HEIRS OF MARCELINO CABAL, REPRESENTED BY VICTORIA CABAL, PETITIONER SPOUSES LORENZO CABAL AND ROSITA CABAL, RESPONDENTS.

G.R. NO. 153625. July 31, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[2] of the Court of Appeals (CA) dated September 27, 2001 in CA-G.R. SP No. 64729 which affirmed in toto the Decision of the Regional Trial Court, Branch 70, Iba, Zambales (RTC) dated August 10, 2000 in Civil Case No. RTC-1489-I; and the CA Resolution[3] dated May 22, 2002 which denied the Motion for Reconsideration of Marcelino Cabal (Marcelino).

The factual background of the case is as follows:

During his lifetime, Marcelo Cabal (Marcelo) was the owner of a 4,234-square meter parcel of land situated at Barrio Palanginan, Iba, Zambales, described as Lot G and covered by Original Certificate of Title (OCT) No. 29 of the Registry of Deeds of Zambales.

Sometime in August 1954,[4] Marcelo died, survived by his wife Higinia Villanueva (Higinia) and his children: Marcelino, Daniel, Cecilio, Natividad, Juan, Margarita, Lorenzo, Lauro and Anacleto.[5] It appears that sometime in 1949, five years before he died, Marcelo allowed his son, Marcelino, to build his house on a portion of Lot G, now the southernmost portion of Lot 1-E of Transfer Certificate of Title (TCT) No. 43419.[6] Since then, Marcelino resided thereon.[7] Later, Marcelino's son also built his house on the disputed property.[8]

On August 17, 1964, Marcelo's heirs extra-judicially settled among themselves Lot G into undivided equal shares of 423.40-square meters each and Transfer Certificate of Title (TCT) No. T-8635 was issued in their names.[9]

On September 17, 1973, Daniel sold 380 square meters of his 423.40-square meter undivided share to spouses Oscar Merete and Clarita Ebue.[10]

On September 12, 1976, the heirs subdivided Lot G into Lot G-1 in favor of Marcelino, resulting in the issuance of TCT No. T-22656;[11] and Lot G-2 in favor of Higinia, Daniel, Natividad, Juan, Cecilio, Margarita, Lorenzo, Lauro and Anacleto, resulting in the issuance of TCT No. 22657.[12]

On March 1, 1977, Marcelino mortgaged his share, as described under TCT No. 22656, to the Rural Bank of San Antonio (Zambales), Inc.[13] The mortgage on the property was subsequently released on December 19, 1983.[14]

In the interim, based on consolidated subdivision plan (LRC) Pcd-24078, Lot G-2 was further subdivided and the remaining portion, known as Lot 1 of the subdivision plan, comprising 3387.20 square meters, became subject of TCT No. T-24533 with Higinia, Margarita, Natividad, Lorenzo, Daniel, Oscar Merete, Cecilio, Carmelita C.

Pagar, and Anacleto as co-owners.

On August 3, 1978, the co-owners of Lot 1 executed a Deed of Agreement of Partition with Sale. Lot 1 was subdivided among the co-owners with Higinia, Margarita, Natividad, Lorenzo, Cecilio, Carmelita C. Pagar and Anacleto, receiving 423.40 square meters each; Daniel, with 43.4 square meters; and Oscar Merete, with 380 square meters.[15] In the same deed, Lorenzo bought the shares of Higinia, Margarita, Daniel and Natividad.[16] Thus, Lorenzo's share in the co-ownership amounted to 1,737 square meters. Likewise, in the same deed, Cecilio sold his share to a certain Marcela B. Francia.[17]

On January 13, 1982, a land survey was conducted on Lot 1 by Geodetic Engineer Dominador L. Santos and Junior Geodetic Engineer Eufemio A. Abay and based on the survey, they submitted subdivision survey plan (LRC) Psd-307100, designating the shares of Carmelita C. Pagar, Marcela B. Francia, spouses Oscar Merete and Clarita Ebue, Anacleto, and Lorenzo as Lots 1-A, 1-B, 1-C, 1-D and 1-E, respectively.[18] The subdivision survey plan of Lot 1 was approved by the Director of the Bureau of Lands on May 7, 1982.[19] On June 7, 1990, the co-owners of Lot 1 executed a Subdivision Agreement designating their shares based on the approved subdivision plan.[20] On July 13, 1993, TCT No. 43419 covering Lot 1-E was issued in the name of Lorenzo.[21]

In the meantime, since the subdivision plan revealed that Marcelino and his son occupied and built their houses on a 423-square meter area located on the southernmost portion of Lot 1-E and not the adjacent lot designated as Lot G-1 under TCT No. T-22656,[22] the spouses Lorenzo and Rosita Cabal (respondents) confronted Marcelino on this matter which resulted to an agreement on March 1, 1989 to a re-survey and swapping of lots for the purpose of reconstruction of land titles.[23] However, the agreed resurvey and swapping of lots did not materialize[24] and efforts to settle the dispute in the barangay level proved futile.[25]

Hence, on August 10, 1994, respondents filed a complaint for Recovery of Possession with Damages against Marcelino before the Municipal Trial Court of Iba, Zambales (MTC), docketed as Civil Case No. 735. They alleged that Marcelino introduced improvements in bad faith on their land with knowledge that the adjacent lot is titled in his name.[26]

On August 26, 1994, Marcelino filed his Answer with Counterclaim, contending that respondents have no cause of action against him because he has been in possession in good faith since 1949 with the respondents' knowledge and acquiescence. He further avers that acquisitive prescription has set in.[27]

On January 24, 1997, during the pendency of the trial of the case, Lorenzo died. Following trial on the merits, the MTC rendered on November 19, 1997 its Decision[28] in favor of Marcelino, the dispositive portion of which reads:

> WHEREFORE, on the basis of the foregoing premises as adduced by this Court the plaintiff or their representatives are hereby directed to relinquish the possession of said property subject matter of this case and deliver the peaceful possession of the same to the herein defendant or his authorized representatives, to remove the improvements made thereon within fifteen (15) days from the receipt of this decision, otherwise, this Court would remove and/or destroy the same with cost against the plaintiff, further the plaintiff is hereby ordered to pay the amount of Ten Thousand Pesos (P10,000.00), Philippine Currency representing moral damages and exemplary damages in the amount of Five Thousand Pesos (P5,000.00), Philippine Currency, and the amount of Twenty Thousand Pesos (P20,000.00), Philippine Currency, representing attorney's fees.
>
> SO ORDERED.[29]

The MTC reasoned that prescription or the length of time by which Marcelino has held or possessed the property has barred the respondents from filing a claim.

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On December 12, 1997, respondents filed a Motion for Reconsideration[30] but the MTC denied it in its Order dated February 5, 1998.[31]

Dissatisfied, respondents filed an appeal with the RTC Branch 70, Iba, Zambales, docketed as RTC-1489-I. On August 10, 2000, the RTC rendered its Decision setting aside the Decision of the MTC.[32] The dispositive portion of the Decision states:

> WHEREFORE, the appealed Decision of the Municipal Trial Court is hereby REVERSED and SET ASIDE ordering the defendant Marcelino Cabal and all other persons claiming interest under him to vacate and deliver peaceful possession of the disputed area of 423 sq. m. within Lot 1-E embraced in TCT No. T-43419 to the plaintiffs-appellants; to remove all improvements therein introduced by said defendant or by persons under his direction and authority; to pay the plaintiffs-appellants P10,000.00 and P5,000.00 by way of moral and exemplary damages, respectively; to pay plaintiff-appellants attorney's fee in the sum of P20,000.00 and cost of this suit.
>
> SO ORDERED.[33]

In reversing the MTC, the RTC held that Marcelino's possession was in the concept of a co-owner and therefore prescription does not run in his favor; that his possession, which was tolerated by his co-owners, does not ripen into ownership.

On August 30, 2000, Marcelino filed a Motion for Reconsideration[34] but the RTC denied it in its Order dated May 3, 2001.[35]

On May 18, 2001, Marcelino filed a petition for review with the CA, docketed as CA-G.R. SP No. 64729.[36] Marcelino, however, died during the pendency of the case. On September 27, 2001, the CA rendered its Decision affirming in toto the Decision of the RTC.[37]

In sustaining the RTC, the CA held that Marcelino may have been in good faith when he started to occupy the disputed portion in 1949 but his occupation in good faith diminished after Lot G was surveyed when he was apprised of the fact that the portion he was occupying was not the same as the portion titled in his name; that from the tenor of the petition for review Marcelino would like to hold on to both the lot he occupies and Lot G-1, which cannot be allowed since it will double his inheritance to the detriment of his brother Lorenzo.

On November 13, 2001, Marcelino's counsel filed a Motion for Reconsideration[38] but the CA denied it in its Resolution dated May 22, 2002.[39]

On June 6, 2002, the heirs of Marcelino (petitioners), represented by his widow, Victoria Cabal, filed the present petition anchored on the following grounds:

> - CONTRARY TO THE COURT OF APPEALS' FINDINGS AND CONCLUSION, PETITIONER NEVER INTENDED AND NEITHER DOES HE INTEND TO HOLD ON TO BOTH THE 423 SQUARE METER WITHIN LOT 1-E WHICH HE IS OCCUPYING AND LOT 1-G (sic). PETITIONER IS ONLY INTERESTED IN THE DISPUTED PROPERTY, THAT IS, A PORTION OF LOT 1-E BECAUSE THIS IS WHERE HE INTRODUCED CONSIDERABLE IMPROVEMENTS IN GOOD FAITH.
>
> - THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT RULED THAT THE GOOD FAITH OF PETITIONER ON THE DISPUTED PROPERTY BEGAN TO DIMINISH AFTER LOT-G WAS SURVEYED.[40]

Anent the first ground, petitioners contend that since 1949 Marcelino has claimed no other portion as his inheritance from Marcelo, except the disputed lot; that Marcelino believed in good faith that the disputed lot is Lot G-1; that Marcelino never intended to hold on to both lots since he did not introduce any improvement on Lot

G-1 and he even agreed to a resurvey, swapping of lots and reconstruction of title after discovery of the mistake in 1989; that Marcelino wanted the disputed lot because he has introduced considerable improvements thereon.

On the second ground, petitioners maintain that Marcelino became aware of the flaw in his title only before the execution of the swapping agreement in March 1, 1989, long after he had introduced considerable improvements in the disputed lot; that Marcelino should not be faulted for believing that the disputed lot is his titled property because he is a layman, not versed with the technical description of properties; that Marcelino should be adjudged a builder in good faith of all the improvements built on the disputed property immediately prior to the execution of the swapping agreement and accorded all his rights under the law or, alternatively, the swapping of lots be ordered since no improvements have been introduced on Lot G-1.

Respondents, on the other hand, submit that Marcelino cannot be adjudged a builder in good faith since he exhibited blatant and deliberate bad faith in dealing with respondents.

The Court rules in favor of the petitioners.

As a general rule, in petitions for review, the jurisdiction of this Court in cases brought before it from the CA is limited to reviewing questions of law which involves no examination of the probative value of the evidence presented by the litigants or any of them.[41] The Supreme Court is not a trier of facts; it is not its function to analyze or weigh evidence all over again.[42] Accordingly, findings of fact of the appellate court are generally conclusive on the Supreme Court.[43]

Nevertheless, jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court, such as: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[44] The Court finds that exceptions (1), (2), (4) and (11) apply to the present petition.

It is undisputed that Marcelino built his house on the disputed property in 1949 with the consent of his father. Marcelino has been in possession of the disputed lot since then with the knowledge of his co-heirs, such that even before his father died in 1954, when the co-ownership was created, his inheritance or share in the co-ownership was already particularly designated or physically segregated. Thus, even before Lot G was subdivided in 1976, Marcelino already occupied the disputed portion and even then co-ownership did not apply over the disputed lot. Elementary is the rule that there is no co-ownership where the portion owned is concretely determined and identifiable, though not technically described,[45] or that said portion is still embraced in one and the same certificate of title does make said portion less determinable or identifiable, or distinguishable, one from the other, nor that dominion over each portion less exclusive, in their respective owners.[46]

Thus, since Marcelino built a house and has been occupying the disputed portion since 1949, with the consent of his father and knowledge of the co-heirs,[47] it would have been just and equitable to have segregated said portion in his favor and not one adjacent to it. Undoubtedly, the subdivision survey effected in 1976 spawned the dilemma in the present case. It designated Lot G-1 as Marcelino's share in the inheritance notwithstanding his

possession since 1949 of a definite portion of Lot G, now the southernmost portion of Lot 1-E.

Marcelino raised the defense of acquisitive prescription, in addition to possession in good faith, in his Answer to the Complaint in the MTC. Prescription, in general, is a mode of acquiring or losing ownership and other real rights through the lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted and adverse.[48] Acquisitive prescription is either ordinary or extraordinary.[49] Ordinary acquisitive prescription requires possession in good faith and with just title[50] for ten years.[51] In extraordinary prescription ownership and other real rights over immovable property are acquired through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.[52]

In the present case, the evidence presented during the trial proceedings in the MTC were sorely insufficient to prove that acquisitive prescription has set in with regards to the disputed lot. The tax declaration[53] and receipts[54] presented in evidence factually established only that Marcelino had been religiously paying realty taxes on Lot G-1. Tax declarations and receipts can only be the basis of a claim of ownership through prescription when coupled with proof of actual possession.[55] Evidently, Marcelino declared and paid realty taxes on property which he did not actually possess as he took possession of a lot eventually identified as the southernmost portion of Lot 1-E of subdivision plan (LRC) Psd-307100.

Furthermore, the Court notes that Marcelino no longer invoked prescription in his pleadings before the RTC[56] and CA;[57] neither did herein petitioners raise prescription in their petition[58] and memorandum[59] before this Court. They only extensively discussed the defense of possession in good faith. They are thus deemed to have abandoned the defense of prescription.

The Court shall now delve on the applicability of the principle of possession in good faith.

It has been said that good faith is always presumed, and upon him who alleges bad faith on the part of the possessor rests the burden of proof.[60] Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry.[61] The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another.[62] Applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.[63]

In the present case, Marcelino's possession of the disputed lot was based on a mistaken belief that Lot G-1 is the same lot on which he has built his house with the consent of his father. There is no evidence, other than bare allegation, that Marcelino was aware that he intruded on respondents' property when he continued to occupy and possess the disputed lot after partition was effected in 1976.

Moreover, the fact that in 1977 Marcelino mortgaged Lot G-1 subject of TCT No. 22656 is not an indication of bad faith since there is no concrete evidence that he was aware at that time that the property covered by the title and the one he was occupying were not the same. There is also no evidence that he introduced improvements on Lot G-1. In fact, the agreement on March 1, 1989 to a resurvey and swapping of lots for the purpose of reconstructing the land titles is substantial proof of Marcelino's good faith, sincerity of purpose and lack of intention to hold on to two lots.

Thus, the CA's conclusion that Marcelino intended to hold on to both the disputed lot and Lot G-1 is pure

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speculation, palpably unsupported by the evidence on record. Marcelino is deemed a builder in good faith[64] at least until the time he was informed by respondents of his encroachment on their property.[65]

When a person builds in good faith on the land of another, the applicable provision is Article 448, which reads:

> Article 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[66] and 548,[67] 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.

Thus, 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 building, planting or sowing, after payment to the builder, planter or sower of the necessary and useful expenses, and in the proper case, expenses for pure luxury or mere pleasure. The owner of the land may also oblige the builder, planter or sower to purchase and pay the price of the land. If the owner chooses to sell his land, the builder, planter or sower must purchase the land, otherwise the owner may remove the improvements thereon. The builder, planter or sower, however, is not obliged to purchase the land if its value is considerably more than the building, planting or sowing. In such case, the builder, planter or sower must pay rent to the owner of the land. If the parties cannot come to terms over the conditions of the lease, the court must fix the terms thereof. The right to choose between appropriating the improvement or selling the land on which the improvement stands to the builder, planter or sower, is given to the owner of the land.[68]

In accordance with Depra v. Dumlao, [69] this case must be remanded to the trial court to determine matters necessary for the proper application of Article 448 in relation to Articles 546 and 548. Such matters include the option that respondents would take and the amount of indemnity that they would pay, should they decide to appropriate the improvements on the lots.

The Court notes that petitioners' alternative prayer that swapping of lots be ordered because no improvements have been introduced on Lot G-1. This cannot be granted. Respondents and Marcelino, petitioners' predecessor-in-interest, did not pray for swapping of lots in all their pleadings below. Both parties also did not allege the existence of a swapping agreement in their initial pleadings, much less pursue the enforcement of the swapping agreement. They are deemed to have renounced or abandoned any enforceable right they had under the swapping agreement and the parties cannot be compelled to a swapping of lots.

WHEREFORE, the instant petition is GRANTED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 64729 are REVERSED and SET ASIDE. The case is REMANDED to the court of origin for further proceedings to determine the facts essential to the proper application of Article 448 in relation to Articles 546 and 548 of the Civil Code.

No pronouncement as to costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Died during the pendency of the trial in the MTC.

[2] Penned by Associate Justice Ramon A. Barcelona (now retired) and concurred in by Associate Justices

Rodrigo V. Cosico and Bienvenido L. Reyes.

[3] Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Eubulo G. Verzola (now deceased) and Rodrigo V. Cosico, CA rollo, p. 220.

[4] TSN, Testimony of Domeciano C. Cabigao, September 17, 1996, p. 11.

[5] Id. at 6.

[6] TSN, Testimony of Marcelino Cabal, December 11, 1996, pp. 7-10.

[7] TSN, Testimony of Domeciano C. Cabigao, September 17, 1996, pp. 8-9.

[8] TSN, Testimony of Marcelino Cabal, December 11, 1996, p. 16.

[9] Annex "B" of the Brief of Plaintiffs-Appellants, Records, p. 669.

[10]Id. (dorsal side).

[11] Exhibit "E", id. at 290.

[12]Annex "B" of the Brief of Plaintiffs-Appellants, supra.

[13] Exhibit "E," supra, (dorsal side).

[14]Id.

[15] Exhibits "G" and "G-1," id. at 292-293.

[16]Exhibit "G-1," id. at 293.

[17] Id.

[18] Exhibit "H," id. at 295.

[19]Id.

[20]Id.

[21] Exhibit "B," id. at 287.

[22] Exhibit "E-4," id. at 289.

[23] Exhibit "1," id. at 472.

[24]TSN, Testimony of Rosita Cabal, April 20, 1995, p. 22.

[25] Id. at 22-23; Exhibit "F," Records, p. 8.

[26] Records, p. 1.

[27] Id. at 12.

[28] Id. at 504.

[29] Id. at 514.

[30] Id. at 515.

[31] Id. at 521.

[32] Id. at 673.

[33] Id. at 680.

[34] Id. at 682.

[35] Id. at 688.

[36] CA rollo, p. 2.

[37] CA rollo, p. 194.

[38] Id. at 208.

[39] Id. at 220.

[40] Rollo, p. 8.

[41] Spouses Hanopol v. Shoemart, Incorporated, 439 Phil. 266, 277 (2002); St. Michael's Institute v. Santos, 422 Phil. 723, 737 (2001).

[42] Go v. Court of Appeals, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 364; Spouses Hanopol v. Shoemart, Incorporated, supra.

[43] Custodio v. Corrado, G.R. No. 146082, July 30, 2004, 435 SCRA 500, 511; Spouses Hanopol v. Shoemart, Incorporated, supra.

[44] The Insular Life Assurance Company, Ltd. v. Court of Appeals, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86; Aguirre v. Court of Appeals, G.R. No. 122249, January 29, 2004, 421 SCRA 310, 319.

[45] De Guia v. Court of Appeals, 459 Phil. 447, 462 (2003). Spouses Si v. Court of Appeals, 396 Phil. 821, 828 (2000).

[46] Noceda v. Court of Appeals, 372 Phil. 383, 397 (1999).

[47] TSN, Testimony of Rosita Cabal, April 20, 1995, p. 12.

[48] Calicdan v. Cendaña, G.R. No. 155080, February 5, 2004, 422 SCRA 272, 279; Gesmundo v. Court of Appeals, 378 Phil. 1099, 1108 (1999); Heirs of Maningding v. Court of Appeals, 342 Phil. 567, 574 (1997).

[49] Civil Code, Article 1117.

[50] Id.

[51] Civil Code, Article 1134.

[52] Civil Code, Article 1137.

[53] Exhibit "2," Records, p. 473.

[54] Exhibit "5," id. at 476-499.

[55] Heirs of Flores Restar v. Heirs of Dolores R. Cichon, G.R. No. 161720, November 22, 2005, 475 SCRA 731, 741; De la Cruz v. Court of Appeals, G.R. No. 127593, September 30, 2003, 412 SCRA 282, 292.

[56] Motion for Reconsideration; despite notice, Marcelino failed to file an appellee's memorandum or brief, records at 670, 678 and 682.

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[57] Petition for Review and Motion for Reconsideration, CA rollo, pp. 2, 208.

[58] Rollo, p. 3.

[59] Id. at 115.

[60] CIVIL CODE, Article 527.

[61] Black's Law Dictionary, Abridged Fifth Edition, p. 353.

[62] Philippine National Bank v. De Jesus, G.R. No. 149295, September 23, 2003, 411 SCRA 557, 561; Negrete v. Court of First Instance of Marinduque, 150-C Phil. 322, 333 (1972); Bernardo v. Bernardo, 96 Phil. 202, 205 (1954).

[63] CIVIL CODE, Article 526.

[64] See Macasaet v. Macasaet, G.R. Nos. 154391-92, September 30, 2004, 439 SCRA 625, 644; Boyer-Roxas v. Court of Appeals, G.R. No. 100866, July 15, 1992, 211 SCRA 470, 488; De Guzman v. Fuente, 55 Phil. 501, 503 (1930); Aringo v. Arena, 14 Phil. 263, 268-269 (1909); Javier v. Javier, 7 Phil. 261, 267 (1907).

[65] Article 528, Civil Code provides: Possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully.

[66] 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 value which the thing may have acquired by reason thereof.

[67] 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.

[68] Ballatan v. Court of Appeals, 363 Phil. 408, 423 (1999); Grana & Torralba v. Court of Appeals, 109 Phil. 260, 263 (1960); Acuña v. Furukawa Plantation Co., 93 Phil. 957, 961 (1953); Aringo v. Arena, supra.

[69] G.R. No. 57348, May 16, 1985, 136 SCRA 475, 483.

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