3 Phil. 604

[G.R. No. 1132. April 02, 1904]

MARTINIANO M. VELOSO, PLAINTIFF AND APPELLANT, VS. PETRONA NAGUIT ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

ARELLANO, C.J.:

This case concerns a piece of land containing 1,897 square meters and 24 square centimeters, situated on the Island of Tanduay, of this city. The subject-matter of the suit, as to its identity, is well defined and leaves no room for doubt between the parties litigant.

This land is at the present time in the possession of the three defendants, as children and lawful heirs of their father, Don Santiago Naguit; in his lifetime it was regarded as one tract, but is now considered as divided into three parcels, one for each heir.

The plaintiff, Don Martiniano Veloso, brings suit for the recovery of all three of these parcels as part of the Island of Tanduay, of which, with the exception of certain portions, he claims to be the owner.

In 1901 the defendants recorded a possessory information covering the three parcels. This inscription, which appears in the books of the Northern Register of Manila, is one of the facts alleged in the complaint by Veloso as the ground of his action for the recovery of the land. The attorney for the defendants says: ” The recorded possessory informations which Mr. Veloso mentions, the existence of which he therefore knows, were not presented but reserved for exhibition in case of necessity.” (P. 117).

The fact that the possessory informations are recorded is one of the grounds of the action brought by Veloso. The relief sought is a declaration of his sole and exclusive ownership of the lot in question, and the annulment of the possessory informations obtained upon them by the defendants, and consequently the cancellation of the record thereof in the register of property of the northern district of this city, within which the land in question is located.

The complaint was filed September 28, 1901, and consequently before the enactment of the present Code of Civil Procedure. The entire case was conducted up to this stage in accordance with the former law of Civil Procedure, with one exception, that of the taking of evidence.

The title deeds upon which the plaintiff relies run back to the year 1621. (1) The most recent document is a deed of gift from Don Melchor Veloso to Don Martiniano. (2) Don Melchor obtained title by a similar gift from his brothers and sisters, Don Buenaventura, Doña Damiana, and Don Mariano, legitimate children of Don Gabino Veloso, deceased, who in his will bequeathed the Island of Tanduay to these children, (3) Don Gabino Veloso in his lifetime had become the owner of the island by purchase from Don Jose Perez Garcia and Don Jose Luciano Boca, the 17th of June, 1868, the consideration being 12,000 pesos. (4) Roca had purchased half of it from Don Leopoldo Segundo Pacheco March 11th, 1868, and was tenant in common with Perez Garcia, who, on the 6th of September, 1865, had purchased the property from the testamentary estate of Don Cristobal Arlegui, purchasing first the *dominium utile* and subsequently the entire fee, the legal title having been conveyed to him by the Convent of San Sebastian, the 18th of November, 1865, in consideration of 3,000 pesos. Subsequent to this date he conveyed a half interest to Pacheco in the month of December for 6,000 pesos, and this half interest, as has been stated, was conveyed in turn to Roca. (5) The Convent of San Sebastian, and formerly the corporation of Recoletos, had acquired the island by donation, made the 2d of September, 1621, by Doña Ines Daytin, with the consent of her husband, Don Miguel Banal.

The attorney for the defendants spoke at some length concerning

these documents, but did not except to their admission, and did not refer to them again in his reply ok elsewhere in the course of the suit. And it is certain that an exception based upon the objections made by the defendants' attorney could have been successfully opposed by no others than the heirs of the donor, Ines Daytin.

The plaintiff in his complaint anticipated the defense of prescription by the defendants, but the latter expressly stated in their answer that they had not thought of making use of the defense of prescription, and that it was not necessary for them to do so. Consequently this phase of the case was not discussed in the pleadings. The question was, however, raised in the evidence by means of two witnesses. One of them said that Santiago Naguit, under whom^ the defendants claim ¦" had been in possession for forty years, more or less." The other witness said that he knew that Naguit had been in possession of the lot in question for thirty years, more or less. These witnesses were testifying in 1902. (Record, pp. 223 and 227.) With respect to this plea of the statute of limitations, the documentary evidence of the defense is conclusive, to' wit, a restoring order, and an interdict of peaceful possession. In the restoring order obtained by Don Santiago Naguit against Don Gabino Veloso, a judgment was rendered in favor of Naguit January 28, 1880, ordering the restoration of possession to him, which judgment was affirmed subsequently by the *Audiencia* of Manila by judgment dated February 21 of the same year. As the order of the Court of First Instance was made in January, 1880, it follows that the statement therein contained that the complaint had been filed the 22d of October of the preceding year, means that it was filed in October, 1879, and that when the witnesses for the interdict testified that it was a fact that the plaintiff had been in quiet and peaceable possession of the lot in question for more than three years, it appeared that he had been in possession since September or October, 1876.

In the proceedings concerning the order of peaceful possession (*interdicto de retener*) of another portion of the land in question, brought by Naguit against one Gregorio Cleofas, the plaintiff and his witnesses stated, in March, 1887, that Naguit had been in possession for two years, so that the

possession dated from March, 1885.

From September, 1876, to September, 1901, the date of the filing of the present complaint, only twenty-five years have elapsed, and from 1885 to 1901 sixteen years. It follows, therefore, that the period of thirty or forty years' possession, affirmed by these witnesses, is conclusively conradicted by the documentary evidence of the defendants themselves, from which the period of only twenty-five years appears with respect to one portion and of sixteen years with respect to the other, this being insufficient for the period of extraordinary prescription without title, under the provisions of law 21, title 29 of the Third Partida, entirely similar to the provisions of article 1959 of the Civil Code now in force. We can not, therefore, sustain the exception of extraordinary prescription of thirty years, first because the plea of prescription was not set up in the pleadings, and second, because even had the issue been raised, the evidence does not show the lapse of a period of thirty years, as required by the law.

Nor can we sustain the exception of ordinary prescription of ten or twenty years for the same reason, to wit, that the plea of prescription was not presented by the pleadings. But even had prescription been pleaded, it would have been necessary, in order to make out a defense on the ground of ordinary prescription, both by the old law and by the present law, to show in addition to the passage of time, a just title by virtue of which possession commenced. (Art. 1957 of the Civil Code.) With respect to the two portions of land which were the objects of the two interdicts already referred to, the documentary evidence presented by the defendants themselves says nothing except that they were swampy lands, which Don Santiago Naguit had filled in, and that the filling of one of them had cost him $300 and of the other $100. Throughout the entire course of the case the defendants have not shown that the fact of mere occupation or filling of a piece of land is a legal title of possession and ownership which is sufficient to overcome the titles presented by the plaintiff in support of his complaint, recorded in authentic public instruments, and against the contents of which no allegation of falsity or any other allegation sufficient to overcome them has been made in the manner required either by the old law or by

the law now in force.

These deeds are the original deed of donation of 1621; the deed of possession of 1641; th,e deed of *enfiteusis* or conveyance of the *dominium utile* made in 1849; the deed of conveyance of the same *dominium utile* of 1865; the deed of consolidation of the *dominium utile* with the *dominium directum* in the same year; the deed of conveyance of an undivided half interest, the first in the same year 1865, and the second in 1868; the sale of both half interests in the same year 1868, and finally the deeds of donation dated 1891 and 1900, bringing the title down to the plaintiff under the deed of gift made in the year 1900.

The mere allegation that these are titles sine re, not accompanied by possession, is not sufficient; in the first place, because although physical possession may not have accompanied them, nevertheless juridical possession was always inherent in them by operation of law; in the second place, because a mere physical possession is unavailing against title deeds until this adverse possession is raised to the category of ownership; in the third place, because among the benefits derived from possession, such as the right to utilize the prohibitive remedies, to finally obtain a title by prescription, and the right to the presumption of ownership as against any other person seeking possession, is not included the right to oppose an action for recovery; and in the fourth place, because the record does not show an absolute lack of possession on the part of the persons holding those titles, or even that their possession had been denied or unrecognized, but rather the contrary.

In 1621, according to the public instrument marked “Exhibit A,” which records the original donation, the donor said; “There are (referring to the lands at Tanduay) some nipa groves and fields. They, are under cultivation, and there are some Chinamen there, who pay the rent and acknowledge the ownership of the donor; * * *” and the *procurator* of the donees, in accepting the donation, in an instrument of the same date, said that the native inhabitants of the district wherein the said Don Miguel and his wife resided, were to

be preferred to any others with respect to the cultivation of the lands, on the same conditions as before, without increasing the charge or rent. For the formal act of possession solicited by the *procurator,* notice was served upon the governor of Quiapo and three of the principal inhabitants, and there was no opposition, possession having been given on the 19th of October, 1641, although among some of the people who were present, some stated that they had lawsuits pending with the donor,
but demand having been made upon them to state what the grounds of the suits were, or to show the deeds to the lands which they said were theirs, they failed to do so.

On the 30th of January, 1868, the *Audiencia* of Manila decided on appeal the opposition made by Victoriano et al. against an action of possession brought by Jose Perez Garcia, one of the predecessors of the present plaintiff, and the judgment rendered, which was introduced in evidence by the defendants, reads as follows:

> ” Whereas that in order that the interdict for the acquisition of possession may be granted, it is one of the indispensable requisites that no one be in possession of the lands of which possession is sought under claim of ownership or usufruct; whereas, the possessor can not be deprived of his possession without having his day in court; whereas those who have opposed the possession claimed by Don Jose Perez Garcia allege that they are in possession of part of the lands on the Island of Tanduay, and that Perez Garcia has not proved the contrary, *the order appealed is affirmed with respect to the portions of land not possessed by others,*
> but is reversed with respect to the lands which are possessed by others, and the parties are remitted to their ordinary action for the determination of the question of ownership.”

As documentary evidence introduced by the defendants it may properly be considered against them in so far as it is unfavorable to them in this suit. From the decision in question it appears very evident that

Jose Perez Garcia was given judicial possession by the inferior court of the lands of the Island of Tanduay solicited by him, which possession was affirmed on appeal by the final judgment of January 30, 1868, except as to certain lands which had been the object of opposition by Victoriano et al.; that as to the defendants it must be considered as conclusively established that from the month of January, 1868, Don Jose Perez Garcia, in addition to the right of possession accompanying his ownership of the lands in question, had the actual possession judicially conferred by means of an interdict; that on that date Don Santiago Naguit had not yet thought of going upon the two pieces of land which, according to the two interdicts which he brought against Gabino Veloso and Gregorio Cleofas, he had filled in during 18T6 and 1885, respectively; that these lands which he entered upon and filled in during 1876 and 1885 were possessed judicially, notoriously, and publicly by Don Jose Perez Garcia, at least since 1868, unless the defendants can show that Naguit succeeded to the interest of Victoriano et al. as to whom the judgment of 1868 had reserved their possession against the claims of Perez Garcia; that in consequence thereof, the entrance by Naguit upon lands lawfully possessed by another, without any contract to authorize such entrance, was an act necessarily illegal, which could not be considered as lawful possession, and much less lawful possession under title of ownership, for such a possession can not exist in favor of two possessors at the same time, and it is unquestionable that the possession obtained by Perez Garcia in 1868 was possession as
owner (arts. 445 and 447, Civil Code); that the possession testified to in the possessory informations recorded in the Registry of Property of the northern district of Manila, is wholly insufficient as a ground for opposition to the lawful possession of Perez Garcia as owner, and consequently as that of his uninterrupted successors down to the present plaintiff, and which has been shown conclusively by the documentary evidence presented by the defendants themselves.

Consequently the record should be canceled and the plaintiff’s right recognized, not only to the ownership of the land, but to the possession thereof against a mere trespasser, especially as his

ownership is evidenced by title deeds which have not been attacked as false or in any wise overcome in this suit.

We therefore decide (1) that the building lot in the barrio of Tanduay, district of Quiapo, city of Manila, described and specified in the complaint according to its metes and bounds as three parcels now divided between the three defendants as heirs of Santiago Naguit, is the property of the plaintiff, Martiniano M. Veloso; that the possessory informations obtained by the defendants and recorded in the registry of the northern district of this city, are null and void, and the cancellation thereof is
hereby directed; and (2) that we give judgment against the defendants for the costs of the trial court, but do not award costs on the appeal.

Torres, Cooper, Willard, and *Mapa, JJ.,* concur.

Johnson and *McDonough, JJ.,* did not sit in this case.

Date created: January 24, 2019