

PELICULA SABIDO AND MAXIMO RANCES, PETITIONERS, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT AND DOMINADOR STA. ANA, RESPONDENTS.

G.R. No. 73418. September 20, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review on certiorari seeks to set aside the decision of the then Intermediate Appellate Court which nullified the orders of the trial court for the issuance of the writs of execution and demolition in favor of the petitioners and which ordered the trial court to assess the value of the demolished properties of the private respondent for the purpose of set-off against respondent's liability to the petitioners.

This case originated from an action for quieting of title which was filed by the spouses Victor Dasal and Maria Pecunio against herein petitioners, Maximo Rances and Pelicula Sabido on the question of ownership over two parcels of land otherwise known as Lots "B" and "D".

On October 7, 1969, the trial court presided by Judge Delfin Sunga declared the petitioners as owners of Lots "B" and "D". The decision became final. However, when the decision was being carried out to put the petitioners in possession of Lot "B", the Provincial Sheriff found three (3) persons occupying portions of Lot "B". One of them was private respondent Dominador Sta. Ana.

The petitioners filed a motion to require the private respondent to show cause why he should not be ejected from the portion of Lot "B". In his answer, Sta. Ana claimed ownership by purchase from one, Prudencio Lagarto, of a bigger area of which Lot "B" is a part. He stated that the two other persons occupying the disputed portion are his tenants.

Subsequently, an order of demolition was issued by the trial court against the private respondent. This order was challenged by the private respondent and upon his filing of certiorari proceedings, this Court on November 26, 1973, set aside the order of the trial court and remanded the case to the latter for further reception of evidence to determine: 1) Whether or not the private respondent is privy to the spouses Victor Dasal and Maria Pecunio as the losing parties in the action below; and 2) Whether or not the petitioners and the private respondent are litigating over the same parcel of land or whether there is overlapping of boundaries of their respective lands.

On December 12, 1974, after conducting an ocular inspection and hearing, Judge Sunga issued an order for the private respondent to vacate Lot "B" upon finding that there is no proof that what the respondent allegedly purchased from Lagarto covers a portion of Lot "B" but on the contrary, the deed of sale and tax declaration show that what was sold to the respondent was bounded on the south by Tigman river and therefore, the respondent's ownership could not have extended to Lot "B" which was separated by Tigman river and mangrove swamps from the portion he purchased.

Before the order of December 12, 1974, could be executed, however, Judge Sunga inhibited himself from the case

so the same was transferred to the then Court of First Instance (now Branch XXI, Regional Trial Court) of Naga City presided by Judge Mericia B. Palma.

The execution of the order met with some further delay when the records were reconstituted. Judge Palma, feeling the need for a clearer understanding of the facts and issues involved in the case, proceeded to hear and receive evidence.

On May 16, 1983, Judge Palma issued a resolution finding that there was privity between the private respondent and the spouses Victor Dasal and Maria Pecunio as to the ownership of Lot "C" and as to the possession over the western portion of the private road and the disputed Lot "B"; and that Lot "B" and the private road are not included in the land purchased by the respondent from Lagarto.

According to the trial court, the private respondent was in the company of Dasal (from whom he was renting Lot "C" and who was also the brother-in-law of Lagarto) and was present when Commissioner Tubianosa inspected the land in question in 1953 supporting the claim that the respondent knew that the land was already in dispute between Dasal and the petitioners; and if the respondent really believed that he owns the entire Lot "B" and the private road, he should have raised his claim of ownership when Tubianosa inspected the land. The respondent also failed to include the land in dispute in the survey of his purchased lot with the flimsy excuse that the surveyor failed to return to finish the survey and include the disputed land.

Before arriving at the above findings, however, the trial court clarified the issues involved in the case. It said:

"WE NOW come to the RESOLUTION OF THE TWO ISSUES: (1) Was there privity between Petitioner Sta. Ana and Plaintiffs Dasal? and (2) Is the disputed area identified in paragraph '1' of the foregoing enumeration, part of the land purchased by Petitioner from Prudencio Lagarto?

"If there is a privity between the Petitioner and Dasal, then the Petitioner is bound by the final decision in this CC No. R-396 (2040) against Dasal and therefore Petitioner is subject to the order of execution and is bound to vacate the land in question or subject a portion of his house and the surrounding walls to demolition. If there is no privity then he is not bound by said final decision." (Rollo, pp. 48-49)

In the dispositive portion, however, the trial court held:

"WHEREFORE, premises considered, the Court finds:

"1)

That there is privity between the petitioner and the plaintiffs spouses Victor Dasal and Maria Pecunio as to ownership of Lot C and as to the possession over the western portion of the private road and the disputed Lot B as so identified in Exhibit 5;

"2)

That the private road identified as within points 1, 2, 3, 4, 5, 6 and 1 in Exh. 5 is owned by the respondents as already decided in CC No. 1103, and the same private road and the Lot B in Exhibit 5 are both owned by the respondents as already decided in this CC No. R-396 (2040);

"3)

That the balcony of the present house of the petitioner is located in the disputed Lot B and its southern (or southeastern) part of the western portion of the 'private road';

xxx xxx xxx

"6)

That therefore, this Court recommends to the Honorable Supreme Court, that the petitioner be ordered to remove the entire balcony and the northern portion of the main house to the extent of about one meter found to be standing on the private road, as well as the northern extension of the hollow block walls on the eastern boundary of Lot C that stand on the private road and to the northern end of Lot B which wall measures to a total length of about 15 meters from the northern boundary of Lot B to the southern edge of the private road; or in the alternative to require the petitioner to pay the respondents the value of the western portion of the disputed area which is now enclosed in the wall constructed by the petitioner;

"7) And to hold the petitioner liable to the respondents for reasonable attorney's fees and damages." (Rollo, p. 52)

On June 7, 1983, the private respondent filed with this Court a pleading captioned "Notice of Appeal for Review." Said petition was denied in this Court's resolution on October 26, 1983, to wit:

"L-32642 (Dominador Sta. Ana v. Hon. Delfin Vir, Sunga, etc., et al.). Considering the petition of petitioner for review of trial court resolution dated May 16, 1983, the Court Resolved to DENY the petition, said resolution of May 16, 1983, being in accord with the decision of November 26, 1973 (Rec., p. 438) and the resolution of May 16, 1975 (idem, p. 595) as well as the order of December 12, 1974 (idem, p. 500) which ordered the petitioner to vacate the premises (which is presumably final). As stated in the aforesaid resolution of May 16, 1975, any review has to be sought by timely appeal to the appellate court and cannot be sought in this case." (Rollo, p. 65)

A series of resolutions were subsequently issued by this Court denying the private respondent's motion to reconsider the above-quoted resolution. Finally, on February 27, 1984, this Court issued a resolution ordering "the Chief of the Judgment Division of this Court to RETURN the records thereof to the respondent court for execution of judgment."

On August 9, 1984, the petitioners filed a motion for execution of judgment, accompanied by a bill of costs, as follows: 1) Attorney's fees - P25,000.00; 2) Cost of litigation - P7,000.00; 3) Expenses for transcript of records - P600.00; 4) Expenses for xeroxing of important papers and documents - P500.00; 5) Accrued rentals for the lot in question - P11,800.00 and 6) Legal interest of accrued rentals at 12% a year - P1,436.00, for a total of P46,336.00.

On October 5, 1984, the trial court issued an order granting the petitioners' motion for execution and application for a writ of attachment and approving the bill of costs. In said order, the trial court ordered the demolition of any part of the private respondent's building and all other construction within Lot "B" and the private road. The demolition was effected.

The private respondent appealed to the then Intermediate Appellate Court, contending that the order of the trial court departed from the intention of the Supreme Court's resolution ordering execution of the judgment, for it thereby deprived him of the alternative choice of paying the value of the disputed area which was allowed in the trial court's resolution of May 16, 1983, which the Supreme Court found to be in accord with, among others, its decision in G.R. No. L-32642 (Sta. Ana v. Sunga, 54 SCRA 36).

On September 20, 1985, the appellate court rendered the assailed decision, the dispositive portion of which provided:

"WHEREFORE, the writs of certiorari and prohibition applied for are granted. The Order of October 5, 1984 approving the bill of costs and granting execution of 'previous orders', as well as the order/writ of demolition are hereby set aside, Respondent Court is ordered to forthwith determine the value of the demolished portion of petitioner's residential building and other structures affected by the demolition and also, to assess the value of the disputed area for purposes of set off and whatever is the excess in value should be paid to the party entitled thereto." (Rollo, pp. 40-41)

In its decision, the appellate court explained the rationale behind the dispositive portion. It said:

XXX XXX XXX

"The unqualified affirmance of said resolution of May 16, 1983, to Our Mind, carried with it the approval of the above recommendation. The fact that the Supreme Court was silent on the recommended alternative choice of demolition and payment of the disputed area and merely returned the records for execution of judgment, did not indicate that the recommended demolition was preferred. The sufficiency and efficacy of the resolution of May 16, 1983, as the judgment to be enforced or executed, cannot be doubted considering its substance rather than its form. The aforequoted recommendation, itself the dispositive portion, can be ascertained as to its meaning and operation. Thereby, the petitioner is given the option to pay the value of the western portion of the disputed area which is enclosed in the wall constructed by said petitioner. It is petitioner who is given the alternative choice since if he does not pay, then he can be ordered to remove whatever structure he had introduced in the questioned premises. Notably, petitioner indicated his willingness to pay the price of the disputed area or otherwise exercised that option.

"Respondent Court therefore acted with grave abuse of discretion tantamount to lack or excess of jurisdiction in abandoning the alternative choice of payment of the value of the area in dispute, which it authorized in its final resolution of May 16, 1983, when it ordered execution of its 'previous orders' for the petitioner to vacate the land in question and for demolition, which was set aside when the case was remanded for hearing pursuant to the Supreme Court decision of November 26, 1973. The previous orders referred to have not been specified by the respondent Court in its Order of October 5, 1984. If it is the Order of December 12, 1974 which is being referred to by respondent Court, it should have so specified; however, it did not presumably because it was reconsidered as can be deduced from the fact that thereafter, respondent Court further heard the parties and received their respective evidence in compliance with the decision of November 26, 1973, after which proceedings, the respondent Court issued its resolution of May 16, 1983." (Rollo, p. 38)

In the petition before us, the petitioners maintain that the appellate court committed grave abuse of discretion when it granted the private respondent the option of exercising the alternative choice of staying in the disputed land when it has been established that the private respondent was in privity with the spouses Victor Dasal and Maria Pecunio and, therefore, he could not be considered a builder in good faith as to entitle him to the alternative choice of retention; and that the demolition of the private respondent's construction on Lot "B" and on the private road is a logical consequence of the finding that he was privity to the losing parties who were also the adversaries of the petitioners in the original case.

We agree.

When this Court ordered the remand of the case between the petitioners and the private respondent in our decision of November 26, 1973 (see *Sta. Ana v. Sunga*, supra), it was precisely to determine whether herein respondent was privity to the spouses Dasals as to make the decision against the latter and in favor of the petitioners over Lot "B" binding upon him. And this fact was clearly pointed out by Judge Palma in her resolution of May 16, 1983 stating that if there is privity between the private respondent and the spouses Dasals, then the former is bound by the final decision in CC No. R-396 (2040) which is the case between the Dasals and the petitioners. However, an apparent confusion was brought about by the dispositive portion of the aforementioned resolution when it

recommended to this Court either to order the respondent to remove all his constructions over Lot "B" or to require said respondent to pay the petitioners the value of the disputed area which was already enclosed by a wall constructed by the respondent. This, nevertheless, was rectified when we issued the series of resolutions denying the respondent's petition and motions for reconsideration before this Court wherein we stated that the resolution of May 16, 1983 was in accord, among others, with the order of December 12, 1974 "which ordered the petitioner (private respondent) to vacate the premises (which is presumably final)."

Hence, it is clear that the private respondent has to remove all his constructions over Lot "B" and vacate the premises. This is his only option. Being adjudged in privy with the spouses Dasals, he cannot avail himself of the rights granted to a builder in good faith. He, therefore, must remove all his useful improvements over Lot "B" at his own expense and if the same have already been removed, he cannot be entitled to the right of retention or to any reimbursement. Thus, in the case of *Metropolitan Waterworks and Sewerage System v. Court of Appeals*, (143 SCRA 623, 629), we ruled:

"Article 449 of the Civil Code of the Philippines provides that 'he who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.' As a builder in bad faith, NAWASA lost whatever useful improvements it had made without right to indemnity (*Santos v. Mojica*, Jan. 31, 1969, 26 SCRA 703).

"Moreover, under Article 546 of said code, only a possessor in good faith shall be refunded for useful expenses with the right of retention until reimbursed; and under Article 547 thereof, only a possessor in good faith may remove useful improvements if this can be done without damage to the principal thing and if the person who recovers the possession does not exercise the option of reimbursing the useful expenses. The right given a possessor in bad faith to remove improvements applies only to improvements for pure luxury or mere pleasure, provided the thing suffers no injury thereby and the lawful possessor does not prefer to retain them by paying the value they have at the time he enters into possession (Article 549, *Id.*)."

We, therefore, find that the appellate court committed reversible error in holding that the private respondent is entitled to exercise the option to pay the value of the disputed area of Lot "B" and to reimbursement for the value of the demolished portion of his building. We, however, affirm its ruling that the petitioner's bill of costs must be set aside and that while the resolution of May 16, 1983 included attorney's fees and damages, the necessity of proof cannot be dispensed with. Since no proof was presented before the trial regarding any of these claims, they cannot be awarded.

WHEREFORE, the petition is GRANTED and the decision of the Court of Appeals dated September 20, 1985 is ANNULLED and SET ASIDE. The writ of attachment issued by the trial court for the purpose of satisfying the award for damages and the bill of costs is, however, permanently SET ASIDE.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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