

**VALERIANA SUDECO ET AL., PLAINTIFFS AND APPELLANTS, VS.
ALEJO SANDE, DEFENDANT AND APPELLEE.***G.R. No. L-4226. April 28, 1952*

Ponente: REYES, J.

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In 1946 Valeriana Sudeco and her husband, Gregorio Moreno, filed a complaint in the Court of First Instance of Occidental Misamis, alleging that they were the owners of a parcel of land situate in the barrio of Sibasi, municipality of Misamis; that some time in 1935 the defendant Alejo Sande "unlawfully, and by means of threat, force and intimidation, took possession of the above described parcel of land," excluding the plaintiffs from the enjoyment thereof and refusing to return the same despite repeated demands. Plaintiffs, therefore, prayed for judgment, ordering defendant to return the land and to pay them damages.

The defendant was served with summons but failed to answer the complaint. He was, therefore, declared in default and plaintiffs were permitted to present their evidence. This consisted of the testimony of Atty. Jose Bernad and the plaintiff Valeriana Sudeco.

Atty. Bernad testified that he had prepared a deed of sale between Jose Guinto and Valeriana Sudeco de Moreno but did not know how much was paid by the latter to the former. Shown a document marked Exh. "A", he identified it as the deed he had prepared. But the document does not appear to have been offered in evidence.

Valeriana Sudeco on her part testified that she owned a piece of land in Sibasi with an area of about seven hectares; that she acquired the land by purchase from Jose Guinto; that in 1931 (later she said it was in 1935) the land was usurped by defendant; that she reported the matter to the barrio lieutenant; that Atty. Bernad sent word to defendant asking him to settle the matter amicably but that defendant paid no attention; that the land was planted to corn, palay, camote, cassava and other crops and that her yearly share of the products was about P200.00.

On the basis of the above evidence the court rendered its decision, holding "that the defendant had acquired the ownership of the land in question by acquisitive prescription which, according to the express provision of the law, may not be interrupted by the occurrence of war," and dismissing the case without costs. From this decision, plaintiffs have appealed, alleging that the trial court erred "in dismissing the complaint, *motu proprio*, on the ground that the occurrence of war does not interrupt the running of the statute of limitations, contrary to law."

The legal provision on acquisitive prescription is contained in section 41 of Act 1901 which reads:

"SEC. 41. Title to land by prescription.—Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grant, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possession of such land a full and complete title, saving to the persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous under a claim of title exclusive of any other right and adverse to all other

claimants. But failure to occupy or cultivate land solely by reason of war shall not be deemed to constitute an interruption of possession of the claimant, and his title by prescription shall be complete, if in other respects perfect, notwithstanding such failure to occupy or cultivate the land during the continuance of war."

No question is raised as to whether defendant's possession of the disputed property, in so far as it can be gleaned from plaintiffs' own evidence, is of the kind that may in ten years ripen into title under this provision. On the contrary, counsel for appellants seems to take that for granted, for he plants his assignment of error on the proposition that the running of the prescriptive period of ten years was, in this case, interrupted by the occurrence of war. The proposition is foreign to the question, for the prescription applied by the lower court is what is known as acquisitive prescription and refers to the period of possession and not to the period for bringing suits. What counsel evidently has in mind is prescription of actions or statute of limitations, since he speaks of the prescriptive period being interrupted by war. This assignment of error is, therefore, not to the point and cannot be urged as a ground for reversal.

We also note that the plaintiffs have not proved their case. They claim to have become the owners of the land sought to be recovered for having allegedly bought it from Jose Guinto. But there is no evidence that Guinto had title to the land. Furthermore, it is not even clear that the land alleged to have been purchased from Guinto is the same land that plaintiffs claim in their complaint, there being a marked discrepancy in the boundaries. The complaint gives the boundaries of the land sought to be recovered as follows:

"North—Public land claimed by one Subano Mariga;
South—Baria Creek;
East—Sibasi River;
West—Public land claimed by one Subano Amucas Sumoson."

On the other hand, the plaintiff Valeriana Sudeco in her testimony gives the boundaries of the land purchased from Guinto as follows:

"Q. Who are the boundaries on the North?—A. Valentin Camingao with a creek between us.
Q. On the East?—A. Jose Guinto.
Q. On the South?—A. Donato Tomilao with a creek between our land.
Q. On the West?—A. Amucas Sumosan Subano and now it is mine."

It will be seen that only the boundary on the West may be considered identical.

In conclusion we may say that appellants have not only not shown a reversible error; they have also failed to prove their case.

Wherefore, in so far as it orders the dismissal of plaintiffs' action the decision appealed from is affirmed with costs in this instance.

Paras, C. J., Feria, Pablo, Bengzon, Montemayor, and Bautista Angelo, JJ., concur.

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