

**NAZARIA ALCALA ET AL., PLAINTIFFS AND APPELLEES, VS.
BARTOLOME ALCALA ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 11054. December 11, 1916*

Ponente: TORRES, J.

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This decision relates to two civil cases Nos. 174 and 175, which were appealed from the Court of First Instance of Mindoro. Both cases were tried together and only one decision was rendered on December 31, 1914.

On July 20, 1914, counsel for Jose Alcala's children named Francisco and Nazaria (the latter married to Vicente Jurado), for his grandchildren named Simeon Abao and Generosa Abao (the latter assisted by her husband Maximo Gerera), and for his grandchildren Guillermo Abay and Silvina Abay, filed a written complaint in the Court of First Instance of Mindoro against the said Alcala's other grandchildren (children of Rosendo Alcala) named Bartolome Alcala, Tomas Alcala and Isidora Alcala (the latter married to Eleno Belen). As a cause of action he alleged that their common predecessor in interest, Jose Alcala, at the time of his death in 1870, owned and held possession, in the barrio of Silonay, pueblo of Calapan, Mindoro, of a building lot and of three parcels of land, the area, metes and bounds of which are set forth in the subparagraphs (a), (b), (c), and (d) of paragraph 4 of the complaint; that the said decedent left five children named Francisco, Nazaria, Maria, Laureana and Rosendo, all surnamed Alcala, of whom the first two and the descendants of the said Maria and Laureana are plaintiffs, the children of Rosendo, defendants; that said heirs of Jose Alcala left all of this decedent's estate undivided and under the administration of Rosendo Alcala, he being better educated than the rest of the children; but that at Rosendo Alcala's death in 1902, his children Bartolome, Tomas and Isidora, now defendants, took possession of the said property, considered it as their own and, up to the time of the filing of the complaint, refused to divide it among the lawful heirs of the said Jose Alcala, notwithstanding plaintiff's friendly demands so to do.

As a second cause of action the plaintiffs set forth that during Rosendo Alcala's entire administration of the said hereditary property he annually rendered an account of the income and of the expenses thereof and then religiously delivered to each coheir his or her respective share of said proceeds; that the children of the said Rosendo Alcala (the defendants who continued the administration of the said property) took possession thereof and during the years 1902, 1903, 1904, and 1905 annually presented accounts of their administration, delivering to each of the plaintiffs his or her respective share of the profits, until the year 1906; that said defendants then refused and from that date had continued to refuse to render accounts of their administration and to share the proceeds of the lands with their coheirs, the plaintiff; that the estate left by the said Jose Alcala produced annually the sum of P1,500 wherefore the income to date should amount to the sum of P13,500; all to the serious damage and detriment of the plaintiffs.

As a third cause of action they alleged that about the year 1895, Rosendo Alcala being still administrator of the said estate of his deceased father Jose Alcala, by agreement between the heirs they commissioned him to apply for and obtain, by means of possessory information proceedings, the proper title to the said lands in the name of all the coheirs; but that, instead of doing this which was his duty, the said Rosendo Alcala took advantage of the

ignorance of his brother and sisters (his coheirs), obtained title to the said lands in his own name alone and secretly kept them in his possession; that the other interested parties had no knowledge of this improper procedure until a few days prior to the filing of the complaint when counsel for the plaintiffs learned of the fraud.

Counsel for plaintiffs therefore prayed the court to declare that Jose Alcala was the original owner of the property described in the complaint and that the plaintiffs were coowners with the defendants in the said property; to order the partition of the property among the interested parties by dividing it into five equal shares, one to be awarded to the defendants; to order the defendants to render an account to the plaintiffs of the proceeds of the common property for the past nine years, or from 1906, and to pay to the plaintiffs their corresponding share of such proceeds less one-fifth thereof which rightfully belongs to the defendants; counsel furthermore prayed the court to order the title to be produced and a correction to be made in the inscription in the property registry of the estate left by the decedent Jose Alcala and also in the possessory information, so that the said property and the said information shall be registered in the names of all the heirs of the said Jose Alcala; with the costs against the defendants.

In their written answer, amended December 14, 1914, the defendants made a general and specific denial of all the allegations set forth in the complaint; in special defense they alleged that they had peaceably, adversely, uninterruptedly and from time immemorial held possession of the property, the object of the complaint, designated as parcels 1, 2, and 3; that, in the use of their ownership rights, they had transferred and sold to third persons the parcels 2 and 3; that they had never held parcel 4 and knew nothing whatever about it; that in the unlikely event that the court should find the plaintiffs might have some rights of action over the said property, these have already prescribed; and they therefore asked to be absolved from the complaint, with the costs against the plaintiff.

In the other complaint which gave rise to case No. 175 and which was filed by Vicente Jurado and his wife Nazaria Alcala in July, 1914, against the same defendants, Bartolome Alcala together with his brother and sisters, demand was made for the possession and delivery of the parcel of land containing 12½ hectares, described in the complaint, situated in the sitio of Silonay, Calapan, and for the payment of the sum of P3,000 as damages. Said complaint contained a prayer that the defendants be ordered at the same time to present to the court the possessory information title of the lands in question so that a correction might be made therein whereby the plaintiffs would appear as the owners of the aforesaid parcel of land in Silonay. Said complaint alleged as grounds for said prayer that in 1895 the plaintiffs, as the holders and owners of the property in litigation, charged Rosendo Alcala, the defendants' predecessor in interest, to take the steps required to obtain title to the land; but that Rosendo, taking advantage of superior education, fraudulently obtained title to the land in his own name (a fact concealed from the plaintiffs who did not happen to discover the fraud until just a few days before in connection with the filing of the first complaint by Alcala and his sisters against the heirs of the said Rosendo Alcala) and that, after the plaintiffs had been in the continuous possession and enjoyment of the said land for more than forty-five years, the defendants unlawfully seized the same in 1909, cultivated it for their own benefit and refused to restore same to the plaintiffs, to the latter's damage and prejudice.

On October 13, 1914, the defendants answered the foregoing complaint by denying all the allegations therein contained and, in special defense, alleged that they were the sole and absolute owners pro indiviso of the parcel of land described in the complaint; that, even though the plaintiffs might have had some right in the property in question, the same had prescribed in favor of the defendants, and that they therefore moved to dismiss the complaint with the costs against the plaintiffs.

Both cases having been heard together on December 31, 1914, the court rendered judgment holding the plaintiffs to be the owners, pro indiviso with the defendants, of the property derived from their common predecessor in

interest, Jose Alcala, consisting of the real properties described in the possessory information title exhibited at the trial and of the lot containing 50 ares situated in the town of Calapan, Mindoro, and finding that this inheritance should be distributed among the parties according to the legal status of each, to wit: Francisco and Nazaria Alcala, children of Jose Alcala, per capita; the plaintiffs Guillermo and Silvina Abay, in representation of their deceased mother Laureana Alcala; Simeon and Generosa Abao, in representation of their mother Maria Alcala, deceased; and the defendants Bartolome, Tomas and Isidora Alcala; in representation of their father Rosendo Alcala—these last three per stirpes.

In consequence the court decreed that after the defendants had rendered accounts to the plaintiffs of the proceeds of the said lands from 1906 to the date when the judgment should have become final, they should deliver to each representation one-fifth of the proceeds of the said lands; that, from the parcel designated by letter (a) of the complaint filed in case No. 174, there should be deducted a strip of three cavanases in area, on the side adjoining the property of Ceferino Abao, to be delivered to the plaintiff Vicente Jurado; and, finally, that the registrar of property for the Province of Mindoro should correct the entry of the possessory information title Exhibit 1, issued and inscribed in the name of Rosendo Alcala, so that the lands therein mentioned should appear as belonging to the heirs of the deceased Jose Alcala, except a portion measuring nine cavanases which should be deducted from the first parcel of land described in the said possessory information title and which was held to belong to the brothers Vicente, Nicomedes and Donato, all surnamed Jurado. The costs of the suit were assessed against the defendants.

To this judgment the defendants excepted and, after complying with the legal requirements, they filed bills of exception which were approved and forwarded to the clerk of this court.

The questions raised between the parties in both suits and submitted to the decision of this court are therefore: (1) Whether or not Jose Alcala, the common predecessor in interest of the litigants in case No. 174 of the Court of Land Registration, on his demise left property which has not yet been partitioned; (2) whether or not, after the death of the said Jose Alcala, his son Rosendo (the defendant's father) did, by agreement with his coheirs, enter into possession of and administer the property left by his father and, at the request of his coheirs, institute possessory information proceedings in 1895 for the purpose of securing title to the said property in the names of all the interested parties; (3) whether or not, after the death of the administrator Rosendo Alcala in 1902, his children (the defendants) succeeded to his possession of the said real property and, if so, whether said possession of the defendant and that of their predecessor in interest, Rosendo Alcala, constitute a title and a reason, sufficient in law, to vest in them title to the said property by prescription; (4) with respect to the action brought by Vicente Jurado and his wife, whether or not these parties are the lawful owners and proprietors of the land claimed in the complaint.

By stipulation between the parties, it was proven that when Jose Alcala died in 1870 he left five children, to wit: (1) Francisco and Nazaria Alcala, now living, the latter married to Vicente Jurado; (2) Maria Alcala who died in 1904 leaving two children named Simeon Abao and Generosa Abao (the latter married to Maximo Gerera); (3) Laureana Alcala who died in 1876 leaving two children named Guillermo Abay and Silvina Abay; (4) Rosendo Alcala who died in 1902 leaving children named Bartolome Alcala, Tomas Alcala, and Isidora Alcala (the latter married to Eleno Belen). Of these said children the first four were the plaintiffs in case No. 174, the defendants being the children of the deceased Rosendo Alcala.

The record shows, as fully proven by the stipulation between the parties (stenographic notes, p. 2), that the common predecessor in interest, Jose Alcala, upon his death in 1870, left property consisting of three tracts of agricultural land and a parcel of urban land, specifically described in paragraph 5 of the complaint in case No. 174; but that he sold to third persons one of these tracts of land, thus leaving only two tracts of tillable land in the barrio of Silonay, Calapan, and a building lot in the town of Calapan. It is these properties that are the subject

matter of the present suit.

The defendants, the children of Rosendo Alcala, positively stated (their testimony being corroborated by Rosendo's widow) that for about 84 years they had been in possession of the land situated in Silonay; that this land was a part of the property that their father, the deceased Rosendo, had inherited from his father; that the land in Anilao as well as the land situated in Batino had belonged to their parents; that these properties fell to the deceased Rosendo in the extrajudicial partition made by his eldest brother, Francisco Alcala, of the property left by their deceased father Jose Alcala; and that other lands fell to the said Rosendo's brothers and jewelry to his sisters. However, the record does not show that any such partition or division of the property which the common predecessor in interest, Jose Alcala, left at death was actually made for, aside from the fact that it was denied by the plaintiffs, the proceedings disclose no evidence whatever in support of the allegation.

Extrajudicial partition of a decedent's estate may not be taken for granted for, although the law in force prior to the enactment of the Code of Civil Procedure authorized the verbal partition of an inheritance (*Pisarrillo vs. Ladia*, 10 Phil. Rep., 58, and *Madamba vs. Magno*, 10 Phil. Rep., 86), it nevertheless required that the operation of the division should be proven by some of the means recognized by law.

The evidence on the whole does not show that the said Jose Alcala left any other property than that concerned in this suit. There is therefore nothing to support the defendants' allegations that the lands in litigation fell to Rosendo Alcala, that other lands went to his other brothers, and the jewelry to his sisters. The evidence does not afford satisfactory proof that the alleged partition of the property was made in accordance with the law and the principles of justice. On the contrary, from the record the logical inference to be drawn is that the property here in litigation, derived from the estate of Jose Alcala, belonged pro indiviso to the plaintiffs and the defendants in the manner and the proportion specified by law for each heir (arts. 926, 927, 932 to 934, Civ. Code). For this reason, as there is no obligation to maintain it undivided the plaintiffs' petition should be granted for they have incontrovertible rights to the legal portions which correspond to them.

The record discloses that immediately after the death of Jose Alcala all the real properties he had owned passed to the charge of Rosendo Alcala (the defendants' father) who, because of being better educated than his brother and sisters, was expressly intrusted by them with the administration and care of the said lands and who also, on account of this circumstance of superior education and, besides, on account of being an employee of the Government, was requested by his brother and sisters, his coheirs, to bring possessory information proceedings to secure title to the lands left at the death of their common predecessor in interest, and to bring the same in behalf and in the names of all of the latter's heirs. Accordingly Rosendo Alcala brought the proper information proceedings for the three parcels or tracts of land situated in the barrio of Silonay of the pueblo of Calapan; after due legal course the "information" was approved on January 18, 1895, and afterwards entered in the property registry on April 8 of the same year. (Exhibit 1.)

But afterwards it was discovered that Rosendo Alcala had brought the said possessory information proceedings exclusively in his own name, without mention of his brother and sisters, his coowners in the land designated in the said information, and had set forth that he had acquired the said land through inheritance from his deceased parents, Jose Alcala and Marta Adcoa. If this be true, defendants have not explained how it came about that their father's brother and sisters failed to inherit any land and how it was that the whole of it came into the possession of their predecessor in interest Rosendo.

The judicial declaration contained in the said information issued to the defendants' father was made in accordance with the provisions of article 392 of the Mortgage Law which provides that, upon approval of the proceedings, the order decreeing inscription thereof in the registry shall be executed without prejudice to a third person having a

better title. Therefore, although the information proceedings were commenced and prosecuted solely by Rosendo Alcala, their result and approval did not prejudice his coheirs in so far as regards their unquestionable rights in the lands, the subject matter of the possessory information.

The silence and the conduct of Francisco and Nazaria Alcala, Rosendo's brother and sister, confirm the fact of the agreement made among the children of the deceased Jose Alcala to the effect that Rosendo, the cleverest, should undertake, as he did, to bring possessory information proceedings in order to obtain title to the properties that formed a part of their deceased father's estate which was and is pro indiviso and administered by Rosendo himself. Francisco and Nazaria had no intention of preventing their brother Rosendo from carrying out his part of the agreement to endeavor to obtain the said information title; and although they did not then foresee that Rosendo's children would lay claim to all the property that had belonged to their deceased grandfather, to the exclusion of the latter's other heirs, they are not on this account estopped.

The record does not disclose the existence of any circumstance whatever to prevent Nazaria Alcala from testifying in this case, neither is Francisco Alcala estopped, as the appellant alleges he is.

Francisco Alcala was summoned to appear in the said possessory information proceedings as an adjacent boundary owner of the lands therein concerned, but could not have wished to oppose the steps taken by his brother Rosendo, comprehending that the latter was complying with the agreement made among the brothers and sisters for the purpose of obtaining title to the lands they jointly owned. It is to be noted that Francisco Alcala was summoned to testify in these possessory proceedings because he held land of his own, not inherited from his father, adjoining the lands held in common by these brothers and sisters. These acts therefore are perfectly compatible, one with another, and cannot under any consideration estop Francisco Alcala.

The appellants allege that the plaintiffs have no right to ask for the annulment of the possessory information title (Exhibit 1) since it is vested with the character of a public document, obtained lawfully and approved after proper legal proceedings. It has been said that a possessory information title is only prima facie evidence and in the case of *Geraldo vs. Arpon* (22 Phil. Rep., 407) it was held that "a duly registered possessory information in the name of the plaintiff is not conclusive either as to possession or ownership." Now, the approval of the possessory information proceedings (Exhibit 1) obtained by Rosendo Alcala was given in accordance with article 392 of the Mortgage Law (leaving, unimpaired the rights of third persons whose knowledge of the said proceedings might or might not have been had) which provides that the approval and registration of the possessory information shall not prejudice third persons who, in matters governed by the mortgage laws, are all persons who have not intervened in the contract, assignment or adjudication of any real right. (*Lopez vs. Alvarez*, 9 Phil. Rep., 28.)

So that even the brother and sisters themselves, the coowners of the properties referred to in Exhibit 1, are third persons with respect to the possessory information proceedings wherein they do not appear as interested parties and the issue of title to Rosendo Alcala alone should not and does not prejudice his brother and sisters, heirs pro indiviso of the lands in Silonay, just because the successors in interest of Rosendo Alcala now deny their coheirs' lawful rights and the undivided ownership in common of the hereditary property.

Unlike the decree ordering issue of a Torrens title (which, by mandate of law and by means of the procedure and other guarantees of the rights of any third person who might be prejudiced, is final and conclusive as to all the world) the title obtained by means of a possessory information is, as its name indicates, no more than one of mere possession under title of ownership, the basis of property rights, and this possessory title is not converted into a property title until twenty years after its inscription in the registry and until certain legal requisites have been complied with; and even so, under the new system of legislation in force in this country, this title, within the period fixed by law, is still not conclusive nor exempt from attack on the ground of fraud in the manner of

obtaining it.

The various exceptions made by the defendants rest principally upon the said title to the possession obtained by means of the information proceedings prosecuted by Rosendo Alcala in the Court of First Instance of Mindoro, approved by the order of January 18, 1895, and inscribed in the property registry on April 3 of the same year (Exhibit 1).

In this information it appears that the petitioner Rosendo Alcala declared that the three parcels of land, the possession of which he proved by the said information, were acquired by inheritance from his deceased parents. This declaration was in conformity with the provision of paragraph 3 of article 391 of the Mortgage Law. The interested party stated in his petition that he had no inscribed title susceptible of registration by which he might prove his ownership in fee simple over the said parcels of land and, although he requested that the public prosecutor and the owners of the adjacent lands be cited, he nevertheless made no mention of the other coowners of the lands applied for. These persons were entitled to be notified in accordance with the provisions of article 390 of the said Mortgage Law, for rule 5 of the aforementioned article 391 prescribes that in the event that a part owner of the property is absent, he must be cited by the court of the place of his residence by means of an official communication (*officio o exhorto*) or, if his whereabouts are unknown, by means of edicts published in the local newspapers. As is seen, Rosendo Alcala was very careful not to disclose the names of his coheirs and the coowners of the lands concerned in the information proceedings brought by him.

It is to be noted that the order approving the possessory information proceedings contains the indispensable clause of "without prejudice to a third person having a better claim," in conformity with the provisions of the said article 392. For this reason the entry of possession will not prejudice any person who has a better right to the property in the land, pursuant to the last paragraph but one of article 394 of the Mortgage Law, even though his title is not recorded, unless prescription should have validated and insured the inscribed right. This condition did not exist in the case of the defendants or their predecessor in interest, since article 1965 of the Civil Code prescribes:

"Among coheirs, coowners, or proprietors of adjacent estates, the action to demand the division of the inheritance, of the thing held in common, or the survey of the adjacent properties, does not prescribe."

No matter how long the period that elapsed during which the defendants and their father Rosendo Alcala held possession of the property, their possession is not validated by long prescription because the lands held are hereditary property, as the defendants themselves and their predecessor in interest so recognized, and because the former now hold possession in the names of their lawful coheirs. Therefore the action for the partition among the heirs of Jose Alcala could not have prescribed.

The rights of inheritance pertaining to these latter in the property left by the common predecessor in interest at his death cannot be annulled by the bad faith and assurance of one of his coheirs who, abusing the confidence of his brother and sisters, arranged to secure all or the greater part of the property to the exclusion of the other coowners in the inheritance.

It is incontrovertible that the plaintiffs have a better right to four-fifths of the estate which Jose Alcala left at death than the defendant children of Rosendo, who apparently have only a legal title which contains a radical defect that completely annuls same with respect to the four-fifths of the usurped property, as fully proven by the record in the present case.

There is no positive law which protects bad faith, nor is it just that the usurpation of hereditary property, to the prejudice of its lawful owners, should receive any support notwithstanding that its detainers show a title that is apparently legal. The malicious procedure of the deceased Rosendo Alcala, the defendants' father, consisted in that, after the termination of the possessory information proceedings and their inscription in the property registry,

he kept silent, retained and concealed the copy of the record of the said proceedings without informing his coheirs of its contents and effects, and restricted himself to sharing from time to time the proceeds of the lands with his brother and sisters (his coheirs) just as his children, the defendants, continued to do after his death, until the year 1906. Then they came to believe that they were no longer obliged to share with their coheirs, became inspired with the desire of retaining all of the income and, with the unlawful and unjust design of excluding their coheirs from their shares, refused to continue to make such distribution, claiming that they were the sole owners of the lands in litigation together with the fruits thereof. For these reasons the plaintiffs were obliged to file the complaint that originated this suit.

Rosendo Alcala's right to dispose of the hereditary property he administered and held in the name of his brother and three sisters was limited to one-fifth of the said property to be determined by a partition of the estate.

Article 399 of the Civil Code prescribes:

"Every coowner shall have full ownership of his part and in the fruits and benefits derived therefrom, and he therefore may alienate, assign, or mortgage it, and even substitute another person in its enjoyment, unless personal rights are in question. But the effect of the alienation or mortgage, with regard to the coowners, shall be limited to the share which may be awarded him in the division on the dissolution of the community."

In order to offset the rights alleged by the plaintiffs, the defendants allege that the estate left by the death of their predecessor in interest, the original owner of the land in litigation, was partitioned; that the land referred to in the possessory information title recorded in the property registry was the property allotted to Rosendo Alcala, son of the first predecessor in interest, father of the defendants; that although they claimed that the land in litigation came to them as an inheritance from their said grandfather, they were unable to show how and when the alleged partition was effected; that it is only by a legal partition of the hereditary property that each heir obtains the exclusive ownership of the property adjudicated to him; and that such partition must be duly proven in order to show that a given portion of the inherited property has ceased to retain its *pro indiviso* character. (*Aliasas vs. Alcantara*, 16 Phil. Rep., 489.)

Were it true that the property left by the death of Jose Alcala has already been divided among his children, then no explanation has been offered why the defendants, the holders of the lands in litigation, recognized the plaintiffs' right of coownership by annually delivering to the latter their respective shares in the income derived from the lands they administered, up to the year 1906; why they then ceased to make such distribution of the proceeds and refused to recognize the plaintiffs' right—a right recognized by defendants' father up to the date of his death, and by the defendants themselves up to the said year 1906.

Furthermore, after Rosendo Alcala's death, his son Bartolome, one of the defendants, sold by and for himself the land situated in Batino and, after having deducted the amount of the taxes and the mortgage debt, divided the remainder of the selling price among his coheirs, including the plaintiffs, thus recognizing the latter's rights in the lands in litigation, notwithstanding that in the possessory information title to these properties the defendants' father, Rosendo Alcala, alone appears as their owner. The fact that the sale price was divided among all the interested plaintiffs and defendants is affirmed by a witness to the transaction, Baltazar del Rosario, clerk of the court of Mindoro, in an affidavit presented by him during the trial.

The action to secure partition of the inheritance presupposes that both the plaintiffs and the defendants are coowners and that the property sought to be divided is *pro indiviso*. Therefore, the material possession enjoyed by one of the coheirs of a real property owned in common with other coheirs, does not create any right in favor of the possessor, nor does it give him any by prescription, through the *pro indiviso* nature of the property, inasmuch as said possession is always understood to be held by himself and in the names of his coheirs.

For the purpose of preventing serious damage to the interests of the coheirs, nothing could be more lawful and just than to order the correction of said possessory information title and the entry of the same, by noting in the margin of the inscribed title the order of the court to that effect and the result of the partition to be made of the property in question, in compliance with the said order, thus recording the actual facts that occurred and giving to each heir his lawful share of the property that existed at the time of the death of their common predecessor in interest, Jose Alcala, the land that was situated in Batino being excluded.

The probatory force of the possessory information title (Exhibit 1) as prima facie proof in favor of the person who obtained same, now invoked by his heirs, is positively and conclusively negated, not only by the result of the stipulated agreement between the parties but also by other evidence of record. The defendants admit that the property in question was a part of the estate left by the common predecessor in interest, Jose Alcala; and, in order to prove how and why they come to hold the said property to the detriment and prejudice of the rights and interests of the plaintiffs, and how it comes about that the name of the defendants' father, Rosendo Alcala, appears in the information title as the sole owner of the said lands, they allege that the lands in litigation fell to the said Rosendo Alcala in the distribution of the estate of the deceased Jose Alcala, although they could not prove that that distribution was actually made. The plaintiffs' right in the disputed property is therefore incontrovertible and it has been fully proven that Rosendo Alcala obtained the said information title by means of deceit, with the intent fraudulently to deprive his coheirs of the hereditary property that belonged to them, and to keep all himself. The validity and force, then, of Exhibit 1 have been offset by the irrefutable proof, taken as a whole, furnished by the record, in so far as concerns the four-fifths of the said property.

Upon the foregoing premise, as the correction of the said possessory information title was requested by the plaintiffs who unquestionably have a better right than the defendants to four-fifths of the property in question, there is no reason or legal ground to justify the taking from and dispossession of plaintiffs in their respective lawful shares in the estate left by the ancestor and common predecessor in interest, Jose Alcala.

So far we have dealt with the lands inherited by the children of the deceased Jose Alcala, the subject matter of case No. 174 of the court of Mindoro, heard in junction with case No. 175 of the same court, both of which cases have been brought before this Supreme Court by appeals from the judgment of December 31, 1914, rendered in the said cases. We shall now consider the second case, No. 175, and also the errors assigned to the said judgment on the appeal raised by the defendants.

Notwithstanding that Vicente Jurado and his wife Nazaria Alcala allege that they were in possession of the tract of land situated in Silonay for more than forty-five years previous to 1909, yet the record discloses that in 1895 Rosendo Alcala, with the consent of the plaintiffs, included the said tract of land in the possessory information initiated by himself in the Court of First Instance of Mindoro, for the purpose of obtaining title to several parcels of land, the subject matter of case No. 174; that said information was entered in the property registry in April of the same year, 1895; and that as the record of case No. 175 does not show that Vicente Jurado was in possession of any parcel of land that formed part of a larger tract designated in the said information proceedings, brought with Jurado's knowledge by Rosendo Alcala, it is to be presumed, and is so held from that information, that all the land which, according to the document Exhibit 4 (written in the dialect of the province and followed by its translation) belonged to the brothers Vicente, Donato and Nicomedes, all surnamed Jurado, and which was designated in the said possessory information proceedings brought by Rosendo Alcala, was sold in its entirety (as set forth in the said document Exhibit 4) to Ceferino Abao and his wife Eusebia Acero for the price of P100. If the claim made by Vicente Jurado is true, namely, that he had not sold the parcel of land belonging to him, and that this parcel continues to be included in the tract of land covered by the said possessory information title held by the heirs of Rosendo Alcala, then the possession that these latter have enjoyed dates at least from April, 1895, about

nineteen years before the filing of the complaint in June, 1914.

In spite of plaintiff Vicente Jurado's denial of having been a party in the deed of sale Exhibit 4, the contract contained in the said document appears to be maintained by the purchaser Ceferino Abao and even in part by Nicomedes Jurado (Vicente's brother) who nevertheless corroborated Vicente's statement of not having taken any part in the said sale; and withal the record does not furnish conclusive proof that the contents of the said document are not true, seeing that the three vendors did not know how to write or to sign and were obliged to place a cross beside their names, written by another person, at the bottom of the said deed of sale.

If it be true, as Vicente Jurado says, that the parcel of land belonging to him was not sold, as were the parcels belonging to his brothers Donato and Nicomedes, still there is lacking positive proof of the area of the land which jointly and pro indiviso belonged to the three brothers Nicomedes, Donato, and the plaintiff, furthermore of the actual partition of the said property among them, and, finally, of the area of the land of such a partition, allotted to the plaintiff. Though in his complaint plaintiff claims a parcel containing 12½ hectares, during the trial he did not prove himself the owner, nor did he specifically identify a parcel of land of that size.

Even though we disregard the allegation that the action for the recovery of possession filed by the plaintiff Vicente Jurado and his wife has prescribed, and that a certain part of the land belonging to him was not included in the said deed of sale, Exhibit 4 (notwithstanding that it so appears therein), nevertheless plaintiff's action cannot prosper because the land that is the subject matter of his claim is not identified. (*Salacup vs. Rambac*, 17 Phil. Rep., 21, and *Belen vs. Belen*, 13 Phil. Rep., 202.)

The plaintiff Vicente Jurado may be the owner of a piece of land now in the possession of the defendants, but he has not established the location and area of the land he claims and, therefore, he has not duly identified the property in accordance with law and established jurisprudence.

For the foregoing reasons, whereby several of the errors assigned by the appellants to the judgment appealed from have been refuted, the said judgment should be affirmed in respect to the lands claimed by the plaintiffs, the successors of the deceased Jose Alcala and the coowners of four-fifths of the property left by him, as set forth and held in that judgment in subparagraph (a), and the registrar of property of Mindoro should be ordered to make the correction and notation mentioned in the subparagraph (c), except in the last part thereof relative to the nine cavanases of land belonging to the brothers Vicente, Nicomedes, and Donato Jurado.

This part of the judgment is reversed, as is also subparagraph (b), and the defendants are absolved from the complaint filed by the plaintiffs Vicente Jurado and Nazaria Alcala, thus affirming the judgment of the court below in so far as it agrees with this decision and reversing it in so far as it does not. Appellants shall pay one-half of the costs of both instances and no special finding is made with regard to the other half thereof. So ordered.

Johnson, Carson, Trent, and Araullo, JJ., concur.

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