

44 Phil. 221

[G. R. No. 18806. December 23, 1922]

MARIANO CATIGBAC, JUAN REYES, AND RAMON GENATO IN THE CAPACITY OF ADMINISTRATOR OF THE ESTATE OF MANUEL GENATO, PLAINTIFFS AND APPELLANTS, VS. NORBERTO, POTENCIANO, NICOLAS, NARCISO, CLEMENTE, JR., JOSEFA, ARSENIO, AND ANGEL LEYESA, NICOLAS OLAGUIVEL AND GUTIERREZ HERMANOS, DEFENDANTS AND APPELLEES.

D E C I S I O N

OSTRAND, J.:

This is an appeal by the plaintiffs from a judgment of the Court of First Instance of Batangas dismissing the complaint.

The action is brought to determine the boundaries of various portions or subdivisions of a large tract of land situated in the barrio of Pinagsibaan, municipality of Rosario, Province of Batangas. The tract forms a strip of about eleven kilometers in length running from east to west, is bounded almost entirely by water-courses and covers a total area of 991 hectares, 41 ares and 46 centiares. It was originally possessed by one Celestino Solis, who died in 1874.

After the death of Celestino Solis the tract was divided into parcels by running lines across the land from north to south and partitioned among his heirs. His daughters Petra and Gliceria were jointly given the easternmost parcel measuring 69 hectares, 84 ares and 54 centiares, and his other children, Filomena, Justa, Bernardo, Maria, Catalina, Marcelina and Salvadora each received a parcel of 115 hectares, 17 ares, and 12 centiares, Germana's parcel adjoining the parcel of Petra and Gliceria, and the parcels of the others following from east to west in the order named, the parcel of Salvadora occupying the western end of the tract.

The boundaries of the parcels were, perhaps, not officially determined, but the participants in the partition entered into possession of what they considered their respective parcels and

the weight of the evidence shows that they and their successors in interest have remained in such possession ever since and that for many years the boundaries of the various parcels have been indicated by monuments and fences. It also appears that in the year 1881, each of the holders of the land obtained title by *composicion gratuita* for his or her parcel, the title documents stating the area of the various parcels as above indicated.

Through purchase and otherwise, the various parcels have been acquired by the parties in this action. The defendants Leyesa are now in possession of the parcel originally assigned to Petra and Gliceria Solis; Germana Solis' parcel is now owned by the plaintiff Ramon Genato; the parcel of Filomena and Justa Solis is owned by the plaintiff Catigbac; the parcel of Bernardo Solis is owned by the plaintiff Juan Reyes; and the remaining four parcels are possessed by Nicolas Olaguivel and Gutierrez Hermanos. The plaintiff Catigbac being the owner of two parcels of over 115 hectares each, should possess a total area of 230 hectares, but upon surveying the land in his possession in 1916, he found that he was in possession of only some 169 hectares, while Nicolas Olaguivel and Gutierrez Hermanos, the owners of four parcels or 460 hectares of the western part of the tract, are in possession of an area considerably greater than the area called for by their title documents. The same seems to be true of the defendants Leyesa, who occupy the eastern end of the tract. The plaintiff Juan Reyes whose parcel lies between the Leyesa parcel and that of Mariano Catigbac holds, approximately, the area stated in his documents and so does the plaintiff Genato whose parcel adjoins the western boundary of the land of Mariano Catigbac.

The remedy here sought is the old action of *deslinde y amojonamiento*. Though this action is not specifically provided for in the Code of Civil Procedure, there can be no doubt that it still exists. The substantive right upon which it is based is granted by article 384 of the Civil Code, and where there is a right there is also a remedy; the issuing of commissions to establish boundaries is an ancient branch of equity jurisdiction and this power no doubt still resides in our courts of general jurisdiction.

But it is very evident that the plaintiffs in this case have failed to establish a cause of action for *deslinde y amojonamiento* and that what they have here shown is a cause of action in ejectment, barred long ago by the statute of limitations. The action of *deslinde* is merely a remedial right; it cannot create new substantive rights nor can it deprive anyone of rights already acquired. (Sentences of the supreme court of Spain of December 13, 1870, July 3, 1884 and November 23, 1903.) The remedy is necessarily limited to the determination of uncertain boundary lines and cannot be used to recover possession of real property to which the adverse party has acquired title by prescription. In the present case the evidence clearly

shows that the defendants by themselves and their predecessors in interest have been in continuous and adverse possession of the lands now held by them for much more than the length of time required for the acquisition of title by prescription, and the boundaries of their respective holdings appear to be well defined. It is, therefore, here not a question of the determination of boundaries, but of title and right of possession; that this is so becomes still more evident when it is considered that the land of the plaintiff Catigbac does not adjoin the land of any of the defendants', and that the other plaintiffs do not appear to have any real interest in the result of the litigation.

The judgment appealed from is affirmed with the costs against the appellants jointly and severally. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.