

[G.R. No. 10769. March 23, 1916]

RAYMUNDO MELLIZA, PLAINTIFF AND APPELLANT, VS. F. W. TOWLE AND ENRIQUE MUELLER, DEFENDANTS AND APPELLEES.

D E C I S I O N

MORELAND, J.:

This is an action to recover the possession of real estate described in the complaint and for P100 damages for unlawful detention. The trial court found in favor of the defendants dismissing the action with costs; and plaintiff appealed.

The first error assigned is that the court erred in admitting in evidence Exhibit 2 which is a certificate issued to Towle of the land in question under the Torrens system. The contention is that the action being one for possession merely, evidence as to ownership is inadmissible. This contention would be partly correct if this were an action of unlawful entry and detainer provided for in section 80 of the Code of Civil Procedure. This, however, is not such an action. The complaint alleges none of the facts on which an action of unlawful entry and detainer is based under the law. It alleges ownership in the plaintiff with the right to possession which naturally follows ownership, the mere possession of the defendants, and asks for possession. It does not allege that the possession of the defendants had been obtained by force, intimidation, threat, strategy, or stealth, or that possession was unlawfully withheld after the expiration or determination of the right to hold possession by virtue of a contract, or in any other manner required by section 80. For these reasons the error assigned is not well founded.

The second objection is that the court erred in dismissing the complaint. This is also the last error assigned, and the remainder of appellant's brief is devoted to a discussion of the evidence relative to who was in possession of the land up to the time of bringing the action, the plaintiff or the defendants. This, of course, involves a question of fact which was passed upon by the trial court on conflicting evidence. The court said:

“Melliza claims that he had been in possession of this strip of land for many years, and showed through a succession of tenants down to the present time that he had cultivated a small portion of the land in dispute. Therefore, he was in possession of it all. His own witnesses show that only a very small part of this land in dispute had been cultivated by him at any time. The testimony of these witnesses was very doubtful. They did not show continuous possession, while Mr. Mueller, who was made a party to this suit by the plaintiff, testified that when in 1912 they got a judgment for this land Melliza had a tenant who had been cultivating the land adjoining, and he ran over the line fixed by the Land Court and only had a very small portion of this land in dispute cultivated; that he notified this tenant of the decision of the Land Court and that he must get off. After he had gathered his crop he gave up the land and nobody had been on the land since 1912, except Towle. Mueller testified that he had no interest whatever in the land and that Melliza afterwards agreed to let him drop out of the case.

“So it appears that Mr. Melliza did not have possession of any part of this land since 1912, and only a very small portion of it at any time prior to that. He would be entitled to the possession of that part only of which he was in possession, not the entire tract in dispute, and his own witnesses show that he was not in possession of the entire tract in dispute but only this small part. I believe the evidence in this case shows clearly and unmistakably that Melliza has not been in possession of any part of the land in dispute since 1912. He lives in Iloilo, rarely ever sees the land, merely sent the tenant this year to plant this land which had been cleared up by a tenant of Towle two years ago and clearly, according to the testimony, it was only his intention to claim possession for the purposes of holding up the title and, as he said, to protect his tenant.

“Towle evidently had the right and title to this land, and he shows possession following that claim of right and title from January of this year. His witnesses showed as far back as 1912 possession of the entire tract in dispute, and the Torrens title and the order of this court show it.”

There is abundant evidence in the case to support the findings of the trial court above set out. While there is evidence to the contrary, and considerable of it, there is nothing which would justify us in reversing the judgment of the trial court based on this conflicting testimony. We have frequently held that where there exists a question with regard to the

relative credibility of opposing witnesses, we will not disturb the finding of the trial court with respect thereto unless the record discloses some fact or circumstance of weight and influence which has been overlooked by the court, or the significance of which has been misunderstood, or that some other error has been shown which led to a misapprehension by the trial court. Nothing of that sort appears in this case, and we accordingly must affirm the judgment.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Torres, Johnson, Trent, and Araullo, JJ., concur.

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