

SPOUSES ISMAEL AND TERESITA MACASAET, PETITIONERS, VS. SPOUSES VICENTE AND ROSARIO MACASAET, RESPONDENTS.

G.R. Nos. 154391-92. September 30, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The present case involves a dispute between parents and children. The children were invited by the parents to occupy the latter's two lots, out of parental love and a desire to foster family solidarity. Unfortunately, an unresolved conflict terminated this situation. Out of pique, the parents asked them to vacate the premises. Thus, the children lost their right to remain on the property. They have the right, however, to be indemnified for the useful improvements that they constructed thereon in good faith and with the consent of the parents. In short, Article 448 of the Civil Code applies.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the March 22, 2002 Decision[2] and the June 26, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR SP Nos. 56205 & 56467. The challenged Decision disposed as follows:

“WHEREFORE, the assailed Decision is AFFIRMED with the following MODIFICATIONS:

‘1. Vicente and Rosario should reimburse Ismael and Teresita one-half of the value of the useful improvements introduced in the premises prior to demand, which is equivalent to P475,000.00. In case the former refuse to reimburse the said amount, the latter may remove the improvements, even though the land may suffer damage thereby. They shall not, however, cause any more impairment upon the property leased than is necessary.

‘2. The award of attorney’s fees is DELETED.

‘3. The records of these consolidated cases are REMANDED to the Court of origin for further proceedings to determine the option to be taken by Vicente and Rosario and to implement the same with dispatch.”[4]

The assailed Resolution denied petitioners’ Motion for Reconsideration.

The Facts

Petitioners Ismael and Teresita[5] Macasaet and Respondents Vicente and Rosario Macasaet are first-degree relatives. Ismael is the son of respondents, and Teresita is his wife.[6]

On December 10, 1997, the parents filed with the Municipal Trial Court in Cities (MTCC) of Lipa City an ejectment suit against the children.[7] Respondents alleged that they were the owners of two (2) parcels of land covered by Transfer Certificate of Title (TCT) Nos. T-78521 and T-103141, situated at Banay-banay, Lipa City; that by way of a verbal lease agreement, Ismael and Teresita occupied these lots in March 1992 and used them as their residence and the situs of their construction business; and that despite repeated demands, petitioners failed to

pay the agreed rental of P500 per week.[8]

Ismael and Teresita denied the existence of any verbal lease agreement. They claimed that respondents had invited them to construct their residence and business on the subject lots in order that they could all live near one other, employ Marivic (the sister of Ismael), and help in resolving the problems of the family.[9] They added that it was the policy of respondents to allot the land they owned as an advance grant of inheritance in favor of their children. Thus, they contended that the lot covered by TCT No. T-103141 had been allotted to Ismael as advance inheritance. On the other hand, the lot covered by TCT No. T-78521 was allegedly given to petitioners as payment for construction materials used in the renovation of respondents' house.[10]

The MTCC[11] ruled in favor of respondents and ordered petitioners to vacate the premises. It opined that Ismael and Teresita had occupied the lots, not by virtue of a verbal lease agreement, but by tolerance of Vicente and Rosario.[12] As their stay was by mere tolerance, petitioners were necessarily bound by an implied promise to vacate the lots upon demand.[13] The MTCC dismissed their contention that one lot had been allotted as an advance inheritance, on the ground that successional rights were inchoate. Moreover, it disbelieved petitioners' allegation that the other parcel had been given as payment for construction materials.[14]

On appeal, the regional trial court[15] (RTC) upheld the findings of the MTCC. However, the RTC allowed respondents to appropriate the building and other improvements introduced by petitioners, after payment of the indemnity provided for by Article 448 in relation to Articles 546 and 548 of the Civil Code.[16] It added that respondents could oblige petitioners to purchase the land, unless its value was considerably more than the building. In the latter situation, petitioners should pay rent if respondents would not choose to appropriate the building.[17]

Upon denial of their individual Motions for Reconsideration, the parties filed with the CA separate Petitions for Review, which were later consolidated.[18]

Ruling of the Court of Appeals

The CA sustained the finding of the two lower courts that Ismael and Teresita had been occupying the subject lots only by the tolerance of Vicente and Rosario.[19] Thus, possession of the subject lots by petitioners became illegal upon their receipt of respondents' letter to vacate it.[20]

Citing *Calubayan v. Pascual*,[21] the CA further ruled that petitioners' status was analogous to that of a lessee or a tenant whose term of lease had expired, but whose occupancy continued by tolerance of the owner.[22] Consequently, in ascertaining the right of petitioners to be reimbursed for the improvements they had introduced on respondents' properties,[23] the appellate court applied the Civil Code's provisions on lease. The CA modified the RTC Decision by declaring that Article 448 of the Civil Code was inapplicable. The CA opined that under Article 1678 of the same Code, Ismael and Teresita had the right to be reimbursed for one half of the value of the improvements made.[24]

Not satisfied with the CA's ruling, petitioners brought this recourse to this Court.[25]

The Issues

Petitioners raise the following issues for our consideration:

- “1. a) Whether or not Section 17[,] Rule 70 of the Rules of Court on Judgment should apply in the rendition of the decision in this case;
- b) Whether or not the Complaint should have been dismissed;

c) Whether or not damages including attorney's fees should have been awarded to herein petitioners;

"2. a) Whether or not the rule on appearance of parties during the Pretrial should apply on appearance of parties during Preliminary Conference in an unlawful detainer suit;

b) Whether or not the case of Philippine Pryce Assurance Corporation vs. Court of Appeals (230 SCRA 164) is applicable to appearance of parties in an unlawful detainer suit;

"3. Whether or not Article 1678 of the Civil Code should apply to the case on the matters of improvements, or is it Article 447 of the Civil Code in relation to the Article 453 and 454 thereof that should apply, if ever to apply the Civil Code;

"4. Whether or not the [D]ecision of the Court of Appeals is supported by evidence, appropriate laws, rules and jurisprudence;

"5. Whether or not Assisting Judge Norberto Mercado of the MTCC Lipa City should be held accountable in rendering the MTCC [D]ecision;

"6. Whether or not Atty. Glenn Mendoza and Atty. Andrew Linatoc of the same [l]aw office should be held accountable for pursuing the [e]jectment case[.]"[26]

The Court's Ruling

The Petition is partly meritorious.

First Issue:

Ejectment

Who is entitled to the physical or material possession of the premises? At the outset, we stress that this is the main issue in ejectment proceedings.[27] In the present case, petitioners failed to justify their right to retain possession of the subject lots, which respondents own. Since possession is one of the attributes of ownership,[28] respondents clearly are entitled to physical or material possession.

Allegations of the Complaint

Petitioners allege that they cannot be ejected from the lots, because respondents based their Complaint regarding the nonpayment of rentals on a verbal lease agreement, which the latter failed to prove.[29] Petitioners contend that the lower courts erred in using another ground (tolerance of possession) to eject them.

In actions for unlawful detainer, possession that was originally lawful becomes unlawful upon the expiration or termination of the defendant's right to possess, arising from an express or implied contract.[30] In other words, the plaintiff's cause of action comes from the expiration or termination of the defendant's right to continue possession.[31] The case resulting therefrom must be filed within one year from the date of the last demand.

To show a cause of action in an unlawful detainer, an allegation that the defendant is illegally withholding possession from the plaintiff is sufficient. The complaint may lie even if it does not employ the terminology of the law, provided the said pleading is couched in a language adequately stating that the withholding of possession or the refusal to vacate has become unlawful.[32] It is equally settled that the jurisdiction of the court, as well as the nature of the action, is determined from the averments of the complaint.[33]

In the present case, the Complaint alleged that despite demands, petitioners "refused to pay the accrued rentals and [to] vacate the leased premises." [34] It prayed that judgment be rendered "[o]rdering [petitioners] and all those claiming rights under them to vacate the properties x x x and remove the structures x x x constructed thereon." [35] Effectively then, respondents averred that petitioners' original lawful occupation of the subject lots

had become unlawful.

The MTCC found sufficient cause to eject petitioners. While it disbelieved the existence of a verbal lease agreement, it nevertheless concluded that petitioners' occupation of the subject lots was by mere tolerance of respondents. Basing its conclusion on the fact that the parties were close relatives, the MTCC ruled thus:

"x x x [T]he parties herein are first degree relatives. Because of this relationship, this Court takes judicial notice of the love, care, concern and protection imbued upon the parents towards their [children], i.e., in the instant case, the love, care, concern and protection of the [respondents] to the [petitioners]. With this in mind, this Court is inclined to believe the position of the [petitioners] that there was no such verbal lease agreement between the parties herein that took place in 1992. x x x.

"From the allegations of the [petitioners], this Court is convinced that their stay and occupancy of the subject premises was by mere tolerance of the [respondents], and not by virtue of a verbal lease agreement between them." [36]

Having found a cause of action for unlawful detainer, the MTCC (as well as the RTC and the CA) did not err in ordering the ejectment of petitioners as prayed for by respondents. There was no violation of Section 17 of Rule 70 [37] of the Rules of Court. As earlier explained, unlawful detainer was sufficiently alleged in the Complaint and duly proven during the trial. Significantly, the issue of whether there was enough ground to eject petitioners was raised during the preliminary conference. [38]

Not Merely Tolerated Possession

Petitioners dispute the lower courts' finding that they occupied the subject lots on the basis of mere tolerance. They argue that their occupation was not under such condition, since respondents had invited, offered and persuaded them to use those properties. [39]

This Court has consistently held that those who occupy the land of another at the latter's tolerance or permission, without any contract between them, are necessarily bound by an implied promise that the occupants will vacate the property upon demand. [40] A summary action for ejectment is the proper remedy to enforce this implied obligation. [41] The unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate. [42]

Toleration is defined as "the act or practice of permitting or enduring something not wholly approved of." [43] *Sarona v. Villegas* [44] described what tolerated acts means, in this language:

"Professor Arturo M. Tolentino states that acts merely tolerated are 'those which by reason of neighborliness or familiarity, the owner of property allows his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who permits them out of friendship or courtesy.' x x x. And, Tolentino continues, even though 'this is continued for a long time, no right will be acquired by prescription.' x x x. Further expounding on the concept, Tolentino writes: 'There is tacit consent of the possessor to the acts which are merely tolerated. Thus, not every case of knowledge and silence on the part of the possessor can be considered mere tolerance. By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission.'" [45]

We hold that the facts of the present case rule out the finding of possession by mere tolerance. Petitioners were able to establish that respondents had invited them to occupy the subject lots in order that they could all live near one other and help in resolving family problems. [46] By occupying those lots, petitioners demonstrated their

acceptance of the invitation. Hence, there was a meeting of minds, and an agreement regarding possession of the lots impliedly arose between the parties.

The occupancy of the subject lots by petitioners was not merely “something not wholly approved of” by respondents. Neither did it arise from what Tolentino refers to as “neighborliness or familiarity.” In point of fact, their possession was upon the invitation of and with the complete approval of respondents, who desired that their children would occupy the premises. It arose from familial love and a desire for family solidarity, which are basic Filipino traits.

Right to Use the Lots Terminated

That Ismael and Teresita had a right to occupy the lots is therefore clear. The issue is the duration of possession. In the absence of a stipulation on this point, Article 1197 of the Civil Code allows the courts to fix the duration or the period.

“Article 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

“The courts shall also fix the duration of the period when it depends upon the will of the debtor.

“In every case the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.”

Article 1197, however, applies to a situation in which the parties intended a period. Such qualification cannot be inferred from the facts of the present case.

To repeat, when Vicente and Rosario invited their children to use the lots, they did so out of parental love and a desire for solidarity expected from Filipino parents. No period was intended by the parties. Their mere failure to fix the duration of their agreement does not necessarily justify or authorize the courts to do so.[47]

Based on respondents’ reasons for gratuitously allowing petitioners to use the lots, it can be safely concluded that the agreement subsisted as long as the parents and the children mutually benefited from the arrangement. Effectively, there is a resolutory condition in such an agreement.[48] Thus, when a change in the condition existing between the parties occurs --like a change of ownership, necessity, death of either party or unresolved conflict or animosity -- the agreement may be deemed terminated. Having been based on parental love, the agreement would end upon the dissipation of the affection.

When persistent conflict and animosity overtook the love and solidarity between the parents and the children, the purpose of the agreement ceased.[49] Thus, petitioners no longer had any cause for continued possession of the lots. Their right to use the properties became untenable. It ceased upon their receipt of the notice to vacate. And because they refused to heed the demand, ejectment was the proper remedy against them. Their possession, which was originally lawful, became unlawful when the reason therefor -- love and solidarity -- ceased to exist between them.

No Right to Retain

Possession

Petitioners have not given this Court adequate reasons to reverse the lower courts’ dismissal of their contention that Lots T-78521 and T-103141, respectively, were allegedly allotted to them as part of their inheritance and given in consideration for past debts.

The right of petitioners to inherit from their parents is merely inchoate and is vested only upon the latter’s demise.

Indisputably, rights of succession are transmitted only from the moment of death of the decedent.[50] Assuming that there was an “allotment” of inheritance, ownership nonetheless remained with respondents. Moreover, an intention to confer title to certain persons in the future is not inconsistent with the owners’ taking back possession in the meantime for any reason deemed sufficient.[51] Other than their self-serving testimonies and their affidavits, petitioners offered no credible evidence to support their outlandish claim of inheritance “allocation.”

We also agree with the lower courts that petitioners failed to prove the allegation that, through a dation in payment, Lot T-78521 had been transferred to the latter as payment for respondents’ debts.[52] The evidence presented by petitioners related only to the alleged indebtedness of the parents arising from the latter’s purported purchases and advances.[53] There was no sufficient proof that respondents had entered into a contract of dation to settle the alleged debt. Petitioners even stated that there was a disagreement in the accounting of the purported debt,[54] a fact that disproves a meeting of the minds with the parents.

Petitioners also admitted that a portion of the alleged debt is the subject matter of a collection case against respondents (Civil Case No. 0594-96).[55] Thus, the former’s allegation that the indebtedness has been paid through a dation cannot be given credence, inconsistent as it is with their action to recover the same debt.

Despite their protestations, petitioners recognized the right of the parents to recover the premises when they admitted in their Position Paper filed with the MTCC that respondents had a title to the lots.

“The [respondents] want to get their property because the title is theirs, the [petitioners] do not object but what is due the [petitioners] including the reparation for the tarnish of their dignity and honor must be given the [petitioners] for the benefits of their children before the premises will be turned over.”[56]

As a rule, the right of ownership carries with it the right of possession.

Second Issue:

Appearance at the Preliminary Conference

Section 8 of Rule 70 of the Rules of Court requires the appearance of the plaintiff and the defendant during the preliminary conference. On the basis of this provision, petitioners claim that the MTCC should have dismissed the case upon the failure of respondents to attend the conference. However, petitioners do not dispute that an attorney-in-fact with a written authorization from respondents appeared during the preliminary conference.[57] The issue then is whether the rules on ejectment allow a representative to substitute for a party’s personal appearance.

Unless inconsistent with Rule 70, the provisions of Rule 18 on pretrial applies to the preliminary conference.[58] Under Section 4 of this Rule, the nonappearance of a party may be excused by the showing of a valid cause; or by the appearance of a representative, who has been fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.[59]

Section 4 of Rule 18 may supplement Section 8 of Rule 70. Thus, the spirit behind the exception to personal appearance under the rules on pretrial is applicable to the preliminary conference. If there are valid reasons or if a representative has a “special authority,” a party’s appearance may be waived. As petitioners are challenging only the applicability of the rules on pretrial to the rule on preliminary conference, the written authorization from respondents can indeed be readily considered as a “special authorization.”

Third Issue:

Rights of a Builder in Good Faith

As applied to the present case, accession refers to the right of the owner to everything that is incorporated or attached to the property.[60] Accession industrial -- building, planting and sowing on an immovable -- is governed by Articles 445 to 456 of the Civil Code.

Articles 447 and 1678 of the
Civil Code Inapplicable

To buttress their claim of reimbursement for the improvements introduced on the property, petitioners cite Article 447.[61] They allege that the CA erred in applying Article 1678, since they had no lease agreement with respondents.

We clarify. Article 447 is not applicable, because it relates to the rules that apply when the owner of the property uses the materials of another. It does not refer to the instance when a possessor builds on the property of another, which is the factual milieu here.

In view of the unique factual setting of the instant case, the contention of petitioners regarding the inapplicability of Article 1678 deserves attention. The CA applied the provisions on lease, because it found their possession by mere tolerance comparable with that of a lessee, per the pronouncement in *Calubayan v. Pascual*,[62] from which we quote:

“x x x. It has been held that a person who occupies the land of another at the latter’s tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against them. The status of defendant is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner. In such a case, the unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate.”[63] (Emphasis in the original.)

As explained earlier, Ismael and Teresita’s possession of the two lots was not by mere tolerance, a circumstance that negates the applicability of *Calubayan*.

Article 448 Applicable

On the other hand, when a person builds in good faith on the land of another, the applicable provision is Article 448, which reads:[64]

“Article 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.”

This Court has ruled that this provision covers only cases in which the builders, sowers or planters believe themselves to be owners of the land or, at least, to have a claim of title thereto.[65] It does not apply when the interest is merely that of a holder, such as a mere tenant, agent or usufructuary.[66] From these pronouncements, good faith is identified by the belief that the land is owned; or that -- by some title -- one has the right to build, plant, or sow thereon.[67]

However, in some special cases, this Court has used Article 448 by recognizing good faith beyond this limited definition. Thus, in *Del Campo v. Abesia*,[68] this provision was applied to one whose house -- despite having been built at the time he was still co-owner -- overlapped with the land of another.[69] This article was also

applied to cases wherein a builder had constructed improvements with the consent of the owner. The Court ruled that the law deemed the builder to be in good faith.[70] In *Sarmiento v. Agana*,[71] the builders were found to be in good faith despite their reliance on the consent of another, whom they had mistakenly believed to be the owner of the land.[72]

Based on the aforecited special cases, Article 448 applies to the present factual milieu. The established facts of this case show that respondents fully consented to the improvements introduced by petitioners. In fact, because the children occupied the lots upon their invitation, the parents certainly knew and approved of the construction of the improvements introduced thereon.[73] Thus, petitioners may be deemed to have been in good faith when they built the structures on those lots.

The instant case is factually similar to *Javier v. Javier*. [74] In that case, this Court deemed the son to be in good faith for building the improvement (the house) with the knowledge and consent of his father, to whom belonged the land upon which it was built. Thus, Article 448[75] was applied.

Rule on Useful Expenses

The structures built by petitioners were “useful” improvements, because they augmented the value or income of the bare lots.[76] Thus, the indemnity to be paid by respondents under Article 448 is provided for by Article 546, which we quote:

“Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

“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.”

Consequently, respondents have the right to appropriate -- as their own -- the building and other improvements on the subject lots, but only after (1) refunding the expenses of petitioners or (2) paying the increase in value acquired by the properties by reason thereof. They have the option to oblige petitioners to pay the price of the land, unless its value is considerably more than that of the structures -- in which case, petitioners shall pay reasonable rent.

In accordance with *Depra v. Dumlao*,[77] this case must be remanded to the trial court to determine matters necessary for the proper application of Article 448 in relation to Article 546. Such matters include the option that respondents would take and the amount of indemnity that they would pay, should they decide to appropriate the improvements on the lots. We disagree with the CA’s computation of useful expenses, which were based only on petitioners’ bare allegations in their Answer.[78]

Ruling on Improvement Justified

While, ordinarily, the jurisdiction of the MTCC on ejectment proceedings is limited to the issue of physical or material possession of the property in question, this Court finds it necessary to abbreviate the issue on the improvements in relation to Article 448. First, the determination of the parties’ right to those improvements is intimately connected with the MTCC proceedings in the light of the ejectment of petitioners. Second, there is no dispute that while they constructed the improvements, respondents owned the land. Third, both parties raised no objection when the RTC and the CA ruled accordingly on this matter.

Equitable considerations compel us to settle this point immediately, *pro hoc vice*, to avoid needless delay. Both parties have already been heard on this issue; to dillydally or equivocate would not serve the cause of substantial

justice.

Other Issues Raised

Given the foregoing rulings, it is no longer necessary to address petitioners' allegation that the MTCC judge and respondents' lawyers should be respectively held personally accountable for the Decision and for filing the case.[79] The insinuation of petitioners that the lawyers manipulated the issuance of a false barangay certification is unavailing.[80] Their contention that respondents did not attend the barangay conciliation proceedings was based solely on hearsay, which has little or no probative value.[81]

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are AFFIRMED with the following MODIFICATIONS:

- The portion requiring Spouses Vicente and Rosario Macasaet to reimburse one half of the value of the useful improvements, amounting to P475,000, and the right of Spouses Ismael and Rosita Macasaet to remove those improvements (if the former refuses to reimburse) is DELETED.
- The case is REMANDED to the court of origin for further proceedings to determine the facts essential to the proper application of Articles 448 and 546 of the Civil Code, specifically to the following matters:
 - Spouses Vicente and Rosario Macasaet's option to appropriate -- as their own -- the improvements on the lots, after paying the indemnity, as provided under Article 546 in relation to Article 448 of the Civil Code; or in requiring Spouses Ismael and Rosita Macasaet to pay for the value of the lots, unless it is considerably more than that of the improvements, in which case petitioners shall pay reasonable rent based upon the terms provided under the Civil Code
 - The value of the useful expenses incurred by Spouses Ismael and Rosita Macasaet in the construction of the improvements on the lots
 - The increase in value acquired by the lots by reason of the useful improvements
 - Spouses Vicente and Rosario Macasaet's choice of type of indemnity to be paid (whether b or c)
 - Whether the value of the lots is considerably more than that of the improvements built thereon

No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] Rollo, pp. 35-76.

[2] Id., pp. 209-229. Ninth Division. Penned by Justice Mariano C. del Castillo, with the concurrence of Justices Ruben T. Reyes (Division chairman) and Renato C. Dacudao (member).

[3] Id., pp. 264-265.

[4] Assailed Decision, p. 20; rollo, p. 228.

[5] Also referred to as "Rosita" in some parts of the records.

[6] Id., pp. 2 & 210.

- [7] Respondents' Complaint; rollo, pp. 85-88.
- [8] Assailed Decision, pp. 2-3; rollo, pp. 210-211. Respondents' Complaint, pp. 1-2; rollo, pp. 85-86.
- [9] Id., pp. 3-4 & 211-212. Petitioners' Answer with Compulsory Counterclaim, p. 4; rollo, p. 94.
- [10] Ibid.
- [11] Presided by Assisting Judge Norberto P. Mercado.
- [12] Assailed Decision, pp. 5-6; rollo, pp. 213-214. MTCC Decision dated August 27, 1998, pp. 3-4; rollo, pp. 167-168.
- [13] Ibid.
- [14] Ibid.
- [15] Presided by Judge Jane Aurora C. Lantion.
- [16] RTC Decision dated July 15, 1999, pp. 4-5; rollo, pp. 173-174.
- [17] Ibid.
- [18] Assailed Decision, p. 9; rollo, p. 217.
- [19] Id., pp. 10 & 218.
- [20] Id., pp. 11 & 219.
- [21] 128 Phil. 160, September 18, 1967.
- [22] Ibid.
- [23] Assailed Decision, p. 13; rollo, p. 221.
- [24] The CA computed the total value of the improvements at P950,000, which represented the cost of constructing a one-storey structure (P700,000), the equipment necessary for the construction business (P130,000), and the cost of filling materials (P120,000). See Assailed Decision, p. 15; rollo, p. 223.
- [25] This case was deemed submitted for resolution on May 13, 2003, upon this Court's receipt of respondents' Memorandum signed by Atty. Glenn P. Mendoza. Petitioners' Memorandum, signed by Atty. Ismael H. Macasaet, was filed on April 14, 2003.
- [26] Petitioners' Memorandum, p. 15; rollo, p. 432.
- [27] Rivera v. Rivera, 405 SCRA 466, 471, July 8, 2003; Balanon-Anicete v. Balanon, 402 SCRA 514, 518, April 30, 2003; De Luna v. Court of Appeals, 212 SCRA 276, 278, August 6, 1992.
- [28] Co v. Militar, GR No. 149912, January 29, 2004.
- [29] Petitioners' Memorandum, p. 16; rollo, p. 433.
- [30] Varona v. Court of Appeals, GR No. 124148, May 20, 2004; Sarmiento v. Court of Appeals, 320 Phil. 146, 153, November 16, 1995; Sumulong v. Court of Appeals, 232 SCRA 372, May 10, 1994.
- [31] Sarmiento v. Court of Appeals, supra; Sumulong v. Court of Appeals, supra.
- [32] Varona v. Court of Appeals, supra; Cañiza v. Court of Appeals, 335 Phil. 1107, 1115, February 24, 1997;

Sumulong v. Court of Appeals, *supra*, p. 386.

[33] Lopez v. David, GR No. 152145, March 30, 2004; Arcal v. Court of Appeals, 348 Phil. 813, 823, January 26, 1998; Hilario v. Court of Appeals, 329 Phil. 202, 210, August 7, 1996; Sarmiento v. Court of Appeals, *supra*; Sumulong v. Court of Appeals, *supra*, p. 385.

[34] Respondents' Complaint, p. 2; rollo, p. 86.

[35] *Id.*, pp. 3 & 87.

[36] MTCC Decision dated August 27, 1998, pp. 3-4; rollo, pp. 167-168.

[37] "Section 17. Judgment. — If after the trial the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees and costs. If it finds that said allegations are not true, it shall render judgment for the defendant to recover his costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party and award costs as justice requires."

[38] MTCC Order on the Preliminary Conference dated July 30, 1998; rollo, p. 108.

[39] Petitioners' Memorandum, p. 22; rollo, p. 439.

[40] Rivera v. Rivera, 405 SCRA 466, 471, July 8, 2003; Pengson v. Ocampo Jr., 412 Phil. 860, 866, June 29, 2001; Arcal v. Court of Appeals, *supra*, p. 825; Refugia v. Court of Appeals, 327 Phil. 982, 1010, July 5, 1996; Dakudao v. Consolacion, 207 Phil. 750, 756, June 24, 1983.

[41] *Ibid.*

[42] Lopez v. David, *supra*; Arcal v. Court of Appeals, *supra*, p. 825; Villaluz v. Court of Appeals, 344 Phil. 77, 89, September 5, 1997.

[43] Black's Law Dictionary (8th ed., 1999), p. 1525.

[44] 131 Phil. 365, March 27, 1968.

[45] *Id.*, pp. 372-373, per Sanchez, J.

[46] MTCC Decision, dated August 27, 1998, p. 3 (rollo, p. 167); RTC Decision, dated July 15, 1999, p. 2 (rollo, p. 171).

[47] *Id.*, p. 198. The term "may" in Article 1197 connotes discretion on the part of the courts to exercise this power.

[48] In an obligation with a resolutive condition, the extinguishment of the right acquired depends upon the occurrence of the event that constitutes the condition (Article 1181 of the Civil Code).

[49] The records do not disclose the exact date when the conflict between petitioners and respondents arose. It can be readily assumed to have transpired not later than June 6, 1996, the date of petitioners' demand letter, which became the subject of Civil Case No. 0594-96 (Demand Letter; rollo, p. 145). At any rate, an animosity between the parties was confirmed by respondents' demand letter dated August 13, 1997, asking petitioners to vacate the subject lots (rollo, p. 89), and the subsequent filing of this case.

[50] Art. 777 of the Civil Code.

[51] Cañiza v. Court of Appeals, *supra*, p. 1118.

[52] Petitioners' Memorandum, pp. 43-44; rollo, pp. 460-461. In a dation in payment, property is alienated to the creditor in satisfaction of a debt. Such contract is governed by the law on sales. Art. 1245 of the Civil Code.

[53] *Ibid*.

[54] In the Affidavits submitted with their Position Paper, petitioners alleged that the execution of the Deed of Assignment did not occur, because their father had refused to agree to the accounting of the materials supplied. Petitioners' Memorandum, pp. 45-46; rollo, pp. 462-463.

[55] Petitioners' Memorandum, p. 44; rollo, p. 461. The recovery of P235,908, which forms a significant part of respondents' alleged P391,338 debt, is the subject matter of Civil Case No. 0594-96.

[56] Petitioners' Position Paper, p. 3; rollo, p. 111.

[57] Petitioners' Memorandum, p. 31; rollo, p. 448. Petitioner challenges the applicability of Philippine Pryce Assurance Corp. v. Court of Appeals (230 SCRA 164, 170, February 21, 1994 per Nocon, J.), in which this Court reiterated the rule that "where a party may not himself be present at the pre-trial, and another person substitutes for him, or his lawyer undertakes to appear not only as an attorney but in substitution of the client's person, it is imperative for that representative or the lawyer to have 'special authority' to enter into agreements which otherwise only the client has the capacity to make."

[58] §8 of Rule 70 of the Rules of Court.

[59] This rule on substitution of a party through a "special authority" can be traced to jurisprudential pronouncements. See *Home Insurance Co. v. United States Lines Co.*, 129 Phil. 106, 109, November 15, 1967, in which this Court held that attorneys needed a "special authority" to compromise litigation. See also *Development Bank of the Phils. v. Court of Appeals*, 169 SCRA 409, 413, January 26, 1989, in which we noted that a special authority is imperative to make substantive agreements that, otherwise, only the client has capacity to make.

[60] Jose C. Vitug, *Civil Law Annotated* (2003), Vol. II, p. 23.

[61] Petitioners' Memorandum, pp. 33-37; rollo, pp. 450-454.

[62] *Supra*.

[63] *Id.*, p. 163, per Angeles, J.

[64] See *Depra v. Dumlaog*, 136 SCRA 475, 481, May 16, 1985, in which this Court explained the philosophy behind this provision.

[65] *Pada-Kilario v. Court of Appeals*, 379 Phil. 515, 530, January 19, 2000; *Chua v. Court of Appeals*, 361 Phil. 308, 318, January 21, 1999; *Balucanag v. Francisco*, 207 Phil. 433, 438; *Floreza v. Evangelista*, 96 SCRA 130, 136, February 21, 1980; *Quemuel v. Olaes*, 111 Phil. 797, April 29, 1961; *Alburo v. Villanueva*, 7 Phil. 277, 280, January 2, 1907.

[66] *Chua v. Court of Appeals*, *supra*; *Balucanag v. Francisco*, *supra*; *Quemuel v. Olaes*, *supra*; *Alburo v. Villanueva*, *supra*. See also *Edgardo L. Paras*, *Civil Code of the Philippines Annotated* (14th ed., 1999), Vol. 2, p. 212. In *Pecson v. Court of Appeals* (314 Phil. 313, 322 per Davide, J.), this Court also ruled that "Article 448 does not apply to a case where the owner of the land is the builder, sower, or planter who then later loses ownership of the land by sale or donation."

[67] *Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines* (1992), Vol. 2, p.

111.

[68] 160 SCRA 379, 383, April 15, 1988.

[69] *Id.*, pp. 382-383. Article 448 does not apply where a co-owner builds, plants, or sows on land owned in common, since such co-owner does not do so on land that he or she does not own. See also Arturo M. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* (1992), Vol. 2, p. 117.

[70] *De Guzman v. Fuente*, 55 Phil. 501, 503, December 29, 1930; *Aringo v. Arena*, 14 Phil. 263, 268-269; *Javier v. Javier*, 7 Phil. 261, 267, January 2, 1907. [Cited in Edgardo L. Paras, *Civil Code of the Philippines Annotated* (14th ed., 1999), Vol. 2, p. 211]; See also *Boyer-Roxas v. Court of Appeals*, 211 SCRA 470, 488, July 15, 1992.

[71] 129 SCRA 122, April 30, 1984.

[72] *Id.*, p. 125.

[73] The RTC observed that petitioners had merely been invited by the parents (respondents) to transfer to the premises. Considering that the parties were living near one other, it was readily assumed that respondents had known of the structures built and had not opposed their construction. RTC Decision dated July 15, 1999, p. 4; rollo, p. 173.

[74] *Supra*, note 70.

[75] Then Art. 361 of the Civil Code.

[76] *Cabangis v. Court of Appeals*, 200 SCRA 414, 420, August 9, 1991.

[77] *Supra*. Also cited in *National Housing Authority v. Grace Baptist Church*, GR No. 156437, March 1, 2004; and *Technogas Philippines Manufacturing v. Court of Appeals*, 335 Phil. 471, 485, February 10, 1997.

[78] Assailed Decision, p. 15; rollo, p. 223. This Court also notes that petitioners merely submitted a list of expenses with their corresponding costs, without showing any proof (e.g., actual receipts) that these costs had been incurred. Petitioner's Position Paper, p. 15, rollo, p. 123; Itemized List of Materials, rollo, p. 588.

[79] Petitioners' Memorandum, pp. 49-51; rollo, pp. 466-468.

[80] *Id.*, pp. 51 & 468.

[81] This contention was based on information from an alleged barangay councilor of Banay-banay that no conciliation had transpired on October 14, 1997, the scheduled date. Petitioner Teresita Macasaet's Affidavit; rollo, p. 77. In a letter dated October 14, 1997, addressed to the barangay captain, it appears that petitioners waived their presence at the conciliation proceedings. Rollo, p. 103.

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