

ANGELO ANGELES AND LUCIA A. DE ANGELES, PLAINTIFFS AND APPELLEES, VS. ANATALIA LOZADA AND HER HUSBAND SEGUNDO SAGUISAG, DEFENDANTS AND APPELLANTS.

G.R. No. 30823, December 28, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Alleging that they are entitled to repurchase the property specified in their complaint, the plaintiffs pray:

"Wherefore: The plaintiffs respectfully pray this honorable court to render judgment ordering the defendants: (a) To vacate the properties described in the complaint; (b) to pay the plaintiffs the sum of two hundred and forty pesos (P240) as rent for said property from December 13, 1925 to December 13, 1926, inclusive, plus P20 monthly as rent from the date last mentioned until they vacate the aforesaid property; (c) to pay plaintiffs the sum of two hundred and fifty pesos (P250) for the portions of the house demolished by the defendants; (d) to pay plaintiffs the sum of P200 for damages; (e) to pay the costs of this action; and (f) to grant plaintiffs any other just and equitable remedy." (Pages 6 and 7, bill of exceptions.)

The defendants filed a demurrer, which was overruled, and answered with a general denial and a counterclaim to the effect that in order to make the house mentioned in the complaint habitable, they had to repair it, expending P259.74 thereon which the plaintiffs refused to reimburse them; wherefore, they prayed to be absolved from the complaint and that the plaintiffs be compelled to pay them said sum of P259.74.

In reply, the plaintiffs set up a general denial of the allegations of the answer, and by way of special defense contend that the defendants had no right to take possession, or to dispose, of the aforesaid property, and they pray that the petition contained in the complaint be granted, and that they be absolved from the counterclaim.

After hearing, the Court of First Instance of Rizal rendered judgment as follows:

"It is ordered that judgment be entered requiring the defendants to vacate the property described in the complaint, upon payment to them of the repurchase price in the hands of the sheriff; to pay plaintiffs the sum of ten pesos (P10) monthly, as the value fixed by the court for the use and occupation of the aforementioned property, from December 13, 1925 until the delivery thereof, with the costs of the instant case against said defendants (Pages 11 and 12, bill of exceptions.)

The defendants appeal from this judgment making the following assignments of error as committed by the court below:

"1. In overruling the demurrer.

"2. In holding:

" (a) That the appellants refused to vacate the property here in question upon payment of the repurchase price.

" (b) That the sheriff tendered the repurchase price when the appellants were called upon to resell said lot.

"(c) That the appellants have no right to take possession of the property before the period of redemption has expired, if the property is not occupied by the judgment debtor.

"3. In not holding:

"(a) That the term of redemption had expired when the action was brought.

"(b) That the appellants are possessors in good faith.

"4. In ordering the payment of P10 monthly for the use and occupation of the property and the payment of the costs.

"5. In dismissing the appellants' counterclaim."

The facts are: The property in question, levied upon by virtue of a writ of execution, was sold at public auction to the defendants for P405 on December 12, 1925.

It is shown by a preponderance of the evidence that the house upon the aforesaid lot was then uninhabitable and almost in ruins, and the defendants repaired it, expending P259.74 thereon.

On November 15, 1926, the judgment debtor sold her rights and interests in said lot to the plaintiffs.

On November 18, 1926, in view of the defendants' refusal to accept the repurchase, the plaintiff Lucia A. de Angeles, deposited with the sheriff the sum of P457.19, which is the auction sale price, plus 1 per cent interest monthly, and the sheriff notified said defendant thereof, who still refused to resell the lot.

With regard to the repurchase, the plaintiffs were, and still are entitled to recover the property from the defendants upon payment of the sum of P457.19 offered and deposited by them. Article 1518 of the Civil Code, made applicable to legal redemption by article 1525 thereof, in so far as it provides that the redemptioner must reimburse the purchaser for the necessary and useful expenditures made upon the thing sold, and with respect to legal redemption, can no longer be enforced in view of the provision of section 465 of the Code of Civil Procedure, which is a law subsequent to the Civil Code, and which reads:

"The judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve months after the sale, on paying the purchaser the amount of his purchase, with one per cent per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate. And if the purchaser be also a creditor having a prior Hen to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest." (Italics ours.)

The defendants' right of retention by virtue of their having defrayed the expenses for repairs to the property, is not a prior lien to that of the redemptioners, and we have seen that a prior lien is an indispensable condition, according to section 465 of the Code of Civil Procedure, in order that the amount of such lien may be demanded as part of the sum payable for the redemption.

With respect to the defendants' counterclaim for the amount expended for the aforesaid repairs, we are of opinion that they are entitled to recover the same from the defendants. It is true that the purchaser of real property sold at public auction in the execution of a judgment is not entitled to the possession of said property pending the repurchase, for it was so held by this court in the case of *Pabico vs. Ong Pauco* (43 Phil., 572), and in *Powell vs. National Bank* (G. R. No. 31339, in the decision promulgated on November 27, 1929),^[1] the Spanish translation of said section being wrong, and leading to a different conclusion. But it is certain that the repairs to the real property here in question, according to the evidence, were made in good faith (it has not been shown that they were made in bad faith), and that they were useful and necessary, inasmuch as the house, as has been stated, was

uninhabitable and almost in ruins. Consequently, the defendants are entitled to reimbursement of the amount of said repairs from the plaintiffs according to article 453 of the Civil Code, and they would have a perfect right to retain the property according to said article, were it not for the fact that the defendants are indebted to the plaintiffs for rent for the occupation thereof, because as we have stated, the defendants were not entitled to its possession, and because said rent due to this date, compensated by the sum of P259.74, the cost of the repairs, leaves a balance in favor of the plaintiffs.

And for the determination of the amount of this rent, we accept the monthly rate fixed by the court below at which, under the circumstances of the case, is reasonable. However, the rent should not be computed from the date of the public auction sale since the house was then uninhabitable, but from the day when the plaintiffs tendered and deposited the repurchase price, which took place on November 18, 1926.

Wherefore, the judgment appealed from is affirmed in so far as it orders the defendants to vacate the property described in the complaint upon receipt of payment of the price of redemption in the hands of the sheriff; and it is modified by ordering the plaintiffs to pay the defendants for the repairs made amounting to P259.74, to be compensated by the sum which the defendants are hereby ordered to pay to plaintiffs as rent of the property at the rate of P10 monthly from November 18, 1926, until the same is delivered to the plaintiffs, so that the defendants are to pay to the plaintiffs the balance resulting in favor of the latter.

Without express pronouncement as to costs. So ordered.

Johns and Villa-Real, JJ., concur.

Avanceña, C. J., and Malcolm, J., concur in the result.

[1] Page 54, ante.

DISSENTING

STREET, J.:

I am constrained to dissent from so much of this decision as holds that the judgment creditor is entitled to recover the value of improvements made on the property prior to the time when redemption was effected. The result reached is contrary to the doctrine stated in *Flores vs. Lim* (50 Phil., 738), and in my opinion is objectionable as creating indirectly an unlawful clog on the right of redemption.

DISSENTING

OSTRAND, J.:

I am inclined to think that the judgment of the court below is correct. The defendants in taking possession of the house before the expiration of the period of redemption were mere trespassers and as such are not entitled to compensation for the improvements.

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