

AURELIO ASOMBRA, PLAINTIFF AND APPELLANT, VS. BENITA DORADO AND FELIX GESMUNDO, DEFENDANTS AND APPELLEES.*G.R. No. 11353. September 21, 1917*

Ponente: JOHNSON, J.

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This action was commenced in the Court of First Instance of the Province of Laguna on the 22d day of April, 1914. While its original purpose was to obtain a perpetual injunction against the defendants, prohibiting them from interfering with the possession of a certain piece or parcel of land particularly described in paragraph 2 of the complaint, it resolved itself into an action to recover the title to land by virtue of the answer of the defendants which alleged that they were the owners of said parcel of land and entitled to the possession thereof. In support of his claim for a perpetual injunction the plaintiff alleged that he was the owner of said parcel of land; that the defendants were continuously molesting him in the possession of the same and were reaping the crops and fruits of said land

illegally, and that they would continue so to do unless restrained by an order of the court.

The defendants, answering the petition, alleged that they were the owners of the parcel of land in question and had been in the peaceable and lawful possession of the same for a period of twenty years or more.

Upon the issue thus joined, the Honorable Pedro Concepcion, judge, after hearing the evidence adduced by the respective parties, reached the conclusion that the defendants were the owners of the parcel of land in question and dismissed the complaint and absolved them from all liability thereunder. From that decision the plaintiff appealed.

In his first assignment of error he alleges that the lower court committed an error in admitting Exhibit 1. An examination of the records shows that said exhibit was admitted without objection. The appellant not having raised the question in the court below, and having been raised here for the first time, and finding as we do that said exhibit was in fact admissible for the reason that it tended to prove the allegations of the defendants in their answer, we find that the lower court committed no error in admitting the same.

The second assignment of error alleges that the lower court committed an error in admitting Exhibit No. 2. The objection presented in the court below to said document was the fact that it had not been properly certified. Exhibit 2 was a certified copy of a certain action in the court of justice of the peace. The same justice of the peace who heard said action certified that the copy presented was in accordance with his record. The certificate was made under the seal of said justice of the peace. The justice of the peace having certified under his seal that Exhibit 2 was a true and correct copy of the record of his court, we find no objection to its admissibility upon the ground alleged by the appellant. Exhibit 2 showed that prior to the commencement of the present action, another action, criminal in form, had been commenced against the present defendants and others for alleged illegal acts on the part of the defendants committed upon said land.

The justice of the peace reached the conclusion that the defendants were the owners of the parcel of land in question and were, therefore, not criminally responsible for the alleged acts committed by them. The lower court committed no error in admitting Exhibit 2.

The third assignment of error alleges that the lower court committed an error in declaring that the defendants were the owners of the parcel of land in question, and in refusing to issue the perpetual injunction. The court refused to issue the injunction to prevent the defendants from entering upon said land and occupying it and reaping the fruits thereof, for the reason that the proof showed that the same belonged to them. Both the plaintiff and defendants presented proof tending to show that they were the owners of the parcel of land in question. They each claimed the land by inheritance. They had each declared the land for the purpose of taxation. Considering the evidence introduced by both the plaintiff and the defendants, and considering the conclusion of the judge who saw and heard the witnesses, and being required as we are by Act No. 1596 to take into consideration the findings and conclusions of the lower court as to what is the preponderance of proof, we have reached the conclusion that there is a preponderance of proof in support of the conclusion that the defendants were the owners of the parcel of land in question.

Therefore, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Considering that the purpose of the present action, as it was originally commenced, was to obtain possession of real property by means of an injunction, and in view of the fact that there seems to be a practice in many of the judicial districts to use the remedy of injunction to obtain possession of real property, we deem it pertinent to observe that the purpose of an injunction is not to take property out of the possession or control of one person and to place it in the hands of another. The law affords another adequate, speedy and summary proceeding for that purpose. (*Devesa vs. Arbes*, 13 Phil. Rep., 273; *Palafox vs. Madamba*, 19 Phil. Rep., 444; *Evangelista vs. Pedreños*, 27 Phil. Rep., 648; *Gilchrist vs. Cuddy*, 29 Phil. Rep., 542; *Golding vs. Balatbat*, p. 941, post.)

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

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