

**LUMEN POLICARPIO, PETITIONER, VS. HON. COURT OF APPEALS
(NOW INTERMEDIATE APPELLATE COURT), HON. ELVIRO L.
PERALTA, AND PHILIPPINE TRUST COMPANY, RESPONDENTS.**

G.R. No. 55900. April 27, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

We order the remand of the case at bar to the Intermediate Appellate Court pursuant to the provisions of Section 9 of the Judiciary Reorganization Act of 1980 (Batas Pambansa Blg. 129) which grant the Intermediate Appellate Court "power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings."

The remand is warranted and necessary in the light of facts and circumstances appearing in the records which impel Us to grant the relief prayed for in the instant petition seeking, among others, that respondent Judge Elviro L. Peralta be directed "to receive the evidence for herein petitioner as a builder in good faith under the provisions of Article 546 in relation with Articles 448 and 450 of the Civil Code, in Civil Case No. 41518 of Branch XVII of the Court of First Instance of Manila."

Before citing said facts and circumstances, a recital of the petition's case history is necessary.

In 1959, the spouses Simeon and Modesta Policarpio together with daughter Iluminada (Lumen) R. Policarpio mortgaged to the Philippine Trust Company certain properties with TCT No. 24182 located in Navotas, Malabon, Rizal as security for a P300,000.00 loan. In 1963, for failure to pay the loan, the mortgage was foreclosed judicially by the bank in Civil Case No. 41518 and the properties mortgaged were sold at public auction on October 15, 1970 and was confirmed by the court on March 9, 1971. In the meantime, Simeon Policarpio died on April 16, 1971.

On October 20, 1976, the Philippine Trust Company filed in said case No. 41518 a Motion for Writ of Possession of the properties it had purchased at the auction sale, which was opposed separately by herein petitioner, and her brothers and sister, namely Ricardo, Leonila, Abelardo, Jose and Ruben, all surnamed Policarpio, on the ground of lack of notice of the auction sale to them. The trial court rejected their position, ruling that since the foreclosure sale took place before the death of Simeon Policarpio, his heirs who are the petitioner, her brothers and sister, were bound by the foreclosure proceedings and the subsequent sale, and that the bank had the right of possession of the properties after the confirmation of the sale. The court, however, did not issue the writ prayed for at that stage because there were circumstances of record which deterred the issuance, said circumstances being, in the words of the court's Order dated February 28, 1977, to wit:

"Whereas, in the exercise of its power to enforce its own decree and thus avoid circuitous action and vexatious litigation this court can give possession to the plaintiff without driving it to an action at law to obtain possession (Ramos vs. Mañalac, 89 Phil. 270), there are circumstances of record which deter it from issuing

the writ prayed for at this stage. Firstly, on the supposition that the new house of defendants was constructed with the knowledge of the plaintiff, they would be builders in good faith with the right to retain the land on which said structure stands until they are reimbursed the expenses in the construction thereof (Article 546, Civil Code), should the plaintiff elect to retain the land, instead of obliging the defendants to buy it in accordance with the provisions of Article 448 of the Civil Code. Secondly, since the defendants including the 'compulsory heirs', successors in interest of the deceased defendant, who have been in the possession of the property are deemed the lessees thereof, it would be in keeping with the policy of avoiding circuitous suits if evidence be introduced on the following: - whether or not defendants are builders in good faith of the house mentioned above, the value of the same, and the reasonable value of the use by the defendants or the heirs of the premises since the period to redeem expired - matters which this court can in this incident determine in much the same manner as it could oblige the plaintiff to render to the defendants an accounting of the fruits of the property had it taken possession thereof from the date of the confirmation of the sale. (Matta, et al. vs. PNB, et al., 66 Phil. 379). Moreover, the plaintiff has to articulate which of the alternatives in Article 448 or Article 450 of the Civil Code it would choose to elect depending on whether defendants are builders in good faith or bad faith.

"The proposal of Atty. Policarpio to buy the property is purely a matter for her to take up with the plaintiff, one the court cannot dip its fingers into, much less use as reason to delay the writ of assistance to plaintiff.

"In view of the foregoing, the court for the moment defers further action until the parties shall have adduced evidence on the matters set forth above, which they will do on March 31, 1977, at 8:30 in the morning.

"SO ORDERED.

"Manila, Philippines, February 28, 1977."

Subsequently, a number of orders was issued by the court dated May 6, 1977, February 14, 1979 and February 27, 1979 repeatedly calling for evidence on the alleged good faith or bad faith of the Policarpios. We cite below pertinent portions of these orders, thus:

Order dated May 6, 1977

"In view of the foregoing, let the incident be rescheduled for June 14 and June 15, 1977, at 8:30 in the morning, the court calling the attention of the parties to the fact that it cannot issue the writ prayed for unless evidence will be adduced on whether the defendants and the oppositors who claim themselves to be the heirs of Simeon Policarpio are builders in bad faith of the building admittedly constructed or reconstructed after the period to retain the property had expired, and on how much should said parties pay the plaintiff for their use of the premises since the time plaintiff was entitled to the possession and enjoyment of the same."

Order of February 14, 1979

"After the Court will have ruled on the exhibits of the plaintiff, it will set the incident for the purpose of receiving the evidence of the Policarpios. Mr. Jose B. R. Policarpio, his brothers and sisters who are allied with him in this case, are hereby directed to employ the services of an attorney to substitute Atty. David Flores, deceased, as promised in their pleading of November 17, 1978, otherwise in the hearing, the Court will consider that they waived assistance of counsel in connection therewith."

Order of February 27, 1979:

"Nevertheless, in a spirit of chivalry, the Court hereby sets the hearing for the last time to April 20, 1979, at 8:30 in the morning, for it to at least start hearing from the Policarpios on the evidence contem-plate in the several orders of this Court."

It appears from the orders cited above that the can-cellation of the hearings for the reception of evidence was due

to the fact that "in the past few weeks Atty. Lumen Policarpio had been suffering from dermatitis," that she (Atty. Lumen Policarpio) "cannot appear in court because she is presently with a rare species of skin disease."

Notwithstanding the above orders and inspite of the reasons for the postponement or cancellation of the scheduled hearings for the reception of the evidence, which to Us ap-pears reasonable and justifiable, the trial court received the evidence of the plaintiff Philippine Trust Company on April 23, 1979 as shown in the assailed order of May 28, 1979, to wit:

"Plaintiff presented the following: Letter of Paterno M. Sisante, then president of the plaintiff, dated January 15, 1974, addressed to Atty. Lumen Policarpio, informing her that the Board of Directors of said plaintiff in its meeting of January 8, said year, rejected her request of December 11, 1973, to repurchase the property foreclosed because (apparently) while possession should have been delivered upon confirmation of the sale on March 24, 1971, she filed an action relative to said property, ob-taining a restraining order, which however was dismissed by the Supreme Court on September 4, 1973 (Exhibit "E"); letter dated March 29, 1974, of Atty. Policarpio to the said Board appealing for a reconsideration of its stand and announ-cing that the family would be repurchasing the property, with interest on the 'sales price', 'plus accrued interest, legal cost, real estate taxes and other miscellaneous expenses incurred and contributed to the damage of your bank for the delay and failure to pay your bank on time' as soon as the loan applied by the purchaser, for the purchase price of their Rizal Avenue property, would be released by the Far East Bank (Exhibit "F"); letter dated August 21, 1974, of Ricardo G. Verzosa, then vice-president of the Bank, in answer to the letter of Miss Policarpio giving the Policarpios 'an exclusive option to repurchase the said properties within a period of forty-five (45) days from the date hereof (also the date of its receipt by the addressee) at P2,000,000.00 in spot cash' with the understanding that they were 'to account for and remit to us the rentals you have been collecting from tenants leasing certain portions of the said properties, which rentals, we understand, aggregated P1,150.00 monthly, as well as the rentals on the residential house being occupied by your family which is fixed at the rate of P500.00 per month, from March 24, 1971' (Exhibit "G"); letter of Antonio M. Nuyles of the Bank's legal department, dated February 9, 1976, demanding vacation of the property as there were already buyers of the same and payment of rents for the use thereof (Exhibits "H"); affidavit of Leonides de la Llana, president of the Bank from October 1, 1976 to May 15, 1978, to the effect that Atty. Policarpio did not repurchase the property within the time granted her, upon her repeated requests, to so repurchase (Exhibit "A"); affidavit of Oscar Ledesma, chairman of the Board of Directors of plaintiff, to the effect that he had never given his consent to Miss Policarpio as one of the defendants and as counsel of defendants to build a house on the property (Exhibit "B"); letter, dated June 21, 1978, of President Rafael Arnaldo of the plaintiff informing Miss Policarpio of the rejection by the Board of Directors of her request contained in her letter of May 15, 1978, for an extension from June 25, 1978 to October 25, 1978, to repurchase the property (Exhibit "D"); letter of said Arnaldo to Atty. Policarpio, dated September 28, 1978, informing her of the rejection by the Board of her request (apparently for reconsideration) of July 28, 1978, and of the reaffirmation by the said Board of its former decision, that contained in Exhibit "D" (Exhibit "C"); and a statement of the rents the Policarpios owe for the use of the property from March 24, 1971 to April 30, 1979, amounting to P48,500.00 as well as rents collected by them from portions of the property they leased to third persons in the total sum of P102,820.00 as of April 30, 1979 (Exhibit "I")."

The court further added that it committed a mistake in calling for evidence on whether or not the Policarpios are builders of a supposed renovated building in good faith. In the words of the court, We quote the pertinent portion of its Order dated May 28, 1979, as follows:

"Going over the records of the case once again, the Court realizes that it committed a mistake in calling for evidence on whether or not the Policarpios are builders of a supposed renovated building in good faith. The mortgage which was foreclosed contains the following provision:

'Now, therefore, as security for the payment of the principal and interest of the indebtedness herein referred to,

the Mortgagor hereby conveys, by way of first mortgage, to the Mortgagee, its successors and assigns that (those certain parcel(s) of land, together with all the buildings and improvements existing thereon and which may hereafter be placed thereon x x x x"

The above, coupled, not so much with the affidavit of Ledesma (Exhibit "B"), which is hearsay, as with the utter absence of any evidence on the part of the Policarpios which the Court may utilize as basis for not following the underscored provision of the mortgage contract, erases all obstacles to the delivery of the property to the plaintiff.

"A different consideration has to be accorded the matter of rentals. Exhibit "I" of the plaintiff is both hearsay and self-serving. Defendant Simeon Policarpio died on April 16, 1971; and while in her letter of March 29, 1974, Atty. Policarpio mentioned that her mother, defendant Modesta Reyes, was in a serious and critical condition by reason of a lingering illness, the records do not show whether or not she is still alive. The Court has to-date no way of knowing who among the heirs of defendant Simeon Policarpio other than Atty. Policarpio - Ricardo, Felizardo, Leonida, Concordia, Abelardo, Jose and Ruben, all oppositors to the motion for a writ of possession - had enjoyed the property in their rights as heirs after the death of their father. The Court in the absence of adequate evidence cannot make any accurate assessment, not determine whom to assess, in respect the rentals or fruits of the property bought by the plaintiff, not from March 24, 1971, as claimed by the plaintiff, but from March 24, 1972, as ruled by the Court in its order of March 24, 1971. (See Page 230, Records).

"Considering the probable traumatic effect this order may have upon the Policarpios, the havoc it may cause upon their lives, for it would appear that the property is their ancestral home, and the hardship of looking for a place to live, the Court hereby orders the issue of a writ of possession for the plaintiff with instructions to the implementing sheriff to give the defendants, their successors subsequent to the suit herein, and all the persons acting in their behalf or under them, a period of three (3) months from the service, which he shall make forthwith, of said writ upon each and every one of them within which to leave the premises."

In the dispositive portion of the May 28, 1979 Order, the Court directed that "(f)urther hearing on the matter of rentals and who should pay them shall be set at the pleasure of the plaintiff. The pendency of said matter is without prejudice to the service and implementation of the writ of possession."

Acting on her own behalf, petitioner Lumen Policarpio filed Motion for Reconsideration of the Order dated May 28, 1979 on the ground of equity but which the Court ordered stricken out per its Order of September 30, 1979. Again petitioner moved for a reconsideration of the September 30, 1979 order. On November 27, 1979, the court denied the second Motion for Reconsideration and directed that the Order of May 28, 1979 be then implemented.

Petitioner appealed to the Court of Appeals, now the Intermediate Appellate Court, on a Petition for Certiorari with Preliminary Injunction, docketed as CA-G.R. No. 10802, "Lumen Policarpio vs. Hon. Elviro L. Peralta, (Presiding Judge, Court of First Instance of Manila, Branch XVII) and Philippine Trust Company".

In a decision promulgated August 29, 1980, the Court of Appeals, after consolidating the case with a similar petition filed in CA-G.R. No. 10129-SP entitled "Ricardo Policarpio, et al. vs. Hon. Elviro L. Peralta, Presiding Judge, Court of First Instance of Manila, Br. XVII, et al." which was dismissed previously by the Court of Appeals in its decision of March 12, 1980, similarly dismissed the appeal of herein petitioner. Petitioner filed a Motion for Reconsideration on September 9, 1980 which was denied by the appellate court in its Resolution dated January 5, 1981.

Petitioner now comes to Us in the instant petition for review on certiorari.

In Our Resolution of November 11, 1981, We denied the petition for lack of merit. Petitioner then filed Motion for Reconsideration dated January 4, 1982 and We required respondents to comment thereon, which they did on February 8, 1982. Petitioner submitted a Reply to which respondents filed a Rejoinder. We then heard the parties

on oral argument on September 15, 1982, at which time petitioner argued and submitted Exhibits "A" to "Q" in support of her rebuttal arguments, among which are photographs of the new building constructed on the mortgaged land 3 years after the foreclosure and sale of the same which petitioner claims to have made in good faith and would entitle her to the rights granted under Article 546 in relation to Articles 448 and 450 of the New Civil Code.

As indicated earlier, the lower court had called for evidence on the matter of good faith in numerous orders quoted above. While the hearings scheduled for the reception of petitioner's evidence were cancelled due to the illness of petitioner, the Court proceeded to reverse itself and in the absence of the petitioner, heard, received and admitted the evidence of the respondent Philippine Trust Company. We hold that the lower court acted arbitrarily, whimsically and capriciously, which is tantamount to denying petitioner the right to due process, much more, so when the court denied the petitioner the opportunity to cross-examine the witnesses for the plaintiff and thereafter to adduce evidence as builder in good faith.

The reason of the lower court in reversing itself on the ground that the stipulation in the mortgage deed included "all the buildings and improvements existing thereon and which may hereafter be placed thereon" is not tenable.

Whether the above-cited stipulation foreclosed the right of the petitioner to be reimbursed for improvements made in the construction or renovation of the residential building in question was not in issue before the respondent Judge. What was before the court was the question of good faith on the part of the petitioner that would have entitled her to the right of reimbursement with the right of retention until payment thereof in accordance with Article 546 in relation to Articles 448 and 450 of the New Civil Code. Not only did the court evade the issue before it but also, after admitting the evidence of the plaintiff bank, the herein private respondent, the respondent Judge arbitrarily and with grave abuse of discretion denied the petitioner the opportunity to cross-examine the witnesses for the plaintiff bank and to adduce evidence on her behalf as builder in good faith.

Appealing to the respondent Court of Appeals on certiorari to reverse the assailed order of May 28, 1979 on the ground of abuse of discretion, the appellate court simply dismissed the petition for lack of merit on the ground of res judicata since the right of the Philippine Trust Company to a writ of possession of property sold at public auction on October 15, 1970 and confirmed by the court on March 16, 1971 had already been previously resolved in CA-G.R. No. 10129-SP, passing sub silencio the issue raised by petitioner as to her right of reimbursement for expenses in building the new house and the consequent retention of possession thereof based on good faith.

The right of petitioner under the cited provisions of the New Civil Code to retain possession of the property involved until reimbursement is paid for the improvements made thereon in good faith in the new construction and/or renovation after the destruction of the building by typhoon must be respected as much as the right of the bank to the possession of the foreclosed property it had purchased at the public auction sale. Since petitioner's right depends on the existence of good faith, such fact in issue must first be resolved.

We hold that petitioner is entitled to present her evidence to prove the alleged good faith which fact in issue may be resolved by the Intermediate Appellate Court pursuant to the Judiciary Reorganization Act of 1980, Batas Pambansa Blg. 129, Section 9 thereof.

WHEREFORE, the decision appealed from is SET ASIDE and the case at bar is hereby REMANDED to the Intermediate Appellate Court to resolve the factual issue raised herein under the provisions of Article 546 in relation to Articles 448 and 450 of the New Civil Code, and thereafter decide accordingly.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., De Castro, and Escolin, JJ., concur.

Aquino and Abad Santos, JJ., no part.

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