

FELICIDAD LOPEZ, PETITIONER-APPELLEE, VS. MARCIANA CONSTANTINO, OPPOSITOR-APPELLANT.*G.R. No. 48882. March 17, 1943*

Ponente: OZAETA, J.

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In January, 1936, appellant sold to her daughter, the appellee, a parcel of land with all the buildings and improvements thereon situated at Nos. 1215, 1217, 1219, and 1221 Juan Luna, Tondo, Manila, in consideration of the sum of P4,000. In civil case No. 49536 of the Court of First Instance of Manila, which was instituted by the present appellant against the present appellee in order that the sale be either rescinded or declared subject to the condition presently to be mentioned, final judgment was rendered in which the court found that the purchase price of the house was far below its assessed or market value and that the sale was subject to the condition that the vendor shall receive from the vendee by way of life pension one half of the rents from Nos. 1215, 1217 and the ground floor of Nos. 1219 and 1221 Juan Luna. By virtue of that judgment said condition was annotated on the back of the certificate of title:

On May 3, 1941, without appellee's fault, the building or buildings above mentioned were totally destroyed by fire. Appellee and appellant, however, collected P5,000 and P1,000, respectively, on the insurance of their respective interests.

After the destruction of the building appellee sought by motion in the land registration case to cancel the annotation on the certificate of title of the condition of the sale above mentioned, on the theory that her obligation to pay appellant a life pension had terminated upon the destruction of the building out of the rents from which said pension was payable. The Fourth Branch of the Court of First Instance of Manila granted the motion over the opposition of the appellant and ordered the cancellation of the annotation and the issuance of a new certificate of title in favor of the appellee without such annotation.

Appellant contends (a) that her right to receive a life pension as a condition of the sale affected not only the building but also the lot on which it was erected and, hence, such right was not extinguished upon the loss of the building ; and (b) that the proceeds of the fire insurance policy which appellee collected should be ordered invested in the construction of another building.

The trial court believed that the life pension was an incumbrance on the building alone, and held that said building having been destroyed without appellee's fault, and there remaining nothing but the lot, "which in Manila constitutes a liability when it has no building," the life pension could no longer subsist.

It may indeed seem at first blush that the rents out of which the pension was payable were earned by or paid for the building only, independently of the lot on which it was erected; but further reflection will show that such impression is wrong. When both land and building belong to the same owner, as in this case, the rents on the building constitute an earning of the capital invested in the acquisition of both land and building. There can be a land without a building, but there can be no building without land. The land, being an indispensable part of the

rented premises, cannot be considered as having no rental value whatsoever.

Since appellant's participation in the rents of the leased premises by way of life pension was part of the consideration of the sale, it cannot be deemed extinguished so long as she lives and so long as the land exists, because that land may be rented to anyone who may desire to erect a building thereon. As a matter of fact, counsel for the appellee stated in open court during the oral argument that the present motion to cancel the annotation on his client's title was occasioned by the desire of the appellee to lease the lot in question to a company which intended to establish a gasoline station thereon but which did not want to enter into the contract of lease unless the incumbrance or annotation on appellee's title be first canceled. That, only goes to show that the land itself has a rental value. Hence we think it is erroneous to hold, as the trial court did, that the condition of the sale above mentioned attached only to the building and not to the land also, both land and building being the subject of the sale.

This is not an action by appellant to compel appellee to fulfil the said condition of the sale by paying her as a pension one half of the rents of the premises in question. As long as said premises earn no rents, appellant claims nothing because her right depends upon the existence of the rents. The nonexistence of the rents because of lack of any tenant on the premises cannot produce the extinguishment of appellant's right. The destruction of the building did not make the fulfilment of the condition of the sale forever impossible, inasmuch as a part of the subject of the sale, the land, still exists and may yet be rented.

But even granting that the obligation of the appellee to pay to the appellant during the latter's lifetime one half of the rents of the building in question or of certain portions thereof is an incumbrance on the building alone, such obligation may properly be considered as constituting the appellant a co-usufructuary of said building. Article 469 of the Civil Code provides that usufruct may be created on the whole or a part of the fruits of a thing, in favor of one or more persons, simultaneously or successively, and in any case from or to a certain day, conditionally or unconditionally.

Article 517 reads as follows:

"Art. 517.—If the usufruct is created on an estate of which a building forms part, and the latter should be destroyed in any manner whatsoever, the usufructuary shall be entitled to enjoy the use of the land and materials.

"The same rule shall be applied if the usufruct be created upon the building only and the latter should be destroyed. But, in such case, if the owner desires to construct another building he shall be entitled to occupy the ground and to make use of the materials, being obliged to pay the usufructuary during the continuance of the usufruct the interest upon a sum equivalent to the value of the ground and of the materials."

It is clear, therefore, that from whatever aspect the case is viewed, the conclusion is inescapable that appellee's obligation towards appellant under the contract above mentioned has not been extinguished.

We cannot consider here appellant's contention that the P5,000 collected by appellee from the insurance on the building should be invested in the construction of another building in lieu of the one destroyed by fire so that one half of the rents thereon may be subjected to the payment of appellant's life pension. That matter is entirely beyond the scope of the present proceedings under section 112 of Act No. 496, and can only be determined in an appropriate action. (*Fidelity and Surety Co. vs. Ansaldo and Quintos de Ansaldo*, 37 Off. Gaz., 1164.)

The order appealed from is reversed and appellee's petition is denied, without any finding as to costs. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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