

6 Phil. 655

[G.R. No. 2903. November 09, 1906]

**ESTEFANIA VILLAR, PLAINTIFF AND APPELLANT, VS. THE CITY OF MANILA,
DEFENDANT AND APPELLEE.**

D E C I S I O N

JOHNSON, J.:

On the 23d day of October, 1901, the plaintiff and appellant herein obtained permission from the defendant to erect a dwelling house on her property situated at 101 Calle Novaliches, in the district of San Miguel, in the city of Manila.

On the 17th day of December, 1901, the plaintiff was notified by the city engineer of the city of Manila "to stop work (upon her said house) and place her building now in. construction on a line with other buildings on an unnamed alley."

On the 11th day of January, 1902, the plaintiff and appellant received the following notice:

"The occupant or owner of the property No. — Calle Novaliches is ordered to stop work until further orders."

The plaintiff and appellant believing that these different orders had the effect of depriving her of the possession of a part of her land, to wit, a strip 3 meters and 368 millimeters wide, bordering upon an unnamed alley which was located upon the boundary of her property, commenced an action in the court of the justice of the peace of the city of Manila on the 3d of April, 1902, to obtain possession of this strip of land. This action finally came before the Court of First Instance of the city of Manila where, after the termination of the proof in said cause, a judgment was rendered in favor of the defendant, dismissing the action with costs against the plaintiff. From this decision, after making a motion for a new trial in the court below, the plaintiff appealed to this court.

The plaintiff and appellant presents two questions to this court:

First. What was the true length of the *braza realenga* which was used as the unit of measurement in the different title deeds of the plaintiff and her predecessors to determine the extension of her land?

Second. If the plaintiff has possessed, as she alleges, the land described in her complaint, peaceably, continuously, and without interruption for the time required by the law, has she not thereby obtained a legitimate title to the same?

The defendant admits that the plaintiff and appellant is the real owner and has a good title to the lands described in her title deeds, but insists that she is occupying a strip of land along the said alley bordering upon her lot 3 meters and 368 millimeters in width which is not included within her lot and which belongs to said alley and is therefore a part of the property of the city of Manila.

During the trial the plaintiff introduced the title deeds of her predecessors, in all of which the land in question was described as of the following dimensions: "Seis brazas realengas de frente y siete brazas de fondo," etc.

No statement is found in these various title deeds by which we are able to determine what was the length of the particular *brma realetiga* used in the measurement of said property.

In the deed of the immediate grantor of the plaintiff herein there was an attempt to give the value of the *braza realenga* used in the measurement of said tract of land. The following language in the description of said property was used:

"Cada uno de sus lados de frente y espalda, seis *brazas realengas*, equivalentes a diez y siete y una cuarta varas de Burgos, igual a catorce metros con cuarenta y dos centímetros; y cada uno de los restantes lados derecho e izquierdo, siete *brazas realengas*, equivalentes a veinte y media varas de Burgos, igual a diez y siete metros con doce centímetros, formando un total de doscientos cuarenta y seis metros y ochenta y siete centímetros cuadrados de extensión superficial."

No attempt was made by the defendant to prove during the trial of said cause in the Court of First Instance that the *brma recdmga* described in the deed of the grantor of the plaintiff herein was not the same *bramta realenga* used in all of the title deeds presented on the part

of the plaintiff.

The plaintiff introduced evidence during the trial of said cause which tended to prove that the brazm realenga mentioned in her grantor's deed was the hram realenga actually used in the measurement of her property and that by such measurement her land extended so as to include the land upon which the proposed house was being constructed.

The defendant alleges that, if the plaintiff's land should be measured by the *braza realenga* described in her grantor's title deed, this would make the alley narrower at that point than at other points on the line of the said alley, and that therefore such brazmarealmga is not the one which was actually used in the measurement of the said land. The defendant, however, made no attempt to show that said alley had ever been regularly laid out nor that its exact location had ever been ascertained. The plaintiff and appellant alleges that many of the streets and alleys of the city of Manila are not of regular width throughout their length and that the fact that by the true measurement, as the plaintiff claims here, her land should extend into the alley, thereby making the alley narrower at that point than at other points along the line of the said alley, was no proof that the *braza realenga* alleged to have been used in the measurement of her land was not in fact the *braza realenga* described in the deeds of her predecessors.

Neither the plaintiff nor the defendant presented a plan showing the superficial area of the land in question in its relation to the said alley.

It was proven during the trial that formerly in these Islands there were various brazas realmgas used by private parties, and that private parties had a right to use whatever braza realenga they desired to use. Of course private parties could not increase the superficial dimensions of their land by changing the braza realenga in measuring the same.

The plaintiff and appellant shows that she has been in possession of the land described in her title deeds since 1897, and that her predecessors had been in actual possession of said land for a great many years prior thereto. The plaintiff and appellant was in possession of said land on the 11th day of January, 1902, at the time she was prohibited from continuing the construction of her house. If the defendant had reason to believe that the plaintiff was in actual possession of its property, it should have brought an action, the same as any private person is obliged to do, for the purpose of obtaining possession of the said parcel or tract of land and not to take forcible possession of the same without the aid of judicial proceedings. (Tambunting vs. City of Manila,^[1] 4 Off. Gaz., 287.)

The evidence presented shows that the plaintiff was in possession of the land described in her title deeds at the time she, was dispossessed by the defendant and had been in the quiet and peaceable possession of the same for many years prior thereto. The defendant did not show during the trial of the cause that the braza rmlengga described in the title deed of the grantor of the plaintiff, the length of which was there given, was not the same braza realengga used by her other predecessors nor that the plaintiff was in fact occupying more land than her predecessors occupied.

Until the defendant can show conclusively that the plaintiff is occupying more land than is contained in her title deeds, it (the defendant) must not interfere with her possession.

The judgment of the lower court is therefore hereby reversed and the defendant is hereby ordered to desist from further interference with the possession of plaintiff's land as described in the deed to her by her immediate grantor.

After expiration of ten days let judgment be entered in accordance herewith and the case remanded to the court below for proper procedure. So ordered.

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

^[1] 5 Phil. Rep., 590.
