335 Phil. 471

THIRD DIVISION

[G.R. No. 108894, February 10, 1997]

TECNOGAS PHILIPPINES MANUFACTURING CORPORATION, PETITIONER, VS. COURT OF APPEALS (FORMER SPECIAL SEVENTEENTH DIVISION) AND EDUARDO UY, RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

The parties in this case are owners of adjoining lots in Parañaque, Metro Manila. It was discovered in a survey that a portion of a building of petitioner, which was presumably constructed by its predecessor-in-interest, encroached on a portion of the lot owned by private respondent. What are the rights and obligations of the parties? Is petitioner considered a builder in bad faith because, as held by respondent Court, he is "presumed to know the metes and bounds of his property as described in his certificate of title"? Does petitioner succeed into the good faith or bad faith of his predecessor-in-interest which presumably constructed the building?

These are the questions raised in the petition for review of the Decision[1] dated August 28, 1992, in CA-G.R. CV No. 28293 of respondent Court[2] where the disposition reads:[3]

> "WHEREFORE, premises considered, the Decision of the Regional Trial Court is hereby reversed and set aside and another one entered -
>
> 1. Dismissing the complaint for lack of cause of action;
>
> 2. Ordering Tecnogas to pay the sum of P2,000.00 per month as reasonable rental from October 4, 1979 until appellee vacates the land;
>
> 3. To remove the structures and surrounding walls on the encroached area;
>
> 4. Ordering appellee to pay the value of the land occupied by the two-storey building;
>
> 5. Ordering appellee to pay the sum of P20,000.00 for and as attorney's fees;
>
> 6. Costs against appellee."

Acting on the motions for reconsideration of both petitioner and private respondent, respondent Court ordered the deletion of paragraph 4 of the dispositive portion in an Amended Decision dated February 9, 1993, as follows:[4]

"WHEREFORE, premises considered, our decision of August 28, 1992 is hereby modified deleting paragraph 4 of the dispositive portion of our decision which reads:

'4. Ordering appellee to pay the value of the land occupied by the two-storey building.'

The motion for reconsideration of appellee is hereby DENIED for lack of merit."

The foregoing Amended Decision is also challenged in the instant petition.

The Facts

The facts are not disputed. Respondent Court merely reproduced the factual findings of the trial court, as follows:[5]

> "That plaintiff (herein petitioner) which is a corporation duly organized and existing under and by virtue of Philippine laws is the registered owner of a parcel of land situated in Barrio San Dionisio, Parañaque, Metro Manila known as Lot 4331-A (should be 4531-A) of Lot 4531 of the Cadastral Survey of Parañaque, Metro Manila, covered by Transfer Certificate of Title No. 409316 of the Registry of Deeds of the Province of Rizal; that said land was purchased by plaintiff from Pariz Industries, Inc. in 1970, together with all the buildings and improvements including the wall existing thereon; that the defendant (herein private respondent) is the registered owner of a parcel of land known as Lot No. 4531-B of Lot 4531 of the Cadastral Survey of Parañaque, LRC (GLRO) Rec. No. 19645 covered by Transfer Certificate of Title No. 279838, of the Registry of Deeds for the Province of Rizal; that said land which adjoins plaintiff's land was purchased by defendant from a certain Enrile Antonio also in 1970; that in 1971, defendant purchased another lot also adjoining plaintiff's land from a certain Miguel Rodriguez and the same was registered in defendant's name under Transfer Certificate of Title No. 31390, of the Registry of Deeds for the Province of Rizal; that portions of the buildings and wall bought by plaintiff together with the land from Pariz Industries are occupying a portion of defendant's adjoining land; that upon learning of the encroachment or occupation by its buildings and wall of a portion of defendant's land, plaintiff offered to buy from defendant that particular portion of defendant's land occupied by portions of its buildings and wall with an area of 770 square meters, more or less, but defendant, however, refused the offer. In 1973, the parties entered into a private agreement before a certain Col. Rosales in Malacañang, wherein plaintiff agreed to demolish the wall at the back portion of its land thus giving to defendant possession of a portion of his land previously enclosed by plaintiff's wall; that defendant later filed a complaint before the office of Municipal Engineer of Parañaque, Metro Manila as well as before the Office of the Provincial Fiscal of Rizal against plaintiff in connection with the encroachment or occupation by plaintiff's buildings and walls of a portion of its land but said complaint did not prosper; that defendant dug or caused to be dug a canal along plaintiff's wall, a portion of which collapsed in June, 1980, and led to the filing by

> plaintiff of the supplemental complaint in the above-entitled case and a separate criminal complaint for malicious mischief against defendant and his wife which ultimately resulted into the conviction in court of defendant's wife for the crime of malicious mischief; that while trial of the case was in progress, plaintiff filed in Court a formal proposal for settlement of the case but said proposal, however, was ignored by defendant."

After trial on the merits, the Regional Trial Court[6] of Pasay City, Branch 117, in Civil Case No. PQ-7631-P, rendered a decision dated December 4, 1989 in favor of petitioner who was the plaintiff therein. The dispositive portion reads:[7]

> "WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendant and ordering the latter to sell to plaintiff that portion of land owned by him and occupied by portions of plaintiff's buildings and wall at the price of P2,000.00 per square meter and to pay the former:

1. The sum of P44,000.00 to compensate for the losses in materials and properties incurred by plaintiff through thievery as a result of the destruction of its wall;

2. The sum of P7,500.00 as and by way of attorney's fees; and

3. The costs of this suit."

Appeal was duly interposed with respondent Court, which as previously stated, reversed and set aside the decision of the Regional Trial Court and rendered the assailed Decision and Amended Decision. Hence, this recourse under Rule 45 of the Rules of Court.

The Issues

The petition raises the following issues:[8]

"(A)

Whether or not the respondent Court of Appeals erred in holding the petitioner a builder in bad faith because it is 'presumed to know the metes and bounds of his property.'

(B)

Whether or not the respondent Court of Appeals erred when it used the amicable settlement between the petitioner and the private respondent, where both parties agreed to the demolition of the rear portion of the fence, as estoppel amounting to recognition by petitioner of respondent's right over his property including the portions of the land where the other structures and the building stand, which were not included in the settlement.

(C)

Whether or not the respondent Court of Appeals erred in ordering the removal of the 'structures and surrounding walls on the encroached area' and in withdrawing its

earlier ruling in its August 28, 1992 decision for the petitioner 'to pay for the value of the land occupied' by the building, only because the private respondent has 'manifested its choice to demolish' it despite the absence of compulsory sale where the builder fails to pay for the land, and which 'choice' private respondent deliberately deleted from its September 1, 1980 answer to the supple-mental complaint in the Regional Trial Court."

In its Memorandum, petitioner poses the following issues:

"A

The time when to determine the good faith of the builder under Article 448 of the New Civil Code, is reckoned during the period when it was actually being built; and in a case where no evidence was presented nor introduced as to the good faith or bad faith of the builder at that time, as in this case, he must be presumed to be a 'builder in good faith,' since 'bad faith cannot be presumed.'[9]

B.

In a specific 'boundary overlap situation' which involves a builder in good faith, as in this case, it is now well settled that the lot owner, who builds on the adjacent lot is not charged with 'constructive notice' of the technical metes and bounds contained in their torrens titles to determine the exact and precise extent of his boundary perimeter.[10]

C.

The respondent court's citation of the twin cases of Tuason & Co. v. Lumanlan and Tuason & Co. v. Macalindong is not the 'judicial authority' for a boundary dispute situation between adjacent torrens titled lot owners, as the facts of the present case do not fall within nor square with the involved principle of a dissimilar case.[11]

D.

Quite contrary to respondent Uy's reasoning, petitioner Tecnogas continues to be a builder in good faith, even if it subsequently built/repaired the walls/other permanent structures thereon while the case a quo was pending and even while respondent sent the petitioner many letters/filed cases thereon.[12]

D. (E.)

The amicable settlement between the parties should be interpreted as a contract and enforced only in accordance with its explicit terms, and not over and beyond that agreed upon; because the courts do not have the power to create a contract nor expand its scope.[13]

E. (F.)

As a general rule, although the landowner has the option to choose between: (1) 'buying the building built in good faith', or (2) 'selling the portion of his land on which stands the building' under Article 448 of the Civil Code; the first option is not

absolute, because an exception thereto, once it would be impractical for the landowner to choose to exercise the first alternative, i.e. buy that portion of the house standing on his land, for the whole building might be rendered useless. The workable solution is for him to select the second alternative, namely, to sell to the builder that part of his land on which was constructed a portion of the house."[14]

Private respondent, on the other hand, argues that the petition is "suffering from the following flaws:[15]

1. It did not give the exact citations of cases decided by the Honorable Supreme Court that allegedly contradicts the ruling of the Hon. Court of Appeals based on the doctrine laid down in Tuason vs. Lumanlan case citing also Tuason vs. Macalindong case (Supra).

2. Assuming that the doctrine in the alleged Co Tao vs. Chico case is contradictory to the doctrine in Tuason vs. Lumanlan and Tuason vs. Macalindong, the two cases being more current, the same should prevail."

Further, private respondent contends that the following "unmistakably" point to the bad faith of petitioner: (1) private respondent's purchase of the two lots, "was ahead of the purchase by petitioner of the building and lot from Pariz Industries"; (2) the declaration of the General Manager of Tecnogas that the sale between petitioner and Pariz Industries "was not registered" because of some problems with China Banking Corporation; and (3) the Deed of Sale in favor of petitioner was registered in its name only in "the month of May 1973."[16]

The Court's Ruling

The petition should be granted.

Good Faith or Bad Faith

Respondent Court, citing the cases of J. M. Tuason & Co., Inc. vs. Vda. de Lumanlan[17] and J. M. Tuason & Co., Inc. vs. Macalindong,[18] ruled that petitioner "cannot be considered in good faith" because as a land owner, it is "presumed to know the metes and bounds of his own property, specially if the same are reflected in a properly issued certificate of title. One who erroneously builds on the adjoining lot should be considered a builder in (b)ad (f)aith, there being presumptive knowledge of the Torrens title, the area, and the extent of the boundaries."[19]

We disagree with respondent Court. The two cases it relied upon do not support its main pronouncement that a registered owner of land has presumptive knowledge of the metes and bounds of its own land, and is therefore in bad faith if he mistakenly builds on an adjoining land. Aside from the fact that those cases had factual moorings radically different from those obtaining here, there is nothing in those cases which would suggest, however remotely, that bad faith is imputable to a registered owner of land when a part of his building encroaches upon a neighbor's land, simply because he is supposedly presumed to know the boundaries of his land as described in his certificate of title. No such doctrinal statement could have been made in those cases because such issue was not before the Supreme Court. Quite the contrary, we have rejected such a theory in Co Tao vs. Chico,[20] where we held