

RODRIGO COLOSO, PLAINTIFF AND APPELLANT, VS. DOMINGO DE JESUS, AS ADMINISTRATOR OF THE INTESTATE OF THE DECEASED FLORENTINA N. VDA. DE JESUS, LILIA DE JESUS-SEVILLA AND HERMAN S...*G.R. No. 16411. August 31, 1963*

Ponente: LABRADOR, J.

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This is an appeal from a decision of the Court of First Instance of Manila, Hon. Magno Gatmaitan, presiding, dismissing the complaint filed by plaintiff-appellant for damages and condemning the defendants to execute a deed of sale in favor of the plaintiff of the property subject of the action for the amount of P60,000 within the period of the duration of the contract, or 10 years.

The record discloses that on February 12, 1955 Florentina N. Vda. de Jesus and Rodrigo Coloso entered into an agreement whereby the former authorized the latter to manage a parcel of land belonging to her containing 315 hectares and located in Samal, Bataan, with power to cut all trees and introduce productive improvements, and to appoint tenants or hire persons to work in the land. The parties agreed that they will divide the fruits of the trees and plants planted on the land on a fifty-fifty basis. It was further agreed that Coloso will commence the work and introduce improvements within two years from the date of the contract and upon failure to do so the contract will become of no force and effect.

The plaintiff entered the land in accordance with the contract, clearing out the land for planting with the necessary improvements thereon. On January 14, 1956 a letter was sent to the President of the Philippines, signed by various individuals supposed to be working on the land, asking the President to purchase the property for re-sale to them. The letter was referred to the Land Tenure Administration, which received it on January 14, 1956. Thereupon said office proceeded to evaluate the land, and at the same time tried to secure from the owner and the plaintiff-appellant information as to the price that the latter would be willing to sell the property to the Land Tenure Administration. Meetings were had between the representatives of the Land Tenure Administration and Atty. Lilia de Jesus-Sevilla who represented her deceased mother, and Rodrigo Coloso.

De Jesus and Coloso at first expressed their willingness to sell the property at P3,000 per hectare, which price Coloso later reduced to P2,685 and then to P2,500. On September 30, 1957 another meeting was held between the parties in which Lilia de Jesus did not appear. At this time Coloso reduced his price to P770 per hectare. Later in another meeting on October 21, 1957, Lilia de Jesus being present, she gave her price as P2,000.

The committee appointed by the Land Tenure Administration to make the appraisal of the value of the property fixed the said value at P700, but as Lilia de Jesus insisted on the price of P2,000 per hectare and questioned the right of Coloso to enforce his right of option on the Land Tenure Administration, no final agreement could be made.

In view of this stalemate Coloso brought this action for damages against the estate of Florentina N. Vda. de Jesus, alleging that by reason of the obstruction placed by Lilia de Jesus to the perfection of an agreement he has suffered the following damages: P161,050 actual damages, P40,000 moral damages, P30,000 compensatory damages, P20,000 exemplary damages, and P10,000 attorney's fees, or a total of P261,050.

The heirs of Florentina de Jesus submitted their respective answers. Lilia de Jesus-Sevilla denied the right of action of the plaintiff alleging that the latter's action in participating in the conferences for the purchase of the property by the Land Tenure Administration was not justified by any rights; that no definite or final offer was made by the Land Tenure Administration to acquire the property at any stated price; that the plaintiff had no authority to negotiate with the Land Tenure Administration for the sale of the property and that the property could not be sold without prior approval of the court of first instance because of the pendency of a proceeding for administration of the estate of the deceased Florentina N. Vda. de Jesus. The other defendant Domingo de Jesus presented practically the same defenses. The parties went to trial and thereafter the judge rendered the decision already stated above.

In finding for the defendants, the court declared that the negotiations between the plaintiff and the defendants with the Land Tenure Administration was only preliminary, to find out at what price the owners would be willing to part with the property at a negotiated sale; that the heir Lilia de Jesus was at liberty to agree or not to agree with the price offered by the plaintiff Coloso and that if the Land Tenure Administration desisted from concluding the agreement, the result of which would deprive Coloso of the chance to gain, Coloso could not complain because Lilia de Jesus, if she obstructed the sale, was only exercising her right to the property, and furthermore, because it is not clear that because of her obstruction the deal was not consummated, thereby depriving Coloso of an opportunity to gain from the intended transaction.

However, the court recognized the right of Coloso to exercise his right to buy the property and ordered the defendants to execute the corresponding deed of sale of the property upon payment by Coloso of the sum of P60,000 as agreed upon. The above decision is the subject of the present appeal of plaintiff-appellant.

Plaintiff claims in his first assignment of error that the lower court erred in finding that the Land Tenure Administration merely held preliminary negotiations for the said purchase of the property. In support of this supposed error it is argued that in October 1957 the Land Tenure Administration had sent out notices to the parties to attend "a final negotiation." This took place on October 22, 1961. Aside from this fact the committee appointed to assess the property had recommended a fixed price of the property at P700 per hectare. This is all that transpired.

It is to be noted that there was no formal offer made by the Land Tenure Administration to purchase the property for P700 a hectare. All that was held was a conference at which neither the Land Tenure Administration nor its officials expressed readiness and willingness to pay for the Land at the rate of P700 per hectare, or actually offered such price for the purchase of the property. It can not be deduced from these facts, therefore, that the Land Tenure Administration was ready and willing to pay P700 per hectare as no actual offer to purchase for that amount was made in the negotiations, either verbally or in writing thereafter.

But assuming for the sake of argument that the negotiations failed because the price offered by Lilia de Jesus was P2,000, we agree with the court below that it was her right to demand the price that she wanted. At the time of the negotiations Coloso had not yet become the owner of that property as he had not exercised the right of option by depositing the price fixed for the property. The interest of Coloso was not an absolute right to the property; it was a mere inchoate right dependent upon the exercise of the option and the payment by him of the agreed price. We further agree with the trial court that if the cause of the failure of the negotiations was the refusal of Lilia de Jesus

to agree to the of P700, as she was still the owner of the property at that time, her refusal could not have caused any damage to Coloso subject to be repaired.

It is also contended on behalf of the appellant that the court below erred in finding that there was no proof that the proximate and immediate cause of the failure of the negotiations was the refusal of Lilia de Jesus to come to terms and lower her price to P700. Neither do we find this supposed error to have been committed by the court below, no competent person testifying for the Land Tenure Administration having testified in court that the failure of the negotiations was due to the refusal of Lilia de Jesus to the price of P700 to which Rodrigo Coloso had agreed. The claim of the plaintiff-appellant that the refusal of Lilia de Jesus to conform to the price of P700 is the cause of the failure of the negotiations is, therefore, without foundation in fact. It was merely a surmise of plaintiff-appellant or his lawyer. We, therefore, find that the conclusion of the court that there was no sufficient proof that the cause of the failure of the negotiations was the fault of Lilia de Jesus, is sustained by the facts and circumstances disclosed by the evidence,

Finding no error in the decision appealed from, we hereby affirm it, with costs Against the plaintiff-appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

CONCEPCION, J.:

Appellant Isidro Soriente seeks the review by certiorari of a decision of the Court of Appeals.

It appears that sometime in 1900, the Compania Agri-cola de Ultramar was the owner of a big tract of land, situated in the municipality of Mandaluyong, Province of Rizal, which was leased to several tenants, among them Antonia Reyes and her brother Arturo Reyes. Said land was registered under the Torrens System of August 21, 1907. In 1912, Antonia Reyes, married Gregorio Domingo who built on part of the land leased to her and her brother some permanent improvements, consisting of a house, a well and water tanks. Subsequently, or in 1916, Gregorio Domingo purchased the portion of about 667.50 sq. m. on which said house stood. A small part of the eaves thereof abutted on the lot held by Arturo Reyes, who, on October 17, 1918 bought said lot, which is about 542.40 square meters, more or less. Inside this lot were, also, said well and water tanks, which, including the part of which the eaves of the house of Gregorio Domingo and Antonia Reyes abutted, covered an aggregate area of 24.90 square meters, more or less. However, Gregorio Domingo and their neighbors freely entered said lot of Arturo Reyes and drew water from said well with his consent.

Upon the death of Gregorio Domingo, whose wife had seemingly predeceased him, their daughter, appellee herein Juanita Domingo, inherited their aforementioned property, and secured therefor, on August 31, 1951, Transfer Certificate of Title No. 23570 of the province of Rizal. Arturo Reyes, likewise, died leaving three (3) children, namely, Lamberto, Reynaldo and Leonila, all surnamed Reyes, who succeeded to his title in and to the lot of 542.40 sq. m., which is covered by Transfer Certificate of Title No. 25352 of the same province. On August 15, 1934, Lamberto Reyes bought the share of his sister Leonila in the latter lot, consisting of one-third thereof, and then sold the same, as well as his own share, or two-thirds altogether of said lot, with an area approximately of 361 square meters, to appellant Isidro Soriente, for the sum of P5,000.00. Soon, later, or on August 27, 1954, counsel for Soriente wrote to Juanita Domingo the letter Exh. 7 stating that her water tanks and part of her house were beyond the boundaries of her lot and within that of Soriente and that she was using the water coming from the well therein without his knowledge and consent, and advising her to remove, within 15 days, said part of her

house and the water tanks from Soriente's property. In reply thereto, on September 1, 1954, Juanita Domingo offered to buy said property for the sum of P5,000.00 paid to Lamberto Reyes by Soriente, plus expenses incurred by the latter in connection therewith. Then, on September 16, 1954, she commenced the present action, to compel Soriente to "reconvey" said property to her for said sum of P5,000.00 plus expenses, and to recover damages by way of attorney's fees and costs.

In an amended complaint dated March 28, 1955, Juanita Domingo prayed the Court—in the event it deemed improper to order Soriente to make said reconveyance—to declare that the portion of Soriente's land encroached upon by the aforementioned improvements is charged "with easement of allowing the encroachments during the existence of said improvements, and to order the annotation of said easement upon defendant's (Soriente's) title, or else to either order defendant to pay for said improvements or to order" him "to convey to plaintiff that portion of his lot encroached upon by plaintiff's improvements, the price thereof to be fixed by the Honorable Court." On June 8, 1955, Juanita Domingo filed a "supplemental pleading" alleging that Soriente had maliciously constructed a new building on the lot which is the subject matter of this litigation, and praying that he be ordered to refrain from making further constructions thereon and "to remove the portion of his newly constructed building which occupies the portion of the lot occupied by plaintiff's improvements."

In his answer, Soriente admitted some allegations of appellee's complaints, denied other allegations thereof and set up special defenses, in addition to several counterclaims for alleged damages. After appropriate proceedings, the Court of First Instance of Rizal rendered a decision the dispositive part of which reads as follows:

"* * * the Court hereby renders judgment in favor of plaintiff and against the defendant, declaring the well in question to be the property of the plaintiff, and, in accordance with Art. 361 of the old Civil Code which must necessarily govern in this case, ordering the defendant to do any of the following: (1) to appropriate the useful improvements of plaintiff, namely, the well, the two waterpipes, the laundry tanks, and the eaves found in defendant's land upon paying to plaintiff their reasonable value, plus the damages and expenses to be caused in the removal of the said eaves; (2) to require the plaintiff to pay him the value of the land upon which the improvements are built; (3) in case defendant does not choose any of the two choices mentioned above, to respect the existence of said improvements on his land and to allow plaintiff to remain in the premises in question upon payment of reasonable rentals."

On appeal taken by the both parties, this decision was reversed by the Court of Appeals, which, likewise, ordered:

"* * * (1) the defendant Isidro Soriente to convey, for the amount of P1,991.66, to the plaintiff Juanita E. Domingo the portion of his property indicated on Exhibited 'A', having a total area of 143.40 square meters 15 days after the judgment has become final; (2) the said defendant to remove the improvements which he had constructed during the pendency of the case on the portion stated; (3) the plaintiff to pay to the defendant the sum of P15.00 a month as rentals for the use of the property covered by her improvements and the further sum of P5.00 a month as rentals for the space occupied by the well belonging to her, from August 15, 1954, until the said portion of 143.40 square meters is conveyed by the defendant to the plaintiff; and (4) the said defendant to pay to the plaintiff the sum of P1,000.00 as attorney's fees. For the purpose of carrying out item No. (1) of the dispositive portion of this decision, the clerk of Court (CFI, Rizal) is hereby designated and authorized to undertake the necessary steps to segregate the portion herein indicated. Without pronouncement as to costs."

Hence, this appeal by certiorari taken by Soriente, who maintains that the Court of Appeals has erred: (1) in holding that appellee is entitled to the benefits of Art. 1622 of the Civil Code of the Philippines; (2) in holding that this legal provision authorizes a partial redemption; (3) in applying the solution adopted by said Court in *Priscilla vs. Teodoro*, CA-G. R. No. 13291; (4) in refusing to apply articles 1573 and 487 of the Civil Code of Spain; (5) in ordering the demolition of appellant's new building; and (6) in awarding attorney's fees to herein

appellant.

With reference to the first two assignments of error, the Court of Appeals expressed itself as follows:

"We feel without authority and legal ground to order the demolition of the encroaching improvements of the plaintiff, without proper and adequate indemnity by the defendant of the damages incurred by the plaintiff, as a consequence of such removal, and which said defendant refuses to pay. The well, the water pipes and laundry tanks, as may be recalled, were first utilized by plaintiff's predecessors-in-interest in their charcoal business and later in their embroidery-laundry business long before the war and, after the war, by the plaintiff herself for like purpose, and they are the life-line and principal source of the water which supplies her laundry where no less than 200 family workers depend for living.

The eaves or portions of the building encroaching defendant's land, cannot be removed without great expense on plaintiff's part. Amado de Alba a civil engineer, hired by plaintiff to make an estimate of what it would cost the plaintiff, if the encroaching eaves were set back to the place required by the present ordinance, declared that said plaintiff would spend about P6,000.00 to P7,000.00 in all, because in order to remove the eaves in question, the trestle would have to be cut lengthwise and almost the whole building would be destroyed, and that would include the renovation of the roofing and entire sidings, plus windows and the stairs, change the posts and joists etc., (t.s.n., p. 16-19). This statement was not assailed by defendant. Such being the case, justice and equity would dictate that the court should be vigilant for the protection of the plaintiff who stands to suffer more than the defendant.

What remains to be determined, therefore, would be the portion to be segregated from defendant's land and the cost or price thereof. We believe and so hold that plaintiff is entitled to a conveyance of that portion of the defendant's property which is indicated in Exhibit 'A', having an area of 143.40 square meters. It would be extremely difficult to put into practical effect the decision of the lower court which would grant only to the plaintiff the portions exactly occupied by the encroaching improvements. Not only because the boundary between the plaintiff and defendant will result in a grotesque and irregular contour, but also because the intervening and interspersed spaces (not occupied by the improvements and which are small in area), will remain to be in the ownership of defendant, and this situation will be constant source of future controversies, and, consequently, litigations, between the parties. It is the belief of this Court that its duty must not end only in settling the present litigation, but also to see to it that the judgment will not unnecessarily breed another case among the parties. The records show that the defendant bought from Lamberto Reyes his land with an area of 360 square meters for P5,000.00. It would, therefore, seem reasonable that the plaintiff should pay for the area of 143.40 square meters, the amount of P1,991.66. This ruling might be objected to by the appellant, because the area is bigger than what the lower court had set aside. Considering, however, the fact that plaintiff can legally buy the entire lot of 360 square meters (Art. 1622, New Civil Code) and our finding that the defendant did not act in good faith in having bought the same, it would seem obvious that said plaintiff is entitled to buy 143.40 square meters. If one is permitted to buy the whole, he can also buy a part."

Said article 1622 reads:

"Whenever a piece of urban land which is so small and so situated that a major portion thereof cannot be used for any practical purposes within a reasonable time, having been bought merely for speculation, is about to be resold, the owner of any adjoining land has a right of pre-emption at a reasonable price." (Italic supplied.)

This provision is not in point. It has been neither proved nor alleged, either that the land purchased by appellant from Lamberto Reyes "is so small and so situated that a major portion thereof cannot be used for any practical purposes," or that it has "been bought merely for speculation," or, even, that it "is about to be resold." Besides, it is alleged in appellant's answer "that the land sought to be redeemed by plaintiff is * * * sufficiently big in area and so situated that the major portion or the whole thereof can serve comfortably as workshop and storage of machineries and equipments which defendant is putting up in the exercise and furtherance of his profession as

professional mechanical engineer and associate electrical engineer;" that "in fact a portion of said lot is actually used for residential purposes * * *;" and "that defendant has no intention now or in the future to dispose of or sell the property subject matter of the present action to any person * * *." What is more, appellee does not contest appellant's evidence on these allegations. Hence, the first two assignments of error are well taken.

With respect to the third assignment of error, we find that the case of *Priscilla vs. Teodoro* (supra) involved a concrete cement building of several stories, one of the walls of which encroached upon a portion of barely 1.43 square meters of the adjoining lot, due to a mistake in the survey made by an officer of the government, upon which the agents of the owner of said building had relied in the construction thereof. Besides, the encroachment could not be removed without demolishing said wall at a fantastic cost.

In the case at bar, appellee and her parents knew that their tanks and well were in appellant's property, which they used with the consent of its former owner (Artura Reyes). Furthermore, it is not claimed that said tanks and well cannot be constructed on the vacant portion of appellee's lot, apart from the fact that the building aforementioned is a two-story wooden house, with galvanized iron roofing. Hence, the equities in *Priscilla vs. Teodoro* (Supra) differ from those obtaining in the present case sufficiently to take the latter away from the rule laid down by the Court of Appeals in the former case.

As regards the third assignment of error, Art. 1573 and 487 of the Civil Code of Spain read:

"ART. 1573.—A lessee shall have, with respect to useful and voluntary improvements, the same rights which are granted to-usufructuaries.

"Art. 487.—The usufructuary may make on the property held in usufruct any improvements, useful or recreative which he may deem proper, provided he does not change its form or substance; but he shall have no right to be indemnified therefor. He may, however, remove such improvements, should it be possible to do so without injury to the property." (Italic supplied.)

As contended by appellant Soriente, the rights of the parties herein are governed by these legal provisions, the well, the water tanks and appellee's house having been constructed in 1912, when the Spanish Civil Code was in force in the Philippines and the builders of said improvements and appellant's predecessor in interest (Arturo Reyes) were mere lessees of the two lots which were later on divided among and then bought by them. Having succeeded to the interest of Gregorio Domingo and Antonia Reyes, appellee Juanita Domingo can claim no better rights than those possessed by her aforementioned parents, as lessees and builders of said improvements. Upon the other hand, appellant Soriente, as purchaser of the land on which said improvements are, has no other obligations in favor of its builder, and, hence, of its successor in interest—appellee herein—than those transmitted to him by Lamberto Reyes, his immediate predecessor in interest, who sold the land to him, and, in turn, acquired said obligations ultimately from its original owner and former lessor, the *Compania Agricola de Ultramar*. Pursuant to said Articles 487 and 1573, appellee herein has "no right to be indemnified" for said improvements, but may "remove" the same, "should it be possible to do so without injury to the property" of appellant herein. This implies, necessarily, that the latter may not be compelled, either to sell the portions covered by said improvements, much less a bigger area of appellant's property, or to have "the apparent easement of allowing the encroachments to continue during the existence of said well, water tanks and a portion of the building owned by plaintiff," as prayed for by appellee herein.

As a consequence, the last two assignments of error must, also, be sustained.

Wherefore, judgment is rendered:

(1) Declaring: (a) that appellee Juanita Domingo is not entitled to compel appellant Isidro Soriente to sell to her

any portion of his property; (b) that said appellant is not bound, either to remove the improvements constructed by him on said property, during the pendency of this case, or to pay attorney's fees to appellee Juanita Domingo; (c) that appellant may appropriate the well aforementioned, unless the appellee shall remove the same within thirty (30) days from notice of receipt of the records of this case by the court of first instance of Rizal, after this decision shall have become final and executory; and

(2) Sentencing the appellee (a) to remove, within the same period of time, the water tanks aforementioned and so much of the eaves of her house as abuts on the land of the appellant Soriente; and (b) to pay to the latter the sum of P20 a month, as rental for the use or occupation of his land by the improvements adverted to above, from August 15, 1954 to the date of the complete removal of said water tanks and eaves, as well as the costs.

As thus modified, the decision appealed from is hereby affirmed. It is so ordered.

Bengzon, C. J., Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Regala, and Makalintal, JJ., concur.

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