

6 Phil. 659

[G.R. No. 1326. November 10, 1906]

**FELIX FANLO AZNAR, PLAINTIFF AND APPELLANT, VS. RAFAEL RODRIGUEZ,
DEFENDANT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

The plaintiff brought this action, alleging, among other things, that on the 21st day of June, 1895, the defendant and one Ballesteros dissolved a partnership which then existed between them and that by the terms of the dissolution all the property of the partnership was conveyed to Ballesteros, he agreeing to pay the defendant for the latter interest therein, 2,000 pesos in four years from the date of dissolution. The document evidencing the dissolution and this contract for the payment of the money to the defendant was duly recorded in the Registry of Property.

The plaintiff further alleged that after the dissolution Ballesteros had mortgaged the property to one Guimarans; that the plaintiff had acquired all the interest of Guimarans in the property so mortgaged and that afterwards, and in 1899, Ballesteros conveyed the property absolutely to the plaintiff. The complaint further alleged that in the year 1900 the defendant commenced an action before the provost court of Capiz against Ballesteros, alleging the non-payment of the 2,000 pesos above mentioned, and asking that the contract be rescinded and he be restored to the ownership of one-half of the property mentioned therein; that a judgment was rendered by the provost court granting the relief asked in the complaint and that the defendant, Rodriguez, was placed in possession of the property. The complaint also alleged that the possession of the property by the defendant had damaged the plaintiff to the amount of 5,000 pesos.

Judgment was asked, first, for the restitution to the plaintiff of the property in question; second, for damages for 5,000 pesos, caused by the possession of the property by the defendant; third, for the costs; and, fourth, for any other remedy which the court might

consider just and equitable.

The defendant in his answer expressly denied that he had ever been put in possession of the property or had taken possession thereof. The court in its decision found, as a fact, that the defendant never had taken possession of any of the property mentioned in the complaint, and further found that at the trial the plaintiff expressly withdrew this allegation of his complaint. Judgment was rendered in favor of the defendant. No motion for a new trial was made in the court below, and we held on April 9, 1904, in this case, in a proceeding against the judge of the court below to compel him to sign a bill of exceptions, that the evidence did not constitute any part of the bill of exceptions and could not be reviewed here.

The only question, therefore, before us is whether the findings of fact stated in the decision and those admitted by the pleadings justified the judgment entered in the court below.

The appellee insists that the basis of the plaintiff's action is the wrongful possession of the property by the defendant and, the plaintiff not only not having proved this wrongful possession, but having expressly withdrawn the allegation in relation thereto, that he, the defendant, is entitled to judgment. This contention we think must be sustained.

The court, however, in its decision held that the judgment of the provost court was valid and that the defendant thereby legally recovered one-half of the property which formerly belonged to the dissolved partnership between him and Ballesteros, and the judgment of the lower court maintained in all its parts the judgment of the provost court of September 30, 1900.

Provost courts are courts of very limited and special jurisdiction. As a general rule such jurisdiction extends only to criminal cases. General Orders, No. 23, series of 1899, which related only to the provost courts of Iloilo in Panay Island and of Oebu in Oebu Island, indicate the care with which the civil jurisdiction was conferred on such courts: There is nothing in this record to show that the provost court of Oapiz had any such jurisdiction at all. That fact must affirmatively appear before validity can be given to its judgments.

The judgment of the court below, therefore, can not be affirmed upon the grounds upon which it was based by the court below. It is affirmed, however, upon the ground that the defendant never having taken possession of the property in question, and not being in possession thereof at the time this action was commenced, it can not be maintained against him. This judgment, however, is entered without prejudice to the rights of the parties to litigate again concerning their interests in the property in question. No costs will be allowed

to either party in this court. After expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the case be remanded to the court below for proper action. So ordered.

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

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