

CONSOLACIÓN ARBOSO, PLAINTIFF AND APPELLANT, VS. DOROTEO ANDRADE, DEFENDANT AND APPELLEE.*G.R. No. L-2176. December 29, 1950*

Ponente: BAUTISTA ANGELO, J.

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This is an appeal from a decision of the Court of First Instance of Leyte declaring the defendant owner of the land in litigation. The appeal having been taken purely on questions of law, the facts appearing in the decision are deemed admitted as correct.

It appears that as early as 1917 Sotera Arboso was the owner of the parcel of land in litigation, it having been declared in her name for tax purposes (Exhibit A). The land was under the administration of Roman Budak. Since 1917, and as late as 1920, after the death of Sotera Arboso, the latter's children continued to receive the products of the land which were delivered to them by Roman Budak himself. Plaintiff is one of the children of Sotera Arboso. In the year 1920 however Roman Budak subscribed to an affidavit stating therein that he was the owner of the land having allegedly acquired it by inheritance from Sotera Arboso and by virtue of said affidavit he succeeded in having the land declared in his name for tax purposes (Exhibit C). Sometime in December, 1926 Roman Budak sold the land to Doroteo Andrade, the defendant, who purchased it in spite of the warning given him that the vendor was not the real owner thereof. Andrade declared the land in his name and paid the taxes thereon up to 1946. When in 1927 the children of Sotera Arboso learned that the land was sold by Roman Budak to Doroteo Andrade, they entered the land and gathered coconuts therefrom for which they were accused of theft by Doroteo Andrade, but which case was later dismissed because the justice of the peace court opined that the controversy was civil in nature. Subsequently, in 1928, the heirs of Sotera Arboso filed an action against Doroteo Andrade to recover the ownership of the land with the Court of First Instance of Leyte. This case however was dismissed on May 25, 1932 for lack of interest on the part of the plaintiffs (Exhibits 3 and 4). As said heirs re-entered the land thereafter, Doroteo Andrade in turn filed an action for ejectment against them on September 29, 1947 with the Justice of the Peace Court of Pastrana, Leyte, which was decided in favor of Andrade. In this case the court ordered the Arboso heirs to refrain from interfering further with the possession of the land (Exhibit 2). But as the Arboso heirs continued entering the land and gathering coconuts therefrom over the objection of Doroteo Andrade, in 1946 Andrade took a firmer hand by foiling any further attempt on their part to interfere with the property. As a result, Consolación Arboso filed the present action claiming to be the owner of the land in question.

The issue before us is whether the defendant has acquired ownership of the land by prescription in the light of the facts obtaining in this case.

With regard to prescription, we find that possession may be interrupted either naturally or civilly (article 1943, Civil Code). Possession is interrupted naturally, when, for any cause whatsoever, it ceases for more than one year (article 1944, *idem.*). Civil interruption is caused by the service of a summons upon the possessor, even should the judge who authorized its issue be without jurisdiction (article 1945, *idem.*). But the service of such summons

shall be inoperative and shall not cause interruption if the suit against the possessor should be decided in his favor (article 1946, *idem.*). These articles of the old Civil Code can still be invoked here under the transitional provisions of the new Civil Code (art. 2223, new Civil Code), and in our opinion have not been impliedly repealed by the Code of Civil Procedure. They refer to matters aliunde not covered by it. Repeals by implication are not favored. (See *Bargayo vs. Camumot*, 40 Phil., 857, 872.) To the same effect are the following authorities which either interpret or reaffirm the foregoing provisions:

"Realty; Action for Possession; Statute of Limitations. —An action for the possession of real estate which is commenced and afterwards abandoned, does not interrupt the running of the statute of limitations.

"ID.; ID.; ID.; Order of Court.—Nor will an incidental order of the court putting the plaintiffs in possession of the property suspend the running of the statute in favor of the defendants if the plaintiffs subsequently abandon the suit." (*Lacuesta et al. vs. Guerrero*, 8 Phil., 719.)

"Effect of Unsuccessful Suit or Reversal of Judgment. —An unsuccessful suit does not, of course, break the continuity of the adverse possession. The courts are practically in harmony in holding that where an action of ejectment or an action to try the title to, or obtain the possession of, real estate fail, or does not result in a judgment in favor of the plaintiff which is prosecuted during the life of the judgment to an actual ouster of the defendant and the taking possession of the land in controversy by the plaintiff, or the clear recognition of the plaintiff's title by the defendant, it does not have the effect of suspending or tolling the running of the Statute of Limitations in favor of the defendant against an independent action. It has been held, however, that the continuity is destroyed by a surrender of the premises in obedience to a writ of possession, even though the judgment on which the writ was based was subsequently reversed. This ruling was predicated on the theory that the claimant should not have yielded his possession, even under the pressure of lawful methods used to oust him, if he could legally retain it, and that failing to prosecute duly his appeal and to obtain a supersedeas was, in effect, an abandonment.

"Effect of Dismissal, Abandonment, or Discontinuance.—The decisions are unanimous in holding that in computing the period of adverse possession of land, the time of pendency of any dismissed, abandoned, or otherwise, discontinued action in respect thereto is to be treated as though such action had never been instituted. Accordingly, the prosecution of an action of ejectment to judgment does not interrupt the running of the Statute of Limitations where, upon appeal taken, a new trial is granted, following which the action is dismissed." (1 American Jurisprudence, p. 892.)

"Thus the mere, institution of an action which is dismissed or abandoned or settled will not of itself constitute such a disturbance of the adverse claimant's possession as will interrupt the running of limitations in his favor." (*Corpus Juris Secundum*, Vol. 2, p. 724.)

Now, bearing in mind the foregoing legal provisions and authorities, can it be said that Doroteo Andrade acquired ownership of the land in litigation by prescription in the light of the facts obtaining in this case? Our answer is in the affirmative.

The attempts made by the heirs of Sotera Arboso to regain the ownership and possession of the land in litigation cannot have the effect of interrupting the possession held thereof by Doroteo Andrade since 1926 (when it was sold to him by Roman Budak) for the simple reason that all those attempts resulted in failure. The actions taken by them were either dismissed or decided in favor of Doroteo Andrade. Even their occasional entry into the land proved ineffective because of the repelling action taken opportunely by Andrade. It can therefore be said that his possession of the land has never been interrupted either naturally or civilly.

It is true that Doroteo Andrade may be considered as having acted in bad faith because he bought the property with knowledge of the lack of authority of Roman Budak to sell it or of the fact that he was not the owner thereof,

but this guilty knowledge is of no moment, for under the law title by prescription may be acquired in whatever way possession may have been commenced or continued (section 41, Code of Civil Procedure). It appearing that Andrade had possessed the land openly, publicly, continuously and under a claim of title for a period of over ten years, it is evident that he acquired title thereto by prescription (section 41, Idem.).

Wherefore, the decision appealed from is hereby affirmed, without costs.

So ordered.

Moran, C.J., Pablo, Bengzon, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

Padilla, J., concurs in the result.

MORAN, C. J. :

Mr. Justice Paras and Mr. Justice Feria voted to affirm the decision appealed from.

Judgment affirmed.

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