

ROSENDO LEQUIGAN, PLAINTIFF AND APPELLANT, VS. PEDRO R. KATALBAS, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-11995. April 30, 1959*

Ponente: REYES, J.B.L., J.

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On October 16, 1956, the plaintiff Rosendo Lequigan filed with the Court of First Instance of Negros Occidental a complaint for injunction and damages against defendants Pedro, Quintin, Rosela, Otelia, all surnamed Katalbas, and the spouses Jovito and Constancia Carmales, docketed in said court as Civil Case No. 4095. Among other things, plaintiff's complaint alleges that he is the lawful possessor and actual occupant of a parcel of land described therein; that defendants have, since 1947, repeatedly disturbed and molested him in his free use and enjoyment of the property; and that, by reason of such intrusions, several criminal complaints were filed, some decided adversely against them, others resulting in acquittal and one still pending. Plaintiff, therefore, prays that his peaceful possession over the property in question be recognized by defendants; that a permanent injunction issue enjoining them from further molesting and disturbing him in his possession; that defendants, spouses Jovito and Constancia Carmales, be ordered to remove their house built on the said property; and finally, that plaintiff be awarded damages and such other relief as may be due him under the premises.

In due time, the defendants filed a motion to dismiss the complaint on the ground that (1) the complaint states no cause of action, (2) the cause of action, if any, is barred by the Statute of Limitations, and (3) the court has no jurisdiction over the subject matter of the suit. An opposition to this motion was interposed by plaintiff's counsel.

Acting favorably on the aforesaid motion, the lower court, in an order dated November 27, 1956, dismissed the complaint in this wise:

"Acting on the motion to dismiss dated November 12, 1956, filer by Atty. Januario L. Jison, for the defendants, and the opposition thereto dated November 23, 1956 filed by Attys. Tupas and del Castillo, for the plaintiff, this Court, finding said motion well founded, hereby grants the same, and order this case dismissed, without pronouncement as to costs." (Rec. App. 50-51)

Against this order, plaintiff perfected an appeal to this Court.

The appeal must be sustained. The complaint avers that plaintiff is in the actual and peaceful possession of the property described therein, subsequent to plaintiff's application for a residence permit with the Bureau of Forestry in 1924, a sales application with the Bureau of Lands in 1927, and a free patent application in 1954 and that defendants have been and are continuously and unlawfully interfering¹ with his physical and peaceful occupation of the same. The absence of allegation that the Bureau of Lands had already made an award on these applications or authorized an entry does not justify defendants' interference with plaintiff's occupancy. It is to be noted that plaintiff seeks not a recognition of title or ownership, but of his prior actual possession over the same, which the law and the courts protect against subsequent and baseless acts of dispossession, in order to prevent or settle disorders of breaches of the peace. "Possession of a piece of property may wholly be precarious of unrighteous,

yet if the possessor has in his favor priority of time, he has the security, that he is entitled to stay on the property until he is lawfully ejected by a person having a better right." (*Mediran vs. Villanueva*, [Syllabus,] 37 Phil., 752)

In a prior case, the question arose as to whether or not a public land applicant may be considered as having any right to the land occupied before award thereof, which may entitle him to a possessory action. In answering the query in the affirmative, this Court ruled:

"There are compelling reasons of policy supporting¹ the recognition of a right in a bona fide applicant who has occupied the land applied for. Recognition of the right encourages actual settlement; it discourages speculation and land-grabbing. It is in accord with well established practices in the United States. It prevents conflicts and the overlapping of claims. It is an act of simple justice to the enterprise and diligence of the pioneer, without which land settlement can not be encouraged or emigration from thickly populated areas hastened.

Our answer to the second problem is also in the affirmative, and we hold that even pending the investigation of, and resolution on, an application by a bona fide occupant, such as plaintiff-appellee herein, by the priority of his application and record of his entry, he acquires a right to the possession of the public land he applied for against any other public land applicant, which right may be protected by the possessory action of forcible entry or by any other suitable remedy that our rules provide." (*Andres Pitargue vs. Leandro Sorilla*, 92 Phil., 5; 48 Off. Gaz. [9], 3849; 'see also *Bohayang vs. Maceren*, et al., 53 Off. Gaz. No. 13, 4105.)

On the question of the court's jurisdiction over the case, it was further held:

"Resuming the consideration we have set forth above, we hold that the grant of power and duty to the Lands Department to alienate and dispose of public lands does not divest the courts of their duty or power to take cognizance of actions instituted by settlers or occupants or applicants against others to protect their respective possessions and occupations, more especially the actions of trespass, forcible entry and unlawful detainer, and that the exercise of such jurisdiction, and control of public lands. The question we have proposed to consider must be answered in the affirmative." (*Pitargue vs. Sorilla*, supra.)

It is contended that the patent application made only in 1954 was illegal because public lands in Negros are no longer open for patent application after December 31, 1938 under section 45 of the Public Land Act. Besides the fact that the principle of protection of prior possession or occupation against subsequent ones not showing a better right (as already mentioned above) would have sufficed to dispose of this assertion. It is well to remember that the section cited by the defendants was later amended by Republic Act No. 107 enacted in 1947, which extended the privilege to file applications to not later than December 31, 1957 (see also Proclamation No. 70, series of 1948 of the President of the Philippines, declaring all regions opened to free patent up to December 31, 1957). At any rate, it is only the government that can question plaintiff's entry and occupancy of lands of the public domain.

Lastly, defendants assail the action for damages, in that the same is unauthorized under article 33[1] of the Civil Code of the Philippines, and that, moreover, assuming that it is sanctioned, it had already prescribed, invoking articles 1146[2] and 1149[3] of the same Code.

This contention is, however, premised on the wrong assumption that plaintiff's suit is based on the criminal convictions of some of the defendants years before this suit was filed. This is not so, for, as stated by the plaintiff, the complaint is based on the continuous and repeated acts of dispossession of defendants, which acts are sought to be enjoined in the case.

Wherefore, the order of dismissal appealed from is hereby reversed, and the case ordered remanded for further proceedings. Costs against defendants-appellees. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Endencia, JJ., concur.

[1] Art. 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party, Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence

[2] Art. 1146. The following actions must be instituted within four years:

- (1) Upon an injury to the rights of the plaintiff;
- (2) Upon a quasi-delict.

[3] Art. 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues.

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