

RODOLFO EUSEBIO, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND ROHIMUST SANTOS, RESPONDENTS.

G.R. No. 72188. September 15, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The controversy in this case is between two co-owners of a parcel of land of 811.30 sq. m. situated at Blumentritt Extension, corner Don Manuel Street, La Loma, Quezon City (the LOT). Petitioner (RODOLFO), as one of the two, had filed suit in 1981 against Private Respondent (ROHIMUST), the other co-owner, before the then Court of First Instance of Quezon City (now Regional Trial Court) for determination of their participations in the co-ownership, and for actual partition of the LOT. The dispositive part of the Trial Court's Decision was as follows:

"WHEREFORE, judgment is hereby rendered ordering the partition of that parcel of land, containing an area of 811.30 square meters, known as Lot No. 1, Block No. 77 of the Subdivision Plan Psd. 157222, situated at Blumentritt Extension corner Don Manuel Street, La Loma, Quezon City, covered by Transfer Certificate of Title No. 37685 of the Register of Deeds, Quezon City, as follows:

"a) 611.30 sq. m. which shall be given to plaintiff, Rodolfo Y. Eusebio;

"b) 200 sq. m. which shall be given to defendant, Rohimust Santos.

"The expenses for the survey of the lot to define the metes and bounds of the portions appertaining to plaintiff and defendant shall be equally shared by both parties. After which, any improvement existing thereon which encroached on that portion appertaining to the other party shall be demolished so that the party affected may fully enjoy and exercise his right over said portion."[1]

We have gone over the Expediente in the Trial Court, as well as the Record in the Appellate Tribunal, and we have found indications in the evidence that there are houses constructed on the LOT which may be legally owned in common, or which one party might claim to have been constructed by him separately from the co-ownership. Addresses of both parties are at No. 4 Don Manuel, and it can be presumed they live separately within the LOT. In his brief submitted to the Appellate Tribunal, ROHIMUST, in part, had said:

"x x x. The said lot is located at the corner of Don Manuel and Blumentritt Extension consisting of 811.30 square meters. There is an old house built and is still standing in the middle of the land. The house was constructed by his late grandfather Philip Zinsineth. (t.s.n., p. 6, Id.)."

As the manner of dividing the LOT has yet to be determined, and it could not then be known which buildings have to be cut by a dividing line, the Trial Court simply provided for the demolition of any building or part thereof, claimed by either party, which would be within the area assigned to the other party. No mention of compensation was made, and it is our opinion the omission shows the Trial Court intended that no compensation shall be payable.

ROHIMUST took an appeal from the Trial Court's Decision to the Intermediate Appellate Court (now Court of Appeals). The Appellate Tribunal initially affirmed the judgment of the Trial Court in toto. However, on Motion for Reconsideration filed by ROHIMUST, it rendered a Resolution amending its previous affirmance, holding that ROHIMUST "has the legal right to retain the house together with its improvements and the possession thereof until full payment of the value thereof". It is that modification which RODOLFO, in the instant Petition for Review, has alleged to be erroneous and which should be set aside.

The LOT was part of a subdivision owned by J.M. Tuazon & Co., Incorporated, represented by Gregorio Araneta, Incorporated (GA, Inc.). As early as 1924, it was occupied by Philip Zinsineth as a lessee, and he had constructed a house and garage thereon (Exhibit "7"). After his death, his "leasehold rights" were inherited by his two daughters, Mary, the mother of ROHIMUST, and Isabel, the deceased mother of RODOLFO's wife.

On April 15, 1974, the parties concerned agreed that the leasehold rights will be placed in the name of RODOLFO to the extent of 383 sq. m., and in the name of FERNANDO J. Santos, Jr., a son of Mary, to the extent of 428.30 sq. m. On that same date, a contract to sell the LOT on installment was executed by GA, Inc. in favor of RODOLFO FERNANDO was not included in the contract because GA, Inc. wanted to deal only with one person. However, on July 2, 1974, RODOLFO and FERNANDO signed an affidavit reading in part as follows:

"xxx xxx xxx

"That actually the property was bought by us jointly and the monthly installments shall be paid by us pro-rata to the area which we are presently occupying, which is as follows:

"Rodolfo Y. Eusebio - 383.00 sq. m. at P49,790.00, of which the amount of P9,958 was paid as down payment, shall pay a share in the monthly installment corresponding to P1,048.94 monthly;

"Fernando J. Santos, Jr. - 428.30 sq. m. at P55,679.00, of which the amount of P11,135.80 was paid as down payment, shall pay a share in the monthly installment corresponding to P1,173.01 monthly;

"xxx xxx xxx

"That it is our understanding that as soon as the property is fully paid for by us, the same shall be subdivided so as to have two transfer certificates of title issued to us for our corresponding portions;

"xxx xxx xxx"

By August 5, 1976, installment payments under the Contract to Sell had not been kept up to date. RODOLFO and FERNANDO then made an agreement as follow:

"That all overdue monthly installment arising from the monthly share of Fernando J. Santos, Jr. will be advanced by Rodolfo Y. Eusebio and the corresponding payment will be charged an interest rate of 1% per month;

"That the said parcel of land is to be fully paid forty eight (48) months from May 15, 1974. On the said due date of full payment, each party will have to pay its corresponding full share of payment. Each party will be given a grace period of five (5) months to settle its corresponding share of payment with the corresponding share thereon, and if after this date one party fails to pay its corresponding share, the said parcel of land will be subdivided according to the amount of payment by each party" (Exhibit "G").

In 1978, full payment was made to GA, Inc., and Transfer Certificate of Title No. 244154 of the Registry of Deeds of Metro Manila (originally No. 37685, Quezon City) was issued solely in the name of RODOLFO. For the full payment of the amount paid to GA, Inc., FERNANDO was not able to contribute his full share. In 1980, FERNANDO transferred his rights to ROHIMUST who is his brother.

In the case instituted by RODOLFO against ROHIMUST in 1981, the Trial Court found that, as a result of RODOLFO's payments made to GA, Inc. on behalf of FERNANDO, his share in the LOT had to be increased from 383 sq. m. to 611.30 sq. m., with the participation of ROHIMUST being decreased to 200 sq. m. That adjudication is now final.

The legal issue to be resolved in this instance is the correctness of the Appellate Tribunal's Resolution that:

"x x x. It is undisputed that defendant?appellant's house was erected on the land in question at the time that said portion was under his claim of ownership. They were therefore in possession thereof unquestionably in good faith. And, par. 2 of Article 546 of the Civil Code reads:

'Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.'

The Appellate Tribunal was in error in invoking Article 546 which prescribes the rights of the possessor in good faith as regards useful expenses. Article 546 presupposes, but does not establish, possession in good faith, the requisites of which are laid down in Article 526, thus:

"ART. 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

"He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.

"Mistake upon a doubtful or difficult question of law may be the basis of good faith."

It may be mentioned that, prior to April 15, 1974, the possession of the parties was in the concept of lessees of the LOT, which was not possession in good faith for purposes of Article 546. Conceding, for the sake of avoiding immaterial complications, that the parties became co-owners after April 15, 1974, when the contract to sell was executed, neither co-owner can claim possession in himself of any particular identified part of the LOT. As stated in *Cabello v. Cabello*, 37 Phil. 328, 336, "the possession held by a co-heir of the undivided estate is understood to be enjoyed in the name of the rest of the heirs." An undivided estate is co-ownership by the heirs. The ownership of the physically undivided thing pertains to more than one person, thus defined as "the right of common dominion which two or more persons have in a spiritual part of a thing which is not physically divided" (*Sanchez Roman*).

The provision of the Civil Code which should be applicable is Article 543, which provides:

"ART. 543. Each one of the participants of a thing possessed in common shall be deemed to have exclusively possessed the part which may be allotted to him upon the division thereof, for the entire period during which the co-possession lasted. Interruption in the possession of the whole or a part of a thing possessed in common shall be to the prejudice of all the possessors. However, in case of civil interruption, the Rules of Court shall apply."

Under the foregoing provision, after the LOT is actually partitioned, ROHIMUST would be "deemed to have exclusively possessed" since April 15, 1974, the part which may be allotted to him upon the division thereof" consisting of the definite 200 sq. meter area assigned to him, together with all buildings and parts of buildings erected therein (Section 11, Rule 69). RODOLFO can have no claim over such buildings or parts of a building, which improvements ROHIMUST can keep or demolish without paying any compensation thereof to RODOLFO. For the same reason, if there were buildings or parts of a building, found in the definite 611.30 sq. m. area assigned to RODOLFO, he will be deemed to have been in exclusive possession thereof since April 15, 1974, and he can keep or demolish these improvements without paying any compensation therefor to ROHIMUST.

WHEREFORE, the Resolution of June 14, 1985 of respondent Court promulgated in its case AC-G. R. CV No. 02022 is hereby set aside, and its Decision of September 19, 1984 in the same case, affirming the judgment of the Trial Court in toto, shall stand without modification. Let this case be remanded to the Trial Court for actual partition of the LOT between its co-owners under the provisions of Rule 69 of the Rules of Court.

Without pronouncement as to costs.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, and Feliciano, JJ., concur.

[1] Decision, pp. 93, 100, R.A.

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