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WHEREFORE, in view of the foregoing, the petition is *GRANTED* and the decision of the Court of Appeals is *REVERSED* and the Regional Trial Court, Branch 122, Caloocan City is ordered to effect petitioner's exercise of her right of legal redemption in Civil Case No. C-17055.

SO ORDERED.

Bellosillo (Chairman) and *Buena, JJ.,* concur.

Quisumbing and *De Leon, Jr., JJ.,* are on leave.

THIRD DIVISION

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

CORNELIO M. ISAGUIRRE, *petitioner, vs.* **FELICITAS DE LARA,** *respondent.*

SYNOPSIS

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, he 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 squares meters and was further reduced to 1,000 square meters. Sometime in 1953, respondent obtained loans from the Philippine National Bank. When respondent encountered financial difficulties, respondent approached petitioner 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-storey commercial and residential

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structure standing thereon, in favor of petitioner, for and in consideration of the sum of ₱5,000.00. 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 which resulted 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 the subject property was also given due course resulting to the issuance of Original Certificate of Title No. P-13038 in the name of respondent. Due to 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 trial court rendered judgment on October 19, 1992 in favor of petitioner, declaring him to be lawful owner of the disputed property. However, the Court of Appeals reversed the trial court's decision. This case was affirmed by the Supreme Court. 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. Respondent moved for a writ of possession which was granted on March 12, 1998. Petitioner's motion for reconsideration was denied on May 21, 1998. Consequently, a writ of possession, 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 to annul and set aside the March 12, 1998 and May 21, 1998 orders of the trial court, including the writ of possession and the sheriff's notice to vacate. In its decision, the Court of Appeals held that petitioner was not entitled to retain possession of the subject property. Petitioner filed a motion for reconsideration, but the same was denied. Hence this appeal.

The Supreme Court found the appeal devoid of merit. The Court ruled that the trial court correctly issued the writ of possession in favor of the respondent. Such writ was but a necessary consequence of the Supreme Court's ruling in G.R. No. 120832 affirming the validity of the original certificate of the title in the name of respondent while at the same time nullifying the original certificate of title, in the name of petitioner. Possession is an essential attribute of ownership, thus, it would be redundant for respondent to go back to court simply to establish her right to possess subject property. Contrary to petitioner's claims, the issuance of the writ of possession by

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the trial court did not constitute an unwarranted modification of the decision in G.R. No. 120832 but rather, was a necessary complement thereto. It bears stressing that judgment is not confined to what appears upon the face of the decision, but also those necessarily included therein or necessary thereto. Accordingly, the assailed decision of the Court of Appeals and its resolution were affirmed.

SYLLABUS

1. **CIVIL LAW; MORTGAGE; DEFINED; AS A GENERAL RULE, THE MORTGAGOR RETAINS POSSESSION OF THE MORTGAGED PROPERTY SINCE THE MORTGAGE IS MERELY A LIEN AND TITLE TO THE PROPERTY DOES NOT PASS TO THE MORTGAGEE.**— A mortgage is a contract entered into in order to secure the fulfillment of a principal obligation. It is constituted by recording the document in which it appears with the proper Registry of Property, although, even if it is not recorded, the mortgage is nevertheless binding between the parties. Thus, the only right granted by law in favor of the mortgagee is to demand the execution and the recording of the document in which the mortgage is formalized. As a general rule, the mortgagor retains possession of the mortgaged property since a mortgage is merely a lien and title to the property does not pass to the mortgagee. However, even though a mortgagee does not have possession of the property, there is no impairment of his security since the mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted. If the debtor is unable to pay his debt, the mortgage creditor may institute an action to foreclose the mortgage, whether judicially or extrajudicially, whereby the mortgaged property will then be sold at a public auction and the proceeds therefrom given to the creditor to the extent necessary to discharge the mortgage loan. Apparently, petitioner's contention that "[t]o require [him] ... to deliver possession of the Property to respondent prior to the full payment of the latter's mortgage loan would be equivalent to the cancellation of the mortgage" is without basis. Regardless of its possessor, the mortgaged property may still be sold, with the prescribed formalities, in the event of the debtor's default in the payment of his loan obligation.

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2. ID.; ID.; A SIMPLE MORTGAGE DOES NOT GIVE THE MORTGAGEE A RIGHT TO THE POSSESSION OF THE PROPERTY UNLESS THE MORTGAGE SHOULD CONTAIN SOME SPECIAL PROVISION TO THAT EFFECT.— In *Alvano v. Batoon*, this Court held that "[a] simple mortgage does not give the mortgagee a right to the possession of the property unless the mortgage should contain some special provision to that effect." Regrettably for petitioner, he has not presented any evidence, other than his own gratuitous statements, to prove that the real intention of the parties was to allow him to enjoy possession of the mortgaged property until full payment of the loan. Therefore, we hold that the trial court correctly issued the writ of possession in favor of respondent. Such writ was but a necessary consequence of this Court's ruling in G.R. No. 120832 affirming the validity of the original certificate of title (OCT No. P-13038) in the name of respondent Felicitas de Lara, while at the same time nullifying the original certificate of title (OCT No. P-11566) in the name of petitioner Cornelio Isaguirre. Possession is an essential attribute of ownership; thus, it would be redundant for respondent to go back to court simply to establish her right to possess subject property. Contrary to petitioner's claims, the issuance of the writ of possession by the trial court did not constitute an unwarranted modification of our decision in G.R. No. 120832, but rather, was a necessary complement thereto. It bears stressing that a judgment is not confined to what appears upon the face of the decision, but also those necessarily included therein or necessary thereto.

3. ID.; PROPERTY; POSSESSION; POSSESSSOR IN BAD FAITH; CAN CLAIM REINMBURSEMENT FOR NECESSARY EXPENSES BUT NOT USEFUL EXPENSES.— With regard to the improvements made on the mortgaged property, we confirm the Court of Appeals' characterization of petitioner as a possessor in bad faith. Based on the factual findings of the appellate court, it is evident that petitioner knew from the very beginning that there was really no sale and that he held respondent's property as mere security for the payment of the loan obligation. Therefore, petitioner may claim reimbursement only for necessary expenses; however, he is not entitled to reimbursement for any useful expenses which he may have incurred.

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APPEARANCES OF COUNSEL

De Borja Medialdea Belo Guevarra & Gerodias for petitioner
Pedro S. Castillo for 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 Rudolfo, both surnamed de Lara.

Sometime in 1953, respondent obtained several loans from the Philippine National Bank. When she encountered financial

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[1] Entitled "Cornelio M. Isaguirre v. Hon. Jesus A. Zozobrado, Jr., Hon. Wenceslao E. Ibabao, Annie May Braga-Leuterio, Alfonso P. Escovilla, Jr., and Felicitas de Lara" and docketed as CA-G.R. SP No. 48310.

[2] Eighth Division composed of J. Eloy R. Bello, Jr., *ponente*; and *JJ.* Salome A. Montoya and Ruben T. Reyes, *concurring*.

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difficulties, respondent approached petitioner Cornelio M. Isaguirre, who was married to her niece, for assistance. On February 10, 1960, a document denominated as a "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 ₱5,000.

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

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[3] Docketed as Civil Case No 6021.

[4] *Rollo*, 69-71.

[5] Docketed as CA - G.R. No. CV No. 49065; decision was promulgated on March 31, 1995.

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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

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[6] *Rollo*, 6-17, 44.

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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. . . .

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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 become 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:

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[7] *Ibid.*, 45-48.

[8] *Ibid.*, 41-42.

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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.

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 —

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[9] *Ibid.*, 18.

[10] *Ibid.*, 4.

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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

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[11] *Ibid.*, 77.

[12] *Ibid.*, 20-21.

[13] Civil Code, Art. 428 —

The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

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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.
>
> x x x x x x x x x
>
> 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 extinguished even though then mortgagor-debtor may have made partial payments on the mortgage loan:
>
> "Art. 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or the creditor.
>
> "Therefore, *the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as long as the debt is not completely satisfied.*
>
> "Neither can the creditor's heir who has received his share of the debt return the pledge or cancel the mortgage, to the

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[14] *Id.*, Art. 429 —

The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

[15] *Perez v. Evite*, 1 SCRA 949 (1961).

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prejudice of the other heirs who have not been paid." (Italics supplied.)

x x x x x x x x x

4.14 *To require petitioner to deliver possession of the Property to respondent prior to the full payment of the latter's mortgage loan would be equivalent to the cancellation of the mortgage.* Such effective cancellation would render petitioner's rights ineffectual and nugatory and would constitute unwarranted judicial interference.

x x x x x x x x x

4.16 The fact of the present case show that respondent delivered possession of the Property to petitioner upon the execution of the Deed of Absolute Sale and Special Cession of Rights and Interest dated 10 February 1960. Hence, transfer of possession of the Property to petitioner was an essential part of whatever agreement the parties entered into, which, in this case, the Supreme Court affirmed to be an equitable mortgage.

x x x x x x x x x

4.19 Petitioner does not have the mistaken notion that the mortgagee must be in actual possession of the mortgaged property in order to secure the debt. However, *in this particular case, the delivery of possession of the Property was an integral part of the contract between petitioner and respondent. After all, it was supposed to be a contract of sale. If delivery was not part of the agreement entered into by the parties in 1960, why did respondent surrender possession thereof to petitioner in the first place?*

4.20 Now that the Courts have ruled that the transaction was not a sale but a mortgage, petitioner's entitlement to the possession of the Property should be deemed as one of the provisions of the mortgage, considering that at the time the contract was entered into, possession of the Property was likewise delivered to petitioner. Thus, until respondent has fully paid her mortgage loan, petitioner should be allowed to retain possession of the subject property.[16]

Petitioner's position lacks sufficient legal and factual moorings.

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[16] *Rollo*, 135-139.

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A mortgage is a contract entered into in order to secure the fulfillment of a principal obligation.[17] It is constituted by recording the document in which it appears with the proper Registry of Property, although, even if it is not recorded, the mortgage is nevertheless binding between the parties.[18] Thus, the only right granted by law in favor of the mortgagee is to demand the execution and the recording of the document in which the mortgage is formalized.[19] As a general rule, the mortgagor retains possession of the mortgaged property since a mortgage is merely a lien and title to the property does not pass to the mortgagee.[20] However, even though a mortgagee does not have possession of the property, there is no impairment of his security since the mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.[21] If the debtor is unable to pay his debt, the mortgage creditor may institute an action to foreclose the mortgage, whether judicially or extrajudicially, whereby the mortgaged property will then be sold at a public auction and the proceeds therefrom given to the creditor to the extent

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[17] Civil Code, Art. 2085 —

The following requisites are essential to the contracts of pledge or mortgage:

(1) That they be constituted to secure the fulfillment of a principal obligation;

(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

(3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

[18] *Id.*, Art. 2125, 1st par.

[19] *Id.*, Art. 2125, 2nd par.

[20] *Oronce v. Court of Appeals*, 298 SCRA 133 (1998); *Adlawan v. Torres*, 233 SCRA 645 (1994); *Capulong v. CA*, 130 SCRA 245 (1984); *Peña, Peña Jr.*, Peña, *Registration of Land Titles and Deeds*, 257 (1994).

[21] Civil Code. Art. 2126.

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necessary to discharge the mortgage loan. Apparently petitioner's contention that "[t]o require [him] . . . to deliver possession of the Property to respondent prior to the full payment of the latter's mortgage loan would be equivalent to the cancellation of the mortgage" is without basis. Regardless of its possessor, the mortgaged property may still be sold, with the prescribed formalities, in the event of the debtor's default in the payment of his loan obligation.

Moreover, this Court cannot find any justification in the records to uphold petitioner's contention that respondent delivered possession of the subject property upon the execution of the "Deed of Sale and Special Cession of Rights and Interests" on February 10, 1960 and that the transfer of possession to petitioner must therefore be considered an essential part of the agreement between the parties. This self-serving assertion of petitioner was directly contradicted by respondent in her pleadings.[22] Furthermore, nowhere in the Court of Appeals' decisions promulgated on March 31, 1995 (G.R. CV No. 42065) and on October 5, 1998 (G.R. SP No. 48310), or in our own decision promulgated on July 8, 1996 (G.R. No. 120832) was it ever established that the mortgaged properties were delivered by respondent to petitioner.

In *Alvano v. Batoon*,[23] this Court held that "[a] simple mortgage does not give the mortgagee a right to the possession of the property unless the mortgage should contain some special provision to that effect." Regrettably for petitioner, he has not presented any evidence, other than his own gratuitous statements, to prove that the real intention of the parties was to allow him to enjoy possession of the mortgaged property until full payment of the loan.

Therefore, we hold that the trial court correctly issued the writ of possession in favor of respondent. Such writ was but a necessary consequence of this Court's ruling in G.R. No. 120832

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[22] *Rollo*, 108.

[23] 25 Phil. 178 (1913).

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affirming the validity of the original certificate of title (OCT No. P-13038) in the name of respondent Felicitas de Lara, while at the same time nullifying the original certificate of title (OCT No. P-11566) in the name of petitioner Cornelio Isaguirre. Possession is an essential attribute of ownership; thus, it would be redundant for respondent to go back to court simply to establish her right to possess subject property. Contrary to petitioner's claims, the issuance of the writ of possession by the trial court did not constitute an unwarranted modification of our decision in G.R. No. 120832, but rather, was a necessary complement thereto.[24] It bears stressing that a judgment is not confined to what appears upon the face of the decision, but also those necessarily included therein or necessary thereto.[25]

With regard to the improvements made on the mortgaged property, we confirm the Court of Appeals' characterization of petitioner as a possessor in bad faith. Based on the factual findings of the appellate court, it is evident that petitioner knew from the very beginning that there was really no sale and that he held respondent's property as mere security for the payment of the loan obligation. Therefore, petitioner may claim reimbursement only for necessary expenses; however, he is not entitled to reimbursement for any useful expenses[26] which he may have incurred.[27]

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[24] *Gonzales v Court of Appeals*, 212 SCRA 595 (1992); *Perez v. Evite, supra* note 15. See also *Phil Veterans Investment Development Corp. v. Velez, 1*99 SCRA 405 (1991); *Cid v. Peralta*, 24 Phil 142 (1913); *Salacup v. Rambac* 17 Phil. 71 (1910).

[25] *Del Rosario v. Court of Agrarian Relations*, 120 SCRA 422 (1984); *Salomon v. Mendoza*, 14 SCRA 867 (1965); *Unson v. Lacson*, 2 SCRA 861 (1961).

[26] Useful expenses are incurred to give greater utility or productivity to the thing. Tolentino, *Civil Code of the Philippines II* 294 (1992).

[27] Civil Code, 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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Finally, as correctly pointed out by the Court of Appeals., this case should be remanded to the Regional Trial Court of Davao City for a determination of the total amount of the loan, the necessary expenses incurred by petitioner, and the period within which respondent must pay such amount.[28] However, no interest is due on the loan since there has been no express stipulation in writing.[29]

WHEREFORE, the assailed Decision of the Court of Appeals dated October 5, 1998 and its Resolution dated March 5, 1999 are hereby *AFFIRMED*. Respondent is entitled to delivery of possession of the subject property. This case is hereby *REMANDED* to the trial court for determination of the amount of the loan, the necessary expenses incurred by petitioner and the period within which the respondent must pay the same.

SO ORDERED.

Melo (Chairman), Vitug and *Purisima, JJ.*, concur.

Panganiban, JJ., is on leave.

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.

[28] *Rollo*, 48.

[29] Civil Code, Art. 1956; *Velez v. Balzarza*, 73 Phil. 630 (1942).