

EVARISTA ROBLES AND HER HUSBAND ENRIQUE MARTIN, PLAINTIFFS AND APPELLEES, VS. LIZARRAGA HERMANOS, DEFENDANT AND APPELLANT.

G. R. No. 16736. December 22, 1921

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Owing to the character of the facts in the three above entitled cases and the intimate connection existing between them, they Were, by agreement of the parties, tried together in the court below, and on appeal this court was requested to try them at the same time, which was done, and these three cases are jointly adjudged in the present decision. The following facts are undisputed:

Anastasia de la Rama died on the 17th of October, 1916, leaving six children, to wit, Magdalena, Jose, Evarista, Zacarias, Felix, and Purificacion, surnamed Robles, and some properties, among which is house No. 4 on Iznart Street in the city of Iloilo, concerning which a controversy arose which developed into the three cases now under consideration.

The children and heirs of Anastasia de la Rama entered into partnership with Lizarraga Hermanos in liquidation and settlement of their accounts, by virtue of which the competent court awarded to said partnership the properties left by the deceased, including the aforesaid house No. 4 on Iznart Street.

Evarista Robles, one of the aforesaid heirs, since before the death of her mother Anastasia de la Rama, has been with her husband occupying the aforesaid house No. 4 on Iznart Street, at the beginning, by permission of her mother, later on by the consent of her coheirs, and lastly by agreement with the partnership, Lizarraga Hermanos, to whom it had been awarded, having made some improvements on the house, the value of which is fixed at four thousand five hundred pesos (P4,500), and paying to said partnership forty pesos (P40) monthly as rent of the upper story.

On March 18, 1918, Lizarraga Hermanos notified Evarista Robles (Exhibit J) that beginning April next the rent of the upper story of the house would be raised to sixty pesos (P60) a month, and that, if she did not agree to the new rate of rent, she might vacate the house. Evarista Robles refused to pay such a new rate of rent and to vacate the house, and Lizarraga Hermanos brought suit against her for ejectment. Evarista Robles sued Lizarraga Hermanos afterwards to recover the value of the improvements, and demanded, in another action, that said value be noted on the certificate of title as an encumbrance.

Evarista Robles contends that the understanding with Lizarraga Hermanos by virtue of which she continued to occupy the house and made the improvements, was a contract whereby it was agreed to -sell her the said building on Iznart Street, the deed of sale to be executed as soon as the title deeds of the property were transferred to the name of said partnership; that by virtue of this contract she remained in the occupation of the building and made the improvements; that, as one of the stipulations in the contract of sale of the estate, Evarista Robles assumed the liability of an encumbrance of fourteen thousand pesos (P14,000) on the estate and another one in favor of the

Agricultural Bank and its successor, the National Bank, paying the interest thereon as well as the land tax and the premiums of the fire insurance, all of which payments were made through the same firm of Lizarraga Hermanos who, as a result of the liquidation of accounts, held funds in their possession belonging to Evarista Robles. These payments are evidenced by Exhibits A, B, C, F, H, and I. It should here be noted that Evarista Robles does not seek the execution of the proper instrument to evidence this contract of sale, nor the performance thereof. She only claims the cost of the improvements made at her expense and that this be recorded in the corresponding certificate of title.

While the firm of Lizarraga Hermanos does not question the fact that said improvements have been made and that their value amounts to four thousand five hundred pesos (P4,500), it denies, however, having entered into any agreement with Evarista Robles for the sale of the building in question. In deciding the case No. 16736 of this court, the court a quo found such a verbal contract of sale to have been proven not only by Exhibit A, which leads to such a conclusion, but by the oral evidence, which, in its opinion, had a preponderance in favor thereof, and by the corroborative evidence consisting in the fact of Lizarraga Hermanos having executed the deed of sale of the warehouse mentioned in the said Exhibit A. This firm questions the right of Evarista Robles to the improvements under consideration.

The fundamental questions upon which hinges the controversy in these three cases are: First, whether Evarista Robles is the owner of the aforesaid improvements and has the right to demand payment of their value (case No. 16736); second, whether she has any right to retain the building until the said value is paid to her (case No. 16661); and third, whether a note for the four thousand five hundred pesos (P4,500), the value of the above-mentioned improvements, as an encumbrance on this estate (case No. 16662), should be made on the title deeds thereof. Regarding the controversy in the case No. 16736, attention is called to article 453 of the Civil Code which reads:

"Necessary expenditures shall be refunded to every possessor, but only the possessor in good faith may retain the thing until they are repaid to him.

"Useful expenditures shall be paid the possessor in good faith with the same right of retention, the person who has defeated him in his possession having the option of refunding the amount of such expenditures or paying him the increase in value which the thing has acquired by reason thereof."

This provision of law is in force and applies to personal as well as real property.

The expenditures incurred in these improvements were not necessary inasmuch as without them the house would have continued to stand just as before, but were useful, inasmuch as with them the house better serves the purpose for which it was intended, being used as a residence, and the improvements consisting of the addition of a dining room, kitchen, closet, and bathroom in the lower and upper stories of the house, and a stable, suitable as a coach house and dwelling, it is beyond doubt that such improvements are useful to the building. One of the chiefs of the firm of Lizarraga Hermanos, on the occasion of a luncheon in the house, on noting the improvements, could not refrain from expressing that such improvements added much to the value of the building (folio 25, stenographic notes).

Now then, was Evarista Robles a possessor in good faith when she made those improvements? Article 434 provides that "good faith is always presumed and the burden of proving bad faith on the part of the possessor rests upon the person alleging it." Lizarraga Hermanos did not allege, nor prove in the first instance the bad faith characterizing Evarista Robles' possession, who, as shown in the records and heretofore stated, began to occupy the house by permission of the former owner, her mother Anastasia de la Rama, and continued later in the occupation by the consent of her coheirs, and afterwards by considering herself the future owner of the building

by virtue of the contract with the present owner, Lizarraga Hermanos. The evidence shows that said improvements were begun about the end of December, 1916, after the agreement with Lizarraga Hermanos for the sale thereof to Evarista Robles. (Folios 23, 24, 25, stenographic notes.)

We find that in the court below the presumption of good faith in favor of Evarista Robles' possession at the time she made the improvements on the property was neither disputed nor discussed, but on the contrary, there is positive evidence sufficient to support the conclusion that when she made the improvements on the aforesaid building she was possessing it in good faith.

If the improvements are useful and Evarista Robles' possession was in good faith, the conclusion set out in article 453 of the Civil Code, supra, is inevitable; Evarista Robles is the owner of such improvements, and entitled to reimbursement therefor, and to retain the building until the same is made.

One of the proofs establishing the fact that Evarista Robles' possession was in good faith is found in Exhibit A, which textually is as follows:

"Value of house } For Evarista..... P16,500.00

Value of warehouse

"Evarista pays them in this way—

"Balance in h/f owing from L.

Hnos.....

P1,424.35

Legacy to Evarista.....

500.00

Legacy to J. Robles.....

500.00

Legacy to Ambrosio.....

100.00

"Credit Agricultural Bank.....

14,000.00

"Paid by Zacarias.....

16,524.35

"Cash balance carried forward.....

24.35

"Liquidation

16,500.00"

Severiano Lizarraga acknowledged having drawn this document and admitted it to be in his own hand-writing (folios 6-8, transcript of stenographic notes taken in case No. 16661 at the trial held December 6, 1919). Taking into consideration the explanation he gives of the contents of this exhibit, there is the inevitable conclusion which is obviously inferred from the phrases "Value of house—of warehouse—For Evarista P16,500—Evarista pays them in this way," that Evarista Robles was to become the owner of the house (which is the one in question) and the warehouse for sixteen thousand five hundred pesos (P16,500), which sum she was to pay by assuming the liability of all the amounts enumerated" in the said memorandum all the way through.

But the admissibility of this document as evidence is disputed by reference to section 335, case No. 5, of the Code of Civil Procedure, which in the English text, which is clearer on this point, reads:

"SEC. 335. Agreements invalid unless made in writing.— In the following cases an agreement hereafter made shall be unenforceable (*Italics ours*) by action unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or secondary evidence of its contents:

"No. 5. An agreement for * * * the sale of real property, etc."

It should be noted, first of all, that this rule of evidence does not go to the extent of rendering invalid any verbal contract for the sale of real property (*Conlu vs. Araneta and Guanko*, 15 Phil., 387), but declares inadmissible any evidence of such a contract other than the document itself of the sale or some memorandum signed by the party charged, in so far as the object of the action instituted is to enforce performance of said contract of sale. But we are not dealing with that phase in any of the cases now before us. This document was introduced only to reinforce the proofs relative to the good faith characterizing the possession of Evarista Robles when she made the improvements in question, to the effect that if she made them, it was because she entertained the well-founded, nay certain belief that she was making them on a building that was to become her property by virtue of the verbal contract of sale.

In the action wherein Evarista Robles and her husband ask that they be adjudged owners of these improvements and that their value be paid to them, Lizarraga Hermanos filed a general denial and a counterclaim and cross-complaint for nineteen thousand pesos (P19,000) as compensation for damages alleged to have been sustained by them on account of their inability to sell the house and the warehouse, due to the fact that the buyer imposed the condition that the house should be vacated, which the plaintiffs refused to do.

It is a fact that the value of the improvements in question has not as yet been paid by Lizarraga Hermanos. Wherefore, if Evarista Robles and her husband are entitled to retain the building until the value of such improvements is paid them, Lizarraga Hermanos have not yet any right to oust them from the building, nor, therefore, to be indemnified for any damages caused by the refusal of the plaintiffs founded on their legitimate rights.

In regard to the ejectment sought in the case No. 16661, the suit was brought by Lizarraga Hermanos in the justice of the peace court of Iloilo on May 6, 1918, based on the failure of Evarista Robles and her husband to pay the rent of the upper story of the house in question for the month of April of that year, amounting to sixty pesos (OP60), and on the refusal of said spouses to quit the building. These spouses in their answer alleged as special defense that they had never been the tenants of Lizarraga Hermanos until November, 1917, when they became so "under the special circumstances" under which the plaintiff partnership sold the building, whereon they later

made, with the latter's consent, improvements amounting to four thousand five hundred pesos (P4,500), setting out the other stipulations and conditions hereinabove stated, which were incorporated into the contract of sale, and prayed, under their counterclaim, that Lizarraga Hermanos be sentenced to pay the sum of four thousand five hundred pesos (P4,500), the value of the improvements referred to, and under their cross-complaint, that said partnership be ordered to pay ten thousand pesos (P10,000) as compensation for damages alleged to have been sustained by the aforesaid spouses due to the aforesaid partnership's act, praying lastly, in view of the questions raised, that the case be regarded not as one of unlawful detainer, but for the recovery of title to real property, and that the court of the justice of the peace abstain from taking cognizance thereof for want of jurisdiction.

The case having been appealed to the Court of First Instance, these allegations were reproduced.

In the Court of First Instance, Lizarraga Hermanos demurred to this counterclaim and cross-complaint, and the demurrer was sustained by the court in its decision on the merits of the case, whereby the defendants are sentenced to return to Lizarraga Hermanos the possession of the building, to pay the rents thereof due from April, 1918, until they vacate the house, at the rate of sixty pesos P60 per month, and the costs.

From this judgment Evarista Robles and her husband have appealed, assigning as errors of the court a quo in finding that Lizarraga Hermanos were entitled to bring action for unlawful detainer, and ordering them to return the possession of the building.

If Evarista Robles and her husband were mere lessees of this building, the plaintiff's action for unlawful detainer is obvious and must prosper. But, were Evarista Robles and her husband mere lessees?

As above stated, we hold that there existed a contract of sale of this building executed by Lizarraga Hermanos in favor of Evarista Robles about November, 1916, the performance of which is not, however, sought to be enforced, nor would it be enforceable if the evidence offered in the action instituted for the purpose be not the document itself of the sale, or a memorandum thereof, signed by the party bound by the contract and required in the action to fulfill it, and objection be made to said evidence, as was done here.

The possession of these spouses was in no way begun by virtue of any lease whatever, since it is not disputed, and is a proven fact, that they came to occupy the building by permission of the mother of Evarista Robles. Upon said mother's death, they continued to occupy the property by the consent of the coheirs. After the assignment of the property to Lizarraga Hermanos was concluded, but before the title deeds were transferred to the name of this partnership, an agreement was made for the sale of the building to Evarista Robles and her husband, the latter agreeing in the meantime to pay to Lizarraga Hermanos a certain sum per month—forty pesos (P40)—by way of compensation for the occupation of the building until the execution of the deed of sale in favor of the occupants.

Considering abstractly the naked fact that these spouses occupied the house by paying a certain sum for its occupation, it would seem that this is indeed a case of lease. But such was not the contract. It was simply the sense of justice of the parties that led them to make the stipulation that, while the conveyance of the building was being carried into effect in due form, the future owners should pay a certain sum for its possession. This peculiar situation continued for all the time in which the said spouses made and completed the improvements in question until Lizarraga Hermanos changed their resolution to sell the building to Evarista Robles and her husband. But then all the improvements in question had already been made, and when these spouses were requested to vacate the building, they answered, and gave it to understand, that they would do so as soon as the value of the improvements was paid to them. Up to that time they were not lessees strictly speaking. Did they become so afterwards? Neither; for since that moment they have been, as are at present, in possession of the building by virtue of the right that they had, and do have, to retain it until the value of the improvements is paid to them. And it was after these spouses had manifested their intention not to leave the building until they were reimbursed for

the improvements made thereon that this action for unlawful detainer was instituted.

Before these improvements were made, or before these spouses demanded payment of their value, that is, while the possession was partly based on the stipulation with color of lease, an action for unlawful detainer might have, in a sense, been justifiable, though not entirely maintainable, owing to the fact that such possession was based primarily on the well-founded belief of the occupants that they were to become the owners of the house in their possession, that the monthly payment being a provisional arrangement, an incidental and preemptory stipulation, while the solemn formalities of the conveyance were being complied with.

But after the improvements had been made and Lizarraga Hermanos had manifested their resolution to rescind the contract of sale and not to pay for them, then the possession of the aforesaid spouses lost all color of lease, and turns out to be a possession based only upon the latter's right to retain the building. And these were all the attending circumstances of said possession when the action for unlawful detainer was commenced.

We are, therefore, of opinion, and so hold, that Lizarraga Hermanos were not, and are not, entitled to maintain any action for unlawful detainer so long as they do not pay the value of the improvements in question.

We will now take up the case No. 16662 wherein Evarista Robles and her husband ask that these improvements be noted on the proper certificate of title as an encumbrance.

These spouses pray in their complaint for the cancellation of the said certificate of title, which is the transfer certificate No. 526, a substitute of the original No. 32 of the office of the register of deeds of Iloilo.

If the object of these spouses is, as it cannot be otherwise, to have such an encumbrance noted, the cancellation is not necessary, and, of course, not justifiable. At any rate, the fraud alleged in this last action to have been committed precisely to secure such a transfer certificate cannot be held proven.

But it having been decided that these spouses are entitled to demand payment of the value of the improvements and to retain the building until such value is paid them, it only remains for us to determine whether this right of retention has the character of a real right to be regarded as one of the encumbrances referred to in section 70 and the following sections of the Land Registration Act.

It being a burden on the building to the extent of being inseparably attached to the possession thereof, this right of retention must necessarily be a real one. If so, as we regard, and find, it to be, it is but just that such an encumbrance should be noted on the transfer certificate No. 526 issued by the register of deeds of Iloilo in favor of Lizarraga Hermanos, or on any substitute thereof.

As a consequence of all the foregoing, we affirm the judgments appealed from in the three cases in so far as they are in harmony with the conclusions herein set out, and reverse them in so far as they are in conflict therewith, and it is hereby adjudged and decreed:

First. That Lizarraga Hermanos pay to the spouses Evarista Robles and Enrique Martin the sum of four thousand five hundred pesos (P4,500), the value of the improvements referred to in these cases, with right or the part of said spouses to retain the building in question until the payment hereby ordered is made.

Second. That said spouses Evarista Robles and Enrique Martin vacate the aforesaid building immediately after the receipt, or the legal tender, of the payment hereby decreed.

Third. That the said spouses Evarista Robles and Enrique Martin pay to Lizarraga Hermanos a compensation for the occupation of the building at the rate of forty pesos (P40) a month, beginning with the month of April, 1918, until they vacate the aforesaid building as it is ordered herein.

Fourth. That upon payment of his lawful fees, the register of deeds note said right of retention on the back of the transfer certificate No. 526 issued in favor of Lizarraga Hermanos, or of any other certificate standing in lieu thereof, concerning the said building, which note will remain in force until the payment of the aforesaid improvements is made as above ordered. Without pronouncement as to costs in this instance, so ordered.

Araullo, C. J., Malcolm, Avancena, Villamor, Ostrand, and Johns, JJ., concur.

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