

LUCIANO BRIONES AND NELLY BRIONES, PETITIONERS, VS. JOSE MACABAGDAL, FE D. MACABAGDAL AND VERGON REALTY INVESTMENTS CORPORATION, RESPONDENTS.

G.R. No. 150666. August 03, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

On appeal under Rule 45 of the 1997 Rules of Civil Procedure, as amended, is the Decision[1] dated December 11, 2000 of the Court of Appeals (CA) in CA-G.R. CV No. 48109 which affirmed the September 29, 1993 Decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 135, ordering petitioners Luciano and Nelly Briones to remove the improvements they have made on the disputed property or to pay respondent-spouses Jose and Fe Macabagdal the prevailing price of the land as compensation.

The undisputed factual antecedents of the case are as follows:

Respondent-spouses purchased from Vergon Realty Investments Corporation (Vergon) Lot No. 2-R, a 325-square-meter land located in Vergonville Subdivision No. 10 at Las Piñas City, Metro Manila and covered by Transfer Certificate of Title No. 62181 of the Registry of Deeds of Pasay City. On the other hand, petitioners are the owners of Lot No. 2-S, which is adjacent to Lot No. 2-R.

Sometime in 1984, after obtaining the necessary building permit and the approval of Vergon, petitioners constructed a house on Lot No. 2-R which they thought was Lot No. 2-S. After being informed of the mix up by Vergon's manager, respondent-spouses immediately demanded petitioners to demolish the house and vacate the property. Petitioners, however, refused to heed their demand. Thus, respondent-spouses filed an action to recover ownership and possession of the said parcel of land with the RTC of Makati City.[3]

Petitioners insisted that the lot on which they constructed their house was the lot which was consistently pointed to them as theirs by Vergon's agents over the seven (7)-year period they were paying for the lot. They interposed the defense of being buyers in good faith and impleaded Vergon as third-party defendant claiming that because of the warranty against eviction, they were entitled to indemnity from Vergon in case the suit is decided against them.[4]

The RTC ruled in favor of respondent-spouses and found that petitioners' house was undoubtedly built on Lot No. 2-R. The dispositive portion of the trial court's decision reads as follows:

PREMISES CONSIDERED, let judgment be rendered declaring, to wit:

1. That plaintiffs are the owners of Lot No. 2-R of subdivision plan (LRC) Psd-147392 at Vergonville Subdivision, No. 10, Las Piñas, Metro Manila covered by TCT No. 62181 of the Registry of Deeds of Pasay City on which defendants have constructed their house;
2. Defendants, jointly and severally, are ordered to demolish their house and vacate the premises and return the

possession of the portion of Lot No. 2-R as above-described to plaintiffs within thirty (30) days from receipt of this decision, or in the alternative, plaintiffs should be compensated by defendants, jointly and severally, by the payment of the prevailing price of the lot involved as Lot No. 2-R with an area of 325 square meters which should not be less than P1,500.00 per square meter, in consideration of the fact that prices of real estate properties in the area concerned have increased rapidly;

3. Defendants, jointly and severally, pay to plaintiffs for moral damages with plaintiffs' plans and dreams of building their own house on their own lot being severely shattered and frustrated due to defendants' incursion as interlopers of Lot No. 2-R in the sum of P50,000.00;

4. Defendants, jointly and severally, to pay plaintiffs in the amount of P30,000.00 as attorney's fees; and,

5. to pay the costs of the proceedings.

Defendants' counterclaim against plaintiffs is dismissed for lack of merit and with no cause of action.

Defendants' third-party complaint against third-party defendant Vergonville Realty and Investments Corporation is likewise ordered dismissed for lack of cause of action and evidently without merit.

On the other hand, defendants, jointly and severally, are liable for the litigation expenses incurred by Vergonville Realty by way of counterclaim, which is also proven by the latter with a mere preponderance of evidence, and are hereby ordered to pay the sum of P20,000.00 as compensatory damage; and attorney's fees in the sum of P10,000.00

SO ORDERED.[5]

On appeal, the CA affirmed the RTC's finding that the lot upon which petitioners built their house was not the one (1) which Vergon sold to them. Based on the documentary evidence, such as the titles of the two (2) lots, the contracts to sell, and the survey report made by the geodetic engineer, petitioners' house was built on the lot of the respondent-spouses.[6] There was no basis to presume that the error was Vergon's fault. Also the warranty against eviction under Article 1548 of the Civil Code was not applicable as there was no deprivation of property: the lot on which petitioners built their house was not the lot sold to them by Vergon, which remained vacant and ready for occupation.[7] The CA further ruled that petitioners cannot use the defense of allegedly being a purchaser in good faith for wrongful occupation of land.[8]

Aggrieved, petitioners filed a motion for reconsideration, but it was denied by the appellate court.[9] Hence, this petition for review on certiorari.

Petitioners raise the following assignment of errors:

I.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE CONTRARY TO LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT IN AFFIRMING THE DECISION OF THE TRIAL COURT ORDERING PETITIONERS TO DEMOLISH THEIR ONLY HOUSE AND VACATE THE LOT AND TO PAY MORAL AND COMPENSATORY DAMAGES AS WELL AS ATTORNEY'S FEE IN THE TOTAL AMOUNT OF PS[P] 110,000; AND

II.

THE COURT OF APPEALS SANCTIONED THE DEPARTURE OF THE LOWER COURT FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION.[10]

In the main, it is petitioners' position that they must not bear the damage alone. Petitioners insist that they relied

with full faith and confidence in the reputation of Vergon's agents when they pointed the wrong property to them. Even the President of Vergon, Felix Gonzales, consented to the construction of the house when he signed the building permit.[11] Also, petitioners are builders in good faith.[12]

The petition is partly meritorious.

At the outset, we note that petitioners raise factual issues, which are beyond the scope of a petition for review on certiorari under Rule 45 of the Rules. Well settled is the rule that the jurisdiction of this Court in cases brought to it from the CA via a petition for review on certiorari under Rule 45 is limited to the review of errors of law. The Court is not bound to weigh all over again the evidence adduced by the parties, particularly where the findings of both the trial court and the appellate court coincide. The resolution of factual issues is a function of the trial court whose findings on these matters are, as a general rule, binding on this Court, more so where these have been affirmed by the CA.[13] We note that the CA and RTC did not overlook or fail to appreciate any material circumstance which, when properly considered, would have altered the result of the case. Indeed, it is beyond cavil that petitioners mistakenly constructed their house on Lot No. 2-R which they thought was Lot No. 2-S.

However, the conclusiveness of the factual findings notwithstanding, we find that the trial court nonetheless erred in outrightly ordering petitioners to vacate the subject property or to pay respondent spouses the prevailing price of the land as compensation. Article 527[14] of the Civil Code presumes good faith, and since no proof exists to show that the mistake was done by petitioners in bad faith, the latter should be presumed to have built the house in good faith.

When a person builds in good faith on the land of another, Article 448 of the Civil Code governs. Said article 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. (Emphasis ours.)

The above-cited article covers cases in which the builders, sowers or planters believe themselves to be owners of the land or, at least, to have a claim of title thereto.[15] The builder in good faith can compel the landowner to make a choice between appropriating the building by paying the proper indemnity or obliging the builder to pay the price of the land. The choice belongs to the owner of the land, a rule that accords with the principle of accession, i.e., that the accessory follows the principal and not the other way around. However, even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. He must choose one.[16] He cannot, for instance, compel the owner of the building to remove the building from the land without first exercising either option. It is only if the owner chooses to sell his land, and the builder or planter fails to purchase it where its value is not more than the value of the improvements, that the owner may remove the improvements from the land. The owner is entitled to such remotion only when, after having chosen to sell his land, the other party fails to pay for the same.[17]

Moreover, petitioners have the right to be indemnified for the necessary and useful expenses they may have made on the subject property. Articles 546 and 548 of the Civil Code provide,

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.

ART. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

Consequently, the respondent-spouses have the option to appropriate the house on the subject land after payment to petitioners of the appropriate indemnity or to oblige petitioners to pay the price of the land, unless its value is considerably more than the value of the structures, in which case petitioners shall pay reasonable rent.

In accordance with *Depra v. Dumlao*,^[18] this case must be remanded to the RTC which shall conduct the appropriate proceedings to assess the respective values of the improvement and of the land, as well as the amounts of reasonable rentals and indemnity, fix the terms of the lease if the parties so agree, and to determine other matters necessary for the proper application of Article 448, in relation to Articles 546 and 548, of the Civil Code.

As to the liability of Vergon, petitioners failed to present sufficient evidence to show negligence on Vergon's part. Petitioners' claim is obviously one (1) for tort, governed by Article 2176 of the Civil Code, which provides:

ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no preexisting contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (Emphasis ours.)

Under this provision, it is the plaintiff who has to prove by a preponderance of evidence: (1) the damages suffered by the plaintiff; (2) the fault or negligence of the defendant or some other person for whose act he must respond; and (3) the connection of cause and effect between the fault or negligence and the damages incurred.^[19] This the petitioners failed to do. The President of Vergon signed the building permit as a precondition for its approval by the local government, but it did not guarantee that petitioners were constructing the structure within the metes and bounds of petitioners' lot. The signature of the President of Vergon on the building permit merely proved that petitioners were authorized to make constructions within the subdivision project of Vergon. And while petitioners acted in good faith in building their house on Lot No. 2-R, petitioners did not show by what authority the agents or employees of Vergon were acting when they pointed to the lot where the construction was made nor was petitioners' claim on this matter corroborated by sufficient evidence.

One (1) last note on the award of damages. Considering that petitioners acted in good faith in building their house on the subject property of the respondent-spouses, there is no basis for the award of moral damages to respondent-spouses. Likewise, the Court deletes the award to Vergon of compensatory damages and attorney's fees for the litigation expenses Vergon had incurred as such amounts were not specifically prayed for in its Answer to petitioners' third-party complaint. Under Article 2208^[20] of the Civil Code, attorney's fees and expenses of litigation are recoverable only in the concept of actual damages, not as moral damages nor judicial costs. Hence, such must be specifically prayed for--as was not done in this case--and may not be deemed incorporated within a general prayer for "such other relief and remedy as this court may deem just and equitable."^[21] It must also be noted that aside from the following, the body of the trial court's decision was devoid of any statement regarding attorney's fees. In *Scott Consultants & Resource Development Corporation, Inc. v. Court of Appeals*,^[22] we reiterated that attorney's fees are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation or conjecture. Where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney's fees.

WHEREFORE, the Decision dated December 11, 2000 of the Court of Appeals in CA-G.R. CV No. 48109 is AFFIRMED WITH MODIFICATION. The award of moral damages in favor of respondent-spouses Jose and Fe Macabagdal and the award of compensatory damages and attorney's fees to respondent Vergon Realty Investments Corporation are DELETED. The case is REMANDED to the Regional Trial Court of Makati City, Branch 135, for further proceedings consistent with the proper application of Articles 448, 546 and 548 of the Civil Code, as follows:

1. The trial court shall determine:

- the present fair price of the respondent-spouses' lot;
- the amount of the expenses spent by petitioners for the building of their house;
- the increase in value ("plus value") which the said lot may have acquired by reason thereof; and
- whether the value of said land is considerably more than that of the house built thereon.

2. After said amounts shall have been determined by competent evidence, the Regional Trial Court shall render judgment, as follows:

- The trial court shall grant the respondent-spouses a period of fifteen (15) days within which to exercise their option under Article 448 of the Civil Code, whether to appropriate the house as their own by paying to petitioners either the amount of the expenses spent by petitioners for the building of the house, or the increase in value ("plus value") which the said lot may have acquired by reason thereof, or to oblige petitioners to pay the price of said land. The amounts to be respectively paid by the respondent-spouses and petitioners, in accordance with the option thus exercised by written notice of the other party and to the Court, shall be paid by the obligor within fifteen (15) days from such notice of the option by tendering the amount to the Court in favor of the party entitled to receive it;

- The trial court shall further order that if the respondent-spouses exercises the option to oblige petitioners to pay the price of the land but the latter rejects such purchase because, as found by the trial court, the value of the land is considerably more than that of the house, petitioners shall give written notice of such rejection to the respondent-spouses and to the Court within fifteen (15) days from notice of the respondent-spouses' option to sell the land. In that event, the parties shall be given a period of fifteen (15) days from such notice of rejection within which to agree upon the terms of the lease, and give the Court formal written notice of such agreement and its provisos. If no agreement is reached by the parties, the trial court, within fifteen (15) days from and after the termination of the said period fixed for negotiation, shall then fix the terms of the lease, payable within the first five (5) days of each calendar month. The period for the forced lease shall not be more than two (2) years, counted from the finality of the judgment, considering the long period of time since petitioners have occupied the subject area. The rental thus fixed shall be increased by ten percent (10%) for the second year of the forced lease. Petitioners shall not make any further constructions or improvements on the house. Upon expiration of the two (2)-year period, or upon default by petitioners in the payment of rentals for two (2) consecutive months, the respondent-spouses shall be entitled to terminate the forced lease, to recover their land, and to have the house removed by petitioners or at the latter's expense. The rentals herein provided shall be tendered by petitioners to the Court for payment to the respondent-spouses, and such tender shall constitute evidence of whether or not compliance was made within the period fixed by the Court.

- In any event, petitioners shall pay the respondent-spouses reasonable compensation for the occupancy of the respondent-spouses' land for the period counted from the year petitioners occupied the subject area, up to the commencement date of the forced lease referred to in the preceding paragraph;

- The periods to be fixed by the trial court in its Decision shall be inextendible, and upon failure of the party obliged to tender to the trial court the amount due to the obligee, the party entitled to such payment shall be entitled to an order of execution for the enforcement of payment of the amount due and for compliance with such other acts as may be required by the prestation due the obligee.

No costs.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Abad,[*] JJ., concur.

[*] Designated as additional member per Special Order No. 843 dated May 17, 2010.

[1] Rollo, pp. 43-51. Penned by Associate Justice Presbitero J. Velasco, Jr. (now a member of this Court) and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Juan Q. Enriquez, Jr. The dispositive portion reads as follows:

WHEREFORE, premises considered, the appealed Decision is hereby AFFIRMED in toto.

SO ORDERED.

[2] Id. at 81-84. Penned by Judge Omar U. Amin.

[3] Id. at 6-8.

[4] Id. at 71, 75-76.

[5] Id. at 83-84.

[6] Id. at 46-47.

[7] Id. at 48.

[8] Id. at 48-49.

[9] Id. at 54. The Resolution was penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Mercedes Gozo-Dadole and Juan Q. Enriquez, Jr. concurring.

[10] Id. at 14-15.

[11] Id. at 16-27.

[12] Id. at 27-28.

[13] *Bernarda Ch. Osmeña v. Nicasio Ch. Osmeña, et al.*, G.R. No. 171911, January 26, 2010, p. 4.

[14] ART. 527. Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

[15] *Vide Philippine National Bank v. De Jesus*, 458 Phil. 454, 458 (2003) and *Pada-Kilario v. Court of Appeals*, 379 Phil. 515, 529-530 (2000).

[16] *Arangote v. Maglunob*, G.R. No. 178906, February 18, 2009, 579 SCRA 620, 644.

[17] *Sarmiento v. Agana*, No. L-57288, April 30, 1984, 129 SCRA 122, 126 and *Ignacio v. Hilario*, 76 Phil. 605, 608 (1946).

[18] No. L-57348, May 16, 1985, 136 SCRA 475, 483, cited in *National Housing Authority v. Grace Baptist Church*, G.R. No. 156437, March 1, 2004, 424 SCRA 147, 154.

[19] *Child Learning Center, Inc. v. Tagorio*, G.R. No. 150920, November 25, 2005, 476 SCRA 236, 242.

[20] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[21] *Mirasol v. de la Cruz*, No. L-32552, 84 SCRA 337, 342-343.

[22] G.R. No. 112916, March 16, 1995, 242 SCRA 393, 406.

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