

## THE MANILA BUILDING AND LOAN ASSOCIATION AND GREGORIO PEÑALOSA, PETITIONERS AND APPELLANTS.

*G.R. No. 4773. July 13, 1909*

Ponente: ARELLANO, C.J.

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### ARELLANO, C.J.:

On the 14th of January, 1908, the Manila Building and Loan Association applied to the Court of Land Registration for the registration of a building of strong materials erected on ground belonging to another.

On the 3d of March, 1908, the application was denied by said court for the following reason:

"Inasmuch as the petitioners are not the owners of the ground on which is erected the building of strong materials that they are seeking to register separately therefrom, their application can not be entertained by the court. However, if the owner of the land, Benito Legarda, should cause the same to be registered, the lease to which it is subject for the period of time agreed upon may be made to appear as an incumbrance, and the existence of the building erected on the leased portion of the ground may be set forth in the proper place in the certificate."

On the 7th day of said month and year, the petitioners excepted to the above decision and moved for the amendment of the same.

After hearing the motion on the 6th of April, 1908, the Court of Land Registration entered the following decree:

"If the sense of section 2 of Act No. 496 were such as is interpreted by the petitioners, an anomalous situation would arise whereby a building might become registered without the registration of the land upon which it is erected. And in view of the facility with which a building may disappear either by its removal to another place, or by reason of a fire or other causes, the result would be that the title issued by the court would be lacking the stability assured by the law. Not even under the Spanish Mortgage Law can a building erected on ground belonging to another be registered, unless the owner of the former had registered the right of lease of the latter. The decision above referred to is sustained."

On the 9th day of said month and year, the petitioner amended his request so as to include therein the following facts: that the land belonged to Benito Legarda; that it was leased to Gregorio Peñalosa, and by the latter sublet with the express consent of the owner to the Manila Building and Loan Association; that, by a decree of the Court of Land Registration issued on August 9, 1907, in case No. 2724, the land was registered in the name of Benito Legarda, subject to the incumbrance of the lease contract in favor of the Manila Building and Loan Association, which incumbrance was entered and indorsed on the title deed issued in favor of Benito Legarda in conformity with the said decree, and that in consequence thereof, the right of lease of the said Manila Building and Loan Association became registered.

On the 14th of April, 1908, the last decision of the Court of Land Registration was rendered as follows:

"In view of the fact that the building is an accessory, and that, as sworn to in the amended petition at the end of paragraph 1 thereof, the lease of the land on which the building is erected has been entered in the title deed

issued to the owner, Benito Legarda, the note that the registrar shall enter in the proper place at the back of the certificate, to the effect that the building erected on the leased portion of the land is the property of the lessee, is sufficient. The findings contained in the judgment of March 3, and in that rendered on the 6th instant are hereby sustained."

The petitioner excepted in due course and form to the foregoing judgment and submitted to this court his bill of exceptions, wherein two causes of error are alleged :

- That the trial court erred in determining that a building of strong materials, situated on land leased from and owned by a person other than the applicant, such land being duly registered subject to applicant's lease, could not be registered under the provisions of the Land Registration Act.

- In dismissing the application.

In order to support the first assignment of error, the applicant maintains that section 2 of Act No. 496, the Land Registration Act, deals with the entry or registration of land, buildings, interests; according to the applicant the law unites these three words by the conjunction or, as meaning that any one of the three things may be registered independently of the others; and, although in a following clause is mentioned "the land, and the buildings and improvements," the use of the article the in order to distinguish and separate "land" from "buildings and improvements" confirms said interpretation; that section 19 deals with the application for the registration of title without restricting itself to land; that in Act No. 627, dealing with military reservations, mention is made of "lands or buildings, or any interest therein;" that, while it is true that the word "buildings" has been suppressed in Act No. 806, nevertheless, in Act No. 1138, respecting naval reservations "lands of private ownership, buildings, and interests therein," are again mentioned; that the author of the Land Registration Act was well aware that the word "land" comprises everything contained thereon, and probably used it for the sake of brevity so as not to repeat the phrase "land or buildings or an interest therein;" that, if the Mortgage Law admits the registration of buildings erected on land belonging to another, independently of the land (art. 107, par. 1), Act No. 496, which has the same object and was intended to amplify rather than to restrict the said law, should be understood in the same sense; that Act No. 496 should be interpreted in its literal sense; that said law is a literal copy of the law of Massachusetts on the subject, the language of section 1 of the latter being identical with section 2 of our law, with the very significant exception that while, in the law of Massachusetts, the term "title to land" is employed, our law uses the more extensive term "title to land or buildings or an interest therein;" that it might be considered that "the owner of the land has a contingent right at the expiration of the lease, but by reason of the conjunctive provisions of articles 1573 and 487 of the Civil Code, the owner has no contingent interest or other right to the voluntary improvements of the lessee."

The use that the law makes of the phrase "land or buildings or an interest therein," instead of the single word "land," is no reason for construing the law as authorizing the registration of buildings erected on land belonging to another, separately and independently from the registration of the land. From the fact that, besides "land," "buildings" was added, it must not be inferred that it was the intent of the law to allude to buildings belonging to an owner other than the owner of the land. The natural and more logical inference is that since the buildings are an accessory to the land, in first employing the word "land" and subsequently the other word "buildings," it was intended to express what was principal and what was accessory, all pertaining to the same owner; this is shown by section 21, the latter part of which contains a form of application reading as follows:

"And I (or we) declare: (1) That I am (or we are) the owner (or owners) in fee simple of a certain parcel of land with the buildings (if any; if not, strike out the words 'with the buildings'), \* \* \* (2) That said land at the last assessment for taxation was assessed at.....dollars; and the buildings (if any) at..... dollars."

Section 127 contains several forms of "deeds, conveyances, mortgages, leases, releases, and discharges affecting lands, whether registered or unregistered."

Form No. 2, "deed of land registered under this Act," includes the following statement:

"..... do hereby sell and convey to said..... and his heirs and assigns that parcel of land, together with all the buildings and improvements thereon, etc."

Forms Nos. 3 and 4, "deeds of land not registered, without or with covenants of warranty," read:

".....do hereby sell and convey to the said....., his heirs and assigns, that parcel of land, together with all the buildings and improvements thereon, etc."

And the same formula, "parcel of land with all the buildings and improvements thereon" is found in the form of deed for the mortgage and lease of land. It may thus be seen that the language of the forms clearly expresses what was the intent of the law in the identical language of section 2 thereof; the natural and logical interpretation of such language of the Land Registration Act of the Philippine Islands being that it authorizes the owner of the land to register together with the land, all the buildings, improvements, or interests that he has therein, but that under no circumstances can registration be applied for separately and independently by the owner of the land and by the owner of the buildings; that is to say, that the land of one person and the building of another erected thereon can have no separate legal existence in the registry as property independent in themselves. Such a theory can not be set up, nor can this court sustain such a doctrine.

It is not true that "under the system of registration of property established by the Mortgage Law, buildings erected on land belonging to another may be registered separately from the land. (See par. 1, art. 107, Mortgage Law.)" (Brief. 8.)

"ART. 107. The following are mortgageable, but with such restrictions as are hereinafter expressed:

"1. A building erected on ground belonging to another, which, if mortgaged by the person who constructed it, shall be without prejudice to the right of the owner of the ground, this incumbrance being only secured by the interest which the person who constructed the building has therein."

The article above quoted does not state that the buildings erected on ground belonging to another person may be registered independently of the land; it only says that they may be mortgaged. Because they are mortgageable it is not to be inferred that they can be registered separately from the land of another person whereon they are erected.

And even though there has been no question formally presented nor argument advanced as to the registration of a mortgage on a building erected on land owned by another person, title to which land has not been previously registered, it is not considered out of place to state herein the doctrine of certain commentators on the aforesaid Mortgage Law as follows:

"Remarks in connection with the mortgage of a building constructed on a parcel of land belonging to another person.-The right to erect a building on a parcel of land is inherent in the title thereto; and inasmuch as it subsists per se, whereas the building can not subsist without the land, the latter is considered as principal, and that which is constructed thereon as accessory.

"According to article 359 of the Civil Code, all works on a piece of property are presumed to be made by the owner and at his expense unless the contrary is proven.

"Even in case it were proven he is entitled to appropriate the works upon indemnification, if there was good faith on the part of the person who carried out the work, or to compel the latter to pay him the value of the land. (Art. 361, Civil Code.)

"He who builds in bad faith shall lose his right to indemnity. (Art. 362.)

"With such precepts, which have in no manner modified the old law, we are positive that No. 1 of article 107 refers only and Exclusively to a building constructed after a contract made with the owner of the land wherein the title of the person at whose expense it was built is recognized; said contract must be registered, as otherwise it could not be recorded.

"Inasmuch as on the registration of the contract its conditions shall be stated, and the extent of the right of he who built shall become known, there will be no difficulty in applying the said No. 1 of article 107." (Galindo y Escosura, 3 Legislacion Hipotecaria, 162)

Lastly, as a reason for the appeal, it is alleged that he who builds on land belonging to another need not fear any contingent right on the part of the owner of the land at the expiration of the lease, because the provisions of articles 1573 and 487 of the Civil Code do not grant to the owner of the land "any contingent interest" or other right to the voluntary improvements of the lessee.

Article 1573 only says that "a lessee shall have, with regard to the useful and voluntary improvements, the same rights which are granted a usufructuary," and article 487 provides that "the usufructuary may make on the property which is the object of the usufruct any improvements, useful or for recreation, 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 said improvements, should it be possible to do so without injury to the property."

At the expiration of the lease the owner of the land has the right, not merely a contingent one but a definite right under the law, to cause the building erected on his estate to be taken down without incurring any obligation whatever, enforcing against the lessee the obligation imposed by article 1561, to return the estate in the same condition in which he received it (unless an agreement was executed prior to the construction of the building.)

If the object leased were a house, it is evident that the lessee might effect such improvements for use, recreation or comfort as would not change its form or substance as he deemed fit; he could build a bower or luxurious pavilion more expensive than the house itself, to which, at the expiration of the lease, the owner of the house would have no right whatever, unless the lessee could not remove the same without injury to the house to which it was attached as an improvement, excepting of course the right to cause the same to be demolished so that the house might be returned to him in the same condition that the lessee received it; but not because the lessee could make such improvement, and because the owner of the house did not have any right thereto, could the said bower or pavilion be registered independently of the house, when, without the house to which it was accessory, it could have no juridical status nor any real existence as a piece of property independent from the other property, to wit, the house to which it was attached.

"There can be no doubt, with respect to either the usufructuary or the lessee, that they are dealing with something that belongs to another; that the juridical relation maintained by them has a natural term, and that, therefore, when the time comes, they will have no right to allege such absolute and unlimited title to such improvements, as if the same had been made on their own property." (Manresa, 10 Civil Code, 595.)

In one word, they have no independent possession of the thing that the improvement represents.

The importance of superficies, compared to freehold, is in many countries great and constantly increasing, and enormous sums of money are raised and collected for the purpose of speculating in the first of these rights; but a leasehold is by no means a superficies, and the Philippine Civil Code supplies various forms of contract which provide security for capital so employed or for concerns engaged in the investment of funds.

For the reasons above set forth the order appealed from is hereby affirmed with costs.

Torres, Mapa, and Carson, JJ., concur.

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