

MODESTA BELTRAN, PLAINTIFF AND APPELLANT, VS. JUAN VALBUENA ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 25951. December 24, 1927*

Ponente: OSTRAND, J.

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It appears from the record that in the year 1920 the defendants in the present case brought an action in ejectment against the herein plaintiff, Modesta Beltran, for the recovery of the possession of a tract of land embracing about 68 hectares (civil case No. 2159 of the Court of First Instance of Pampanga). Shortly afterwards Modesta Beltran filed a petition in that court for the registration of the same land in her name, the case being numbered land registration case No. 403 of the Province of Pampanga. The defendants herein appeared as opponents in the land registration case and claimed to be the owners in fee simple of the land. The two cases were tried together and on January 12, 1923, the Court of First Instance rendered judgment in favor of said defendants for the possession of the land and denied Modesta Beltran's application for registration. She appealed to this court and on October 15, 1923, a decision was rendered confirming the judgment of the court below.^[1] The judgment was executed on December 10, 1923, the sheriff delivering the possession of the land together with the crop growing thereon to the herein defendants.

The present action was brought by Modesta Beltran to recover compensation in the sum of P25,840.97 for improvements alleged to have been made by her upon the land during the period from the year 1917 until December 10, 1923, when she was ousted. She also asks reimbursement for the expenses of the cultivation and production of the crops delivered to the defendants under the execution of the judgment in case No. 2159 and that she be allowed the right of retention of the possession of the property in litigation until payment of the indemnification and reimbursement.

In their answer the defendants deny the allegations of the complaint and allege as a special defense that the plaintiff should have set up her claim to indemnification as a counterclaim in case No. 2159 and that having failed to do so, her action is now barred under section 97 of the Code of Civil Procedure. Upon trial the court below found that the plaintiff's claim for indemnification was greatly exaggerated, and that moreover she had lost all right to prosecute her claim by her failure to set it up as a counterclaim in civil case No. 2159. From this judgment the plaintiff appealed to this court.

The present case is in all fours with that of the *Berses vs. Villanueva* (25 Phil., 473), in which we held that a claim similar to the one here in question should have been presented as a counterclaim in the original action and that the failure to do so barred the claim under section 97 of the Code of Civil Procedure which reads as follows:

"Effect of Omission to Set up Counterclaim.—If the right out of which the counterclaim arises exists at the time of the commencement of the action and arises out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or is necessarily connected with the subject of the action, neither the defendant nor his assignee can afterwards maintain an action against the plaintiff therefore, if the defendant omits to set up a counterclaim for the same. But if the counterclaim arises out of transactions distinct from those set forth in the

complaint as the foundation of the plaintiff's claim and not connected with the subject of the action, the defendant shall not be barred from any subsequent action upon such counterclaim by reason of his failure to set it up in his answer to the pending action."

Whether the provisions of the section quoted apply to actions in ejectment where the defendant is a possessor in good faith and has reason to believe that his title and right to possession is without flaw, need not here be decided and is not necessarily within the rule laid down in the *Berses vs. Villanueva* case. It would, indeed, seem unjust to require a defendant in an ejectment suit to set up counterclaims which he has good reasons to consider unnecessary (see *Bautista vs. Jimenez*, 24 Phil., 111).

Here, as in the *Berses vs. Villanueva* case, the plaintiff was not a possessor in good faith at the time the expenditures, for which she now demands reimbursement, were incurred. It is true that the land involved was originally the property of one Tomas Bautista and that the plaintiff claims to be one of his heirs though the exact relationship between them does not appear from the records before us. But upon the death of Bautista, his widow, on September 25, 1877, sold the land under pacto de retro to Estanislao Perez and his wife Maria C. Lampa, who in turn sold it, also with pacto de retro, to Mauricio Valbuena, the ancestor of the defendants herein. After the death of Mauricio Valbuena, possession of the land appears to have been given to his widow in the year 1899, and it was declared for taxation by her as soon as the present land tax system was established in these Islands. By reason of default in the payment of the taxes, the land was confiscated by the government on April 11, 1903, but was redeemed by the widow of Mauricio Valbuena in 1906. Since then the taxes appear to have been paid regularly by the Valbuenas, and not by any of the heirs of Tomas Bautista though some of them occupied portions of the land as tenants of the Valbuenas. In or about the year 1917, Modesta Beltran and her son Jose Quinto offered to redeem the land from the pacto de retro sale to Estanislao Perez made in 1877, but the Valbuenas, claiming full ownership of the land, refused to permit the redemption, or rather repurchase. Notwithstanding the rejection of their offer and the fact that there were other heirs of Tomas Bautista with rights equal to those of Modesta Beltran, she and her son nevertheless took possession of the land and proceeded to make the improvements, for the expenses of which she now asks reimbursement. In these circumstances she certainly cannot claim to have made said improvements as a possessor in good faith; she must have been aware of the flaw in her title and should at least have suspected that she could not prosper in the action brought against her by the Valbuenas for the possession of the land. As a possessor in bad faith she might have recovered compensation for necessary expenditures (Civil Code, art. 453) but having failed to present a counterclaim therefor in the original action her claim is now barred.

The appealed judgment is affirmed with the costs against the appellant. So ordered.

Johnson, Street, Villamor, Johns, and Villa-Real, JJ., concur.

Avanceña, C. J., concurs in the result.

Malcolm, J., dissents.

[1] G. R. No. 20564, not reported.

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