

FLORENCIO IGNAO, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT, JUAN IGNAO, SUBSTITUTED BY HIS LEGAL HEIRS, AND ISIDRO IGNAO, RESPONDENTS.

G.R. No. 72876. January 18, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

In this petition for review by certiorari, petitioner seeks the reversal of the decision of the Intermediate Appellate Court (now Court of Appeals) affirming in toto the decision of the Court of First instance of Cavite, ordering petitioner Florencio Ignao to sell to private respondents Juan and Isidro Ignao, that part of his property where private respondents had built a portion of their houses.

The antecedent facts are as follows:

Petitioner Florencio Ignao and his uncles private respondents Juan Ignao and Isidro Ignao were co-owners of a parcel of land with an area of 534 square meters situated in Barrio Tabon, Municipality of Kawit, Cavite. Pursuant to an action for partition filed by petitioner docketed as Civil Case No. N-1681, the then Court of First Instance of Cavite in a decision dated February 6, 1975 directed the partition of the aforesaid land, allotting 133.5 square meters or 2/8 thereof to private respondents Juan and Isidro, and giving the remaining portion with a total area of 266.5 square meters to petitioner Florencio. However, no actual partition was ever effected.[1]

On July 17, 1978, petitioner instituted a complainant for recovery of possession of real property against private respondents Juan and Isidro before the Court of First Instance of Cavite, docketed as Civil Case No. 2662. In his complaint petitioner alleged that the area occupied by the two (2) houses built by private respondents exceeded the 133.5 square meters previously allotted to them by the trial court in Civil Case No. N-1681.

Consequently, the lower court conducted an ocular inspection. It was found that the houses of Juan and Isidro actually encroached upon a portion of the land belonging to Florencio. Upon agreement of the parties, the trial court ordered a licensed geodetic engineer to conduct a survey to determine the exact area occupied by the houses of private respondents. The survey subsequently disclosed that the house of Juan occupied 42 square meters while that of Isidro occupied 59 square meters of Florencio's land or a total of 101 square meters.

In its decision, the trial court (thru Judge Luis L. Victor) ruled that although private respondents occupied a portion of Florencio's property, they should be considered builders in good faith. The trial court took into account the decision of the Court of First Instance of Cavite in the action for partition[2] and quoted:

"x x x. Hence, it is the well-considered opinion of the Court that although it turned out that the defendants had, before partition, been in possession of more than what rightfully belongs to them, their possession of what is in excess of their rightful share can at worst be possession in good faith which exempts them from being condemned to pay damages by reason thereof." [3]

Furthermore, the trial court stated that pursuant to Article 448 of the Civil Code, the owner of the land (Florencio)

should have the choice to either appropriate that part of the house standing on his land after payment of indemnity or oblige the builders in good faith (Juan and Isidro) to pay the price of the land. However, the trial court observed that based on the facts of the case, it would be useless and unsuitable for Florencio to exercise the first option since this would render the entire houses of Juan and Isidro worthless. The trial court then applied the ruling in the similar case of *Grana vs. Court of Appeals*,^[4] where the Supreme Court had advanced a more "workable solution". Thus, it ordered Florencio to sell to Juan and Isidro those portions of his land respectively occupied by the latter. The dispositive portion of said decision reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the defendants and -

"(a) Ordering the plaintiff Florencio Ignao to sell to the defendants Juan and Isidro Ignao that portion of his property with an area of 101 square meters at P40.00 per square meter, on which part the defendants had built their houses; and

"(b) Ordering the said plaintiff to execute the necessary deed of conveyance to the defendants in accordance with paragraph (a) hereof.

"Without pronouncement as to costs."^[5]

Petitioner Florencio Ignao appealed to the Intermediate Appellate Court. On August 27, 1985, the Appellate Court, Second Civil Cases Division, promulgated a decision,^[6] affirming the decision of the trial court.

Hence the instant petition for review which attributes to the Appellate Court the following errors:

"1. That the respondent Court has considered private respondents builders in good faith on the land in question, thus applying Art. 448 of the Civil Code, although the land in question is still owned by the parties in co-ownership, hence, the applicable provision is Art. 486 of the Civil Code, which was not applied.

"2. That, granting for the sake of argument that Art. 448 x x x is applicable, the respondent Court has adjudged the working solution suggested in *Grana and Torralba vs. C.A.* (109 Phil. 260), which is just an opinion by way of passing, and not the judgment rendered therein, which is in accordance with the said provision of the Civil Code, wherein the owner of the land to buy (sic) the portion of the building within 30 days from the judgment or sell the land occupied by the building.

"3. That, granting that private respondents could buy the portion of the land occupied by their houses, the price fixed by the court is unrealistic and pre-war price."^[7]

The records of the case reveal that the disputed land with an area of 534 square meters was originally owned by Baltazar Ignao who married twice. In his first marriage, he had four children, namely Justo (the father of petitioner Florencio), Leon and private respondents Juan and Isidro. In his second marriage, Baltazar had also four children but the latter waived their rights over the controverted land in favor of Justo. Thus, Justo owned 4/8 of the land which was waived by his half-brothers and sisters plus his 1/8 share or a total of 5/8. Thereafter, Justo acquired the 1/8 share of Leon for P500.00 which he later sold to his son Florencio for the same amount. When Justo died, Florencio inherited the 5/8 share of his father Justo plus his 1/8 share of the land which he bought or a total of 6/8 (representing 400.5 square meters). Private respondents, Juan and Isidro, on the other hand, had 1/8 share (66.75 square meters) each of the land or a total of 133.5 square meters.

Before the decision in the partition case was promulgated, Florencio sold 134 square meters of his share to a certain Victa for P5,000.00 on January 27, 1975. When the decision was handed down on February 6, 1975, the lower court allotted 2/8 of the land to private respondents Juan and Isidro, or a total of 133.5 square meters.

It should be noted that prior to partition, all the co-owners hold the property in common dominion but at the same time each is an owner of a share which is abstract and undetermined until partition is effected. As cited in Eusebio

vs. Intermediate Appellate Court,[8] “an undivided estate is co-ownership by the heirs”.

As co-owners, the parties may have unequal shares in the common property, quantitatively speaking. But in a qualitative sense, each co-owner has the same right as any one of the other co-owners. Every co-owner is therefore the owner of the whole, and over the whole he exercises the right of dominion, but he is at the same time the owner of a portion which is truly abstract, because until division is effected such portion is not concretely determined.[9]

Petitioner Florencio, in his first assignment of error, asseverates that the court a quo erred in applying Article 448 of the Civil Code, since this article contemplates a situation wherein the land belongs to one person and the thing built, sown or planted belongs to another. In the instant case, the land in dispute used to be owned in common by the contending parties.

Article 448 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."

Whether or not the provisions of Article 448 should apply to a builder in good faith on a property held in common has been resolved in the affirmative in the case of Spouses del Campo vs. Abesia,[10] wherein the Court ruled that:

"The court a quo correctly held that Article 448 of the Civil Code cannot apply where a co-owner builds, plants or sows on the land owned in common for then he did not build, plant or sow upon land that exclusively belongs to another but of which he is a co-owner. The co-owner is not a third person under the circumstances, and the situation is governed by the rules of co-ownership.

"However, when, as in this case, the ownership is terminated by the partition and it appears that the home of defendants overlaps or occupies a portion of 5 square meters of the land pertaining to plaintiffs which the defendants obviously built in good faith, then the provisions of Article 448 of the new Civil Code should apply. Manresa and Navarro Amandi agree that the said provision of the Civil Code may apply even when there is a co-ownership if good faith has been established".[11]

In other words, when the co-ownership is terminated by a partition and it appears that the house of an erstwhile co-owner has encroached upon a portion pertaining to another co-owner which was however made in good faith, then the provisions of Article 448 should apply to determine the respective rights of the parties.

Petitioner's second assigned error is however well taken. Both the trial court and the Appellate Court erred when they peremptorily adopted the “workable solution” in the case of Grana vs. Court of Appeals,[12] and ordered the owner of the land, petitioner Florencio, to sell to private respondents, Juan and Isidro, the part of the land they intruded upon, thereby depriving petitioner of his right to choose. Such ruling contravened the explicit provisions of Article 448 to the effect that “(t)he owner of the land xxx shall have the right to appropriate xxx or to oblige the one who built xxx to pay the price of the land xxx.” The law is clear and unambiguous when it confers the right of choice upon the landowner and not upon the builder and the courts.

Thus, in Quemuel vs. Olaes,[13] the Court categorically ruled that the right to appropriate the works or improvements or to oblige the builder or planter to pay the price of the land belongs to the landowner.

As to the third assignment of error, the question on the price to be paid on the land need not be discussed as this would be premature inasmuch as petitioner Florencio has yet to exercise his option as the owner of the land.

WHEREFORE, the decision appealed from is hereby MODIFIED as follows: Petitioner Florencio Ignao is directed within thirty (30) days from entry of judgment to exercise his option to either appropriate as his own the portions of the houses of Juan and Isidro Ignao occupying his land upon payment of indemnity in accordance with Articles 546 and 548 of the Civil Code, or sell to private respondents the 101 square meters occupied by them at such price as may be agreed upon. Should the value of the land exceed the value of the portions of the houses that private respondents have erected thereon, private respondents may choose not to buy the land but they must pay reasonable rent for the use of the portion of petitioner's land as may be agreed upon by the parties. In case of disagreement, the rate of rental and other terms of the lease shall be determined by the trial court. Otherwise, private respondents may remove or demolish at their own expense the said portions of their houses encroaching upon petitioner's land.[14] No costs.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Record on Appeal, p. 5.

[2] Civil Case No. N-1681.

[3] Record on Appeal, p. 20, underscoring supplied.

[4] 109 Phil. 260.

[5] Rollo, p. 35, Record on Appeal, p. 24.

[6] Through Associate Justices Serafin E. Camilon, ponente, Crisolito Pascual, Jose C. Campos, Jr. and Desiderio P. Jurado, concurring.

[7] Rollo, pp. 9-10.

[8] G.R. No. 72188, September 15, 1986, 144 SCRA 154.

[9] Felices vs. Colegado, No. L-23374, September 30, 1970, 35 SCRA 173, 178.

[10] No. L-49219, April 18, 1988, 160 SCRA 379.

[11] Underscoring supplied.

[12] *supra*.

[13] G.R. No. L-11084, April 29, 1961, 1 SCRA 1159.

[14] See *Spouses del Campo vs. Abesia*, No. L-49219, April 15, 1988, 160 SCRA 379.

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