

[ G.R. No. 2343. February 10, 1906 ]

**ILDEFONSO TAMBUNTING, PLAINTIFF AND APPELLANT, VS. THE CITY OF  
MANILA, DEFENDANT AND APPELLEE.**

**D E C I S I O N**

**JOHNSON, J.:**

This was an action to recover title and possession, as well as damages, for the illegal possession of a part of the following-described property, commenced in the Court of First Instance of the city of Manila, on the 9th day of October, 1903:

“Partiendo de un angulo formado por la calzada de la Paz y un callejon sin nombre en direccion 23 grados SO., hay una recta de 32’30 metros; esta recta forma el lado derecho de la finca; desde el extremo de dicha recta con una inclinacion de 70 grados SE., otra recta de 39’20 metros, esta recta forma la espalda de la finca; desde el extremo de esta recta en direccion 23 grados NE., otra recta de 32’30 metros, esta recta forma el lado izquierdo entrando de la finca; desde el extremo de esta recta en direccion 70 grados NO. hasta el angulo que se ha servido de punto de partida, otra recta de 39’20 metros, esta recta forma el frente de la finca, teniendo por consiguiente la finca una extension superficial de 1,266 metros cuadrados. Es de forma regular y linda por su frente con la calle de la Gran Divisoria o Chinesco; por la derecha entrando con el callejon de la Paz; por la izquierda con el solar de Doña Vicenta Acuña, y por la espalda con el de esta misma y con el de Don Basilio Yangco.”

The action was brought to recover a portion of the foregoing described tract of land, described more particularly as follows:

“Partiendo del angulo formado por la calzada de la Paz y el callejon arriba citado

ocupo una recta de 17'25 metros que es parte del lado derecho de toda la finca; desde el extremo de esta recta y en linea paralela a la espalda de la finca, otra recta de 35'80 metros; desde el extremo de esta recta otra de 18'00, parte del lado izquierdo de la finca, y desde el extremo de esta ultima recta hasta el angulo anteriormente mencionado otra recta de 39'20 metros, componiendo toda la parte ocupada una extension superficial de unos 705'60 metros cuadrados proximamente. Linda por el frente con la calle de la Gran Divisoria o Chinesco; por la derecha entrando con el callejon de la Paz; por la izquierda con el solar de Doña Vicenta Acuña, y por la espalda con el resto del solar de que forma parte."

The foregoing parcel of land, as well as the particular parcels here in question, will appear more fully described by Exhibit A, as follows, which was introduced in evidence during the trial:

(See Exhibit A in Philippine Reports Vol. 5, p. 592)

The plaintiff claims to be the owner of the land within the boundaries A, B, C, D, and E, of Exhibit A. The plaintiff claims that he was dispossessed of the land described within the limits A, F, G, and E by the defendant. The defendant admits in its answer that it was in possession of the land described in the boundaries A, F, G, and E since the 5th of December, 1902, and that it dispossessed the plaintiff of said land on the same day, upon the theory that it was the owner of the same. The defendant further maintains in its answer that it had been the owner of said land from time immemorial.

During the trial the plaintiff presented evidence showing the following facts:

First. That he had purchased the land described in Exhibit A from Carmen Barredo y Gonzales on the 17th day of July, 1900. The deed of conveyance of Carmen Barredo y Gonzales was introduced in evidence during the trial by the plaintiff and marked "Exhibit C," which deed was duly recorded on the 2d day of August, 1900, which fact appears by the signature of the register of property, Simplicio del Rosario.

Second. The plaintiff introduced in evidence, without objection, a document, marked "Exhibit B," which shows that Carmen Barredo y Gonzales instituted a possessory information with reference to the land described in Exhibit A. The petition for said possessory title was presented in the Court of First Instance of the city of Manila on the 5th day of May, 1892, which petition, after the necessary procedure for the granting of a

possessory title, was finally granted on the 10th day of May, 1893, to Carmen Barredo y Gonzales. This possessory title was duly registered in the proper office in the city of Manila on the 26th day of May, 1893. This possessory title shows upon its face that all of the requirements of the mortgage law in force in the Philippine Islands at that time had been complied with. This possessory title also shows that the "*ministerio fiscal*" of the city of Manila was duly notified of the petition of Carmen Barredo y Gonzales and appeared during the procedure to perfect said possessory title and agreed with the judge in granting to the said Carmen Barredo y Gonzales the said possessory title.

Third. That Carmen Barredo y Gonzales and her ancestors had been in the quiet, peaceable, and uninterrupted possession of the land described in Exhibit A from the year 1868 until the sale of the same to the plaintiff herein. This fact was supported, not only by the testimony of the members of her family but by various persons who had been tenants of and had paid rent to the Barredo family.

These facts proven on behalf of the plaintiff show that he and his vendor and her predecessors had been in the quiet, peaceable, and uninterrupted possession of the land described in Exhibit A from the year 1868 to the 5th day of December, 1902, when he was forcibly ejected from that part of Exhibit A described within the lines marked A, F, G, and E.

The defendant, in its defense, made no effort to show that it had, at any time during the occupancy of the land in question on the part of the plaintiff and his predecessors, made any claim to the land in question, until the latter part of the year 1902. In the year 1902 the plaintiff petitioned the proper department of the city of Manila, under the building ordinance of the city, for the purpose of constructing a house upon the land in question. Then it was for the first time, according to the testimony of the plaintiff, that his attention was called to the fact that the city claimed the land in question. It is not denied that on the date of this petition the plaintiff was in possession of the said parcel of land. The defendant admits that on or about the 5th of December, 1902, it forcibly ejected the plaintiff from the said parcel of land.

From the evidence adduced during the trial of this cause in the inferior court, we deduce the following facts:

First. That the plaintiff was in quiet and peaceable possession of the parcel of land in question on the 5th day of December, 1902.

Second. That the defendant forcibly ejected the plaintiff from the said land on the 5th day of

December, 1902.

Third. That the plaintiff relied upon his right to the possession of said land by virtue of—

(a) His deed of conveyance from Carmen Barredo y Gonzales;

(b) That the said Carmen Barredo y Gonzales had a possessory title to said land;

(c) That no objection had been made to the said possessory title of the said Carmen Barredo y Gonzales;

(d) That no objection had been made, either to plaintiff's possession or to the possession of his predecessors prior to the 5th day of December, 1902.

Fourth. That the plaintiff and his vendor and predecessors had been in the quiet, peaceable, and uninterrupted possession of said land for more than thirty years.

Fifth. That at the time Carmen Barredo y Gonzales petitioned for her possessory information the legal representative (the fiscal) of the defendant, was duly informed and appeared during the hearing for said possessory title and agreed with the conclusion of the court in that instance.

Sixth. That the defendant has shown no title or reason that would justify its right to the possession of the land in question, except the arbitrary occupation of the same since the 5th day of December, 1902.

If the defendant had any right or title to the possession of the land in question on the 5th day of December, 1902, or at any other time, it was its duty to commence an action in the courts for the purpose of establishing that right. The city of Manila has no more right, than a private individual, to forcibly take possession of land and eject the occupants. This arbitrary use of might under the mere shadow of right should not be tolerated.

There was no evidence introduced in the court below upon which a judgment for damages can be based, growing out of the illegal dispossession by the defendant of the plaintiff.

It is the judgment of this court that the decision of the inferior court be reversed and that a judgment be entered declaring—

(a) That the plaintiff is entitled to the title of the land in question included within the limits of A, F, G, and E, as indicated in Exhibit A.

(b) That the defendant return the possession of said land to the plaintiff.

After the expiration of ten days let judgment be entered in accordance with the foregoing decision. So ordered.

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

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Date created: May 15, 2014