8 Phil. 243

[G. R. No. 3476. July 25, 1907]

DOROTEA MBNDOZA, PLAINTIFF AND APPELLANT, VS. CASIMIRO FULGENCIO AND JOSE DE ASIS, DEFENDANTS AND APPELLEES.

D E C I S I O N

TORRES, J.:

On the 1st day of June, 1905, Fulgencio Contreras, attorney at law, appeared on behalf of Dorotea Mendoza, and filed a complaint, which was subsequently amended on the 21st day of July following, alleging that she was the lawful owner of a parcel of land whereon *abaca* and other such crops are raised, and situated at a place named Dayo, in the municipality of Lupi, Province of Ambos Camarines. The area of the property is 16 hectares 46 ares and 47 centares, the same being bounded on the north by the property of Casimiro Fulgencio one of defendants herein, on the east by that of Domingo Alinio, on the south by that of Casimiro de los Santos, now owned by Severo de los Santos, and on the west by the Rio Grande. The plaintiff had obtained property by purchase from Rita Rueda, as appears in a public instrument executed on March 3,1903,registered in the Court of Land Registration, under No. 33, second entry.

On January 23, of the same year, the defendants Casimiro Fulgencio and Jose de Asis, unlawfully took possession of a portion of the northern part of the land, to the extent of 1 hectare 86 ares and 97 centares, as shown on the plan and description accompanying the complaint, thereby depriving the plaintiff thereof, claiming it as their own and damaging the plaintiff as alleged, to the extent of 400
pesos, Philippine currency.

The plaintiff therefore asked that judgment be entered in her favor as against the defendants, for the ownership and possession of said portion of land described in paragraph 4 of her complaint, and that the defendants be further ordered to pay damages to the extent of 400 pesos,together with costs, and such other relief as might be deemed

proper.

The defendants, each of them, replied separately. On July 29, of the same year, Oasimiro Fulgencio, through his attorney, Leoncio Imperial, denied each and all of the allegations contained in the complaint with the exception of the statements made in paragraphs 1 and 2 which were admitted.

As a special plea he then alleged that, for the last twenty-two years, he had owned a parcel of land in Dayo, adjoining on the north the land owned by the plaintiff, and that he had been in continuous and peaceful possession as the exclusive owner of the same; that he had donated it on January 14, of the same year, to his daughter Ramona Fulgencio, wife of the other defendant, Jose de Asis, ever since which time the donee had been in possession of the land as the owner thereof.

This defendant further alleged that the piece of land said to have been usurped, according to the statement made in paragraph 4 of the complaint, formed an integral part of the above-described property bounded on the north by that supposed to belong to the plaintiff; that the plan of the land said to belong to her is inexact and incorrect, for which reason defendant moved that judgment be entered in his favor, that the complaint be dismissed, the plaintiff enjoined from further interference, and that the exclusive ownership of the land in question be adjudicated to Romana Fulgencio, with costs in his favor.

The other defendant, in a petition bearing the same date and through the same attorney, repeated the allegations made by Casimiro Fulgencio, adding as a special defense that he had no direct interest in this action.

Evidence having been produced by both parties, their exhibits were made of record after agreeing that defendant Jose de Asis, who furnished a bond of 400 pesos, be appointed receiver of the land under litigation.

On November 25, 1905, judgment was rendered against the plaintiff, the court holding that the land claimed by her only reached the line formed by the two wells on the site of a certain fallen cotton tree.

The complaint was therefore dismissed and plaintiff enjoined from further interference, and to pay costs of the proceedings. Plaintiff took exception to the judgment and moved for

a rehearing on the ground that the decision was contrary to law and to the weight of evidence. This motion was denied, whereupon plaintiff filed the present appeal.

Both parties have mutually acknowledged that they are owners and holders of neighboring and adjoining land at Dayo, in the municipality of Lupi, Province of Ambos Camarines. This action of recovery was brought by the plaintiff, because defendants had seized a portion of the land which belonged to her, situated on the north side of her property, to the extent of 1 hectare 86 ares and 97 centares. If the fact of the seizure be true, and the same be proven, it can not be doubted that the property must be restored to its lawful owner.

The property of each of the contending parties is shown by their respective title deeds as they appear on pages 137 to 142 and 153 and 154 of the record, with the difference that in those exhibited by the plaintiff the area of her estate is expressed in the possessory information of June 5, 1895, and the contract of sale dated March 11, 1903, both of which are registered in the office of the register of deeds. The defendant's exhibit, however, is a simple document of a private nature, and does not contain the least indication as to the area of the land sold for 10 pesos by Pedro Rogero to Casimiro Fulgencio, one of the defendants in this case.

Therefore, even if the title offered by the defendants were accepted as genuine, notwithstanding the exception taken by the plaintiff to its admission, for the purpose of determining with certainty and in accordance with the law whether or not the former had seized a portion of the land on the north side of the estate, to the extent alleged in the complaint, in addition to the evidence taken in the course of these proceedings, the area stated in the title deeds of the plaintiff must also be considered, for the reason that they have not been expressly or duly objected to, and for the absolute failure to show that the area was erroneous or false.

Article 1218 of the Civil Code provides that:

> "Public instruments are evidence, even against a third person, of the fact which gave rise to their existence, and of the date of the latter.
>
> "They shall also be evidence against the contracting parties and their legal representatives with regard to the declarations the former may have made

therein."

The documents exhibited by the plaintiff are in the nature of a public instrument, and fully and satisfactorily show that Dorotea Mendoza had acquired on her own behalf, from the former owner, Rita Rueda, one parcel of land located at a place called Dayo, in the municipality of Lupi, Camarines, having an area of 16 hectares 46 ares and 47 centares, even against the defendants who in this case appear as the third party, because they did not take part in said sale nor were they subrogated to either the purchaser or the seller of' the land.

The two successive entries of the plaintiff's title deeds in the office of register of deeds must also be treated as *prima facie* evidence of the facts contained therein, such as the area of the land to which they refer. (Sec. 315, Code of Civil Procedure.) And against the legal character and sufficiency of the plaintiff's titles, the private document exhibited by the defendants which, as already noted, does not state the area of the land, can under no circumstances prevail.

It is therefore unquestionable that the land of the plaintiff, Mendoza, consists of the parcel stated in the complaint and shown in the title deeds, but that when the survey was made by the surveyor who drew out the plan marked "Exhibit D," it was found that the land was short by 1 hectare 86 ares and 97 centares, which is the portion seized by the defendants, as it has been shown in these proceedings.

The following are facts ivhich appear of record as having been fully proved: That when Rita Rueda succeeded her deceased mother, Tomasa Pulgencio, in the ownership and possession of the said estate, the management of the same was taken charge of by Casimiro Fulgencio, and later on by Jose Fulgencio, both of them brothers of the deceased and uncles to Rueda, who was then absent from Camarines and living in Cavite, she having but once or twice visited the estate during the thirteen years in which her uncles had been managing the same; that undoubtedly, with the knowledge and consent of Jose, the latter's brother Casimiro widened his own land on the side adjoining the land of their niece, Rueda, at her expense, and the extended estate was subsequently donated by Casimiro to his daughter Ramona, wife of the other defendant Jose de Asis, who in his turn increased the extension, by three times removing the fence which served as dividing line between the two estates, invading the land of the plaintiff, and cutting down the trees thereon; that the property of the plaintiff is bounded on the south by the land belonging to Severo de los Santos, and on

the west by the Rio Grande.

If it were true that the dividing line between the two adjoining lands was indicated by the shallow wells which according to some witnesses for the defendants were located between the two estates, it would not have been necessary for defendant Asis to have cut down the *bonga* trees that were planted on the dividing line nor could he have removed the fence and in-closed therewith the plaintiff's land which he claims as his own.

It can not be doubted that the aforementioned wells were not the original and true dividing line of the estates, and that those opened within the land of the plaintiff, and at both ends of the line of the fence on the site where it had for the third time been transferred, had been dug after the seizure of the land, and its incorporation into the defendant Casimiro's estate for the purpose of feigning lawful possession, to the detriment of the plaintiff, taking advantage of the fact that the contract of sale marked "Exhibit H," page 154, does not describe the area of the land to which it refers.

Aside from the fact that the two wells alleged to indicate the line separating the land of the plaintiff from that of the defendants are not shown in the title deeds of the former, nor in the private document appearing at page 154 and offered in evidence by the defendants, they do not constitute the natural boundary between the two estates. The fact that the plaintiff's land is bounded on the south by the Rio Grande de Lupi is an item which further corroborates the certainty of the seizure and incorporation of the alleged parcel of land.

The two surveys made by a surveyor, and against which an objection was raised by the defendant Jose de Asis every time that the survey was attempted of that portion of land which he himself had seized, show that the house belonging to Asis and his wife was erected on land belonging to plaintiff, and in order to conceal their unlawful occupation trees were cut down by them and the fence was three times moved upon the land of the plaintiff.

It is inferred from the foregoing considerations that the conclusions established in the judgment appealed from are manifestly contrary to the weight of the varied sort of evidence submitted in the case. The evidence being duly considered, it is clear that the land claimed in the complaint was unlawfully occupied under the circumstances and manner as aforesaid, no proof having been furnished by the defendants that the land purchased by Casimiro and now occupied by Jose de Asis extended as far as the site where a fence

inclosing the land had been removed and put up for the third time.

In order to determine the extent and the limits of the two estates in question, though it may only be on the side at which they adjoin each other, it is necessary to abide by the respective title deeds. Only in the absence of sufficient title can the mere possession of adjoining owners prevail. (Art. 385, Civil Code.)

The plaintiff is in the possession of sufficient documents of title in which the area of superficial extent of her land is stated, together with the boundaries thereof, and it has been shown by the testimony of witnesses and by the certificate of an expert that a portion of the said land to the extent of 1 hectare 86 ares and 97 centares was seized and added to the land to which the private document at page 154 refers. This latter document, which does not state the area or extent of the estate, and has not the character of a public instrument, can not prevail nor can it counteract the effect of the plaintiff's title which must not be ignored in the decision of the case.

In the absence of proof as to the loss or damage caused to the plaintiff by reason of the unlawful detention, it is not expedient to decide whether or not the plaintiff is entitled to indemnity.

And finally, taking into consideration the fact that at the time when the complaint was filed no proof existed that the donation which the defendant Casimiro Fulgencio alleged he had made of his land to his daughter Ramona had been perfected, or that the same was made in accordance with the provisions of articles 618 and 623 of the Civil Code, and that Jose Asis and his wife now occupy the parcel of land in question without having offered any legal objection to the action in both instances, the court may now finally decide the question pending between the parties.

For the foregoing reasons we are of opinion that the judgment of the court below should be reversed, and Casimiro Fulgencio and Jose de Asis are hereby directed to restore to Dorotea Mendoza the land detained by them having an area of 1 hectare 86 ares and 97 centares, in accordance with her title deeds. No costs will be allowed to either party in either instance, and no provision is made regarding the claim for damages. So ordered.

Arellano, C J., Torres Johnson, and *Tracey, JJ.*, concur.
Willarad. J., concurs in the results.

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