

AGRIPINA VDA. DE ALBURO, ET AL., PETITIONERS VS. FILOMENA VDA. DE UMBAO, ET AL., RESPONDENTS.*G.R. No. L-14983. November 29, 1960*

Ponente: BENGZON, J.

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Review of the decision of the Court of Appeals declaring plaintiffs Filomena Vda. de Umbao, et al., the owners entitled to possession of a parcel of land of about three hectares located in Sta. Ana, Tubay, Agusan, and ordering defendants to vacate it and pay plaintiffs the sum of P2,363.50 value of the Tatter's share in the products of the land from the time of usurpation thereof by said defendants.

The appellate court found the lot to be a part of a bigger parcel of over 53 hectares which had been in possession of plaintiffs and their predecessors-in-interest since the year 1918 at least. Said court further found that sometime in 1946, defendants surreptitiously took possession of the 3-hectare lot in dispute, and kept it through force. These conclusions were drawn from the testimony of the witnesses of both sides and the documentary evidence, especially the survey plan approved March 12, 1918, of the whole 53-hectare land, and the relocation report of the private surveyor, Exh. F.

The main portion of defendants-appellants' printed brief here attempts to challenge the findings of the court a quo on the matter. Enough to say that the question of physical possession is purely factual, and our usual practice has been not to disturb the findings of fact of the Court of Appeals. The same thing may be said of appellants' contention that the value of the products of the land has not been adequately proven by competent evidence. There was testimony for, plaintiffs which the Court accepted for purposes of computation.

In this connection, it should be stated that when this petition for review was submitted for admission, petitioners expounded the above two questions only. Under ordinary circumstances, the petition would have been denied, the issues being factual. However, this Court noticed a point which it thought could be the subject of further debate: the timeliness of the appeal by plaintiffs to the Court of Appeals. In the court of first instance, the plaintiffs obtained judgment for possession of the land; but they got no damages. They, and the defendants, appealed to the Court of Appeals. There, they again prevailed on the issue of possession, and also on their claim for compensation. Defendants there contended that plaintiffs' appeal was belated, but the Court of Appeals decided it was not; and in so deciding, it apparently held that in estimating the period to perfect the appeal, the day of actual receipt of copy of the court's order denying their motion for reconsideration, should be the starting point—not the notice sent by the postmaster—the copy having been sent by registered mail. (See Rule 27, sec. 8) Now, as at that time (March 1959), there were litigations^[1] pending before this Court affecting the application of the very section of the Rules, we gave due course to this petition. Note specially that if the plaintiffs' appeal had been untimely, no damages could have been awarded to them.

In their printed brief, however, defendants-appellants did not discuss the point here. Perhaps they did so advisedly, because upon careful consideration, there was really no adequate foundation to their contention that

plaintiffs had appealed out of time. Such contention amounted to this: 21 days after receipt of copy of the judge's decision, plaintiffs moved to reconsider; copy of the order denying their motion was sent to plaintiffs by registered mail on November 8, 1954; in view of "the presumption that letters duly directed and mailed are received in the regular course of the mail (Rule 123, Sec. 69-V), the order of denial should have been received by plaintiff within the first five days from the date of the first notice of the postmaster or on November 16, since mail service between Butuan City and Surigao takes only 2 days. The Addressee having failed to claim said letter, service of notice took effect at the expiration of such time (Rule 27, sec. 8) and appeal having been filed only on November 27, 1954, 34 days after notification of the decision, plaintiffs' appeal was allegedly filed out of time. * * *."

We say defendants' theory has no sufficient foundation, because it rests on a presumption derived from another presumption. Indeed, they argue: it is presumed that the registered letter was received at the point of destination in regular course of the mails—2 days after November 8; it is also presumed that the postmaster complied with his duty and sent the first notice on November 10[2]; therefore, plaintiffs must be deemed to have received the letter five days after November 10, according to Rule 27, sec. 8. This is tacking one presumption to another, which is not permitted by orthodox rules of evidence.

"An inference of fact should not be drawn from premises which are uncertain, but the facts on which an inference may legitimately rest must, it is said, be established by direct evidence as if they were the very facts in issue. It follows that one presumption cannot be based on another presumption, and it has been broadly asserted in many decisions that inferences cannot be founded on inferences (31 Corpus Juris Secundum, "Evidence", sec. 116(b) [Italics ours]).

The result, therefore, is that the five-days-after-the-postmaster's-notice principle could not be applied; defendants' arguments built thereon collapses necessarily; and the appel-late court rightfully passed judgment on plaintiffs' appeal.

As stated, this was the legal question which on a preliminary survey, induced this Court to entertain the petition for review. It turns out, however, that petitioners finally elected to discuss only factual questions, which we are not at liberty to revise.

On the other hand, upon the basis of the facts established according to the Court of Appeals—which are binding here —there is no doubting the correctness of its adjudication: plaintiffs are entitled to possession, plus the estimated damages.

Wherefore, the decision under review should be, and is hereby, affirmed with costs against appellants.

Paras, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, and Dizon, JJ., concur.

Decision affirmed.

[1] Grospe vs. Court of Appeals, 106 Phil., 1144.

[2] Admitting there is a presumption that the postmaster sent the notice, the sending could have been made on November 11, or 12 or 13.

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