

[ G.R. No. 2973. February 18, 1907 ]

**JUAN MUYCO, PLAINTIFF AND APPELLEE, VS. PEDRO MONTILLA ET AL.,  
PLAINTIFFS AND APPELLANTS.**

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

**TORRES, J.:**

On the 23d of December, 1904, the plaintiff, Juan Muyco, through his attorney, Mariano Locsin Rama, filed a complaint praying that judgment be rendered in his behalf against the defendants in this case, requiring the latter to return to the plaintiff the possession of the land described in the said complaint, to pay the sum of 2,500 pesos as damages or such amount as may be deemed just and equitable, and for any other and further relief the court may deem proper, reserving to the plaintiff any criminal action which he might have arising out of the acts of violence committed by the defendants, and accordingly alleging:

“That the plaintiff, Muyco, was in the quiet, peaceable, and adverse possession of five tracts of land in the barrio of Ayungon, in the town of Valladolid, the superficial area of which is set out in the complaint, and while in such possession he was wrongfully deprived of the same on the 8th, 10th, 12th, 14th, and 15th of July and the 4th of August, 1904, by Pascual and Francisco Infante and Pedro Montilla, aided by the latter’s share tenants, who proceeded to plough and sow the same, prohibiting the plaintiff from making any use of the said land; and that on account of these acts of spoliation on the part of the defendants, the plaintiff had suffered damages in the sum of 2,500 pesos, more or less, on account of having been deprived of the use and occupation of the land, and costs of the suit.”

Dionisio Mapa appeared in behalf of the defendants, Pedro Montilla, Pascual Infante, Francisco Infante, and three others, and answering the complaint stated:

“That the defendants neither deny nor admit the facts alleged in the complaint;

“That the five parcels of land referred to in the complaint constitute an integral part of the *hacienda* of Ayungon, in the town of Valladolid, which *hacienda* was mortgaged by Bernabela Jaducon and Jose Bellido to one Teofilo Planta on the 1st of July, 1899, the title papers of said *hacienda* having been delivered to the latter;

“That, action having been brought against the debtors Jaducon and Bellido, the Court of First Instance rendered judgment on the 8th of May, 1903, directing that the debtors pay the debt, or in default thereof that the land mortgaged be sold at public auction;

“That on the 16th of July, the debtors having failed to pay the debt, the land pertaining to the *hacienda* was to be sold at public auction, notice thereof having been published in the town of Valladolid; on the 7th of August following the sale was consummated and the land was sold to counsel representing the defendants for the sum of 3,300 pesos; the plaintiff, Muyco, although he had knowledge of said sale, did not make use of his right to intervene, and the purchaser transferred all his rights to the property thus bought by him at public auction to one Pascual Infante for the sum of 3,300 pesos, and for this reason the sheriff on the 14th of August aforesaid gave possession of the property to the assignee, Infante, to which the plaintiff made no objection.

“That in the same month of August and about the same date the defendant Pedro Montilla acquired from Bernabela Jaducon, one of the joint owners of the property in question, the right to redeem the part which he had, and for this reason the sheriff went upon the land on the 17th of August and gave possession to the assignee Pedro Montilla of that part of the land belonging to the judgment debtor Bernabela Jaducon, without any objection or protest on the part of the plaintiff. *On the 29th of August, one year later*, when the right to redeem the property had become barred by the statute of limitations, the plaintiff brought an action for forcible entry and detainer in the court of the justice of the peace, alleging that the five parcels of land in question belonged to him.”

The defendants further denied all the allegations of the complaint relating to acts of spoliation committed by them and alleged that all the contracts made by the plaintiff relating to the ownership of the land were executed subsequent to the year 1899 when all

the undivided property was mortgaged to Teofilo Planta, the direct grantor of the defendants, and accordingly prayed that plaintiff's action be dismissed with costs against him, and for any other and further relief that the court might deem just and equitable.

The cause having proceeded to trial, the evidence introduced by both parties was duly taken and documentary proof introduced by them was attached to the record.

The purpose of this action, as has been seen, was to recover the possession of five parcels of land of which, according to the complaint, the plaintiff, Muyco, was wrongfully deprived, and the action can therefore be termed a plenary action for possession against the defendants Pedro Montilla, Francisco and Pascual Infante, and others, the question of title and ownership not having been raised at all.

It was duly established at the trial that Crispin Catalego, now deceased, was the former owner of the *hacienda* of Ayungon, consisting of 94 hectares, 21 ares, and 57 centares, and that the five parcels of land in question were included within the boundaries of said *hacienda*, as appears from the documents introduced in evidence.

The said *hacienda* of Ayungon was mortgaged by its former owner, Crispin Catalego, to Teofilo Planta, now deceased, to secure a debt, and the action having been brought by the guardian of the minor children of the creditor against the widow and daughter of the debtor, the latter being represented by her husband, to recover the amount of the indebtedness, a judgment was rendered on the 8th of May, 1903, condemning the said defendants to pay the sum of 2,489.76 pesos, and the additional sum of 426.59 pesos, the interest thereon, and in case the said defendants should fail to deposit the said amount in court for the benefit of the plaintiff prior to the first day of the next regular term of court, the land referred to in the deed issued by the "*Direccion General de Administracion Civil*" on the 22d of January, 1886, in favor of the deceased debtor, should be sold at public auction with the costs against the defendants, which said judgment became final, no appeal having been taken therefrom.

On the 14th of July following, demand was made upon the defendant Bernabela Jaducon, the other defendant Jose Bellido being absent, for the payment of the aforesaid sum, and she having failed to pay the same the deputy sheriff went on the following day to the barrio of Ayungon with the creditor and a resident of the town who was familiar with the boundaries of the *hacienda*, and proceeded to levy upon the land therein included, and upon another tract of land in the same barrio, upon which was located a mill of six *cauas* with its corresponding *tiajoyes*, two *camarines* in bad condition, one cart, one carabao, forty-four

bamboo cane plants, and one mango tree. The sheriff further proceeded to levy upon another tract of land in Nabusuan, all of said property belonging to the debtors, Pedro Jaboneta having been appointed receiver of the same.

That according to a notice published in the newspaper "La Igualdad," in the Island of Negros, on the 16th of the said month, and by virtue of an order of the court, the deputy sheriff, Martin Aragon, gave notice of the sale at public auction of the land in Ayungon belonging to Bernabela Jaducon and Jose Bellido, and the sale took place between 4 and 5 o'clock p. m. on the 7th of August of the same year.

The said *hacienda* of Ayungon was sold at public auction for the sum of 3,300 pesos to the attorney, Dionisio Mapa, the latter, however, immediately transferring the same to Pascual Infante for the same price, and the assignee was accordingly given possession thereof on the 14th of August, 1903, although the latter, on account of the assignment made by Bernabela Jaducon of her right to redeem six-tenths of the said *hacienda* to Pedro Montilla, was placed in possession of the same by the sheriff on the 17th of the said month, the said Pascual Infante remaining in possession of the other four-tenths, as per agreement between them.

In the course of the proceedings relating to the execution of the aforesaid judgment, to wit, from the 14th of July until the 17th of August of the said year, when the *hacienda* of Ayungon was levied upon by the sheriff, the sale thereof was announced on the 16th of July to take place on the 7th of August, and it was sold on the latter date to the said Mapa, Pascual Infante and Pedro Montilla having been given possession of the same on the 14th and 17th of August, respectively. It does not appear that Juan Muyco made any opposition or objection thereto or that he intervened in any way in order to defend his alleged interest in the five parcels of land levied upon and subsequently sold, the possession of which was given to the assignee of the original purchaser, notwithstanding the fact that he was duly notified of the proceedings by his own tenants, and it was only until a year later that he made any claim thereto, alleging that he had been wrongfully dispossessed by the said Infante and Montilla, who were given possession of the *hacienda* of Ayungon by the deputy sheriff, Martin Aragon, under an order of the court.

The fact that the plaintiff Muyco took no action whatever when he was duly notified of the levy made upon the land of the *hacienda* of Ayungon, nor of the notice to the effect that the said land would be sold on a fixed day and hour, published in a newspaper in the Island of Negros, nor of the possession given by the deputy sheriff on the 14th of August of the said

land to Pascual Infante, the assignee of the original purchaser, and on the 17th of August, 1903, to Pedro Montilla, the assignee of Bernabela Jaducon as to the six-tenths of the *hacienda*, as appears from the record, shows conclusively that Jose Bellido's testimony to the effect that after he wrote a letter to the plaintiff notifying him of the levy made upon the *hacienda*, he met the plaintiff in the principal street of the town of Valladolid and was told by him that he would not take any action because the expenses would be greater than the value of the land in controversy.

It is very probable that the plaintiff had desisted from making any claim as to the land because when he was notified by different persons of the levy and sale of the said *hacienda*, within the boundaries of which the land in question was situated, the new owners having been placed in possession of the same, he did not take any steps to defend his rights and avoid the consequences of the judicial proceedings relating to the execution of a final judgment.

The aforesaid proceedings and the acts executed by the deputy sheriff, which must be presumed to have been in accordance with procedural law, have not been duly challenged and it has not been proved that they were abusive or illegal or that there was some defect that would render them null and void, and therefore the acts of the sheriff, who was the officer in charge, enforcing all judicial processes, should be respected until they are set aside by a judicial decision in accordance with law.

Article 438 of the Civil Code provides:

“Possession is acquired by the physical occupation of the thing or right possessed, or by the fact that the latter remains subject to the action of our will, or by the proper legal steps and formalities established for acquiring such rights.”

The possession given by the sheriff to the assignees of the original purchaser of the *hacienda* of Ayungon, in compliance with the order made by the court in an action brought against the former owners of the said *hacienda*, constituted *the proper legal steps and formalities* referred to in the above-quoted article as one of the means of acquiring possession.

Article 460 of the same code provides: “The possessor may lose his possession—

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“(4) By the possession of another even against the will of the former possessor, if the new possession has lasted more than one year.”

It is to be inferred from the express provision of the above-quoted article that Juan Muyco, after Infante and Montilla had obtained judicial possession in due form of the land of the *hacienda* of Ayungon, more than a year having elapsed, lost his right to the possession of the parcels of land which he claims belong to him and which were alleged to be included within the boundaries of the said *hacienda*, he having lost not only the mere possession *de facto* but also the possession *de jure*, and the only action that he can now maintain is an action to recover title.

If Pascual Infante and Pedro Montilla took possession of the property under an order of the court which was enforced by an officer thereof on the 14th and 17th of August, 1903, there being no evidence that they have either abandoned or lost the possession thus acquired by them, it is to be presumed that they were in possession of the land during the months of July and August, 1904, when, as alleged in the complaint, the wrongful occupation took place.

The acts alleged to have been performed by the owners of the property were acts performed by the owner upon his property, and in objecting to the plaintiff Muyco cultivating a part of the land of the said *hacienda* they merely exercised the right accorded them by the law.

No evidence has been introduced to show that the five parcels of land sought to be recovered were outside the boundaries of the said *hacienda*; on the contrary, the documentary proof introduced by the plaintiff himself shows that the land was included within the said boundaries.

Even though it should have been proved that the land was not within the boundaries of the *hacienda*, and whatever the rights of the plaintiff might have been with regard to the five parcels of land which he seeks to recover, with his silence and his negligence he could not defend his right of ownership or of possession, nor secure the aid of the courts in protecting his rights. The fact that the plaintiff gathered part of the crop raised upon the land of the *hacienda* does not affect the rights of the defendants, as the provisions of article 452 of the Civil Code grant him this privilege.

Juan Muyco, who was a stranger to the action between the minors, Planta and the debtors

Jaducon and Bellido, had no right to bring an action against the sheriff who, in order to satisfy the judgment, proceeded to levy upon and sell the land of the *hacienda* of Ayungon, of which the land in controversy was a part, claiming that the acts performed by the said sheriff and the purchasers of the land were acts of spoilation. His remedy was that provided for in section 442 of the Code of Civil Procedure, in connection with section 451 of the same code, relating to the execution or enforcement of the judgment and proceedings thereunder.

The plaintiff Muyco, instead of applying to the sheriff in accordance with the referred-to section of Act No. 190, or instead of filing a petition in intervention, elected to bring an action to recover possession of the property, alleging that he had been wrongfully and illegally deprived of the same. Moreover, it has not been shown that the sheriff did not give possession of the said *hacienda* to the purchaser thereof in the manner and form prescribed by law.

The foregoing facts show conclusively that the findings of the lower court were plainly and manifestly against the weight of the evidence; that the court instead of rendering judgment for the plaintiff should have dismissed the action, and we accordingly reverse the judgment rendered by that court on the 8th of March, 1905, and absolve the defendants Pedro Montilla, Pascual Infante, and others from the complaint filed by Juan Muyco, without special provision as to costs, and the right is reserved to the plaintiff to bring a separate action to recover title to the said property.

After the expiration of twenty days from the date hereof let judgment be entered in accordance herewith, and ten days thereafter the case be remanded to the court below for execution. So ordered.

*Arellano, C. J., and Johnson, J., concur.*

*Willard and Tracey, JJ., concur in the result.*

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*DISSENTING*

**CARSON, J.:**

I dissent. The trial court found that it was not proven that the sheriff gave possession of the land in question as alleged, and I do not think that this finding is plainly and manifestly against the weight of the evidence.

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