

**VICENTE STO. DOMINGO BERNARDO, PLAINTIFF AND APPELLANT,
VS. CATALINO BATACLAN, DEFENDANT AND APPELLANT. TORIBIO
TEODORO, PURCHASER AND APPELLEE.***G.R. No. 44606. November 28, 1938*

Ponente: LAUREL, J.

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This is an appeal taken by both the plaintiff and the defendant from the order of September 26, 1935, hereinbelow referred to, of the Court of First Instance of Cavite in Civil Case No. 2423.

There is no controversy as to the facts. By a contract of sale executed on July 17, 1920, the plaintiff herein acquired from Pastor Samonte and others ownership of a parcel of land of about 90 hectares situated in sitio Balayunan, Silang, Cavite. To secure possession of the land from the vendors the said plaintiff, on July 20, 1929, instituted Civil Case No. 1935 in the Court of First Instance of Cavite. The trial court found for the plaintiff in a decision which was affirmed by this Supreme Court on appeal (G. R. No. 33017).[1] When plaintiff entered upon the premises, however, he found the defendant herein, Catalino Bataclan, who appears to have been authorized by former owners, as far back as 1922, to clear the land and make improvements thereon. As Bataclan was not a party in Case No. 1935, plaintiff, on June 11, 1931, instituted against him, in the Court of First Instance of Cavite, Civil Case No. 2428. In this case, plaintiff was declared owner but the defendant was held to be a possessor in good faith, entitled to reimbursement in the total sum of P1,642, for work done and improvements made. The dispositive part of the decision reads:

"Por las consideraciones expuestas, se declara al demandante Vicente Santo Domingo Bernardo dueno con derecho a la posesion del terreno que se describe en la demanda, y al demandado Catalino Bataclan con derecho a que el demandante le pague la suma de P1,642 por gastos utiles hechos de buena fe en el terreno, y por el cerco y ponos de coco y abaca existentes en el mismo, y con derecho, ademas a retener la posesion del terreno hasta que se le pague dicha cantidad. Al demandante puede optar, en el plazo de treinta dias, a partir de la fecha en que fuere notificado de la presente, por pagar esa suma al demandado, haciendo asi suyos el cerco y todas las plantaciones existentes en el terreno, u obligar al demandado a pagarle el precio del terreno, a razon de trescientos pesos la hectarea. En el caso de que el demandante optara por que el demandado le pagara el precio del terreno, el demandado efectuara el pago en el plazo conveniente por las partes o que sera fijado por el Juzgado. Sin costas."

Both parties appealed to this court (G. R. No. 87319).[1] The decision appealed from was modified by allowing the defendant to recover compensation amounting to P2,212 and by reducing the price at which the plaintiff could require the defendant to purchase the land in question from P300 to P200 per hectare. Plaintiff was given by this court 30 days from the date when the decision became final within which to exercise his option, either to sell the land to the defendant or to buy the improvements from him. On January 9, 1934, the plaintiff manifested to the lower court his desire "to require the defendant to pay him the value of the land at the rate of P200 per hectare or a total price of P18,000 for the whole tract of land." The defendant informed the lower court that he was unable to

pay for the land and, on January 24, 1934, an order was issued giving the plaintiff 30 days within which to pay the defendant the sum of P2,212 stating that, in the event of failure to make such payment, the land would be ordered sold at public auction "Para hacer pago al demandante de la suma de P2,212 y el remanente despues de deducidos los gastos legales de la venta en publica subasta sera entregado al demandante." On February 21, 1934, plaintiff moved to reconsider the foregoing order so that he would have preference over the defendant in the order of payment. The motion was denied on March 1, 1934 but on March 16 following the court below, *motu proprio*, modified its order of January 24, "en el sentido de que el demandante tiene derecho preference al importe del terreno no se vendiere en publica subasta, a razon de P200 por hectarea y el remanente, si acaso lo hubiere se entregara al demandado en pago de la cantidad de P2,212 por la limpieza del terreno y las mejoras introducidas en el mismo por el citado demandado." On April 24, 1934, the court below, at the instance of the plaintiff and without objection on the part of the defendant, ordered the sale of the land in question at public auction. The land was sold on April 5, 1935 to Toribio Teodoro, the highest bidder, for P8,000. In the certificate of sale issued to said purchaser on the very day of sale, it was stated that the period of redemption of the land sold was to expire on April 5, 1936. Upon petition of Toribio Teodoro the court below ordered the provincial sheriff to issue another certificate not qualified by any equity of redemption. This was complied with by the sheriff on July 30, 1935. On September 18, 1935, Teodoro moved that he be placed in possession of the land purchased by him. The motion was granted by order of September 26, 1935, the dispositive part of which is as follows:

"Por tanto, se ordena al Sheriff Provincial de Cavite ponga a Toribio Teodoro en posesion del terreno comprado por el en subasta publica y por el cual se le expidio certificado de venta definitiva, reservando al demandado su derecho de ejercitar una accion ordinaria para reclamar del demandante la cantidad de P2,212 a que tiene derecho por la limpieza y mejoras del terreno y cuya suma, en justicia y equidad, debe ser descontada y deducida de la suma de P8,000 que ya ha recibido el demandante."

The Civil Code confirms certain time-honored principles of the law of property. One of these is the principle of accession whereby the owner of property acquires not only that which it produces but that which is united to it either naturally or artificially. (Art. 353.) Whatever is built, planted or sown on the land of another, and the improvements or repairs made thereon, belong to the owner of the land (art. 358). Where, however, the planter, builder, or sower has acted in good faith, a conflict of rights arises between the owners and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating what Manresa calls a state of "forced coownership" (vol. 3, 4th ed., p. 213), the law has provided a just and equitable solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity or to oblige the builder or planter to pay for the land and the sower to pay the proper rent (art 361). It is the owner of the land who is allowed to exercise the option because his right is older and because, by the principle of accession, he is entitled to the ownership of the accessory thing (3 Manresa, 4th ed., p. 213). In the case before us, the plaintiff, as owner of the land, chose to require the defendant, as owner of the improvements, to pay for the land.

The defendant dates that he is a possessor in good faith and that the amount of P2,212 to which he is entitled has not yet been paid to him. Therefore, he says, he has a right to retain the land in accordance with the provisions of article 453 of the Civil Code. We do not doubt the validity of the premises stated. "Considera la ley tan sagrada y legitima la deuda, que, hasta que sea pagada, no consiente que la cosa se restituya al vencedor." (4 Manresa, 4th ed., p., 304.) We find, however, that the defendant has lost his right of retention. In obedience to the decision of this court in G. R. No. 37319, the plaintiff expressed his desire to require the defendant to pay for the value of the land. The said defendant could have become owner of both land and improvements and continued in possession thereof. But he said he could not pay and the land was sold at public auction to Toribio Teodoro. The law, as we have already said, requires no more than that the owner of the land should choose between indemnifying the

owner of the improvements or requiring the latter to pay for the land. When he failed to pay for the land, the defendant herein lost his right of retention.

The sale at public auction having been asked by the plaintiff himself (p. 22, bill of exceptions) and the purchase price of P8,000 received by him from Toribio Teodoro, we find no reason to justify a rupture of the situation thus created between them, the defendant-appellant not being entitled, after all, to recover from the plaintiff the sum of P2,212.

The judgment of the lower court is accordingly modified by eliminating therefrom the reservation made in favor of the defendant-appellant to recover from the plaintiff the sum of P2,212. In all other respects, the same is affirmed, without pronouncement regarding costs. So ordered.

Avanceña, C. J., Villa-Real, Imperial, and Diaz, JJ., concur.

[1] Promulgated December 6, 1980, not reported. [1] Promulgated December 2, 1933 (59 Phil., 903).

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