ruled by the CA, is of no moment. As lessees, their right for reimbursement viz-a-viz the improvements made on the land is governed by Article 1678 of the New Civil Code which reads:

Art. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease, shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.

With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished.

The petitioners' reliance on Article 448 is, therefore, misplaced. Being mere lessees, the petitioners knew that their occupation of the premises would continue only for the life of the lease. Plainly, they cannot be considered as possessors nor builders in good faith.[41] In the case of *Sia v. Court of Appeals*,[42] we explained that:

In the 1991 case of *Cabangis v. Court of Appeals* where the subject of the lease contract was also a parcel of land and the lessee's father constructed a family residential house thereon, and the lessee subsequently demanded indemnity for the improvements built on the lessor's land based on Articles 448 and 546 of the New Civil Code, we pointed out that reliance on said legal provisions was misplaced. "The reliance by the respondent Court of Appeals on Articles 448 and 546 of the Civil Code of the Philippines is misplaced. These provisions have no application to a contract of lease which is the subject matter of this controversy. Instead, Article 1678 of the Civil Code applies. We quote: "Art. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon termination of the lease, shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary."

...

On the other hand, Article 448 governs the right of accession while Article 546 pertains to effects of possession. The very language of these two provisions clearly manifest their inapplicability to lease contracts. They provide:

...

The petitioners do not dispute the contention of the private respondent that her father Gaspar Devis, filled the leased parcel of land with truck loads of big stones or rocks (*escumbro*), and enclosed or walled the same with hollow blocks before constructing a residential house thereon. All these, being in the nature of expenses which augmented the value of the land, (*Manresa*, 270 cited in 2, *A. Tolentino*, Civil Code 110 [2nd ed., 1972] or increased the income from it, or improved its productivity, are useful improvements within the purview of the law

(Alburo v. Villanueva, 7 Phil. 277 [1907]; Valencia v. Roxas, 13 Phil. 45 [1909]).

But, it must be remembered, as in fact it is not controverted, that Gaspar Devis was a lessee by virtue of a lease contract between him and the City of Manila. As a mere lessee, he knew that the parcel of land in question was not his but belonged to the latter. Even the respondent court conceded this fact when it stated that the private respondent was “not claiming prior possession much less ownership of the land as heir of her father.” (Rollo, p. 16).

Thus, the improvements that the private respondent’s father had introduced in the leased premises were done at his own risk as lessee. The right to indemnity equivalent to one-half of the value of the said improvements – the house, the filling materials, and the hollow block fence or wall – is governed, as earlier adverted to, by the provisions of Art. 1678, first paragraph of the Civil Code above quoted. But this right to indemnity exists only if the lessor opts to appropriate the improvements (Alburo v. Villanueva, supra, note 10 at 279-280; Valencia v. Ayala de Roxas, supra, note 10 at 46). The refusal of the lessor to pay the lessee one-half of the value of the useful improvements gives rise to the right of removal. On this score, the commentary of Justice Paras is enlightening.

“Note that under the 1st paragraph of Art. 1678, the law on the right of REMOVAL says that ‘should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer thereby.’ While the phrase ‘even though’ implies that Art. 1678 always applies regardless of whether or not the improvements can be removed without injury to the leased premises, it is believed that application of the Article cannot always be done. The rule is evidently intended for cases where a true accession takes place as when part of the land leased is, say, converted into a fishpond; and certainly not where as easily removable thing (such as a wooden fence) has been introduced. There is no doubt that in a case involving such a detachable fence, the lessee can take the same away with him when the lease expires (5 E. Paras, Civil code of the Philippines Annotated 345 [11th ed., 1986]).”[43]

The petitioners have made substantial improvements on the land for which they seek indemnity. Petitioner Reynaldo Lopez testified that there are now three buildings standing on the two parcels of land: the first building is where Margarita and they are presently residing, constructed wayback in 1970; the second building, with an estimated cost of P300,000.00, is the one the couple constructed after obtaining the loan from DBP, with an office at the ground floor and the second floor with three rooms also occupied by the Lopezes; and the third building is the old house where the first floor is being rented by Dr. Nilda Tambong with boarders on the second floor.[44]

It must be stressed that the right to indemnity under Article 1678 arises only if the lessor opts to appropriate the improvements. The respondent (Margarita) would become the owner of the building constructed by the petitioners by reimbursing to the couple one-half (1/2) of the value of the building at the time it was built. This option to pay such indemnity is given to herein respondent. On the other hand, the petitioners do not actually have the right to demand that they be paid therefor.[45] Neither do they have the right to retain in the premises until reimbursement is made. If Margarita refuses to pay indemnity, the petitioners’ sole right then is to remove the improvements without causing anymore impairment upon the lot than is necessary.[46]

Notwithstanding the finding that the nature of the transaction is an equitable mortgage, the petitioners have no basis to invoke Article 1616.[47] The petitioners’ attempt to seek reimbursement for whatever expenses have been incurred or resulted from this transaction with Margarita cannot prosper. It must be noted that after the transfer of title in the name of the petitioners, the latter ceased paying rentals to Margarita since 1984 and, in fact, collected the rentals from the other tenants. We find that the petitioners have benefited more than enough, having stayed in the premises without paying rentals therefor. On the other hand, Margarita was deprived of the fruits and enjoyment of her property. Thus, the petition has no merit.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals is AFFIRMED with the

modification that respondent Margarita Sarabia is DIRECTED to exercise, within thirty (30) days from the finality of this decision, her option of either paying one-half of the value of the improvements made on the land at that time they were made, or to demand the removal by the petitioners of the improvements made on the subject property at their expense. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Penned by Associate Justice Jesus M. Elbinias (retired), with Associate Justices Delilah Vidallon-Magtolis and Presbitero J. Velasco, Jr. (now Court Administrator of the Supreme Court), concurring.

[2] Penned by Judge Maria Carrillo-Zaldivar.

[3] TSN, 9 July 1990, p. 8.

[4] In 1978, Margarita Sarabia lent her title to one Luz Icamina, who applied for a loan from the PNB in the amount of P20,000. (TSN, 9 July 1990, p. 11).

[5] Annex "A," Records, p. 14.

[6] Annexes "B" and "C," Id. at 15-16.

[7] Records, pp. 4-5.

[8] Id. at 39.

[9] Exhibit "4," Folder of Exhibits.

[10] Annex "A," Records, p. 51.

[11] Exhibit "2," Folder of Exhibits.

[12] Exhibit "3," id.

[13] Records, pp. 25-30.

[14] Exhibit "4," supra.

[15] Exhibit "1," id.

[16] Exhibit "H."

[17] TSN, 11 July 1990, p. 6.

[18] Records, p. 435.

[19] Id. at 435-436.

[20] Rollo, p. 33.

[21] Id. at 15-16.

[22] Exhibit "G," Folder of Exhibits.

[23] TSN, 11 September 1992, p. 12

[24] Article 2085 of the Civil Code.

[25] TSN, 15 August 1990, p. 17.

[26] TSN, 13 July 1990, p. 6; TSN, 15 August 1990, p. 18.

[27] TSN, 15 August 1990, p. 16.

[28] Records, p. 416.

[29] 351 SCRA 716 (2001).

[30] Id. at 726.

[31] Exhibit "N."

[32] Ibid.

[33] Misena v. Rongavilla, 303 SCRA 749 (1999).

[34] Lorbes v. CA, supra.

[35] Rollo, p. 33.

[36] Id. at 17.

[37] 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 the 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.

[38] 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.

[39] Bishop v. Court of Appeals, 208 SCRA 636 (1992).

[40] Tolentino, Civil Code of the Philippines, Vol. II, 1983 ed., p. 103.

[41] Geminiano v. Court of Appeals, 259 SCRA 344 (1996).

[42] 272 SCRA 141 (1997).

[43] Ibid.

[44] TSN, 20 November 1991, p. 23.

[45] Heirs of Manuel T. Suico v. Court of Appeals, 266 SCRA 444 (1997).

[46] Geminiano v. Court of Appeals, supra.

[47] Article 1616 provides: The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition:

- (1) The expenses of the contract, and any other legitimate payments made by reason of the sale;
- (2) The necessary and useful expenses made on the thing sold.

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