SPECIAL FIFTEENTH DIVISION

[CA-G.R. CV No. 98735, November 27, 2014]

DANILO L. PAREL, PLAINTIFF-APPELLANT, VS. HEIRS OF SIMEON PRUDENCIO, DEFENDANTS-APPELLANTS,

D E C I S I O N

VILLON, J.:

Before Us are the Appeals[1] respectively interposed by the herein parties under Rule 41 of the 1997 Rules of Civil Procedure seeking to nullify the decision[2] dated 22 March 2011 and the Order[3] dated 28 October 2011 of the Regional Trial Court (RTC) of Baguio City, Branch 60 in Civil Case No. 6680-R, for Recovery Of Possession Of Real Property And Damages which was filed by plaintiff-appellant, Danilo L. Parel (or "Danilo") against the late Simeon Prudencio, (or "Simeon") who was substituted in this case by his heirs (or "Heirs of Simeon Prudencio").

The subject matter of this case is a house (or "subject house") owned by Simeon, constructed on a portion of land which Danilo owns by virtue of Katibayan ng Orihinal na Titulo Blg. P-3594[4]. In his Complaint[5] dated 6 May 2008 filed with the court *a quo* Danilo alleges, among others, that he demanded the removal of the subject house from his lot plus the payment of reasonable compensation for the unlawful occupation thereof per letter[6] dated 18 February 2008 addressed to Simeon, to no avail. In his answer dated 30 July 2008[7], Simeon countered that Danilo remained in control and possession of the subject house pursuant to the Writ of Execution issued in a previous case[8] between them involving the subject property.[9] Further, Simeon claimed that Danilo should be made liable for rents and damages alleging bad faith on the latter's part relative to the use and possession of the said property.[10] On 19 March 2009, Simeon passed away and he was substituted in this case by his heirs, herein defendants-appellants.

The three men team of surveyors constituted by the court a *quo* in its Order[11] dated 26 February 2010 found that the subject house was located in a portion of Danilo's lot as reported in their Joint Relocation Report dated 24 August 2010.[12] After the parties had submitted their respective memoranda when pre-trial proceedings resumed, the court a *quo* eventually rendered its challenged decision disposing in the following manner:

> "WHEREFORE, premises considered, the Defendants Heirs of Simeon Prudencio is ordered to pay Plaintiff Danilo L. Parel P2,000.00 per month as rent for the portion of the latter's lot which is occupied by the Defendants' house. The same shall be computed from March 22, 2008, as prayed for by the Plaintiff, until the possession and control of the said

portion of lot is reverted to the Plaintiff.

"SO ORDERED."[13]

Danilo filed a motion for reconsideration[14] dated 14 June 2011 but the same was denied by the court *a quo* in the Order dated 28 October 2011.

Undaunted, both parties instituted their respective appeals. Danilo raises the following issues.[15]

> **1. THE TRIAL COURT ERRED IN NOT RULING ON PLAINTIFF'S PRINCIPAL CAUSE OF ACTION FOR THE DEFENDANT TO COMPLETELY VACATE PLAINTIFF'S LOT AND REMOVE HIS HOUSE THEREIN AND IF HE DOES NOT, TO ALLOW THE PLAINTIFF TO REMOVE THE SAID HOUSE AT THE EXPENSE OF THE DEFENDANT,**
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> **2. THE TRIAL COURT'S AWARD OF P2,000.00 MONTHLY RENTAL TO BE PAID BY THE DEFENDANT TO THE PLAINTIFF IS NOT FAIR AND REASONABLE.**

On the other hand, appellants Heirs of Simeon Prudencio ascribe to the court a *quo* the following errors[16]:

> **1. THE TRIAL COURT ERRED IN ORDERING THE DEFENDANTS, BUILDERS IN GOOD FAITH, TO PAY RENT TO PLAINTIFF-APPELLANT WITHOUT THE LATTER FIRST COMPLYING WITH ARTICLES 448, 546 AND 548 OF THE NEW CIVIL CODE,**
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> **2. THE TRIAL COURT ERRED IN NOT ORDERING PLAINTIFF TO PAY THE DEFENDANTS DAMAGES TO COVER THE DETERIORATION AND LOSS SUFFERED BY DEFENDANTS' HOUSE THROUGH THE MANY YEARS PLAINTIFF KEPT IT IN HIS POSSESSION ON THE BASELESS CLAIM THAT HE OWNED THE SUBJECT HOUSE.**

The issues raised by both parties are intertwined, which hinge on their respective rights and obligations, i.e., Danilo as lot owner, and the Heirs of Simeon as owners of the subject house. The Heirs of Simeon Prudencio submit that the court *a quo* erred in ordering them to pay rents for the portion of the lot occupied by the subject house without Danilo exercising the options mandated by Article 448 of the New Civil Code.[17] On the other hand, Danilo submits that the court a *quo* erred in not ordering the removal of the subject house unlawfully occupying part of his lot and erroneously applied Article 448[18] of the Civil Code, which states:

> "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."

Such provision of law finds application when a person builds in good faith on the land of another. The provision used to cover 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.[19] It does not apply when the interest is merely that of a holder, such as a mere tenant, agent or usufructuary.[20] From pronouncements made by the High Court, 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. However, in some special cases, the High Court has used Article 448 by recognizing good faith beyond the limited definition. Thus, in *Del Campo v. Abesia*[21], the 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. As in this case, this article was also applied to cases wherein a builder had constructed improvements with the consent of the owner. The High Court ruled that the law, in such case, deemed the builder to be in good faith.[22] In *Sarmiento v. Agana*[23], the builders were even 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.

Undeniably, the structure in question was a "useful" improvement because it augmented the value or income of the bare lot. As such, the basis of indemnity is provided for by Article 546 which states:

> "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.
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> "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 rule that the choice under Article 448 of the Civil Code belongs to the owner of the land is in accord with the principle of accession, i.e., that the accessory follows the principal and not the other way around. Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive.[24] **The landowner**

cannot refuse to exercise either option and compel instead the owner of the building to remove it from the land. The *raison d'etre* for this provision has been enunciated thus: Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. [25] In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower the proper rent.[26] He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.[27]

Verily, Danilo has the right to appropriate as his own the house in question but only after (1) refunding the expenses incurred by Simeon or (2) paying the increase in value acquired by the properties by reason thereof. He has the option as well to oblige the Heirs of Simeon Prudencio to pay the price of the land occupied by it unless its value is considerably more than that of the structures — in which case, appellants-heirs shall pay reasonable rent. As aptly stated by the court a *quo* which We quote with approval:

> "The following are undisputed facts: (1) the late Simeon Prudencio, the predecessor-in-interest of the Defendants, owns the subject house; (2) the parcel of land covered by **Katibayan ng Orihinal na Titulo Blg. P-3594** belongs to Plaintiff Danilo L. Parel; and (3) the portion of land on which the subject house stands is within the lot covered by **Katibayan ng Orihinal na Titulo Blg. P-3594.**
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> The Court will now discuss the circumstances surrounding the construction of the subject house. It can be inferred from the exhibits attached to the instant case, specifically the decisions of the Regional Trial Court, the Court of Appeals and the Supreme Court in relation to Civil Case No. 2493-R, that the subject house was constructed with the consent of the plaintiff's father. In fact the Plaintiff's pleading in the aforementioned case would reveal that he helped in the construction works and even alleged that he contributed funds for the said construction work. The subject house, therefore, was built in good faith. Under **Article 448 of the Civil Code,** the owner of the land on which anything has been build in good faith may oblige the builder to pay the proper rent if he does not chose to appropriate what has been built as his own by paying for the same. Based from these provisions of the Civil Code, the Defendants must pay rent to the Plaintiff considering that their house occupies a portion of the latter's lot. It must be pointed out that the Plaintiff asks for the payment of the said rent from March 22, 2008 and not from the moment the house was constructed. As correctly pointed out by the Defendants, the mere act of vacating the house is not sufficient, the Plaintiff must relinquish the possession of the house in favor of the defendant/s so that the latter can freely exercise control over the said property. The fact that the Plaintiff reckons his prayer for the payment of rent on May 22, 2008 is an implied recognition of