

THIRD DIVISION

[G.R. No. 138053, May 31, 2000]

**CORNELIO M. ISAGUIRRE, PETITIONER, VS. FELICITAS DE LARA,
RESPONDENT.**

D E C I S I O N

GONZAGA-REYES, J.:

In this petition for review on certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure, petitioner Cornelio M. Isaguirre assails the October 5, 1998 decision^[1] of the Court of Appeals^[2] and its Resolution promulgated on March 5, 1999.

The antecedent facts of the present case are as follows:

Alejandro de Lara was the original applicant-claimant for a Miscellaneous Sales Application over a parcel of land identified as portion of Lot 502, Guianga Cadastre, filed with the Bureau of Lands on January 17, 1942 and with an area of 2,342 square meters. Upon his death, Alejandro de Lara was succeeded by his wife - respondent Felicitas de Lara, as claimant. On November 19, 1954, the Undersecretary of Agriculture and Natural Resources amended the sales application to cover only 1,600 square meters. Then, on November 3, 1961, by virtue of a decision rendered by the Secretary of Agriculture and Natural Resources dated November 19, 1954, a subdivision survey was made and the area was further reduced to 1,000 square meters. On this lot stands a two-story residential-commercial apartment declared for taxation purposes under TD 43927 in the name of respondent's sons - Apolonio and Rodolfo, both surnamed de Lara.

Sometime in 1953, respondent obtained several loans from the Philippine National Bank. When she encountered financial difficulties, respondent approached petitioner Cornelio M. Isaguirre, who was married to her niece, for assistance. On February 10, 1960, a document denominated as "Deed of Sale and Special Cession of Rights and Interests" was executed by respondent and petitioner, whereby the former sold a 250 square meter portion of Lot No. 502, together with the two-story commercial and residential structure standing thereon, in favor of petitioner, for and in consideration of the sum of P5,000.

Sometime in May, 1968, Apolonio and Rodolfo de Lara filed a complaint against petitioner for recovery of ownership and possession of the two-story building.^[3] However, the case was dismissed for lack of jurisdiction.

On August 21, 1969, petitioner filed a sales application over the subject property on the basis of the deed of sale. His application was approved on January 17, 1984, resulting in the issuance of Original Certificate of Title No. P-11566 on February 13, 1984, in the name of petitioner. Meanwhile, the sales application of respondent over

the entire 1,000 square meters of subject property (including the 250 square meter portion claimed by petitioner) was also given due course, resulting in the issuance of Original Certificate of Title No. P-13038 on June 19, 1989, in the name of respondent.^[4]

Due to the overlapping of titles, petitioner filed an action for quieting of title and damages with the Regional Trial Court of Davao City against respondent on May 17, 1990. The case was docketed as Civil Case No. 20124-90. After trial on the merits, the trial court rendered judgment on October 19, 1992, in favor of petitioner, declaring him to be the lawful owner of the disputed property. However, the Court of Appeals reversed the trial court's decision, holding that the transaction entered into by the parties, as evidenced by their contract, was an equitable mortgage, not a sale.^[5] The appellate court's decision was based on the inadequacy of the consideration agreed upon by the parties, on its finding that the payment of a large portion of the "purchase price" was made after the execution of the deed of sale in several installments of minimal amounts; and finally, on the fact that petitioner did not take steps to confirm his rights or to obtain title over the property for several years after the execution of the deed of sale. As a consequence of its decision, the appellate court also declared Original Certificate of Title No. P-11566 issued in favor of petitioner to be null and void. On July 8, 1996, in a case docketed as G. R. No. 120832, this Court affirmed the decision of the Court of Appeals and on September 11, 1996, we denied petitioner's motion for reconsideration.

On May 5, 1997, respondent filed a motion for execution with the trial court, praying for the immediate delivery of possession of the subject property, which motion was granted on August 18, 1997. On February 3, 1998, respondent moved for a writ of possession, invoking our ruling in G. R. No. 120832. Petitioner opposed the motion, asserting that he had the right of retention over the property until payment of the loan and the value of the improvements he had introduced on the property. On March 12, 1998, the trial court granted respondent's motion for writ of possession. Petitioner's motion for reconsideration was denied by the trial court on May 21, 1998. Consequently, a writ of possession dated June 16, 1998, together with the Sheriff's Notice to Vacate dated July 7, 1998, were served upon petitioner.

Petitioner filed with the Court of Appeals a special civil action for certiorari and prohibition with prayer for a temporary restraining order or preliminary injunction to annul and set aside the March 12, 1998 and May 21, 1998 orders of the trial court, including the writ of possession dated June 16, 1998 and the sheriff's notice to vacate dated July 7, 1998.^[6]

The appellate court summarized the issues involved in the case as follows: (1) whether or not the mortgagee in an equitable mortgage has the right to retain possession of the property pending actual payment to him of the amount of indebtedness by the mortgagor; and (b) whether or not petitioner can be considered a builder in good faith with respect to the improvements he made on the property before the transaction was declared to be an equitable mortgage.

The Court of Appeals held that petitioner was not entitled to retain possession of the subject property. It said that -

... the mortgagee merely has to annotate his claim at the back of the certificate of title in order to protect his rights against third persons and thereby secure the debt. There is therefore no necessity for him to actually possess the property. Neither should a mortgagee in an equitable mortgage fear that the contract relied upon is not registered and hence, may not operate as a mortgage to justify its foreclosure. *In Feliza Zubiri v. Lucio Quijano*, 74 Phil 47, it was ruled "that when a contract x x x is held as an equitable mortgage, the same shall be given effect as if it had complied with the formal requisites of mortgage. x x x by its very nature the lien thereby created ought not to be defeated by requiring compliance with the formalities necessary to the validity of a voluntary real estate mortgage, as long as the land remains in the hands of the petitioner (mortgagor) and the rights of innocent parties are not affected."

Proceeding from the foregoing, petitioner's imagined fears that his lien would be lost by surrendering possession are unfounded.

In the same vein, there is nothing to stop the mortgagor de Lara from acquiring possession of the property pending actual payment of the indebtedness to petitioner. This does not in anyway endanger the petitioner's right to security since, as pointed out by private respondents, the petitioner can always have the equitable mortgage annotated in the Certificate of Title of private respondent and pursue the legal remedies for the collection of the alleged debt secured by the mortgage. In this case, the remedy would be to foreclose the mortgage upon failure to pay the debt within the required period.

It is unfortunate however, that the Court of Appeals, in declaring the transaction to be an equitable mortgage failed to specify in its Decision the period of time within which the private respondent could settle her account, since such period serves as the reckoning point by which foreclosure could ensue. As it is, petitioner is now in a dilemma as to how he could enforce his rights as a mortgagee. ...

Hence, this Court, once and for all resolves the matter by requiring the trial court to determine the amount of total indebtedness and the period within which payment shall be made.

Petitioner's claims that he was a builder in good faith and entitled to reimbursement for the improvements he introduced upon the property were rejected by the Court of Appeals. It held that petitioner knew, or at least had an inkling, that there was a defect or flaw in his mode of acquisition. Nevertheless, the appellate court declared petitioner to have the following rights:

...He is entitled to reimbursement for the necessary expenses which he may have incurred over the property, in accordance with Art. 526 and Art. 452 of the Civil Code. Moreover, considering that the transaction was merely an equitable mortgage, then he is entitled to payment of the amount of indebtedness plus interest, and in the event of non-payment to foreclose the mortgage. Meanwhile, pending receipt of the total

amount of debt, private respondent is entitled to possession over the disputed property.

The case was finally disposed of by the appellate court in the following manner:

WHEREFORE, the Petition is hereby DISMISSED, and this case is ordered remanded to the Regional Trial Court of Davao City for further proceedings, as follows:

- 1) The trial court shall determine –
 - a) The period within which the mortgagor must pay his total amount of indebtedness.
 - b) The total amount of indebtedness owing the petitioner-mortgagee plus interest computed from the time when the judgment declaring the contract to be an equitable mortgage became final.
 - c) The necessary expenses incurred by petitioner over the property.^[7]

On March 5, 1999, petitioner's motion for reconsideration was denied by the appellate court.^[8] Hence, the present appeal wherein petitioner makes the following assignment of errors:

- A. THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT THE RTC ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING A WRIT OF POSSESSION IN FAVOR OF RESPONDENT.s
 - A.1. The RTC patently exceeded the scope of its authority and acted with grave abuse of discretion in ordering the immediate delivery of possession of the Property to respondent as said order exceeded the parameters of the final and executory decision and constituted a variance thereof.
- B. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER IS NOT ENTITLED TO THE POSSESSION OF THE PROPERTY PRIOR TO THE PAYMENT OF RESPONDENT'S MORTGAGE LOAN.
- C. THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER WAS NOT A BUILDER IN GOOD FAITH.
- D. THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER IS ENTITLED TO INTEREST COMPUTED ONLY FROM THE TIME WHEN THE JUDGMENT DECLARING THE CONTRACT TO BE AN EQUITABLE MORTGAGE BECAME FINAL.^[9]

Basically, petitioner claims that he is entitled to retain possession of the subject property until payment of the loan and the value of the necessary and useful improvements he made upon such property.^[10] According to petitioner, neither the Court of Appeals' decision in G.R. CV No. 42065 nor this Court's decision in G.R. No. 120832 ordered immediate delivery of possession of the subject property to respondent.

The dispositive portion of the March 31, 1995 decision of the Court of Appeals in G.R. CV No. 42065, which was affirmed by this Court, provides that –

IN VIEW OF ALL THE FOREGOING, the judgment appealed from is REVERSED and SET ASIDE and a new one entered: (1) dismissing the complaint; (2) declaring the "Document of Sale and Special Cession of Rights and Interests" (Exhibit B) dated February 10, 1960, to be an equitable mortgage not a sale; (3) upholding the validity of OCT No. P-13038 in the name of Felicitas de Lara; and (3) declaring null and void OCT No. P-11566 in the name of plaintiff Cornelio Isaguirre. All other counterclaims for damages are likewise dismissed. Costs against the appellee.^[11]

Petitioner argues that the abovementioned decision merely settled the following matters: (1) that the transaction between petitioner and respondent was not a sale but an equitable mortgage; (2) that OCT No. P-13038 in the name of respondent is valid; and (3) that OCT No. P-11566 in the name of petitioner is null and void. Since the aforementioned decision did not direct the immediate ouster of petitioner from the subject property and the delivery thereof to respondent, the issuance of the writ of possession by the trial court on June 16, 1998 constituted an unwarranted modification or addition to the final and executory decision of this Court in G.R. No. 120832.^[12]

We do not agree with petitioner's contentions. On the contrary, the March 31, 1995 decision of the appellate court, which was affirmed by this Court on July 8, 1996, served as more than adequate basis for the issuance of the writ of possession in favor of respondent since these decisions affirmed respondent's title over the subject property. As the sole owner, respondent has the right to enjoy her property, without any other limitations than those established by law.^[13] Corollary to such right, respondent also has the right to exclude from the possession of her property any other person to whom she has not transmitted such property.^[14]

It is true that, in some instances, the actual possessor has some valid rights over the property enforceable even against the owner thereof, such as in the case of a tenant or lessee.^[15] Petitioner anchors his own claim to possession upon his declared status as a mortgagee. In his Memorandum, he argues that –

4.8 It was respondent who asserted that her transfer of the Property to petitioner was by way of an equitable mortgage and not by sale. After her assertion was sustained by the Courts, respondent cannot now ignore or disregard the legal effects of such judicial declaration regarding the nature of the transaction.

xxx xxx xxx

4.13 Having delivered possession of the Property to petitioner as part of the constitution of the equitable mortgage thereon, respondent is not entitled to the return of the Property unless and until the mortgage loan is discharged by full payment thereof. Petitioner's right as mortgagee to retain possession of the Property so long as the mortgage loan remains unpaid is further supported by the rule that a mortgage may not be