

RUFINO DIMSON, PLAINTIFF AND APPELLANT, VS. RURAL PROGRESS ADMINISTRATION, DEFENDANT AND APPELLEE.*G.R. No. L-3783. January 28, 1952*

Ponente: PADILLA, J.

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Claiming that he was in actual, and peaceful possession of lots Nos. 609, 610, 611, 631, 634, 635, 636, 638, 639, 641, 642, 597 and 870 of the Dinalupihan Estate, province of Bataan, of some of the lots since 1924 and of the other lots since 1940, without mentioning the number of the lots he had been in possession since 1924 and 1940; and that he had cleared, cultivated and placed permanent and valuable improvements thereon; complaining that since May 1948, the defendant attempted to disturb his occupation by putting in possession of the lots, persons who had no right thereto; that on June 1948, the defendant, through its agent and other persons acting in its behalf, by threats and intimidation, made known to him its intention to put other persons in possession of the lots and persisted in its avowed intention to carry out; and that unless restrained by the court the defendant is likely to carry out its intent to place such persons in possession of the lots, which if carried out would cause him irreparable damage and injury in the amount of at least P50,000, the plaintiff prays that a writ of preliminary injunction be issued upon the filing of a bond in the amount of P5,000; and that after hearing his right to be in possession of the lots referred to be protected and confirmed, the writ of preliminary injunction be made final, and the defendant be ordered to pay him the sum of P50,000 as damages.

The trial court ordered the defendant to appear and show cause why the writ prayed for should not be granted. The day after the required appearance, the defendant filed an answer denying the allegations, claims and pretension of the plaintiff as set forth in paragraphs 2, 4, 5, 6 and 9 of the complaint and pleading lack of knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 3, 7 and 8 of the same. By way of special defense, the defendant alleged that it was the owner and in possession of the lots mentioned in paragraph 2 of the complaint since they were acquired by it, as shown by a copy of a public instrument attached to the answer and made part thereof, and as such owner it had leased the lots to persons who in good faith planted palay therein which was then to be harvested, and that the plaintiff was not entitled to the possession of, and had nothing to do with, the lots. The defendant ends its answer and special defense with the prayer that the writ of preliminary injunction prayed for be denied and the complaint dismissed with costs.

In addition to its answer the defendant filed a motion to dismiss the complaint. An opposition thereto was filed. Acting on the motion to dismiss, the court held that the complaint does not state facts sufficient to constitute a cause of action and ordered the plaintiff to amend the complaint within five days, and directed the dismissal of the complaint should the plaintiff fail to do so as ordered. A motion for reconsideration was denied. The plaintiff did not amend his complaint but appealed from the order dismissing it.

It is not enough to allege in a complaint that the plaintiff is in actual physical or material possession of certain lots or parcels of land and that his possession has been, or is being disturbed by the defendant to entitle the former to have such possession protected by the court. It is an essential allegation that he is lawfully in possession of the

parcels of land. Such lawful possession may be enjoyed by the owner, tenant, usufructuary, usuary, emphyteuticary, antichretic creditor, the creditor in a contract known as *foros*, guardian, trustee, executor, administrator of the estate of a deceased or an absentee, or by a person to whom the possession of the land was lawfully transferred. If the plaintiff predicates his right, upon acquisition of title to a parcel of land by adverse possession, he must allege such adverse possession in the complaint. Adverse possession, as a means of acquiring title to a parcel of land, cannot, however, be pleaded, if the parcel of land, the subject of litigation, is covered by a Torrens title in the name of another person, corporation or juridical entity, for the title to a parcel of land covered by a Torrens title can no longer be acquired by acquisitive prescription.[1]

It appearing from the answer of the defendant that the lots of the Dinalupihan Estate, claimed by the plaintiff to be in his possession without any allegation as to how he came to be in possession thereof, are covered by Torrens certificate of title No. 1301 in the name of the Monte de Piedad and Savings Bank and that the Dinalupihan Estate, which comprises the lots, to the possession of which the plaintiff claims to be entitled, was sold by the registered owner to the defendant, the Rural Progress Administration, it is obvious that no person, corporation or juridical entity can have lawful possession of the lots included in the Estate thus sold, but only by virtue of a contract, express or implied, transferring the possession of the lots to such person, corporation or juridical entity. Such transfer of possession must be averred. Mere material or physical possession by one other than the registered owner who did not transfer the possession of the lots to the one claiming to be in possession thereof does not entitle the latter to be protected. The allegation in the answer that the Monte de Piedad and Savings Bank was the registered owner of the Dinalupihan Estate and that it sold the estate to the defendant is not denied and hence is deemed admitted. The plaintiff could have denied it by amending his complaint. This he failed to do.

The order appealed from is affirmed, with costs against the appellant.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

[1] Section 46, Act 496.

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