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THIRD DIVISION

[G.R. No. 194270, December 03, 2012]

LORETO BOTE, PETITIONER, VS. SPOUSES ROBERT VELOSO AND GLORIA VELOSO, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

The Case

This Petition for Review on Certiorari under Rule 45 of the Rules of Court seeks to annul the May 17, 2010 Decision[1] and October 22, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 69606 entitled *Spouses Robert Veloso and Gloria Veloso v. Loreto Bote and Carlos De Leon.* The assailed CA Decision modified the Decision dated December 8, 2000[3] of the Regional Trial Court, Branch 273 in Marikina City (Marikina RTC) in Civil Case No. 96-282-MK entitled *Spouses Robert Veloso and Gloria Veloso v. Loreto Bote and Carlos De Leon* which dismissed the case for lack of cause of action.

The Facts

On September 21, 1951, Pedro T. Baello (Baello) and his sister, Nicanora Baello-Rodrgiuez (Rodriguez), filed an application for registration of their property in Caloocan City with the then Court of First Instance of Rizal consisting of 147,972 square meters. On November 2, 1953, the land was successfully registered under their names under Original Certificate of Title No. (OCT) (804) 53839.[4] On July 27, 1971, the lot was subdivided into Lot A covering 98,648 square meters in favor of Baello and Lot B covering 49,324 square meters in favor of Rodriguez.[5] On December 3, 1971, Baello died intestate leaving thirty two (32) surviving heirs while Rodriguez died intestate on August 22, 1975 without issue.[6]

The subject property was included in the *Dagat-Dagatan* Project launched in 1976 by the then First Lady Imelda R. Marcos. Sometime thereafter, armed military personnel forcibly evicted the caretaker of the heirs of Baello and Rodriguez from the property, destroying the residential structure and the fishponds thereon. Thereafter, the National Housing Authority (NHA), as the government agency tasked to undertake the *Dagat-Dagatan* Project, took possession of the property preparatory to its subdivision and awarded the lots to chosen

beneficiaries.

After the fall of the Marcos regime, the heirs of Baello executed, on February 23, 1987, an extrajudicial partition of their share of the property.

Then, on August 18, 1987, the NHA filed a complaint with the RTC of Caloocan City, Branch 120 (Caloocan RTC), for the expropriation of the subject land. The case was docketed as Civil Case No. C-169.

In the meantime, Lot A of OCT (804) 53839 was subdivided and on August 7, 1989, TCTs 191069, 191070, 191071, 191072, 191073 and 191074 were issued in the name of Baello. While TCTs 191062, 191063, 191064, 191065,191066, 191067 and 191068 were issued in the name of Rodriguez covering Lot B of OCT (804) 53839.[7]

Thereafter, the Baello and Rodriguez heirs filed separate motions to dismiss Civil Case No. C-169 which the Caloocan RTC granted on the grounds of *res judicata* and lack of cause of action.[8] The NHA appealed the ruling of the RTC to the CA which rendered a Decision dated August 21, 1992[9] affirming the ruling of the trial court. The case was elevated to this Court which denied due course to the petition in a Resolution dated May 3, 1993.[10] The Resolution attained finality in an Entry of Judgment dated July 7, 1993.[11]

Unperturbed, on November 5, 1993, the NHA filed another complaint against the Baello and Rodriguez heirs with another RTC of Caloocan, this time for the declaration of nullity of OCT (804) 53839. The case was eventually dismissed on the grounds of estoppel and *res judicata.* The NHA appealed the case to the CA which affirmed the ruling of the trial court. On August 24, 2004, this Court denied NHA's appeal of the CA decision.[12]

In the meantime, on August 12, 1985, one Gloria Veloso (Gloria) was awarded a residential lot at the *Dagat-Dagatan* Project for the price of PhP 37,600 as evidenced by an Individual Notice of Award dated August 12, 1985.[13] The award was subject to the conditions that Gloria commence construction of a residential house on the property within six (6) months from the date of allocation and complete the same within one (1) year from the commencement of construction, and that she occupy the house also within one (1) year from allocation.[14]

Thus, Gloria constructed a two (2)-storey house on the property awarded to her and resided therein until 1991. In 1995, Gloria leased the house to Loreto Bote (Bote) from October to December.[15] On February 5, 1996, Bote executed a Promissory Note[16] undertaking to pay Gloria Veloso and her husband Robert Veloso (spouses Veloso) the amount of eight hundred fifty thousand pesos (PhP 850,000) on or before March 31, 1996 as purchase price for property. The Promissory Note effectively assigned to the spouses Veloso, Bote's credit with a certain Carlos De Leon who indicated his conforme in the note. Bote failed to pay the purchase price indicated in the Promissory Note. Thus, the spouses Veloso, through

counsel, issued a Demand Letter dated April 15, 1996[17] demanding the payment of the purchase price of PhP 850,000. Despite such demand letter, Bote still failed to pay the purchase price.

Thus, the spouses Veloso filed a Complaint dated June 3, 1996[18] against Bote for Sum of Money and/or Recovery of Possession of Real Property with Damages. Notably, the case was filed at the Marikina RTC, thereat docketed as Civil Case No. 96-282-MK and raffled to Branch 273.

In his Answer dated November 21, 1996,[19] Bote alleged, as Special/Affirmative Defenses, that the Marikina RTC had no territorial jurisdiction to try a case for recovery of possession of real property located in Caloocan City and that the subject property is not owned by the spouses Veloso but by Cynthia T. Baello (Cynthia) as shown in TCT No. 290183 covering the subject property, an alleged heir of Pedro Baello. He further alleged that he purchased the property from Cynthia as evidenced by a Contract to Sell dated May 9, 1996.[20]

It is noteworthy that, at the Pre-Trial Conference, and as reflected in the Pre-Trial Order dated December 9, 1997,[21] the parties agreed that the complaint would only be one for sum of money and no longer for recovery of possession of the subject property. The Pre-Trial Order reads:

STIPULATION OF FACTS

1) That the present action shall be treated as one for Sum of Money and not for Recovery of Possession of Lot;
2) That defendant Loreto Bote is the one presently occupying the house and lot; and
3) That plaintiffs are not the registered owners of the subject lot. (Emphasis supplied.)[22]

Notably, during the hearing of the case, Cynthia testified before the trial court claiming to be one of the heirs of Pedro Baello.[23] Such contention was never rebutted by the spouses Veloso.

After hearing, the RTC issued its Decision dated December 8, 2000,[24] the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint.

With Costs againt the plaintiffs.

SO ORDERED.

In the Decision, the trial court ruled that the spouses Veloso failed to adduce evidence to show a rightful claim over the subject property. Further, the RTC noted that the spouses Veloso's reliance on the award made by the NHA is misplaced, the expropriation case filed by the NHA having been dismissed by the CA in a Decision dated August 21, 1992 in CA-G.R. CV No. 29042. This Court denied the petition for review on certiorari filed by the NHA from the CA Decision in a Resolution dated May 3, 1993. This Resolution, in turn, attained finality as evidenced by an Entry of Judgment dated July 7, 1993. The trial court, thus, concluded that because the NHA failed to expropriate the property, the spouses Veloso could not derive any right from the award.

Thereafter, the spouses Veloso appealed the RTC Decision to the CA. In their Appellant's Brief dated May 23, 2001,[25] they interposed for the first time their status as builders in good faith and are, thus, entitled to possession of the house that Gloria built.

Later, the CA issued its assailed Decision dated May 17, 2010, the dispositive portion of which reads:

> WHEREFORE, premises considered, the appeal is PARTLY GRANTED. The assailed decision of the court a quo is hereby AFFIRMED WITH MODIFICATION that a proper determination of the value of the controverted residential house constructed by the plaintiff-appellant Gloria in the lot, now owned by the defendant-appellee shall be made.
>
> In line with the doctrinal pronouncement in the cited *Pecson v. Court of Appeals*, the present case is hereby REMANDED to the court a quo for it to determine the current market value of the residential house in the aforesaid lot. For this purpose, the parties shall be allowed to adduce evidence on the current market value of the said residential house. The value so determined shall be forthwith paid by the defendant-appellee to the plaintiffs-appellants, otherwise, the latter shall be restored to the possession of the said residential house until payment of the required indemnity.
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> No pronouncement as to costs.
>
> SO ORDERED.

The CA denied Bote's Motion for Reconsideration in its October 22, 2010 Resolution.

Hence, We have this petition.

The Issues

Petitioner raises the following issues in the petition:

I

> Whether or not Pecson v. CA et al. is applicable since that case is a real action for recovery of possession of lot and apartments – while [sic] instant case is a personal action for Sum of Money.

II

> Whether or not the prayer for PhP850,000.00 as full payment for house and lot – should be the controlling amount.

III

> Whether or not the amount of PhP329,000.00 – paid for the lot – should be deducted from the PhP850,000.00 promissory note.

IV

> Whether or not the value of improvements on the house introduced by petitioner-appellant should benefit respondent.[26]

Our Ruling

This petition is meritorious.

Anent the first issue, Bote's argument is that:

> Although the original Complaint in Civil Case No. 96-282-MK is entitled: "For: Sum of Money and/or Recovery of Possession of Real Property With Damages" – the allegations and the prayer both do not sustain the Recovery part of the title. **It should, therefore, be ignored**. The allegations and the prayer of the Complaint only support the Sum of Money case. Additionally, during the pre-trial of the case before the RTC – **the parties stipulated to treat the case purely as a sum of money**.[27] (Emphasis supplied.)

In essence, Bote claims that the spouses Veloso did not raise the issue of their being builders in good faith before the trial court; thus, they are precluded from raising the issue for the first time on appeal. Pushing the point, Bote argues that the spouses Veloso, in fact, stipulated in the Pre-Trial that the issue of possession was being withdrawn from the complaint. Thus, Bote concludes, the CA erred in considering and passing on the new issue.

We agree.

Section 15, Rule 44 of the Rules of Court limits the questions that may be raised on appeal:

> Section 15. *Questions that may be raised on appeal*. – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors **any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.** (Emphasis supplied.)

In *Union Bank of the Philippines v. Court of Appeals*,[28] the Court clarified this provision of the Rules of Court stating that, "It is settled jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process."

This principle forbids the parties from changing their theory of the case.

The "theory of the case" is defined in Black's Law Dictionary as:

> A comprehensive and orderly mental arrangement of principle and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant; the particular line of reasoning of either party to a suit, the purpose being to bring together certain facts of the case in a logical sequence and to correlate them in a way that produces in the decision maker's mind a definite result or conclusion favored by the advocate.[29]
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> The same term is defined in Agpalo's Legal Words and Phrases as:
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> It is the legal basis of the cause of action or defense, which a party is not permitted to change on appeal. (San Agustin v. Barrios, 68 Phil. 475 [1939])
>
> A party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and

cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal. (Arroyo v. House of Representatives Electoral Tribunal, 246 SCRA 384 [1995])[30]

In *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*,[31] the Court reiterated the thrust of the theory-of-the-case principle in this wise:

It is already well-settled in this jurisdiction that a party may not change his theory of the case on appeal. Such a rule has been expressly adopted in **Rule 44, Section 15 of the 1997 Rules of Civil Procedure,** which provides –

SEC. 15. Questions that may be raised on appeal. – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

Thus, in *Carantes v. Court of Appeals*, this Court emphasized that –

The settled rule is that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.

In the more recent case of *Mon v. Court of Appeals,* this Court again pronounced that, in this jurisdiction, the settled rule is that a party cannot change his theory of the case or his cause of action on appeal. **It affirms that "courts of justice have no jurisdiction or power to decide a question not in issue." Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. The rule rests on the fundamental tenets of fair play**. (Emphasis supplied.)

Nevertheless, such rule admits of an exception as enunciated in *Canlas v. Tubil*,[32] to wit:

As a rule, a change of theory cannot be allowed. However, when the factual bases thereof would not require presentation of any further evidence by the

adverse party in order to enable it to properly meet the issue raised in the new theory, as in this case, the Court may give due course to the petition and resolve the principal issues raised therein.

The instant case does not fall under this exception.

To stress, the issue of whether or not the spouses Veloso were builders in good faith is a factual question that was never alleged, let alone proven. And as aptly stated by the spouses Veloso themselves in their Appellant's Brief dated May 23, 2001,[33] "under Article 527 of the Civil Code, good faith is even always presumed and upon him who alleges bad faith on the part of a possessor rests the burden of proof."[34] Thus, in order to refute the spouses Veloso's contention that they are builders in good faith, it is necessary that Bote present evidence that they acted in bad faith.

Understandably, Bote did not present such evidence before the trial court because good faith was not an issue then. It was only on appeal that the spouses Veloso belatedly raised the issue that they were builders in good faith. Justice and fair play dictate that the spouses Veloso's change of their theory of the case on appeal be disallowed and the instant petition granted.

As such, the other issues raised in the petition need no longer be discussed.

WHEREFORE, the petition is **GRANTED**. The May 17, 2010 Decision and October 22, 2010 Resolution of the CA in CA-G.R. CV No. 69606 are hereby **REVERSED** and **SET ASIDE,** and the Decision dated December 8, 2000 of the RTC, Branch 273 in Marikina City in Civil Case No. 96-282-MK is hereby **REINSTATED.**

No costs.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ*., concur.

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[1] *Rollo,* pp. 20-36. Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Normandie B. Pizarro and Ruben C. Ayson.

[2] Id. at 37-38.

[3] CA *rollo*, pp. 37-40. Penned by Judge Olga Palanca Enriquez.

[4] *Rollo*, p. 21.

[5] Records, p. 211.

[6] *National Housing Authority v. Baello,* G.R. No. 143230, August 20, 2004, 437 SCRA 86, 91.

[7] Records, pp. 212-213.

[8] *Rollo*, p. 22.

[9] Records, pp. 207-221.

[10] Id. at 206.

[11] Id. at 205.

[12] *Rollo*, pp. 22-23.

[13] Records, p. 164.

[14] *Rollo*, pp. 23-24.

[15] Id. at 24.

[16] Records, p. 4.

[17] Id. at 5.

[18] Id. at 6-7.

[19] Id. at 25-27.

[20] Id. at 28-29.

[21] Id. at 78-79.

[22] Id. at 78.

[23] Transcript of Stenographic Notes, February 15, 2000, p. 7.

[24] Records, pp. 235-239.

[25] CA *rollo*, pp. 19-36.

[26] *Rollo*, p. 11.

[27] Id. at 12.

[28] G.R. No. 134068, June 25, 2001, 359 SCRA 480, 488.

[29] BLACK'S LAW DICTIONARY 1616 (9th ed.).

[30] R.E. Agpalo, AGPALO'S WORDS AND PHRASES 743 (1997).

[31] G.R. No. 159593, October 12, 2006, 504 SCRA 484, 494-495.

[32] G.R. No. 184285, September 25, 2009, 601 SCRA 147, 156.

[33] CA *rollo*, pp. 19-36.

[34] Id. at 30.
