

[G.R. No. 2587. January 08, 1906]

**CARMELO FLOR BAGO, PLAINTIFF AND APPELLEE, VS. DOMINGA GARCIA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

This is an action by the plaintiff to recover of the defendant a certain parcel of land composed of 4 hectares, more or less, in the barrio of Matik-Matik, in the pueblo of Santa Barbara, in the Province of Pangasinan. The action was first brought in the court of the justice of the peace of said pueblo. The justice of the peace decided that the plaintiff had a right to the possession of said parcel of land. The defendant appealed to the Court of First Instance of said province; the Court of First Instance decided also that the plaintiff was entitled to the possession of said land. The defendant appealed to this court. The action was brought under the provisions of section 80 of the Code of Procedure in Civil Actions and was brought within the period of one year from the time the plaintiff alleges that he was dispossessed of said property. There is some confusion in the testimony adduced during the trial of said cause in the Court of First Instance with reference to the identity of the parcel of land in question. The plaintiff claims that he had been dispossessed and forced out of the possession of said land by the defendant and that he, the plaintiff, was the owners of said land and had been in quiet and peaceable possession of the same for several years.

The evidence on the part of the defendant shows that she, the defendant, had, through her son, dispossessed the plaintiff of a certain tract of land, claiming that she was the owner of said land and Had been in possession of it for many years theretofore.

Admitting that the plaintiff and defendant each in their respective allegations and proof t have reference to the same land, there is a preponderance of evidence that the defendant did dispossess the plaintiff of said land, by force, in the manner alleged by the plaintiff. The judgment of the inferior court is therefore affirmed with costs to the defendant.

Of course this decision does not affect the right of the defendant to institute an action for the purpose of establishing her title to said land and for the purpose of recovering possession of the same. If as is claimed by defendant, the plaintiff was found in possession of said land unlawfully, it was her duty to institute an action to recover possession of the same, instead of forcibly ejecting the said plaintiff from such possession. It was her duty to resort to the courts for the purpose of obtaining peacefully her rights to said land. Under the conditions disclosed by the proof in said cause, the defendant was not justified in taking the law into her own hands and forcibly ejecting the plaintiff, and after the expiration of twenty days judgment shall be entered in accordance herewith and the case remanded to the court below for execution. So ordered.

Arellano, C. J., Mapa, Carson, and Willard, JJ., concur.
