Supreme Court E-Library

Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

Teehankee, J. (*Chairman*), took no part.

SECOND DIVISION

[G.R. No. L-32974. July 30, 1979]

BARTOLOME ORTIZ, *petitioner, vs.* **HON. UNION C. KAYANAN, in his capacity as Judge of the Court of First Instance of Quezon, Branch IV; ELEUTERIO ZAMORA, QUIRINO COMINTAN, VICENTE FERRO, AND GREGORIO PAMISARAN,** *respondents.*

SYLLABUS

1. **CIVIL LAW; POSSESSION; POSSESSOR IN GOOD FAITH; ENTITLED TO RECEIVE THE FRUITS BEFORE POSSESSION IS LEGALLY INTERRUPTED.**— There is no question that a possessor in good faith is entitled to the fruits received before the possession is legally interrupted. Possession in good faith ceases or is legally interrupted from the moment defects in the title are made known to the possessor, by extraneous evidence or by the filing of an action in court by the true owner for the recovery of the property. Hence, all the fruits that the possessor may receive from the time he is summoned in court, or when he answers the complaint, must be delivered and paid by him to the owner or lawful possessor.

2. **ID.; ID.; ID.; RIGHT OF RETENTION, DISCUSSED.**— However, even after his good faith ceases, the possessor in fact can still retain the property, pursuant to Article 546 of the New Civil Code, until he has been fully reimbursed for all the necessary and useful expenses made by him on the property. This right of retention has been considered as one of the conglomerate

Supreme Court E-Library

of measures devised by the law for the protection of the possessor in good faith. Its object is to guarantee the reimbursement of the expenses, such as those for the preservation of the property, or for the enhancement of its utility or productivity. It permits the actual possessor to remain in possession while he has not been reimbursed by the person who defeated him in the possession for those necessary expenses and useful improvements made by him on the thing possessed. The principal characteristic of the right of retention is its accessory character. It is accessory to a principal obligation. Considering that the right of the possessor to receive the fruits terminates when his good faith ceases, it is necessary, in order that this right to retain may be useful, to concede to the creditor the right to secure reimbursement from the fruits of the property by utilizing its proceeds for the payment of the interest as well as the principal of the debt while he remains in possession. This right of retention of the property by the creditor, according to Scaevola, in the light of the provisions of Article 502 of the Spanish Civil Code, is considered not a coercive measure to oblige the debtor to pay, depriving him temporarily of the enjoyment of the fruits of his property, but as a means of obtaining compensation for the debt. The right of retention in this case is analogous to a contract of antichresis and it can be considered as a means of extinguishing the obligation, inasmuch as the right to retain the thing lasts only for the period necessary to enable the creditor to be reimbursed from the fruits for the necessary and useful expenses.

3. **ID.; ID.; ID.; POSSESSOR'S RIGHT OF RETENTION IS SIMILAR TO THAT OF A PLEDGE, IF THE PROPERTY RETAINED IS MOVABLE, AND TO THAT OF ANTICHRESIS, IF THE PROPERTY IS IMMOVABLE.**— According to Manresa, the right of retention is, therefore, analogous to that of a pledge, if the property retained is a movable, and to that of antichresis, if the property held is immovable. This construction appears to be in harmony with similar provisions of the civil law which employs the right of retention as a means or device by which a creditor is able to obtain the payment of a debt. Thus, under Article 1731 of the New Civil Code, any person who has performed work upon a movable has a right to retain it by way of pledge until he is paid. Similarly, under Article 1914 of the same Code, the agent may retain in pledge the things which are the object

Supreme Court E-Library

of the agency until the principal effects reimbursement of the funds advanced by the former for the execution of the agency, or he is indemnified for all damages which he may have suffered as a consequence of the execution of the agency, provided he is free from fault. To the same effect, the depositary, under Article 1994 of the same Code, may retain the thing in pledge until the full payment of what may be due him by reason of the deposit.

4. **ID.; ID.; ID.; ID.; PRINCIPLES APPLICABLE IN CASE AT BAR.**— Applying the afore-cited principles to the case at bar, petitioner cannot appropriate for his own exclusive benefit the tolls which he collected from the property retained by him. It was his duty under the law, after deducting the necessary expenses for his administration, to apply such amount collected to the payment of the interest, and the balance to the payment of the principal of the obligation. We hold, therefore, that the disputed tolls, after deducting petitioner's expenses for administration, belong to Quirino Comintan, owner of the land through which the toll road passed, further considering that the same was on portions of the property on which petitioner had not introduced any improvement.

APPEARANCES OF COUNSEL

Salonga, Ordoñez, Yap, Sicat & Associates and *Salvador, Ulgado & Carbon* for petitioner.

Jose A. Cusi for private respondents.

D E C I S I O N

ANTONIO, *J.*:

Petition for *Certiorari* and Prohibition with Preliminary Injunction to nullify the Order of respondent Judge directing the execution of the final judgment in Civil Case No. C-90, entitled "*Bartolome Ortiz vs. Secretary of Agriculture and Natural Resources, et al.*," and the Writ of Execution issued to implement said Order, allegedly for being inconsistent with the judgment sought to be enforced.

Supreme Court E-Library

Civil Case No. C-90 was filed by Bartolome Ortiz who sought the review and/or annulment of the decision of the Secretary of Agriculture and Natural Resources, giving preference to the sales applications of private respondents Quirino Comintan and Eleuterio Zamora over Lot No. 5785, PLS-45, located at Barrio Cabuluan, Calauag, Quezon.

I

The factual background of the case, as found by respondent Court, is as follows:

"* * * The lot in controversy was formerly the subject of Homestead Application No. 122417 of Martin Dolorico II, plaintiff's ward who died on August 20, 1931; that since then it was plaintiff who continued the cultivation and possession of the property, without however filing any application to acquire title thereon; that in the Homestead Application No. 122417, Martin Dolorico II named his uncle, Martin Dolorico I as his heir and successor in interest, so that in 1951 Martin Dolorico I executed an affidavit relinquishing his rights over the property in favor of defendants Quirino Comintan and Eleuterio Zamora, his grandson and son-in-law, respectively, and requested the Director of Lands to cancel the homestead application; that on the strength of the affidavit, Homestead Application No. 122417 was cancelled and thereafter, defendants Comintan and Zamora filed their respective sales applications Nos. 8433 and 9258; that plaintiff filed his protest on November 26, 1951 alleging that he should be given preference to purchase the lot inasmuch as he is the actual occupant and has been in continuous possession of the same since 1931; and inspite of plaintiff's opposition, 'Portion A' of the property was sold at public auction wherein defendant Comintan was the only bidder; that on June 8, 1957, investigation was conducted on plaintiff's protest by Assistant Public Lands Inspector Serapion Bauzon who submitted his report to the Regional Land Officer, and who in turn rendered a decision on April 9, 1958, dismissing plaintiff's claim and giving due course to defendants' sales applications on the ground that the relinquishment of the homestead rights of Martin Dolorico I in favor of Comintan and Zamora is proper, the former having been designated as successor in interest of the original homestead applicant and that because plaintiff failed to participate in the public auction, he is forever barred to claim the property; that plaintiff filed a motion for reconsideration of this decision which was denied by the Director

Supreme Court E-Library

of Lands in his order dated June 10, 1959; that finally, on appeal to the Secretary of Agriculture and Natural Resources, the decision rendered by the Regional Land Officer was affirmed *in toto*."[1]

On March 22, 1966, respondent Court rendered judgment in the afore-mentioned civil case, the dispositive portion of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered awarding Lot No. 5785-A of PLS-45, (Calauag Public Land Subdivision) one-half portion of the property in litigation located at Bo. Cabuluan, Calauag, Quezon, in favor of defendant QUIRINO COMINTAN, being the successful bidder in the public auction conducted by the Bureau of Lands on April 18, 1955, and hereby giving due course to the Sales Application No. 9258 of defendant Eleuterio Zamora over the other half, Lot No. 5785-B of PLS-45, Calauag, without prejudice to the right of plaintiff BARTOLOME ORTIZ to participate in the public bidding of the same to be announced by the Bureau of Lands, Manila. However, *should plaintiff Bartolome Ortiz be not declared the successful bidder thereof, defendants Quirino Comintan and Eleuterio Zamora are ordered to reimburse jointly said plaintiff the improvements he has introduced on the whole property in the amount of THIRTEEN THOUSAND SIX HUNDRED THIRTY-TWO (₱13,632.00) PESOS, the latter having the right to retain the property until after he has been fully paid therefor, without interest since he enjoys the fruits of the property in question*, with prejudice and with costs against the plaintiff."[2]

Plaintiff appealed the decision to the Court of Appeals.

Two (2) years after the rendition of the judgment by the court *a quo*, while the case was pending appeal and upon petition of private respondents Quirino Comintan and Eleuterio Zamora, respondent Court appointed respondent Vicente Ferro, Clerk of Court, as Receiver to collect tolls on a portion of the property used as a diversion road. On August 19, 1969, the Court of Appeals issued a Resolution annulling the Order appointing the Receiver. Subsequently, on February 19, 1970, the Appellate

---

[1] Annex "B", Petition, pp. 26-27, *Rollo*.

[2] *Ibid.*, pp. 35-36, *Rollo*. Italics supplied.

Supreme Court E-Library

Court affirmed the decision of the trial court. A petition for review on *certiorari* of the decision of the Court of Appeals was denied by this Court on April 6, 1970. At this point, private respondents filed a petition for appointment of a new receiver with the court *a quo*. This petition was granted and the receiver was reappointed. Petitioner sought the annulment of this Order with the Court of Appeals, but said Court ruled that its decision had already become final and that the records of the case were to be remanded to the trial court.

Not satisfied with such denial, petitioner filed a petition for *certiorari*, prohibition and *mandamus* with preliminary injunction before this Court,[3] praying for the annulment of the Order reappointing the Receiver. On July 13, 1970, the petition was dismissed by this Court on the ground of insufficient showing of grave abuse of discretion.

II

The judgment having become final and executory, private respondents filed a motion for the execution of the same, praying as follows:

"WHEREFORE, it is respectfully prayed of this Honorable Court to order the issuance of a writ of execution in accordance with the judgment of this Honorable Court, confirmed by the Court of Appeals and the Supreme Court, commanding any lawful officer to deliver to defendants Comintan and Zamora the land subject of the decision in this case but allowing defendants to file a bond in such amount as this Honorable Court may fix, in lieu of the ₱13,632.00 required to be paid to plaintiff, conditioned that after the accounting of the tools collected by plaintiff, there is still an amount due and payable to said plaintiff, then if such amount is not paid on demand, including the legal interests, said bond shall be held answerable.

"Ordering further the plaintiff to render an accounting of the tolls he collected from March of 1967 to December 31, 1968 and from September 1969 to March 31, 1970, and deliver said tolls collected

---

[3] Docketed as G. R. No. L-32206, entitled "*Bartolome Ortiz vs. Hon. Union C. Kayanan, Eleuterio Zamora, Quirino Comintan and Vicente Ferro.*"

Supreme Court E-Library

to the receiver and if judgment is already executed, then to Quirino Comintan and Eleuterio Zamora; and,

"Finally, to condemn plaintiff to pay moral damages for withholding the tolls which belong to your movant in an amount this Court may deem just in the premises."[4]

Acting upon the foregoing motion, respondent Judge issued an Order, dated September 23, 1970, stating, among others, the following:

"The records further disclosed that from March 1967 to December 31, 1968, plaintiff Bartolome Ortiz collected tolls on a portion of the property in question wherein he has not introduced any improvement particularly on Lot No. 5785-A; PLS-45 awarded to defendant Quirino Comintan, thru which vehicular traffic was detoured or diverted, and again from September 1969 to March 31, 1970, the plaintiff resumed the collection of tolls on the same portion without rendering any accounting on said tolls to the Receiver, who was reappointed after submitting the required bond and specifically authorized only to collect tolls leaving the harvesting of the improvements to the plaintiff.

* * * * * * * * *

"In virtue of the findings of this Court as contained in the dispositive portion of its decision, the defendants are jointly obligated to pay the plaintiff in the amount of ₱13,632.00 as reasonable value of the improvements he introduced on the whole property in question, and that he has the right of retention until fully paid. It can be gleaned from the motion of the defendants that if plaintiff submits an accounting of the tolls he collected during the periods above alluded to, their damages of about ₱25,000.00 can more than offset their obligation of ₱13,362.00 in favor of the plaintiff, thereafter the possession of the land be delivered to the defendants since the decision of the Supreme Court has already become final and executory, but in the interregnum pending such accounting and recovery by the Receiver of the tolls collected by the plaintiff, the defendants pray that they be allowed to put up a bond in lieu of the said ₱13,632.00 to answer for damages of the former, if any.

"On the other hand, plaintiff contends in his opposition, admitting that the decision of the Supreme Court has become final and executory;

[4] Annex "D", Petition, p. 48, *Rollo*.

Supreme Court E-Library

(1) the offer of a bond in lieu of payment of ₱13,632.00 does not, and cannot, satisfy the condition imposed in the decision of this Court which was affirmed *in toto*; (2) the public sale of Portion 'B' of the land has still to take place as ordained before the decision could be executed; and, (3) that whatever sums plaintiff may derive from the property cannot be set off against what is due him for the improvements he made, for which he has to be reimbursed as ordered.

* * * * * * * * *

"Let it be known that plaintiff does not dispute his having collected tolls during the periods from March 1967 to December 31, 1968 and from September 1969 to March 31, 1970. The Supreme Court affirmed the decision of this Court in its findings that said tolls belong to the defendants, considering that the same were collected on a portion of the land in question where the plaintiff did *not* introduce any improvement. The reimbursement to the plaintiff pertains only to the value of the improvements, like coconut trees and other plants which he introduced on the whole property. The tolls collected by the plaintiff on an unimproved portion naturally belong to the defendants, following the doctrine on accretion. Further, the reappointment of a Receiver by this Court was upheld by the Supreme Court when it denied the petition for *certiorari* filed by the plaintiff, bolstering the legal claim of defendants over said tolls. Thus, the decision of the Supreme Court rendered the decision of this Court retroactive from March 22, 1966 although pending appeal its implementation was suspended. It is our honest conviction, therefore, that the putting up of a bond by the defendants pending accounting of the tolls collected by the plaintiff is justified and will not prejudice anybody, but certainly would substantially satisfy the conditions imposed in the decision. However, insofar as the one-half portion 'B' of the property, the decision may be executed only after public sale by the Bureau of Lands shall be accomplished.

"WHEREFORE, finding the Motion for Execution filed by the defendants to be meritorious, the same is granted; provided, however, that they put up a bond equal the adjudicated amount of ₱13,632.00 accruing in favor of the plaintiff, from a reputable or recognized bonding or surety company, conditioned that after an accounting of the tolls collected by the plaintiff should there be found out any balance due and payable to him after reckoning said obligation of ₱13,632.00 the bond shall be held answerable therefor."[5]

[5] Annex "A", Petition, pp. 17-20, *Rollo*.

Supreme Court E-Library

Accordingly, a Writ of Execution was issued after private respondent Quirino Comintan had filed the required bond. The writ directed the Sheriff to enforce the decision of the Court, and stated, in part, the following:

"But should there be found any amount collectible after accounting and deducting the amount of ₱13,632.00, you are hereby ordered that of the goods and chattels of Bartolome Ortiz of Bo. Kabuluan, Calauag, Quezon, be caused to be made any excess in the abovementioned amount together with your lawful fees and that you render same to defendant Quirino Comintan. If sufficient personal property cannot be found thereof to satisfy this execution and lawful fees thereon, then you are commanded that of the lands and buildings of the said BARTOLOME ORTIZ you make the said excess amount in the manner required by the Rules of Court, and make return of your proceedings within this Court within sixty (60) days from date of service.

"You are also ordered to cause Bartolome Ortiz to vacate the property within fifteen (15) days after service thereof the defendant Quirino Comintan having filed the required bond in the amount of THIRTEEN THOUSAND SIX HUNDRED THIRTY-TWO (₱13,632.00) PESOS."[6]

On October 12, 1970, petitioner filed a Motion for Reconsideration of the aforesaid Order and Writ of Execution, alleging:

"(a) That the respondent judge has no authority to place respondents in possession of the property;

"(b) That the Supreme Court has never affirmed any decision of the trial court that tolls collected from the diversionary road on the property, which is public land, belong to said respondents;

"(c) That to assess petitioner a ₱25,000.00 liability for damages is purely punitive imposition without factual or legal justification."

The foregoing Motion for Reconsideration was denied by respondent Judge per Order dated November 18, 1970. Said Order states, in part:

---

[6] Annex "C", Petition, p. 38, *Rollo*.

Supreme Court E-Library

"It goes without saying that defendant Comintan is entitled to be placed in possession of Lot No. 5785-A of PLS-45 (Calauag Public Land Subdivision) and enjoyment of the tolls from March, 1967 to March, 1968 and from September, 1969 to March 31, 1970 which were received by plaintiff Bartolome Ortiz, collected from the property by reason of the diversion road where vehicular traffic was detoured. To defendant Comintan belongs the tolls thus collected from a portion of the land awarded to him used as a diversionary road by the doctrine of accretion and his right over the same is *ipso jure*, there being no need of any action to possess said addition. It is so because as consistently maintained by the Supreme Court, an applicant who has complied with all the terms and conditions which entitle him to a patent for a particular tract of public land, acquires a vested right therein and is to be regarded as equitable owner thereof so that even without a patent, a perfected homestead or sales application is a property right in the fullest sense, unaffected by the fact that the paramount title is still in the Government and no subsequent law can deprive him of that vested right. The question of the actual damages suffered by defendant Comintan by reason of the unaccounted tolls received by plaintiff had already been fully discussed in the order of September 23, 1970 and the Court is honestly convinced and believes it to be proper and regular under the circumstances.

"Incidentally, the Court stands to correct itself when in the same order, it directed the execution of the decision with respect to the one-half portion 'B' of the property only after the public sale by the Bureau of Lands, the same being an oversight, it appearing that the Sales Application of defendant Eleuterio Zamora had already been recognized and fully confirmed by the Supreme Court.

"In view thereof, finding the motion filed by plaintiff to be without merit, the Court hereby denies the same and the order of September 23, 1970 shall remain in full force subject to the amendment that the execution of the decision with respect to the one-half portion 'B' shall not be conditioned to the public sale by the Bureau of Lands.

"SO ORDERED."[7]

---

[7] Annex "G", Petition, pp. 69-71, *Rollo*.

Supreme Court E-Library

III

Petitioner thus filed the instant petition, contending that in having issued the Order and Writ of Execution, respondent Court "acted without or in excess of jurisdiction, and/or with grave abuse of discretion, because the said order and writ in effect vary the terms of the judgment they purportedly seek to enforce." He argued that since said judgment declared the petitioner a possessor in good faith, he is entitled to the payment of the value of the improvements introduced by him on the whole property, with right to retain the land until he has been fully paid such value. He likewise averred that no payment for improvements has been made and, instead, a bond therefor had been filed by defendants (private respondents), which, according to petitioner, is not the payment envisaged in the decision which would entitle private respondents to the possession of the property. Furthermore, with respect to portion "B", petitioner alleges that, under the decision, he has the right to retain the same until after he has participated and lost in the public bidding of the land to be conducted by the Bureau of Lands. It is claimed that it is only in the event that he loses in the bidding that he can be legally dispossessed thereof.

It is the position of petitioner that all the fruits of the property, including the tolls collected by him from the passing vehicles, which according to the trial court amounts to ₱25,000.00, belongs to petitioner and not to defendant/private respondent Quirino Comintan, in accordance with the decision itself, which decreed that the fruits of the property shall be in lieu of interest on the amount to be paid to petitioner as reimbursement for improvements. Any contrary opinion, in his view, would be tantamount to an amendment of a decision which has long become final and executory and, therefore, cannot be lawfully done.

Petitioner, therefore, prayed that (1) a Writ of Preliminary Injunction be issued enjoining the enforcement of the Orders of September 23, 1970 and November 18, 1970, and the Writ of Execution issued thereto, or restoring to petitioner the possession of the property if the private respondents had been

Supreme Court E-Library

placed in possession thereof; (2) annulling said Orders as well as the Writ of Execution, dissolving the receivership established over the property; and (3) ordering private respondents to account to petitioner all the fruits they may have gathered or collected from the property in question from the time of petitioner's illegal dispossession thereof.

On January 29, 1971, this Court issued the Writ of Preliminary Injunction. On January 30, 1971, private respondents filed a Motion for Reconsideration and/or Modification of the Order dated January 29, 1971. This was followed by a Supplemental Motion for Reconsideration and Manifestation on February 3, 1971. In the latter motion, private respondents manifested that the amount of ₱14,040.96, representing the amount decreed in the judgment as reimbursement to petitioner for the improvements, plus interest for six months, has already been deposited by them in court, "with the understanding that said amount shall be turned over to the plaintiff after the court *a quo* shall have determined the improvement on Lot 5785-A, and subsequently the remaining balance of the deposit shall be delivered to the petitioner (plaintiff therein) in the event he loses the bid for Lot 5785-B in favor of private respondent Eleuterio Zamora."[8] The deposit is evidenced by a certification made by the Clerk of the Court *a quo*.[9] Contending that said deposit was a faithful compliance with the judgment of the trial court, private respondent Quirino Comintan prayed for the dissolution of the Writ of Injunction.

It appears that as a consequence of the deposit made by private respondents, the Deputy Sheriff of Calauag, Quezon ousted petitioner's representative from the land in question and put private respondents in possession thereof.[10]

---

[8] Private respondents' Supplemental Motion for Reconsideration and Manifestation, pp. 87-88, *Rollo*.

[9] Annex "B" of above Supplemental Motion, p. 91, *Rollo*.

[10] Manifestation of Deputy Sheriff Gregorio B. Pamisaran, p. 95, *Rollo*.

Supreme Court E-Library

On March 10, 1971, petitioner filed a "Comment on Respondents' 'Motion for Reconsideration' dated January 29, 1971' and 'Supplemental Motion for Reconsideration and Manifestation,'" contending that the tender of deposit mentioned in the Supplemental Motion was not really and officially made, "'inasmuch as the same is not supported by any official receipt from the lower court, or from its clerk or cashier, as required by law"; that said deposit does not constitute sufficient compliance with the judgment sought to be enforced, neither was it legally and validly made because the requisites for consignation had not been complied with; that the tender of legal interest for six months cannot substitute petitioner's enjoyment of the fruits of the property as long as the judgment in Civil Case No. C-90 has not been implemented in the manner decreed therein; that contrary to the allegations of private respondents, the value of the improvements on the whole property had been determined by the lower court, and the segregation of the improvements for each lot should have been raised by them at the opportune moment by asking for the modification of the decision before it became final and executory; and that the tolls on the property constituted "civil fruits" to which the petitioner is entitled under the terms of the decision.

IV

The issue decisive of the controvercy is — after the rendition by the trial court of its judgment in Civil Case No. C-90 on March 22, 1966 confirming the award of one-half of the property to Quirino Comintan — whether or not petitioner is still entitled to retain for his own exclusive benefit all the fruits of the property, such as the tolls collected by him from March 1967 to December 1968, and September 1969 to March 31, 1970, amounting to about ₱25,000.00. In other words, petitioner contends that so long as the aforesaid amount of ₱13,632.00 decreed in the judgment representing the expenses for clearing the land and the value of the coconuts and fruit trees planted by him remains unpaid, he can appropriate for his exclusive benefit all the fruits which he may derive from the property, without any obligation

Supreme Court E-Library

to apply any portion thereof to the payment of the interest and the principal of the debt.

We find this contention untenable.

There is no question that a possessor in good faith is entitled to the fruits received before the possession is legally interrupted.[11] Possession in good faith ceases or is legally interrupted from the moment defects in the title are made known to the possessor, by extraneous evidence or by the filing of an action in court by the true owner for the recovery of the property.[12] Hence, all the fruits that the possessor may receive from the time he is summoned in court, or when he answers the complaint, must be delivered and paid by him to the owner or lawful possessor.[13]

However, even after his good faith ceases, the possessor in fact can still retain the property, pursuant to Article 546 of the New Civil Code, until he has been fully reimbursed for all the necessary and useful expenses made by him on the property. This right of retention has been considered as one of the conglomerate of measures devised by the law for the protection of the possessor in good faith. Its object is to guarantee the reimbursement of the expenses, such as those for the preservation of the property,[14] or for the enhancement of its utility or productivity.[15] It permits the actual possessor to remain in possession while he has not been reimbursed by the person who defeated him in the possession for those necessary expenses and useful improvements made by him on the thing possessed. The principal characteristic of the right of retention is its accessory character. It is accessory to a principal obligation. Considering that the right of the possessor to receive the fruits terminates when his good faith ceases, it is necessary, in order that this right to retain may be useful, to concede to the creditor

---

[11] Article 544, New Civil Code.

[12] *Tacas v. Tobon*, 53 Phil. 356; Article 528, New Civil Code.

[13] *Araujo v. Celis*, 16 Phil. 329.

[14] IV Manresa, 1951 Ed., pp. 293-294.

[15] *Ibid.*, pp. 316-318.

Supreme Court E-Library

the right to secure reimbursement from the fruits of the property by utilizing its proceeds for the payment of the interest as well as the principal of the debt while he remains in possession. This right of retention of the property by the creditor, according to Scaevola, in the light of the provisions of Article 502 of the Spanish Civil Code,[16] is considered not a coercive measure to oblige the debtor to pay, depriving him temporarily of the enjoyment of the fruits of his property, but as a means of obtaining compensation for the debt. The right of retention in this case is analogous to a contract of antichresis and it can be considered as a means of extinguishing the obligation, inasmuch as the right to retain the thing lasts only for the period necessary to enable the creditor to be reimbursed from the fruits for the necessary and useful expenses.[17]

According to Manresa, the right of retention is, therefore, analogous to that of a pledge, if the property retained is a movable, and to that of antichresis, if the property held is immovable.[18]

[16] Now Article 594, New Civil Code.

[17] "*Notese en este caso una singularidad: En la situación jurìdica prevista por el Art. 502, la retención se considera, no como medio coercitivo para obligar al deudor al pago, privàndole temporalmente de los beneficios que el goce de su propiedad pudiera reportarle, sino como medio de obtener una compansaciòn. La retenciòn tiene en este caso mucha analogìa con el pacto anticrìtico, y podemos considerarla como medio extintivo de una obligaciòn, puesto que el derecho de retener la cosa dura sólo el tiempo necessario para compensar con los frutos el coste de las reparaciones extraordinarias indespensables para la subsistencia de la cosa usufructuada. El Código se desvìa conscientemente de las propiedades genuinas del ius retentionis, pero la desviación es racionaly va derecha al logro de una finalidad juridica.*' (8 Scaevola. Codigo. Civil, 1948 Ed., p. 478.)

[18] "*Fàcil es deducir, descartando el Art. 494, por su menor relaciòn con el caso en que nos encontramos, que el Código asimila el derecho de retención en los bienes muebles a la prenda, y en los bienes inmuebles a la anticresis, que confiere al acreedor el derecho de percibir los frutos de un inmueble con la obligación de aplicarlos, al pago de los intereses, si se debieren, y después al del capital de su crédito* (Art. 1.881).

"*Aun tratándose de cosas muebles, la ley hace cuanto esta su alcance para hacer ùtil o provechoso este derecho. De aquì el Artìculo 1.868: 'Si la prenda produce intereses, compensarà el acreedor los que perciba con los que se le deben; y si no se le deben, o en cuanto excedan de los legìtìmamente debidos, los imputarà al capital.*'

Supreme Court E-Library

This construction appears to be in harmony with similar provisions of the civil law which employs the right of retention as a means or device by which a creditor is able to obtain the payment of a debt. Thus, under Article 1731 of the New Civil Code, any person who has performed work upon a movable has a right to retain it by way of pledge until he is paid. Similarly, under Article 1914 of the same Code, the agent may retain in pledge the things which are the object of the agency until the principal effects reimbursement of the funds advanced by the former for the execution of the agency, or he is indemnified for all damages which he may have suffered as a consequence of the execution of the agency, provided he is free from fault. To the same effect, the depositary, under Article 1994 of the same Code, may retain the thing in pledge until the full payment of what may be due him by reason of the deposit. The usufructuary, pursuant to Article 612 of the same Code, may retain the property until he is reimbursed for the amount paid for taxes levied on the capital (Article 597) and for extraordinary repairs (Article 594).

"*Respecto a la anticresis, véanse los Artículos 1.882 y 1.883: 'El acreedor, dice el primero, salvo pacto en contrario, està obligado a pagar las contribuciones y cargas que pesen sobre la finca. Lo està asimismo a hacer los gastos necesarios para su conservación y reparación. Se deducir n de los frutos las cantidades que emplee en uno u otro objeto.' 'El deudor, dice el 1.883, no puede readquirir el goce del inmueble sin haber pagado antes enteramente lo que debe a su acreedor.'*

"*La posesión puede recaer en cosas muebles o inmuebles; la retenciòn de que habla el Art. 453 puede, pues, recaer sobre unas o otras indistintamente. De aquì tal vez la generalidad de la expresiòn: retener hasta el pago. Pero en el Art. 453 se trata de gastos reembolsables, de una deuda, como en los Articulos 502, 522, 1.600, 1.730, 1.780, 1.866 y 1.881. Debemos deducir de aquì, como alguien lo hace, que el derecho de retención en el poseedor se reduce a un simple depòsito en los bienes muebles y a una mera administración en los inmuebles? Que ventaja reportarìa esa deducción al poseedor in al propietario, al acreedor ni al deudor, al vencedor ni al vencido? No es más logico equiparar el derecho de retención a la prenda o a la anticresis? La idea del Codigo es màs bien ésta que la otra: propietario y poseedor ganan màs con ella.*" (IV Manresa, 1951 Ed., pp. 328-329.)

Supreme Court E-Library

In all of these cases, the right of retention is used as a means of extinguishing the obligation. As amply observed by Manresa: "*El derecho de retenciòn, lo hemos dicho, es el derecho de prenda o el de anticresis constituìdo por la ley con independencia de la voluntad de las partes*."[19] In a pledge if the thing pledged earns or produces fruits, income, dividends or interests, the creditor shall compensate what he receives with those which are owing him.[20] In the same manner, in a contract of antichresis, the creditor acquires the right to receive the fruits of an immovable of his debtor with the obligation to apply them to the payment of the interest, if owing, and thereafter to the principal of his credit.[21] The debtor can not reacquire enjoyment of the immovable until he has actually paid what he owes the creditor.[22]

Applying the afore-cited principles to the case at bar, petitioner cannot appropriate for his own exclusive benefit the tolls which he collected from the property retained by him. It was his duty under the law, after deducting the necessary expenses for his administration, to apply such amount collected to the payment of the interest, and the balance to the payment of the principal of the obligation.

We hold, therefore, that the disputed tolls, after deducting petitioner's expenses for administration, belong to Quirino Comintan, owner of the land through which the toll road passed, further considering that the same was on portions of the property on which petitioner had not introduced any improvement. The trial court itself clarified this matter when it placed the toll road under receivership. The omission of any mention of the tolls in the decision itself may be attributed to the fact that the tolls appear to have been collected after the rendition of the judgment of the trial court.

---

[19] IV Manresa, 1951 Ed., p. 330.

[20] Article 2102. New Civil Code.

[21] Article 2132, *Ibid.*

[22] Article 2136, *Ibid.*

Supreme Court E-Library

The records further reveal that earnest efforts have been made by private respondents to have the judgment executed in the most practicable manner. They deposited in court the amount of the judgment in the sum of ₱13,632.00 in cash, subject only to the accounting of the tolls collected by the petitioner so that whatever is due from him may be set off with the amount of reimbursement. This is just and proper under the circumstances and, under the law, compensation or set off may take place, either totally or partially. Considering that petitioner is the creditor with respect to the judgment obligation and the debtor with respect to the tolls collected, Comintan being the owner thereof, the trial court's order for an accounting and compensation is in accord with law.[23]

With respect to the amount of reimbursement to be paid by Comintan, it appears that the dispositive portion of the decision was lacking in specificity, as it merely provided that Comintan and Zamora are jointly liable therefor. When two persons are liable under a contract or under a judgment, and no words appear in the contract or judgment to make each liable for the entire obligation, the presumption is that their obligation is joint or *mancomunada*, and each debtor is liable only for a proportionate part of the obligation.[24] The judgment debt of ₱13,632.00 should, therefore, be pro-rated in equal shares to Comintan and Zamora.

Regarding Lot 5785-B, it appears that no public sale has yet been conducted by the Bureau of Lands and, therefore, petitioner is entitled to remain in possession thereof. This is not disputed by respondent Eleuterio Zamora.[25] After public sale is had and in the event that Ortiz is not declared the successful bidder, then he should be reimbursed by respondent Zamora in the corresponding amount for the improvements on Lot 5785-B.

WHEREFORE, in view hereof, the Order of respondent Court of November 18, 1970 is hereby modified to conform to

---

[23] Cf. Articles 1278, 1279 and 1283, *Ibid.*

[24] *Cacho v. Valles*, 45 Phil. 107; *Ramos v. Gibbon*, 67 Phil. 371.

[25] Memorandum for Respondents, p. 195, *Rollo*.

Supreme Court E-Library

the foregoing judgment. The Writ of Preliminary Injunction, dated January 29, 1971, is hereby dissolved. Without special pronouncement as to costs.

Barredo (Chairman), Concepcion Jr., and *Guerrero, JJ.*, concur.

Aquino, J., concurs in the result.

Santos and *Abad Santos, JJ.*, are on leave.

EN BANC

[G.R. No. L-34355. July 30, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ADELAIDO RAMOS, alias Bayot,** *accused whose death sentence is under automatic review.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; *PENALTIES*; WHEN THE CODE PRESCRIBES A SINGLE INDIVISIBLE PENALTY, IT IS IMPOSABLE REGARDLESS OF MITIGATING OR AGGRAVATING CIRCUMSTANCES; CASE AT BAR.**— We hold that even if the crime committed by Ramos is categorized as attempted rape with homicide, death is still the penalty that should be meted to him under the penultimate paragraph of Article 335 of the Revised Penal Code, as amended by Republic Acts Nos. 2632 and 4111. The appreciation in his favor of the extenuating circumstance of voluntary confession of guilt would not alter the result because when the Code prescribes a single indivisible penalty like death, it is imposable regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime (Art. 63, Revised Penal Code).