

34 Phil. 573

[G.R. No. 10310. July 13, 1916]

**MARCELO REGNER, PLAINTIFF AND APPELLANT, VS. VICENTE LIBREA ET AL.,
DEFENDANTS AND APPELLEES.**

D E C I S I O N

ARELLANO, C.J.:

Gavino Veloso, a wealthy hacienda owner of Cebu, at his death left among other property two parcels of land in the municipality of Naga, Cebu, lying adjacent to each other. In the partition of his estate the parcel toward the east fell to Melchor Veloso, and the western parcel to Damiana Veloso.

Damiana Veloso sold her parcel to the Talaig family and they, in turn, sold it to Vicente Librea. Melchor Veloso sold his parcel to Marcelo Regner. Now a dispute has arisen between Regner, the herein plaintiff, and Vicente Librea and some other parties of the same surname, with regard to the line dividing these two parcels. Both plaintiff and defendants presented much parol and documentary evidence and the Court of First Instance of Cebu decided the case by absolving the defendants from the complaint. From this judgment the plaintiff appealed to this court.

The plaintiff claims that the boundary line of his land on the west, or of that part of his property adjacent to the land of the Librea family, is an alley, and that Librea's crossed this boundary and encroached upon his land, unlawfully occupying a strip of it measuring about 6 meters in depth by 100 meters in length. The defendants contend that the true boundary line between both parcels of land has always been a *sorosoro* hedge, planted on the joint boundary line of both properties. So that the whole controversy hinges upon whether the said strip of land belongs to Regner or to Librea.

The trial court was unable to determine the question. He says:

“Both parties have introduced much parol evidence in support of their respective contentions, and after carefully weighing all the evidence, the court is unable to come to a final and positive conclusion. Without stating that the defendants have proven beyond peradventure of doubt and by a preponderance of evidence the location of the dividing line to be where they claim it to be, the court is of the opinion that their evidence is at least equal in weight to that presented by the plaintiff, and as a result, in accordance with the duty which lies upon the plaintiff to prove his averments by a greater weight of evidence, the court holds that the plaintiff has not succeeded in proving by a preponderance of evidence the allegations that are the grounds of his complaint and of his present cause of action. The court, therefore, finds that the plaintiff has failed to establish by a preponderance of evidence the situation of the dividing line to be where he claims it to be and consequently the averments set forth in the complaint have not been proven.”

On cross-examination Mariano Veloso, who sold Melchor Veloso’s parcel to Marcelo Regner, when asked whether he could determine the boundary line of the two parcels of land, replied that he could not do so at that moment.

The judgment of the lower court is in harmony with the principles of law governing the question in dispute. *Actore non probante, reus absolvendus est*, that is, when the plaintiff has not sufficiently proven his complaint, the defendant must be absolved.

Furthermore, the law in such a case prescribes that the boundaries shall be established in accordance with the titles of each owner (Civ. Code, 385). The defendants presented their title; the plaintiff did not present his own. In accordance with the deeds of sale made by Damiana Veloso to Narciso Talaig and by the Talaigs to Vicente Librea, the parcel of land on the west does not adjoin any alley on the east, but the land of Melchor Veloso. Consequently, it cannot be said that the defendants overstepped the dividing line between the two properties and usurped the part of the plaintiff’s land, the restitution of which he demands in his complaint. And therefore, the *sorosoro* hedge as well as the newly planted coconut trees are within the defendants’ land.

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

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

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