

**NICASIO CABELLO ET AL., PLAINTIFFS AND APPELLEES, VS.
ENGRACIA CABELLO ET AL., DEFENDANTS. ENGRACIA CABELLO,
BUENAVENTURA CABANSAG, AND ARISTON CABELLO, APPELLANTS.**

G.R. No. 11300, December 20, 1917

Ponente: TORRES, J.

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TORRES, J.:

By a written complaint of April 16, 1913, subsequently twice amended, counsel for the brother and sisters, Nicasio, Juana and Petronila, all surnamed Cabello, filed suit in the Court of First Instance of Ilocos Sur, against their aunt Engracia Cabello, and alleged that they were grand-children of Pedro Cabello, who died intestate in 1860, leaving pro indiviso five parcels of land, described in paragraph 2 of the complaint; that, as such relatives of the said Pedro Cabello, they were his forced heirs in concurrence with their aunt, the defendant Engracia Cabello, a daughter of their grandfather, Pedro Cabello; that, after the latter's death, his children, among them the plaintiffs' father, continued in the possession of said parcels of land, but that upon the death of the brothers and sister of the defendant Engracia without leaving any lawful heir except one Lorenzo, who died intestate and was survived by the three children who are the herein plaintiffs, said defendant Engracia, in 1894, appropriated for herself all the lands constituting the hereditary estate of Pedro Cabello, under promise to deliver to the plaintiffs in money the equivalence of the products of the lands that belonged to them, which promise the defendant had not fulfilled up to the time of the filing of the complaint; that the lands in question yielded a net, annual income of P200; and that, notwithstanding the several demands made by the plaintiffs upon this defendant to deliver to them the total amount of their share of the net profits derived from said real estate, she had refused so to do, thereby causing them other damages estimated at P300. Said counsel therefore asked that judgment be rendered—(a) holding the plaintiffs to be entitled to one-half of the estate left by their grandfather, Pedro Cabello; (b) ordering said defendant to pay the plaintiffs the sum of P628, the total value of the uncollected share of the products which should belong to them; (c) ordering the partition of the property in litigation; and, (d), ordering the defendant also to pay the plaintiffs the sum of P300 for losses and damages caused them, and to pay the costs of the trial.

Engracia Cabello made a general and specific denial of all the allegations contained in the complaint, and in special defense alleged that the estate left by her father Pedro Cabello had already been partitioned among his heirs, more than 30 years ago; that the land described under the letter (c) in paragraph 2 of the complaint, belonged to her absolutely and exclusively and was then in her possession, as she had inherited it from her father; that, besides the said parcel of land (c) claimed by her, she had no interest in any of the other real estate described in the complaint; and that by the present complaint she had incurred losses and damages amounting to P150. She therefore requested to be absolved from the complaint, and that the plaintiffs be ordered to pay P150 for losses and damages, and also the costs.

On October 27, 1913, the case was heard. Three witnesses testified for the plaintiff. The defendant Engracia Cabello was a witness in her own behalf. Both litigating parties were represented by their respective counsels. The

plaintiffs introduced evidence to prove that they were the children and sole heirs of Lorenzo Cabello; that the latter was the son of Pedro Cabello whose other children were Simon Cabello, Regina Cabello, and the defendant Engracia Cabello; that Lorenzo died first, then Regina, and afterwards, about the month of August, 1912, Simon, all of whom, except Lorenzo, died intestate and without any forced heir; that the plaintiffs, are Lorenzo's heirs; and that the defendant Engracia Cabello, the plaintiffs' aunt of full blood, is the only surviving daughter of Pedro Cabello.

From the evidence adduced by the plaintiffs it was also shown that said Pedro Cabello died intestate, leaving to his children four undivided parcels of land which had an annual yield of 5 uyonas of rice and were held pro indiviso by these children, who divided their products among themselves; that in 1894 the defendant Engracia stipulated with the plaintiffs that she would take possession of the lands which might pertain to them but that such possession was conditional on her making delivery to them annually of the equivalence in cash of the plaintiffs' share of the crop, which condition the defendant Engracia did not fulfil, but, instead, kept for herself all the property derived from Pedro Cabello from the time of the death of the last of his children, Simon Cabello, who died in 1912.

The defendant Engracia Cabello testified that the land in Orense, pueblo of Narvacan, specified under letter (a) in the complaint, was then held by the plaintiffs themselves; that the lot with the house standing on it, in the same barrio of Orense, Narvacan, designated in the complaint by the letters (b) and (c), belonged to her brother Simon Cabello, who, while still living, had conveyed it to Buenaventura Cabansag, as a gift; that the sementera or rice field in the barrio of Dasay of the same pueblo of Narvacan—land mentioned under letter (d) of the complaint—also belonged to Simon Cabello, who likewise conveyed it to Josefa Cabral, as a gift, and that the latter was then in possession thereof; and that the land described in the complaint, under letter (e) was in her possession, for the reason that it was allotted to her in the extra-judicial distribution made of the property of the estate left by her father, Pedro Cabello (record, pp. 22-23). It is to be noted, however, that, as the predecessor in interest Pedro Cabello left only four parcels of land, one of them would correspond to each of his four children; but the defendant Engracia testified that the lands designated in the complaint by the letters (b) and (d) and which are those donated to Buenaventura Cabansag and Josefa Cabral, respectively, were inherited by her brother Simon from his father Pedro Cabello. This explanation on the derivation of the title to the lands now held by said donees is not very satisfactory.

In view of the evidence produced at the trial and of the fact that two of the disputed parcels of land were in the possession of other persons, the court, by an order of October 27, 1913, directed the plaintiffs to amend their complaint by including therein as defendants Buenaventura Cabansag and Josefa Cabral. The plaintiffs therefore filed a new complaint in which said Josefa Cabral and Buenaventura Cabansag, together with the latter's husband, Ariston Cabello, appeared as defendants.

The defendant Josefa Cabral, in answer to the amended complaint, alleged that she had no interest whatever in any of the real properties in question, also that she had acquired no land at all from the deceased Simon Cabello. The other defendants, Engracia Cabello, and the spouses Ariston Cabello and Buenaventura Cabansag, filed a general denial of all the allegations of the amended complaint, and in special defense alleged that they were unacquainted with the lands claimed in the complaint, but that if the plaintiffs referred to, and claimed (a) the sementera situated in the barrio of Maruzo, (b) the sementera in the barrio of San Pablo, (c) the vegetable garden located in the barrio of Orense, (d) the lot situated in the same barrio, and (e) the house built on said lot, all within the district of the town of Narvacan, Ilocos Sur, then they would allege that said properties all belong exclusively to Buenaventura Cabansag by reason of her having acquired them by gift from Simon Cabello y Cabanit, who inherited them from his father Pedro Cabello, with the exception of the lot and house designated by the letters (d)

and (e), which exclusively belonged to her; that said properties had been the subject of an extra-judicial partition made among the heirs of said Pedro Cabello more than 30 years ago, by virtue of which partition Lorenzo Cabello, plaintiffs' father, received as his hereditary share four parcels of land (more specifically described in paragraph 5 of said written answer) ; that the first and second of said parcels were held by the plaintiffs, and the third and fourth parcels, by Fetrnilo Cabebe and Isidora Viloría, respectively, as having acquired them by purchase from their former owner, Lorenzo Cabello, plaintiffs' predecessor in interest, a long time prior to his death. The defendants, therefore, asked that they be absolved from the complaint, with the costs against the plaintiffs.

Upon a rehearing of the case, notice having been given and appearance made by counsel for both parties, two witnesses for the plaintiffs testified that the lot and house described in the complaint under the letters (b) and (c) belonged to the undistributed estate left by Pedro Cabello, said house and lot having been occupied by the latter's son, Simon Cabello, although the house was kept in repair by the children of Pedro Cabello, which latter, now deceased, occupied while living the house erected on said lot and this property still remained undivided among the heirs of Pedro Cabello. After the cross-examination of these witnesses by counsel for the defendants and the determination of the introduction of evidence by the plaintiffs, said counsel, in representation of the aforesaid defendants, waived his right to present evidence in support of the allegations contained in his answer.

On December 8, 1913, the court rendered judgment in which he held that the estate left by Pedro Cabello at his death had not yet been distributed among his heirs and was now in the possession of the defendant Engracia Cabello, and that the property described in her answer and which is alleged to have been donated to Buenaventura Cabansag by Simon Cabello, is not the property claimed in the complaint. The court, besides, found no proof of the defendant's averment that said Simon Cabello had also donated another parcel of land to Josef a Cabral, for such alleged donation was denied by the latter. The court, therefore, held that the plaintiffs—the heirs of Lorenzo Cabello, who was a brother of Engracia Cabello—are entitled, jointly with their aunt Engracia Cabello, to a share of the undivided estate left by their common predecessor in interest. In compliance with the order contained in the aforementioned judgment, the commissioners appointed for the purpose presented to the court a proposed scheme of partition of the estate, which was approved by the judgment of August 28, 1915, by which the plaintiffs were awarded one-half of the estate left by their grandfather, Pedro Cabello, and the other one-half of it, to the latter's daughter, Engracia Cabello, who is the plaintiffs' aunt.

From this judgment of December 8, 1913, and the order approving the proposed scheme of partition of the estate in question, an appeal was taken to this court by the defendants Engracia Cabello, Buenaventura Cabansag, and the latter's husband, Ariston Cabello. Josefa Cabral acquiesced in both said judgment and order, as being just and lawful.

The defendants and appellants alleged that the trial court erred, in taking into account, as evidence presented against the defendants, that taken at the hearing of October 27, 1913, and which was produced solely against the then defendant Engracia Cabello, the testimony of the two new witnesses presented at the second hearing being insufficient to prove the allegations of the complaint against all the present defendants; and that the lower court also erred in not according due weight to the plea of prescription set up by the defendants, inasmuch as, for 18 years, from 1894 to 1913, Engracia Cabello had been in adverse possession of the lands in litigation.

When the interested parties who may be seriously affected by the decision of a suit, having been duly summoned, intervene therein, and take part in the proceedings at any stage thereof, and their counsel assumes the duty to inform himself of the proceedings had up to that time and of the pleadings made by the other parties, and, if evidence of the results thereof has already been introduced, and there was no express petition by the party in interest nor a previous order of the trial judge, they are not entitled to expect a repetition of the evidence already

taken, for the party who preferred not to avail himself of his right must be reputed and held to conform to the status of the case and to the results and merits of the same.

The new defendants Buenaventura Cabansag and her husband Ariston Cabello entered their appearance in court, answered the complaint and in their answer raised questions which they submitted to the decision of the court; the defendants' counsel took part in the hearing, cross-examined the plaintiffs' new witnesses and had full and ample opportunity to defend his clients and prove the pleas that he had made, though he waived his right to present proofs, perhaps because he had none (rec, p. 39).

The provisions of articles 109 and 110 of the Code of Civil Procedure authorize the court, should he deem it necessary, to order the amendment of any pleading during or after the trial so that it may be in accord with the proof, or for the purpose of correcting errors which do not affect the essential rights of the parties, or for any other just and lawful purpose. The Supreme Court of Montana, in the case of Merrill vs. Miller (28 Mont., 134), held that: "It was not error for the court to permit an amendment to the complaint, after denial of a motion for nonsuit on plaintiff's evidence and before judgment, where no hardship or surprise to defendant was shown, and where no change of the issue resulted."

In the case of Morrissey vs. Faucett (28 Wash., 52) the Supreme Court of the State of Washington held that, "the action of the court in permitting plaintiff at the close of the testimony to amend her complaint so as to correspond to the proof was not error, where defendant's answer theretofore filed had negated the truth of the matters set up in the amendment and evidence upon both sides had been directed to that issue."

The Supreme Court of Colorado, in the case of Jordan vs. Greig (33 Colo., 360), decided that the court was authorized, and it was not error, to allow the plaintiff, after the hearing of the evidence in a case, to file an amended complaint, and for the court further to order the reopening of the case for the taking of such additional evidence as the parties might desire to present; and that, "the bringing into an action of a new and additional party defendant by an amended complaint is not reversible error where the new defendant made no objection, and the original defendants failed to show that they were in any way injured or prejudiced thereby."

From the foregoing it is evident that the rights of the new defendants in this action have in no manner been prejudiced, for the case was reopened and they had every opportunity to defend themselves and to adduce proof, had they wished so to do. It is also to be noted that they were represented by the same attorney who represented the original defendant Engracia Cabello.

With respect to the prescription alleged by the defendant party on account of Engracia Cabello having been in material and adverse possession of the litigated properties from 1894 to 1913 when the complaint was filed, that is, for a period of 18 years, it is well known that among co-heirs the action to demand the division of the inheritance does not prescribe, as provided by article 1965 of the Civil Code, since the possession held by a coheir of the undivided estate is understood to be enjoyed in the name of the rest of the heirs.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, and said judgment being in accord with the law and the evidence of record, they should be, as they are hereby, affirmed, with the costs of this instance against the appellants. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, Malcolm, and Street, JJ., concur.

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