

**ROMANA CORTES ET AL., PLAINTIFFS AND APPELLANTS, VS.
FLORENCIO G. OLIVA, DEFENDANT AND APPELLEE.***G.R. No. 10104. February 10, 1916*

Ponente: CARSON, J.

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This is an action for the recovery of personal property and for damages incident to its alleged unlawful conversion.

The plaintiffs are the heirs of one Pio Oliva, deceased, who during his lifetime was the owner of a large machine used for grinding sugar cane; he was also the joint owner with his brother, Florencio Oliva, the defendant herein, of another smaller machine used for the same purpose. Throughout the record the machine owned outright by Pio Oliva is referred to as the large machine or mill (*trapiche grande*) while the other is referred to as the small or partnership machine.

In 1896 the defendant was the manager of an hacienda in Nasugbu, Batangas, and Pio Oliva was a tenant on the hacienda. The two machines in question were installed and in use on the hacienda at the time of the breaking out of the revolution against Spain. Owing to the unsettled conditions incident to the revolution, the hacienda was abandoned together with the two machines in question and various other agricultural implements. Pio Oliva died in 1898 in the pueblo of Calawang, Laguna, P. I., leaving as his heirs the plaintiffs herein. The defendant, Florencio Oliva, returned to Nasugbu in 1899. In 1901 he took possession of the two machines in question. He found them in an abandoned condition and badly in need of repairs. On the large machine he expended approximately P163 and a less amount on the smaller machine, and he kept both machines under shelter until work was received on the hacienda. In 1906 the large machine was again used for grinding cane and it appears to have been used for that purpose ever since. The smaller machine, the one owned in partnership, has never been used since 1896, and unsuccessful efforts have been made to sell it. The record is very unsatisfactory and inconclusive as to the value of the two machines. One of the plaintiffs testified that the large machine was worth P1,200, while the defendant put its value at P400. There is no direct evidence in the record as to what the value of the smaller machine is, but it is very clear that its market value must be small indeed.

The plaintiffs contend that the defendant unlawfully took possession of these machines in the year 1906 without their knowledge or consent; that from that date until the year 1912 he had ground cane in the large machine to the value of P42,000, and that they, as the heirs of the true owner of the machine, are entitled to P14,000 for the use of this machine, that being one third the estimated value of the output; that the profits which would have accrued to them from the use of the small machine during that period amounts to P3,500; that they are entitled to a judgment for the recovery of the machines or their value; and further to a judgment for the sum of P17,500 for the profits which should have accrued to them for the use of these machines from the year 1906 to the year 1912.

The defendant contends that he took possession of the machines in 1901, and has held them in his possession since that date under a claim of ownership; that he took possession because his brother, Pio Oliva, was indebted to

him at the time of his death, and in view of conditions existing at that time, 1901, he took this mode of indemnifying himself against loss of the amount of the indebtedness which exceeded the value of both machines at the time when he took possession.

This action was instituted on the 6th day of June, 1913, and the trial judge was of opinion that it had prescribed under the provisions of section 43 of the new Code of Civil Procedure (Act No. 190), the evidence of record disclosing that the defendant had been in possession of both the mills under a claim of ownership for a period of more than four years prior to the date of the institution of the action.

As to the larger machine, we are of opinion that the ruling of the trial judge was unquestionably correct. We find nothing in the record which would justify us in disturbing the findings of fact by the trial judge and there can be no doubt that accepting his finding of facts as correct, the plaintiff's action for possession had prescribed long before the action was instituted (sec. 43, Act No. 190).

The plaintiffs contend that the defendant did not take and keep possession of this machine under a claim of ownership; and that in truth and in fact he originally took possession of this machine in the year 1906, and that since that time he has kept possession merely as security for his claim of indebtedness against their father. In support of their contentions, they rely on certain statements made by the defendant in a letter written to one of the plaintiffs. This letter appears to have been written partly with a view to secure some compromise of the threatened litigation over the machines, and partly by way of justification and defense of the defendant's conduct in taking possession of the machines after his brother's death. In the course of the letter he insists that the plaintiffs were not wronged by his action in taking possession, because, as he indicates, their claim of ownership in the machine and of profits from its operation is fully met by his claim of indebtedness and of interest on the debt. Plaintiffs insist that this statement demonstrates that the defendant was not asserting a right of ownership in the machine at the time when that letter was written, but only the right to payment of the amount of the alleged indebtedness with interest.

Without stopping to consider the question of the admissibility in evidence of the contents of his letter, which seems to have been written with some view to a compromise of threatened litigation, we hold that, read in connection with all the evidence of record, it falls far short of sustaining the contentions of the plaintiffs. We agree with the trial judge, who carefully reviewed the letter together with all the rest of the evidence, and held that the letter, as a whole, clearly discloses that defendant regarded himself as the lawful owner of the machine at the time when the letter was written; and that the references to the principal and interest of the debt for which it was taken were made by the defendant merely for the sake of showing that he had not wronged his brother or his brother's heirs by taking the machines for the debt.

With reference to the smaller machine, which was originally owned jointly by the defendant and his brother, the claim of prescription of the action brought by the plaintiffs is not satisfactorily established.

This machine having been originally the joint property of the defendant and his brother, the fact that he held it in his possession for a long period of years, and exercised acts of ownership with reference to it does not afford a sufficient ground for the inference that he had possession under a claim of exclusive ownership, and adverse to the claims of his brother's estate. Ordinarily possession by one joint owner will not be presumed to be adverse to the others, but will, as a rule, be held to be for the benefit of all. Much stronger evidence is required to show an adverse holding, by one of several joint owners than by a stranger; and in such cases, to sustain a plea of prescription, it must always clearly appear that one who was originally a joint owner has repudiated the claims of his coowners, and that his coowners were apprised or should have been apprised of his claim of adverse and exclusive ownership before the alleged prescriptive period began to run. We do not think that the evidence or

record is sufficient to sustain a finding to that effect with reference to the small machine.

On their own allegations, however, plaintiffs cannot maintain an action for possession of this machine against the defendant, who was originally a joint owner with his brother, their predecessor in interest. Doubtless they have a right to have the machine sold and to a partition of the proceeds of the sale, and an accounting for profits while in the exclusive possession of the defendant; and liberally construed, the allegations of their complaint would seem to be sufficient, if supported by competent evidence, to entitle them to a judgment for such profits.

But there is no direct evidence in the record as to profits gained by the defendant from the use of this machine, though there are indications in the record that in fact he made no such profits, and that the machine, which was practically worthless, has lain idle ever since it came into his possession.

The judgment entered in the court below dismissing the complaint at the costs of the plaintiffs should be affirmed with the costs of this instance against the appellants, without prejudice, nevertheless, to the right of the plaintiffs to bring another action asserting any right they may have in the small machine, originally owned jointly by the defendant and his brother, their predecessor in interest, or in profits arising from the use of this machine since the date of the institution of this action. So ordered.

Arellano, C. J., Torres, Johnson, Moreland and Trent, JJ., concur.

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