

AURORA JIMENA-HIDALGO, PLAINTIFF-APPELLEE, VS. TORIBIO LOTO AND ALFONSO LOTO, DEFENDANTS-APPELLANTS.

G.R. No. L-28024. November 04, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

This is an ejectment case involving a few square meters of riceland. On February 26, 1966 Aurora Jimena-Hidalgo filed in the municipal court of Boac, Marinduque an action for forcible entry against Toribio Loto and his son Alfonso, both farmers.

Mrs. Hidalgo alleged that, as co-owner and overseer, she was in possession of a parcel of riceland, with an area of 1,320 square meters, located at Barrio Mainit, Boac, owned by the heirs of the late Victor Jimena; that the said riceland is adjacent to the ricefield of Toribio Loto on the western side; that the western boundary between the two ricefields was an earthen dike (pilapil), and that in May, 1965 Toribio and Alfonso, by means of force, strategy and stealth, changed the western boundary of the two ricefields by moving it "two meters eastward", thus encroaching on a portion of the Jimenas' riceland (2-5, Record on Appeal).

Mrs. Hidalgo prayed that defendants Loto be ordered to vacate the usurped portion, to restore the western boundary to its original position and to pay the reasonable rental value of the said portion (6-7, Record on Appeal).

Defendants Loto in their answers denied the allegations of the amended complaint. They admitted only the allegations as to their personal circumstances and the fact that Toribio's riceland is on the western side of the Jimenas' riceland. They pleaded as special defenses Toribio's ownership of the portion of land in question, lack of jurisdiction because the issue is ownership, insufficient verification, and misjoinder of party. They alleged that it was the tenant of the Jimenas who altered the western boundary of the two parcels of land. They filed counterclaims for damages.

Mrs. Hidalgo filed motions for judgment on the pleadings. She claimed that defendants' answers admitted the material allegations of her amended complaint and did not tender any issue. The municipal court denied the motions.

The oral evidence presented during trial was not taken down by a stenographer. It is summarized in the inferior court's decision.

The municipal court rendered a judgment ordering defendants Loto to vacate the disputed area mentioned in paragraph 5 of the complaint, to reconstruct the old embankment or pilapil and to pay the plaintiff a monthly rental of one peso.

For reference, the decision of Municipal Judge Rustico Navarro dated April 19, 1966 on the merits of the case is reproduced below:

"DECISION

"The bone of contention is embedded in the question as to who had been in prior possession of the strip of land mentioned in paragraph 5 of the complaint situated in Bo. Mainit, Boac, which was separated from the land of the defendants by an earth embankment, commonly known in local lingo as 'pilapil'.

"At the trial, Mariano Opis recounted that in the month of May, 1965, Alberto Montiano informed him that the said earth embankment has been removed and that the defendants put a deflecting palisade of bamboo stakes some two meters inside the premises he was cultivating for the plaintiff. As an overseer, Opis hurried to town and reported the matter to the plaintiff who went along with him that very same day to look into the underalteration.

"For the moment, just to contain water in the 3 rice paddies in preparation for the October, 1965 harvest season, he improvised an earth embankment right close along-side the bamboo stakes.

"He recalled that since November of 1963 when he received the ricefield from the plaintiff, thru his brother-in-law, Domingo Loto, he cultivated the same undisturbed as far as the missing earth embankment which ran straight from north to south, ending 3.69 meters east of an old madre cacao tree. The defendants dared not to molest him, not until May of 1965 when they displaced the old earth embankment and placed the bamboo stakes to the east.

"Alberto Montiano testified that the missing 'pilapil' which divided the two parcels of riceland of the plaintiff and the defendants ran straight from the north to the south and ended near an old madre cacao tree growing in the premises of the defendants. He explained that he knows the position of said embankment because he had cultivated that particular riceland of the plaintiff at the instance of Domingo Loto, the plaintiff's tenant.

"Domingo Loto testified that when the plaintiff gave him 10 rice paddies to cultivate, he passed the 3 of them over to his brother-in-law, Mariano Opis to till. He indicated in a sketch drawn in court (Exhibits A, A-1 thru A-6) the portion in dispute as well as the position of the missing embankment in relation to an old madre cacao tree situated 3.69 meters from its southern tip.

"For her own part, plaintiff Aurora Jimena-Hidalgo narrated that in Manila, her mother, brothers and sisters appointed her manager or 'encargado' of all the real properties left behind by their deceased father, the late Victor Jimena; that as such manager, she entrusted to Domingo Loto in the month of November, 1963 a parcel of riceland consisting of 10 rice paddies, who, in turn, passed the 3 of them over to Mariano Opis for cultivation; that the said parcel is covered by Tax Declaration No. 20361, a certified true copy of which was pre-sented in evidence and marked as Exhibit B; that she came to learn about the intrusion from her overseer, Mariano Opis; and that when she questioned Alfonso Loto why he displaced the embankment, she was told to see his father, Toribio Loto, whom she was unable to contact.

"Defendant Toribio Loto claimed in court that the portion now under litigation is part of a parcel of land, described under Tax Declaration No. 3165 presented and marked as Exhibit II which he had acquired from Alejandro Lozada way back in the year 1925 thru a deed of sale presented in evidence as Exhibit I, a true copy of which was prayed to be marked as Exhibit I-a; that the present visible marks consisting of bamboo stakes which he and his son Alfonso placed and the embankment constructed by Mariano Opis that and near an old 'Tanad' tree of about one-half meter in diameter are at the original position at the time he bought the premises and took possession of the same; that while sojourning in Manila in 1961 and 1962 and then in Sariaya, Quezon, 3 years thereafter, he came down to Boac for periodic cosechas before the end of every month; and that as consequences of the present action, his lawyer collected from him an initial fee of P150 and also incurred incidental expenses for meals and transportation in coming to and from the court.

"Alfonso Loto testified that he cultivated the riceland adjoining that of the plaintiffs; and that he and his father place the bamboo stakes along the true marks dividing their and the plaintiff's lands.

"Hipolito Buenaventura declared that the present palisade of bamboo stakes marks the boundary between the lands of the plaintiff and the defendants; that said boundary line which runs from the north to the south ends near an old 'Tanad' tree of about one-half meter in diameter; and that he is fully aware of the same because he had cultivated the same in 1927 and 1928 before its previous owner conveyed same to the late Victor Jimena.

"Felix Mabato stated that he cultivated the adjoining land of Toribio Loto for a wide span of count-less years before Toribio Loto purchased the proper-ty from its former owner, the late Alejandro Lozada; and that the present boundary line is the correct one, lying from the north to the south, ending near an old 'Tanad' tree.

"The counsel for the defendants introduced evi-dence, oral as well as documentary, dating more than four decades back despite of an agreement not to dwell on events which had transpired long before a year prior to the incident.

"After a searching perusal of the evidence ad-duced in the course of the trial, this court arrived at the inevitable conclusion that the plaintiff has been in prior physical possession of the disputed portion on the following grounds:

"Firstly, the earth embankment was levelled down and displaced by the defendants with a pali-sade of bamboo stakes invariably some two meters inside the ricefield of the plaintiff, thus depriving the plaintiff of the disputed area; and

"Secondly, it is doubly inconceivable that nobody else but any or both of the defendants should have removed 'pilapil'. For had the plaintiff made or effected the demolition, the defendants and not then plaintiff who gone to court for redress.

"While it was true that Mariano Opis, improvised an earth embankment alongside the bamboo stakes put up by the defendants, it did not mean to imply, how-ever, that he has abandoned the disputed premises altogether. For the fact was that he lost no time to report the matter to the plaintiff soon after finding out that the old 'pilapil' was destroyed and displaced.

"A cursory of the testimony of Alfonso Loto leaves no room for doubt that the plaintiff was the one in prior physical possession of the portion in dispute before May of 1965. Because his testimony was crystal clear that a bamboo palisade was cons-tructed to reflect the true boundary of the adjoining properties.

"The conclusion is therefore inescapable that an old landmark in the form of an earth embankment or 'pilapil' separating the adjoining lands of the plaintiff and of the defendants must necessarily be demolished. Hence, it stands to reason that it was the defendants who would effect the demolition to wrest from the plaintiff the disputed portion.

"BY A PREPONDERANCE OF EVIDENCE, this court hereby renders judgment in favor of the plain-tiff and against the defendants, ordering them: (1) to vacate in favor of the plaintiff the disputed portion mentioned in paragraph 5 of the complaint; (2) to restore or reconstruct the old earth embankment in its original position; (3) to pay the plaintiff a monthly rental of ONE PESO (P1.00), the reasonable value for the use of the premises; and (4) to pay the costs of this suit." (34-40, Record on Appeal).

Defendants Loto appealed to the Court of First Instance. Plaintiff Hidalgo reiterated her motion for judgment on the pleadings (Civil Case No. 1362). The defendants did not oppose the motion. The lower court in its decision dated January 3, 1967 ruled that the plaintiff's motion for judgment on the pleadings was proper because defendants' answers failed to tender an issue since there were no specific denials of the allegations of the complaint as contemplated in the Rules of Court.

The lower court ordered defendants Loto to vacate the dis-puted area and "to restore or reconstruct the old earth embankment in its original position", meaning the pilapil serving as boundary between the riceland of the heirs of

Victor Jimena and the riceland owned by Toribio Loto (pp. 53-54, Record on Appeal).

After the denial of defendants' motion for reconsideration, they appealed to this Court on pure questions of law.

Appellants Loto contend that "the trial court erred in not holding that the appellee, in moving for judgment on the pleadings, without offering proof as to the truth of her own allegations and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all material and relevant allegations of the opposing party; consequently, it likewise erred in not dismissing this case".

Appellants Loto's theory is that by moving for a judgment on the pleadings Mrs. Hidalgo admitted the material averments in their special defenses that "Toribio Loto is the owner and possessor of the portion of land now claimed by the plaintiff, that he has been in possession of the same and benefitting from its fruits continuously, publicly, openly, as owner thereof, for more than 20 years" (9, Record on Appeal).

That theory is untenable because Mrs. Hidalgo in her reply alleged that Toribio Loto's claim of ownership and possession "is sham and false, the truth being those alleged in the complaint" (17, Record on Appeal).

The appellants cite the ruling that "one who prays for judgment on the pleadings without offering proof as to the truth of his own allegations and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings" (1 Moran's Comments on the Rules of Court, 1970 Ed., p. 543-544).

That ruling does not support appellants' theory because it refers to material allegations "admitted in the pleadings". As already stated, appellants' special defense of ownership was controverted by Mrs. Hidalgo in her aforementioned reply. She averred that "the issue in this case being as to who is in prior possession of the portion of land in dispute", a "mere claim of ownership cannot defeat the action for forcible entry" (17, Record on Appeal). Ownership is not involved in this ejectment case. The issue is possession de facto or prior physical possession.

Mrs. Hidalgo in paragraph 10 of her complaint alleged that since May, 1965 defendants Loto have remained in illegal possession of the strip of land in question and failed to vacate the same in spite of her repeated demands. Toribio Loto did not deny that allegation in his answer.

Mrs. Hidalgo contends that, because Toribio Loto did not deny that allegation, he is deemed to have admitted it in accordance with the rule that "material averment in the complaint, other than those as to the amount of damage, shall be deemed admitted when not specifically denied" (Sec. 1, Rule 9, Rules of Court).

On the other hand, Alfonso Loto denied that paragraph 10 in his answer by stating that he "specifically denies x x x Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10" (21, Record on Appeal). He did not set forth the substance of the matters relied upon by him to support his denial, a requirement prescribed in section 10, Rule 8 of the Rules of Court.

Alfonso Loto in paragraph A of his special defenses alleged "that sometime in the year 1945 the boundary of the land of Toribio Loto was altered or changed by the tenant of the Jimenas" (21-22, Record on Appeal).

That allegation is inconsistent with the special defense of his father, Toribio, that "sometime last April, 1965, he found out that the boundary of his land had been altered or changed by the tenant of the Jimenas, that he (Toribio) subsequently restored the original boundary or boundary landmarks to its original position or situation" (9-10, Record on Appeal).

The trial court concluded that the Lotos admitted in those special defenses Jimenas' prior possession of the

disputed strip of land and that, therefore, the defendants did not tender any issue as to the fact of prior possession. Hence, it rendered judgment upon the basis of defendants' special defenses.

The trial court did not err in rendering judgment on the basis of appellants' special defenses which admitted the Jimenas' prior physical possession of the disputed strip of land. That admission was strengthened by Toribio Loto's failure to deny the allegation in paragraph 10 of the complaint that the Lotos have illegally possessed the disputed strip of land since May, 1965.

It may be noted that the lower court in its order of July 5, 1967 ordered the execution of its judgment in view of defendants' failure to file a supersedeas bond. The plaintiff in her compliance of April 6, 1976 manifested that by means of an alias writ of execution dated March 18, 1969 she was restored to the possession of the disputed strip of land with an area of "three meters and sixty-nine centimeters" (sic). In her view the instant appeal had become moot. Defendants' counsel was not able to state whether the appeal had become moot because he could not contact his clients.

WHEREFORE , the lower court's judgment is affirmed. No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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