

MGR. JEREMIAS J. HARTY, PLAINTIFF AND APPELLEE, VS. CIPRIANO MACABUHAY ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 11209. January 20, 1919*

Ponente: STREET, J.

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This action was originally instituted upon October 10, 1906, by Mgr. Jeremias J. Harty, in his capacity as Metropolitan Archbishop of Manila, to recover a parcel of real property located in the barrio of Maningning, in the municipality of Taytay, Province of Rizal. It is alleged in the complaint that the property in question pertains to the parish church of Taytay and that said parish is, and from time immemorial has been, the owner thereof in complete and absolute dominion. The defendants are persons who at the time of the institution of the action were alleged to be in possession of various parts thereof, retaining possession without the consent of the owner. Two of the defendants named in the complaint, to-wit, Gabriel Gosum and Cipriano Macabuhay, are dead, and as against these the action may be considered as abandoned, their representatives not having been brought into the proceedings. Another, Angel Macabuhay, has never had possession of any part of the premises in question. All of the other defendants have answered, asserting rights in such parts of the property as are respectively claimed by them. Some of these claim as owners in absolute dominion, others as holding rights acquired by them from the municipality of Taytay.

In the period of more than ten years during which the litigation has been pending, the cause has been twice tried on its merits in the Court of First Instance of the Province of Rizal, first, before Honorable H. D. Gale, who upon October 6, 1911, rendered judgment in favor of the plaintiff; and secondly, before Honorable Alberto Barretto, who upon June 30, 1914, after a careful rehearing, again rendered judgment in favor of the plaintiff. From this judgment the defendants appealed.

Upon February 4, 1918, this court entered judgment, affirming the decision of the trial court; whereupon the defendants, being appellants in this court, under date of February 16, 1918, asked for a rehearing but in effect adduced no reasons for a reversal of the judgment other than such as had already been considered by this court. We were, however, constrained at this juncture, in the interest of justice, to look into the whole case anew; and a careful examination of the pleadings and proof, revealed to us the fact that, as regards several of the defendants, at least the case rested on an error of capital importance, which had been innocently shared by both parties to this protracted litigation during the period of eleven years. The error in question was derived from the fact that both the parties had erroneously assumed that the possessory information upon which the plaintiff relied as evidence of his title covered all of the land which was the subject of the action. It was so alleged in the complaint filed January 14, 1907, and in paragraph 4 of the answer interposed in behalf of the defendants, it was admitted that all of the various parcels of land mentioned in the complaint formed a part of the land included in the possessory information. Upon this theory the litigation had been conducted throughout; and of course in this view the only issue for determination was whether the possessory information upon which the plaintiff relied was valid and was sufficient, in connection with the proof submitted on the point of possession, to prove ownership in the plaintiff.

We note, in this connection, as was stated in our opinion of February 4, 1918, that the situation was not such as to enable the defendants successfully to assert a prescriptive title based on adverse possession.

The contention of the defendants throughout has been that the possessory information in question was procured to be inscribed by undue influence and false testimony and that the church of Taytay was not in fact in possession of the land covered by said possessory information at the time it was drawn up and recorded. This issue of fact has been resolved against the defendants by both the Court of First Instance and this court.

Concerning this document, which constitutes the main foundation of the plaintiff's case, the following brief statement is here pertinent: For a long period antedating the year 1896, the parish of Taytay had been in possession of the property included in the possessory information, having acquired it by Virtue of a donation made by Dona Maria Maningning. Upon May 15, 1896, Father Aniceto Aris, as administrator of the property of the church, made application for the inscription of this parcel of land in conformity with the provisions of articles 390 and 3.91 of the Mortgage Law. Pursuant to this application, a possessory information was duly drawn up and recorded (July 17, 1896), in favor of said church, covering the property in question. In this document it is recited that the church acquired this property by donation from Maria Maningning more than one hundred and fifty years before and that during this time the church had enjoyed quiet and peaceful possession without interruption of any sort.

Owing to the revolution which occurred in the year 1896 the parish of Taytay lost possession of said property, since which time the defendants have acquired possession of the portions of the property respectively held by them, and at the date of the institution of this action still held such possession as already stated.

With the foregoing preliminaries, we proceed to deal with the case as it presented itself to this court when the application to rehear, dated February 16, 1918, was under consideration ; and in this connection it will be convenient here to incorporate the greater part of the opinion filed by us on November 7, 1918, in disposing of said application:

"The decision," said the court, "must chiefly turn upon the probative value to be attributed to the possessory information which was recorded July 16, 1896, at the instance of father Aniceto Aris in the name of the parish church of Taytay, then of the district of Morong. No other document of title is adduced in evidence by the plaintiff and there is no oral testimony showing possession and acts of ownership on the part of the church such as would at all justify a judgment in favor of the church without the assistance of the possessory information.

"The first question—and it is not an easy one to answer— is, to what land does the possessory information refer in describing the lot therein designated as 'parcel 2,' this being the parcel with which the present action is concerned?

"The description of said parcel in the possessory information is as follows:

" 'A parcel of real property situated in the barrio of Maningning, in the municipality of Taytay, Province of Rizal, P. I., with an area of 13 hectares, 41 ares and 21 centiares, bounded on the north by the Maningning estuary (estero); on the east, by the land of Alejandro Rayos del Sol and by the lands of Mateo Crisostomo and Rufino Gonzaga; on the south, by the lands of Bartolome Javier and Pedro de Leon; and on the west, by the lands of Silverio Mendoza by his wife Eustaquia Constantino, Antonio de la Paz, Matias Andres and Adaucto Ocampo

"This description is transcribed bodily into paragraph IV of the plaintiff's amended complaint (filed January 14, 1907).

"When the cause was first heard and decided by judge Gale on October 6, 1911—as it now appears upon an

inadequate presentation of the case—he gave judgment declaring that the parish church of Taytay is owner and possessor of the land in question and condemned the defendants to restore possession of the plaintiff. In the judgment the land was described in the same terms as in paragraph IV of the amended complaint. This judgment seems to have appeared unsatisfactory and inadequate even from the plaintiff's point of view, for we find the plaintiff presently joining with the defendant in the request that the court should set aside the judgment and open the cause for a rehearing and that the plaintiff should be permitted to present & plan of the land, in conformity with an order which had previously been made by the court (Record; p. 79.)

"The necessity for this step doubtless arose from the fact that the land could not be identified from the description contained in the complaint and in the judgment, a circumstance doubtless in part due to the changes in the names of the adjoining owners and possibly in part to inaccuracies in the description when the possessory information was originally drawn up.

"The plaintiff accordingly at the subsequent hearing presented in evidence a plan of the property in question, as surveyed by a qualified surveyor, and approved October 24, 1911, by the Director of Lands. This plan has been used in the case in the interrogation of the witnesses; and without it no court could possibly form any idea of the location of the property or the extent of the holdings of the several defendants.

"The plan exhibits the land claimed by the plaintiff in three separate parcels. The parcel at the north, numbered 3 in the plan, consists of a narrow strip lying between a stream, noted in the plan under the name of Sapang Tvlay na tabla, and the Cainta road, running nearly east and west. This lot has an area of about three fourths of one hectare. Though none of the defendants claim to be in possession of this strip, it apparently originally formed a part of the property included in the possessory information and is covered by the description in the plaintiff's complaint, as amended. To all intents and purposes it may be considered a part of the lot, numbered 1, lying immediately south of the Cainta road. The latter lot has an area of over 11 hectares; and within it are located the parcels respectively claimed by the defendants, Sotero de la Cruz, Leopoldo Araullo, Joaquin Esguerra, Miguel Esguerra and Leoncio de la Rosa (or Mercado). The area of this lot is put down in the plan at 11 hectares and a fraction. Lot 2 in the plan is situated still further south and is separated from lot 1 by a parcel of several hectares accredited to Bartolome" Javier. This lot 2 is surveyed at about 9½ hectares.

"When the cause was heard before Judge Alberto Barretto on March 18, 1913, the plaintiff, with the permission of the court, amended paragraph IV of his complaint, so as to read as follows:

" 'A parcel of real property situated in the barrio of Maningning, in the municipality of Taytay, Province of Rizal, P. I., with an area of about 20 hectares, bounded on the north formerly and at present by the Maningning estuary (estero) ; on the east, formerly by the lands of Alejandro Rayos, Mateo Crisostomo, Rufino Gonzaga and the Maningning estuary, and now by the lands of Prudencio Naval, Sotero Cruz, Domingo Rosario, Juan Gonzaga, Mateo Crisostomo, the Maningning estuary, Agaton Zapanta, Hilario de la Cruz and Rufino Gonzaga; on the south, formerly by the lands of Bartolome Javier and Pedro de Leon, and now by the lands of Juan Atanacio, Teodoro Javier and Faustino de Leon; on the west, formerly by the lands of Silvino Mendoza, Antonio de la Paz, Matias Andres and Adaucto Ocampo, and now by the lands of Manuel Manalo, Antonio Cruz, Manuel Lacson, Miguel Esguerra and Adaucto Ocampo.'

"The description is evidently based chiefly, if not entirely, on the plan above-mentioned. But it will be observed that the area claimed is expanded from the thirteen hectares of the original information to twenty hectares. In trying the case in the lower court, the plaintiff introduced testimony tending to show that the church owned the intervening parcel which is credited in the plan to Bartolome Javier, and the trial seems to have been conducted throughout on the erroneous assumption that the possessory information covered not only everything in the three lots as planned but also the Javier property. It is evident that this conception of the case entertained probably by the parties as well as the trial court, is infected with error. We think the explanation is that the possessory information does not really include all of the land which the complaint supposes.

"We are convinced, after a careful examination of the record, that the possessory information should be understood to include at the most only the property indicated in lots 1 and 3 of the plan. This conclusion rests, first, upon the approximate equality of the areas claimed in the possessory information (13 hectares) and that shown in the plan as covered by those lots (approximately 12 hectares) and, secondly, upon the proof adduced showing that the Javier heirs have long occupied property in the place shown on the plan as owned by Bartolome Javier."

We here insert a sketch of lot No. 1, which, together with lot No. 3, comprises the land held to be included in the plaintiff's possessory information. Lot No. 3 is a narrow strip lying across the road and north of lot No. 1, Lot No. 2 lies to the south and is separated from lot No. 1 by a parcel of land ascribed in the plan to Bartolome Javier and now claimed by his heirs. (See image on Vol. 39 page 502 Phil. Reports)

"Our conclusion as to the extent of the property covered by the possessory information is strongly corroborated by the circumstance that none of the defendants whose holdings lie within the boundaries of lot 1 in the plan claim to hold as owners in full and absolute dominion. Thus Leoncio de la Rosa (Mercado), Leopoldo Araullo, Miguel Esguerra, Joaquin Esguerra and Sotero de la Cruz all say that they are in possession and holding merely as mortgagees under the municipality. On the other hand, all of the defendants who claimed full and absolute dominion are in possession of parcels lying wholly beyond the limits of said lot 1. -This is true of the defendants Alejandro Ramos, Luis Javier, Francisco de la Cruz, and Lucia Esguerra (with Adaucto Ocampo). With regard to the two last mentioned it is evident that the property described by them in the last subdivision of paragraph 3 of the answer lies to the northwest of lot 1, and wholly beyond the limits of said lot. (See the plan;)

"We have been forced to the conclusion that the possessory information approximately covers only lots 1 and 3 of the plan after a careful study of the testimony of record; and it is needless to say that the case has been a source of great perplexity to this court, as it evidently was to the Court of First Instance. We are aware that a certain doubt arises from the fact that according to both the description in the possessory information and that contained in the complaint as finally amended, Rufino Gonzaga is placed to the east of the property which the plaintiff claims; and this would seem to indicate that the possessory information might in fact have covered land as far south as the lower boundary of lot 2. But we think this inference is sufficiently refuted by other circumstances.

"We will add that in our opinion whatever title the Church may be supposed to have had to lot 2 in the plan is based on no better right than a vague and ill-defined claim derived from tradition, coupled with the parochial custom to which reference will be presently made. These elements doubtless supplied the basis on which the possessory information was originally procured, and we now discover the same ideas, coupled with the uncertainty as to the true limits of the possessory information, appearing as a factor in this case, and operating to extend the supposed limits of the property claimed by the church. The confusion of course has its origin in the absence of exact information.

"We have not overlooked the circumstance that each of the defendants has admitted in the answer that he has possession of the certain parcel,;or parcels, therein described by him. An issue is thus made between the plaintiff and each of the respective defendants as to the right of possession to these parcels. It is also true that the defendants have all admitted in their answer that the parcels claimed by them are comprehended within the property described in paragraph IV of the complaint (Answer, paragraph 4). But this admission is clearly founded on error; and in order to prevent those defendants whose land lies beyond the boundaries of the possessory information from being deprived of their property by an innocent mistake in the statement of their defense, we deem it our duty to permit an amendment of their answer in the exercise of the power conferred in section 109 of the Code of Civil Procedure.

"In passing upon a case of this kind, one can not fail to be impressed with the danger to which the defendants are exposed by reason of the fact that the complaint is directed against so many parties, each of whom are

separately holding the various parcels which the plaintiff seeks to recover. In such a case it may easily happen that some of the defendants whose title are really good may be caught in the net spread for others whose titles are defective. The admission in paragraph IV of the defendants' answer, while perfectly true as to some of the defendants, is not true as to others; and their attorneys in making the admission apply to all made a mistake which was not unnatural in view of the vagueness of the description contained in the complaint and the age of the document upon which that description was based. The case is not one where the plaintiff has been misled to his prejudice in establishing his case, and the propriety of permitting the amendment under section 109 of the Code of Civil Procedure can not be doubted.

"With the answer amended in the manner above stated, we are prepared to hold that the property which is in possession of Silvino Alcantara, Francisco de laCruz, Luis Javier 2.^o, and Lucia Esguerra (with Aduacto Ocampo), not being included in the possessory information, can not be recovered in this action.

"Coming now to a consideration of the weight to be attributed to the possessory information with respect to the property actually covered by it, we observe that a possessory information, properly drawn up and ^{and} recorded, constitutes legal proof of the fact that the person named therein as possessor did in fact at the date of the instrument have possession under claim of ownership as therein stated. This proof is, however, presumptive only; and the adversary party is permitted to prove, if he can, by competent and sufficient proof that the person in whose favor the possessory information is recorded was not in possession of the property at the time the possessory information was drawn up. And if it be shown that he did not in fact have such possession at that date, the document is no longer of any value, considered as a muniment of title. Of course the paper even then may be of some probative force, as against the witnesses who signed it and their successors in interest, inasmuch as it contains their solemn statement recognizing the rights of the possessory claimant; and this statement is in the nature of an admission, which may or may not be binding according to the circumstances under which it was made and the conditions existing when it is called in question. But it is to be supposed that ordinarily the same proof which would destroy the document, considered as a muniment of title, would operate to relieve the parties affected by it from the consequences of the admission implied from their participation in its execution.

"While, as already stated, a possessory information may be impeached, it must not be forgotten that the presumption is in favor of the right evidenced by it. Such a document therefore can not be capriciously ignored; and where the evidence which tends to impeach it is uncertain or based upon the testimony of witnesses whose memory is vague the possessory information must prevail. This is especially true where a long period of time has elapsed since the instrument was executed or the parties who participated in it are dead.

"The possessory information in question recites that the Church acquired the property by donation from Dona Maria Maningning and that the Church's possession dates back for more than one hundred fifty years. A recital of this kind in a possessory information does not really constitute any evidence of the fact stated; and the most it can be said to prove is that the possessory claimant was in possession at the time the instrument was executed, claiming as owner and in the character of donee under one Doha, Maria Maningning.

"The evidence shows that there has been a long standing controversy in the municipality of Taytay over certain lands, of which those in question in this case are an illustration, in which the contending claimants are the Church on the one hand and the municipality on the other. It was insisted on behalf of the municipality that this property was community property, and that it was the function of the political side of the local government to administer it as secular community property. The custom was, in cases where the municipal or barrio authorities got such land under their control, to mortgage it without interest to some one who would pay an agreed sum. After the mortgaging of the property was once effected, the municipality was apparently not accustomed to redeem; and if a party in possession and mortgagee wished to dispose of his interest in the property, he did so merely by transferring the mortgage. Documentary evidence is produced by several of the defendants in this case showing that such transactions were not infrequent.

"The opposed claim of the church can only be understood from a brief statement relative to the stewards (mayordomos), whom the parishioners were accustomed to elect at intervals of three years. The witnesses state that as the time approached for the election of the mayordomos, the parish priest gave notice, and the persons who were entitled to participate in the election met in the house of one of the mayordomos whose term of service was ending. Here the election was made. It appears that a mayordomo could be elected to succeed himself; and in this way the terms of some were extended over a longer period than three years.

"The evidence shows that it was the customary duty of the mayordomos to take care of the images of the patron saints which pertain to the Church; and in order apparently to supply them with the means of maintaining the saints in proper style, or as compensation for their trouble and expense in connection therewith, they were allowed to occupy a portion of the church lands. The parish priest was charged with the administration of these lands, and it was his duty to put the mayordomo into possession of the portion which rightfully pertained to him. Sometimes the mayordomo probably let the property assigned to him to some renter under him, or he might allow a person already in possession to remain upon condition of paying a certain regular rental (canon). If the mayordomo himself took over the property, he was relieved of the obligation of paying anything, and was supposed to have the use of the land as compensation for his service. It is said that there were four major saints and four minor saints pertaining to this Church and that there were two mayordomos to each of the four barrios. If this is correct there should have been eight mayordomos of the four barrios holding office at the same time.

"The merit of the dispute between the ecclesiastical and secular authorities over the property in question, supposing either to have had any right, cannot be discovered from the record before us; and this aspect of the case must be dismissed merely by saying that neither party has established any title upon which a judgment could be based. This of course leaves out of consideration the possessory information acquired by the Church.

"The more salient facts relating to the different parcels held by the several defendants within the limits covered by the possessory information are these:

"Leoncio de la Rosa, otherwise called Leoncio Mercado. This defendant claims possession in the right of his wife, Placida, who is said to have inherited from her father Vicente de la Paz. Vicente died about 1906 and had then been in possession for several years. It is not shown that Vicente was in possession as far back as 1896.

"Miguel Esguerra.—This defendant claims' possession in the right of his wife, Romana Araullo, of the southern half of the parcel indicated in the plan as 'claimed by Joaquin and Miguel Esguerra.' Romana inherited from her parents, Regino Araullo and Maria de la Paz. Upon the evidence of record we are unable to find that Miguel was in fact in possession of the parcel occupied by him at the date when the possessory information was executed.

"Joaquin Esguerra.—This witness has possession of the strip just north of that held by Miguel Esguerra. He claims to have acquired possession from his father, Macario Esguerra, who died of cholera years ago. He produces a receipt which appears to show that the father got this land by redeeming a mortgage from Micaela del Valle, (fol. 182). We are not prepared to deny that the land described in this receipt may in fact be the same as the parcel now claimed by Joaquin Esguerra, but the matter is open to doubt; and we are unable to hold, upon the evidence of record, that the possessory information has been refuted as to the possession of this property in 1896.

"Leopoldo Araullo.—This defendant has possession of two parcels, but his right originated subsequently to 1896, by virtue of a mortgage authorized by the municipal authorities. We find nothing in the testimony relating to his claim which throws any light upon the question of possession in 1896.

"Sotero de la Cruz.—This defendant acquired by contract of pacto de retro in about 1902 from Martin de la Cruz and Juana Lacamiento. The document on page 8 of Exhibit 6 (fol. 196) must we think be accepted as showing that this title goes back to about 1875; and it would thus appear that the Church might not in fact have

had possession in 1896. The plaintiff's witness, Cuadrato de Leon, himself testifies that Sotero de la Cruz held in his own right even before the revolution. (Sten. Notes, p. 18.) This has been to us a source of some perplexity; but we find that Sotero, de la Cruz was cited as an adjoining proprietor in the possessory information, with reference to the parcels numbered 3 to 7 therein. Assuming that this person is the defendant of the same name, we think he should be held bound by that document.

"In this connection it should be borne in mind that each of the defendants above mentioned asserts in his answer that the land held by him is under the administration of the municipality; and it is said that each holds by virtue of a mortgage from the municipality. In other words they all admit that they are not owners in full and absolute dominion.

"Furthermore, the possibility cannot be wholly ignored that whatever controversy had existed prior to ,1896 over the right of the Church in this property may have been settled before the possessory information was procured. At any rate we would not feel justified in putting aside this document upon the proof adduced by the defendants in this. case.

"In view of our finding that the possessory information includes no more than lots 1 and 3 of the plan, it becomes unnecessary to discuss in detail the merits of the claims of those defendants whose property lies outside of these limits. It may be observed, however, that they make a better showing of title than those whose claims have been stated above.

"A few words must be added concerning the property held by Cipriano Macabuhay at the time the suit was commenced. This defendant is now dead and the property which he held is in the hands of his widow, Faustina San Juan. At the beginning of the trial which took place in March, 1913, the plaintiff called attention to the death of this defendant and the parties agreed that the name of Faustina Macabuhay (San Juan) might be substituted in the complaint for that of Cipriano Macabuhay. (Sten. Notes, p. 2.) When Judge Barretto came to write his decision, this circumstance seems to have been overlooked by him, and he ignored the complaint as against Faustina. From his action on this point no appeal was taken by the plaintiff, and the result is that this parcel is not involved in the controversy as it is presented in this court. It is important to note, however that the proof shows that the possession of this property by Cipriano Macabuhay and his predecessors in interest long antedated the year 1896, when the possessory information was drawn up. According to the witness Faustina, it had been acquired by Agapita Leon, wife of Candido Macabuhay, many years prior to that date by virtue of a contract of sale with pacto de retro. (Sten. Notes, p. 170.) It is true the witness Cuadrato de Leon says that Candido Macabuhay paid to the church a canon of P5 for each balita of this land (Sten. Notes, p. 5.); but on cross-examination the fact was revealed that about all this witness remembers is that the padre sent him on two or three occasions to call Candido to the convent where the padre wanted to see him, presumably about the matter. (Sten. Notes, p. 20.) We think that a preponderance of the evidence shows that Candido held and cultivated this land in the concept of the owner.

"It follows that the judgment heretofore entered in this court, affirming the decision of the court below, must be vacated; and this is accordingly hereby done. Upon the filing of this opinion the clerk of this court will supply the attorneys of the respective parties with a copy hereof, and the attorneys for the defendants are allowed twenty days from the date of notification within which they will be at liberty to amend, if they see fit, paragraph 4 of their answer in the manner hereinabove indicated. In case the answer should be amended, as herein contemplated, both parties will be at liberty within twenty days thereafter to submit to this court additional briefs discussing such feature of the case as they deem advisable.

"The final disposition of the case will abide the further action of this court."

Pursuant to the permission above granted, the defendants appeared in this court upon November 29, 1918, and amended paragraph 4 of their answer in the sense indicated. Neither party has, however, seen fit to interpose any additional brief questioning the view of the case which we have propounded; and in fact the representation of the

plaintiff, the Archbishop of Manila, has informally signified his acquiescence therein as being the proper solution of the case. It is, therefore, now declared:

That the plaintiff, the Roman Catholic Archbishop of the city of Manila, is the owner in full and complete dominion of the property indicated in the plan of record as contained in lot No. 1 and occupied by Leoncio Mercado, Leopoldo Araullo, Joaquin and Miguel Esguerra, and Sotero de la Cruz. As against the said Leoncio Mercado (or de la Cruz), Miguel Esguerra, Joaquin Esguerra, Leopoldo Araullo, and Sotero de la Cruz, the judgment appealed from is affirmed, with one tenth of the costs of this instance against each, and they are ordered to surrender possession of the land "held by them to the plaintiff. As against Silvino Alcantara, Alejandro Ramos, Francisco de la Cruz, Luis Javier 2.^o, and Lucia Esguerra (with her husband Adaucto Ocampo), the judgment is reserved, without any express adjudication of costs, and said defendant are hereby absolved from the complaint. The judgment against the municipality is affirmed in so far as relates to the property occupied by Leoncio Mercado (or De la Rosa), Miguel Esguerra, Joaquin Esguerra, Leopoldo Araullo and Sotero de la Cruz, and is reversed in so far as relates to the property held by the other defendants, without costs. So ordered.

Arellano, C.J., Torres, Johnson, Carson, Malcolm, and Avanceña, JJ., concur,

Araullo and Moir, JJ., did not take part.

Judgment affirmed in part and reversed in part.

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