

FRANCISCO DEPRA, PLAINTIFF-APPELLEE, VS. AGUSTIN DUMLAO, DEFENDANT-APPELLANT.

G.R. No. 57348. May 16, 1985

Ponente: MELENCIO-HERERA, J.

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MELENCIO-HERERA, J.:

This is an appeal from the Order of the former Court of First Instance of Iloilo to the then Court of Appeals, which the latter certified to this instance as involving pure questions of law.

Plaintiff-appellee, Francisco Depra, is the owner of a parcel of land registered under Transfer Certificate of Title No. T-3087, known as Lot No. 685, situated in the municipality of Dumangas, Iloilo, with an area of approximately 8,870 square meters. Agustin Dumlaos, defendant-appellant, owns an adjoining lot, designated as Lot No. 683, with an approximate area of 231 sq. ms.

Sometime in 1972, when DUMLAO constructed his house on his lot, the kitchen thereof had encroached on an area of thirty four (34) square meters of DEPRA's property. After the encroachment was discovered in a relocation survey of DEPRA's lot made on November 2, 1972, his mother, Beatriz Derla, after writing a demand letter asking DUMLAO to move back from his encroachment, filed an action for Unlawful Detainer on February 6, 1973 against DUMLAO in the Municipal Court of Dumangas, docketed as Civil Case No. I. Said complaint was later amended to include DEPRA as a party plaintiff.

After trial, the Municipal Court found that DUMLAO was a builder in good faith, and applying Article 448 of the Civil Code, rendered judgment on September 29, 1973, the dis-positive portion of which reads:

"Ordering that a forced lease is created between the parties with the plaintiffs, as lessors, and the defendants as lessees, over the disputed portion with an area of thirty four (34) square meters, the rent to be paid is five (P5.00) pesos a month, payable by the lessee to the lessors within the first five (5) days of the month the rent is due; and the lease shall commence on the day that this decision shall have become final."

From the foregoing judgment, neither party appealed so that, if it were a valid judgment, it would have ordinarily lapsed into finality, but even then, DEPRA did not accept payment of rentals so that DUMLAO deposited such rentals with the Municipal Court.

On July 15, 1974, DEPRA filed a Complaint for Quieting of Title against DUMLAO before the then Court of First Instance of Iloilo, Branch IV (Trial Court), involving the very same 34 square meters, which was the bone of contention in the Municipal Court. DUMLAO, in his Answer, admitted the encroachment but alleged, in the main, that the present suit is barred by res judicata by virtue of the Decision of the Municipal Court, which had become final and executory.

After the case had been set for pre-trial, the parties submitted a Joint Motion for Judgment based on the Stipulation of Facts attached thereto. Premised thereon, the Trial Court, on October 31, 1974, issued the assailed Order, decreeing:

"WHEREFORE, the Court finds and so holds that the thirty four (34) square meters subject of this litigation is part and parcel of Lot 685 of the Cadastral Survey of Dumangas of which the plaintiff is owner as evidenced by Transfer Certificate of Title No. 3087 and such plaintiff is entitled to possess the same.

"Without pronouncement as to costs.

"SO ORDERED."

Rebutting the argument of res judicata relied upon by DUMLAO, DEPRA claims that the Decision of the Municipal Court was null and void ab initio because its jurisdiction is limited to the sole issue of possession, whereas decisions affecting lease, which is an encumbrance on real property, may only be rendered by Courts of First Instance.

Addressing ourselves to the issue of validity of the Decision of the Municipal Court, we hold the same to be null and void. The judgment in a detainer case is effective in respect of possession only (Sec. 7, Rule 70, Rules of Court).[1] The Municipal Court over-stepped its bounds when it imposed upon the parties a situation of "forced lease", which, like "forced co-ownership" is not favored in law. Furthermore, a lease is an interest in real property, jurisdiction over which belongs to Courts of First Instance (now Regional Trial Courts) (Sec. 44(b), Judiciary Act of 1948[2]; Sec. 19 (2) Batas Pambansa Blg. 129).[3] Since the Municipal Court, acted without jurisdiction, its Decision was null and void and cannot operate as res judicata to the subject complaint for Quieting of Title. Besides, even if the Decision were valid, the rule on res judicata would not apply due to difference in cause of action. In the Municipal Court, the cause of action was the deprivation of possession, while in the action to quiet title, the cause of action was based on ownership. Furthermore, Sec. 7, Rule 70 of the Rules of Court explicitly provides that judgment in a detainer case "shall not bar an action between the same parties respecting title to the land." [4]

Conceded in the Stipulation of Facts between the parties is that DUMLAO was a builder in good faith. Thus,

"8. That the subject matter in the unlawful detainer case, Civil Case No. 1, before the Municipal Court of Dumangas, Iloilo involves the same subject matter in the present case, the Thirty-four (34) square meters portion of land and built thereon in good faith is a portion of defendant's kitchen and has been in the possession of the defendant since 1952 continuously up to the present; x x x " (Bold ours)

Consistent with the principle that our Court system, like any other, must be a dispute resolving mechanism, we accord legal effect to the agreement of the parties, within the context of their mutual concession and stipulation. They have, thereby, chosen a legal formula to resolve their dispute — to apply to DUMLAO the rights of a "builder in good faith" and to DEPRA those of a, "landowner in good faith" as prescribed in Article 448. Hence, we shall refrain from further examining whether the factual situations of DUMLAO and DEPRA conform to the juridical positions respectively defined by law, for a "builder in good faith" under Article 448, a "possessor in good faith" under Article 526 and a "landowner in good faith" under Article 448.

In regards to builders in good faith, Article 448 of the Civil Code provides:

"ART. 448. The owner of the land on which anything has been built sown or planted in good faith.

shall have the right

to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or

to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent.

However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of

the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof." (Paragraphing supplied)

Pursuant to the foregoing provision, DEPRA has the option either to pay for the encroaching part of DUMLAO's kitchen, or to sell the encroached 34 square meters of his lot to DUMLAO. He cannot refuse to pay for the encroaching part of the building, and to sell the encroached part of his land[5], as he had manifested before the Municipal Court. But that manifestation is not binding because it was made in a void proceeding.

However, the good faith of DUMLAO is part of the Stipulation of Facts in the Court of First Instance. It was thus error for the Trial Court to have ruled that DEPRA is "entitled to possession", without more, of the disputed portion implying thereby that he is entitled to have the kitchen removed. He is entitled to such removal only when, after having chosen to sell his encroached land, DUMLAO fails to pay for the same.[6] In this case, DUMLAO had expressed his willingness to pay for the land, but DEPRA refused to sell.

"The owner of the building erected in good faith on a land owned by another, is entitled to retain the possession of the land until he is paid the value of his building, under article 453 (now Article 546). The owner of the land, upon the other hand, has the option, under article 361 (now Article 448), either to pay for the building or to sell his land to the owner of the building. But he cannot, as respondents here did refuse both to pay for the building and to sell the land and compel the owner of the building to remove it from the land where it erected. He is entitled to such removal only when, after having chosen to sell his land, the other party fails to pay for the same (underscoring ours).

"We hold, therefore, that the order of Judge Natividad compelling defendants-petitioners to remove their buildings from the land belonging to plaintiffs-respondents only because the latter chose neither to pay for such buildings nor to sell the land, is null and void, for it amends substantially the judgment sought to be executed and is, furthermore, offensive to articles 361 (now Article 448) and 453 (now Article 546) of the Civil Code. (Ignacio vs. Hilario, 76 Phil. 605, 608 [1946])".

A word anent the philosophy behind Article 448 of the Civil Code.

The original provision was found in Article 361 of the Spanish Civil Code, which provided:

"ART. 361. The owner of land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the work, sowing or planting, after the payment of the indemnity stated in Articles 453 and 454, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent."

As will be seen, the Article favors the owner of the land, by giving him one of the two options mentioned in the Article. Some commentators have questioned the preference in favor of the owner of the land, but Manresa's opinion is that the Article is just and fair.

". . . es justa la facultad que el código da al dueño del suelo en el artículo 361, en el caso de edificación o plantación? Algunos comentaristas la conceptúan injusta, y como un extraordinario privilegio en favor de la propiedad territorial. Entienden que impone el Código una pena al poseedor de buena fe; y como advierte uno de los comentaristas aludidos, 'no se ve claro el por qué de tal pena ... al obligar al que obra de buena fe a quedarse con el edificio o plantación, previo el pago del terreno que ocupa, porque si bien es verdad que cuando edifico o planto demostro con este hecho, que quería para sí el edificio o plantío, también lo es que el que edifico o planto de buena fe lo hizo en la errónea inteligencia de creerse dueño del terreno. Posible es que, de saber lo contrario, y de tener noticia de que había que comprar y pagar el terreno, no se hubiera decidido a plantar ni a edificar. La ley, obligándole a hacerlo, fuerza su voluntad, y la fuerza por un hecho inocente de que no debe ser responsable'. Así podrá suceder; pero la realidad es que con ese hecho voluntario, aunque sea

inocente, se ha enriquecido torticeramente con perjuicio de otro a quien es justo indemnizarle.

"En nuestra opinion, elCodigo ha resuelto el conflicto de la manera mas justa y equitativa, y respetando en lo posible el principio que para la accesion se establece en el art. 358."[7]

Our own Code Commission must have taken account of the objections to Article 361 of the Spanish Civil Code. Hence, the Commission provided a modification thereof, and Article 448 of our Code has been made to provide:

"ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof."

Additional benefits were extended to the builder but the landowner retained his options.

The fairness of the rules in Article 448 has also been explained as follows:

"Where the builder, planter 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 a state of forced co-ownership, the law has pro-vided a just 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 for the proper rent. It is the owner of the land who is authorized 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 213; Bernardo vs. Bataclan, 37 Off. Gaz. 1382; Co Tao vs. Chan Chico, G.R. No. 49167, April 30, 1949; Article applied: see Cabral, et al vs. Ibanez [S.C.] 52 Off. Gaz. 217; Marfori vs. Velasco, [C.A.] 52 Off. Gaz. 2050)."[8]

WHEREFORE, the judgment of the trial Court is hereby set aside, and this case is hereby ordered remanded to the Regional Trial Court of Iloilo for further proceedings consistent with Articles 448 and 546 of the Civil Code, as follows:

1. The trial Court shall determine —
 - a) the present fair price of DEPRA's 34 square meter-area of land;
 - b) the amount of the expenses spent by DUMLAO for the building of the kitchen;
 - c) the increase in value ("plus value") which the said area of 34 square meters may have acquired by reason thereof, and
 - d) whether the value of said area of land is considerably more than that of the kitchen built thereon.

2. After said amounts shall have been determined by competent evidence, the Regional Trial Court shall render judgment, as follows:

- a) The trial Court shall grant DEPRA a period of fifteen (15) days within which to exercise his option under the law (Article 448, Civil Code), whether to appropriate the kitchen as his own by paying to DUMLAO either the amount of the expenses spent by DUMLAO for the building of the kitchen, or the increase in value ("plus value") which the said area of 34 square meters may have acquired by reason thereof, or to oblige DUMLAO to pay the price of said area. The amounts to be respectively paid by DUMLAO and DEPRA, in accordance with the option thus exercised by written notice to the other party and to the Court, shall be paid by the obligor within fifteen (15) days from such notice of the option by tendering the amount to the Court in favor of the

party entitled to receive it;

b) The trial Court shall further order that if DEPRA exercises the option to oblige DUMLAO to pay the price of the land but the latter rejects such purchase because, as found by the trial Court, the value of the land is considerably more than that of the kitchen, DUMLAO shall give written notice of such rejection to DEPRA and to the Court within fifteen (15) days from notice of DEPRA's option to sell the land. In that event, the parties shall be given a period of fifteen (15) days from such notice of re-jection within which to agree upon the terms of the lease, and give the Court formal written notice of such agreement and its provisos. If no agreement is reached by the parties, the trial Court, within fifteen (15) days from and after the termination of the said period fixed for negotiation, shall then fix the terms of the lease, provided that the monthly rental to be fixed by the Court shall not be less than Ten Pesos (P10.00) per month, payable within the first five (5) days of each calendar month. The period for the forced lease shall not be more than two (2) years, counted from the finality of the judgment, considering the long period of time since 1952 that DUMLAO has occupied the subject area. The rental thus fixed shall be increased by ten percent (10%) for the second year of the forced lease. DUMLAO shall not make any further constructions or improvements on the kitchen. Upon expiration of the two-year period or upon default by DUMLAO in the payment of rentals for two (2) consecutive months, DEPRA shall be entitled to terminate the forced lease, to recover his land, and to have the kitchen removed by DUMLAO or at the latter's expense. The rentals herein provided shall be tendered by DUMLAO to the Court for payment to DEPRA, and such tender shall constitute evidence of whether or not compliance was made within the period fixed by the Court;

c) In any event, DUMLAO shall pay DEPRA an amount computed at Ten Pesos (P10.00) per month as reasonable compensation for the occupancy of DEPRA's land for the period counted from 1952, the year DUMLAO occupied the subject area, up to the commencement date of the forced lease referred to in the preceding paragraph;

d) The periods to be fixed by the trial Court in its Decision shall be inextendible, and upon failure of the party obliged to tender to the trial Court the amount due to the obligee, the party entitled to such payment shall be entitled to an order of execution for the enforcement of payment of the amount due and for compliance with such other acts as may be required by the prestation due the obligee.

No costs.

SO ORDERED.

Teehankee, Acting C.J., Plana, Relova, De La Fuente, and Alampay, JJ., concur.

Gutierrez, Jr., J., took no part, having been one of the two members of a Court of Appeals' Division of Five Justices who dissented from the majority opinion certifying this case to this Court.

[1] "Rule 70

"Forcible Entry and Detainer

"Sec. 7. Judgment conclusive only on possession; not conclusive in actions involving title or ownership. — The judgment rendered in an action for forcible entry or detainer shall be effective with respect to the possession only and in no wise bind the title or affect the ownership of the land or building. Such judgment shall not bar an action between the same parties respecting title to the land or building, nor shall it be held conclusive of the facts therein found in a case between the same parties upon a different cause of action not involving possession."

[2] "Sec. 44. Original jurisdiction. x x x

(b) In all civil actions which involve the title to or possession of real property, or any interest therein, or the legality of any tax, impose or assessment, except actions of forcible entry into and detainer on lands or buildings, original jurisdiction of which is conferred by this Act upon city and municipal courts;"

[3] "Sec. 19. Jurisdiction in civil case. - x x x

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;"

[4] Supra.

[5] Ignacio vs. Hilario, 76 Phil. 605 (1946).

[6] *ibid.*

[7] 3 Manresa, 7[th] Ed., pp. 300-301.

[8] II Tolentino, Civil Code of the Philippines, 1963 ed., p. 97.

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