

JUANA VALENCIA, PLAINTIFF AND APPELLANT, VS. CARMEN AYALA DE BOXAS, DEFENDANT AND APPELLEE.*G.R. No. 5028. February 20, 1909*

Ponente: WILLARD, J.

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After the judgment of this court in the case of Carmen Ayala de Roxas vs. Juana Valencia (9 Phil. Rep., 322) had been entered, the record was returned to the court below where an execution was issued directing the sheriff to put the plaintiff in that suit, who is the defendant in this suit, in possession of the real property there in question. The defendant in that suit, who is the plaintiff in this suit, then brought this action, asking that she be not ejected from the property until the defendant had paid her for the improvements which she had made thereon, which she alleged were of the value of P8,000. A preliminary injunction was granted restraining the eviction until the termination of the suit. The defendant in her answer set up a counterclaim for the use and occupation of the premises from the 1st day of September, 1901. The judgment of the court below acquitted the defendant of the complaint and ordered judgment against the plaintiff on the counterclaim for the sum of P15 a month as rent from the 1st day of September, 1901. From this judgment the plaintiff has appealed.

Article 453 of the Civil Code is as follows:

"Necessary expenses are refunded to every possessor, but only the possessor in good faith may retain the thing until they are repaid to him.

"Useful expenses are paid the possessor in good faith with the same right of retention, the person who has defeated him in his possession having the option of refunding the amount of the expenses or paying him the increase in value the thing has acquired by reason thereof."

So far as the plaintiff's claim to recover for the improvements is based upon the first paragraph of this article, it cannot be sustained. The improvements consisted in filling lot and erecting a house thereon. The term "necessary expenses" was considered in this court in the case of Alburo vs. Villanueva (7 Phil. Rep., 277), and it was there held that the filling in and improvement of a lot could not be brought under this head. The construction of the house, of course, could not, because that was not at all necessary for the preservation of the lot.

The plaintiff's principal reliance is, however, upon the second paragraph of article 453, and her claim is that she was a possessor in good faith. The status of the plaintiff with reference to this property was conclusively settled by the decision in the former case. (Sec. 306, Code of Civil Procedure.) In that case it was said (9 Phil. Rep., 324) :

"We hold in this case that the defendant did not occupy this land as owner, but was there by the mere tolerance of the plaintiff, and, consequently, that she, the defendant, has not acquired the ownership thereof."

The question whether a person who occupies by the mere tolerance of the owner is entitled to recover for improvements, has already been decided by this court. In the case of De Guzman vs. Rivera (4 Phil. Rep., 620),

the court said (p. 624) :

"From the foregoing it follows that the plaintiff occupied the land unlawfully and by mere tolerance of the actual owners thereof. She did not acquire when she bought the house any more rights than those which the former tenant had. She acted in bad faith when she instituted this action and she can not now avail herself of the provisions of articles 361 and 434 and other corresponding articles of the Civil Code."

Without considering the other objections raised to the complaint, we hold that it can not be maintained because the plaintiff was not an occupant in good faith.

The only evidence in the case to show the value of the use of the land occupied by the plaintiff from the 1st of September, 1901, is the following agreement made by the parties at the trial:

"The parties agree that the lot next to the lot mentioned in the complaint, occupied by the Chinese Pio Barretto, pays as rent to Doña Carmen Ayala P237 a month for an area of 4,000 meters."

The lot occupied by the plaintiff has an area of 479.49 square meters. There is no evidence to show whether the location of the lot occupied by Barretto is better or worse than the situation of the lot occupied by the plaintiff. There is no evidence to show what the natural features of the two properties are so that it can not be said that one is just as valuable as the other for the purposes of leasing. The mere isolated fact that one piece of property is actually rented for a certain sum of money is not sufficient evidence of the value of the use of an adjoining piece of property without some evidence to show that they are similarly situated and that one, for the purposes of renting, has the same value as the other.

The judgment of the court below acquitting the defendant of the complaint is affirmed. It is reversed so far as it orders judgment against the plaintiff for ₱15 a month from the 1st day of September, 1901, and the plaintiff is hereby acquitted of the counterclaim contained in the defendant's answer. No costs will be allowed to either party in this court.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.

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