

THE ROMAN CATHOLIC APOSTOLIC CHURCH, PLAINTIFF AND APPELLANT, VS. THE MUNICIPALITY OF CEBU, DEFENDANT AND APPELLEE.

G.R. No. 11548. March 24, 1917

Ponente: TORRES, J.

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TORRES, J.:

An action for recovery of possession, filed on August 22, 1911, by counsel for the Roman Catholic Apostolic Church against the municipality of Cebu, in which the plaintiff claims a certain parcel of land and the building erected thereon. The metes and bounds of the land are given in the complaint. The plaintiff alleged that it had been for more than thirty years the exclusive owner of this property, holding same as such quietly, peaceably and uninterruptedly; that notwithstanding these facts, in 1902, without the plaintiff's consent and against its will, the municipality of Cebu had usurped and unlawfully appropriated and was retaining at that time said property; that at no time had the defendant paid the plaintiff the reasonable rent for the use of the property, estimated by the latter to be worth P80 per month; and that, the plaintiff being informed of the municipality of Cebu's claim of rights adverse to plaintiff's and attempt to acquire the ownership of the property, requested judgment awarding it the possession and ownership of said lot and building and sentencing the defendant corporation to forever hold its peace with respect to the ownership of the said property as well as to pay the plaintiff the sum of P80 as rental and uncollected revenue for each month that the defendant has been in possession of the property, with the costs against the latter.

On September 23, 1911, the provincial fiscal of Cebu, in representation of the municipality of Cebu, filed a written answer to the aforesaid complaint, denying each and all of the allegations contained in each and all of the paragraphs thereof.

After the hearing was had and evidence had been introduced by both parties, the court rendered judgment, on December 8, 1914, holding that the ownership of the disputed property formerly lay and now does lie in the state which has not lost same by permitting the erection of a church and convent on the land, but that, even on the supposition that it had lost such ownership the state had recovered the same by prescription, inasmuch as it had subsequently held the land and building for more than thirty years, during which time it had used the property for public purposes. Therefore, as the court found that the allegations of the complaint had not been proven, it absolved the municipality of Cebu from the complaint, with the costs against the plaintiff. The court also decreed that its judgment should not affect any rights the Insular Government might have in the said property.

In due time the plaintiff filed a petition for the reopening of the case and a new trial. This motion was overruled, exception was taken and, upon presentation of the proper bill of exceptions, the same was approved and transmitted to the clerk of this court.

As leading up to this suit the following facts are to be noted. On May 9, 1906, the Roman Catholic Apostolic Church and the Very Reverend Thomas Hendricks, Bishop of Cebu, filed a complaint with this court under Act

No. 1376 against several municipalities of the Province of Cebu, among which was included that of Cebu, the herein defendant. The plaintiffs alleged that since time immemorial they had been the owner of a parcel of land and a parish house standing thereon which was known as the old parochial building of Parian, then in the possession of and being administered by the defendant municipality of Cebu. The plaintiffs asked that this property be decreed to belong to the Roman Catholic Apostolic Church. (See the record in case 3354 [11 Phil. Rep., 405].)

Section 1 of Act No. 1376, in accordance with which that action was brought, prescribes:

"The Supreme Court of the Philippine Islands is hereby given original jurisdiction and constituted the tribunal to hear and, finally determine all actions which involve controversies between the Roman Catholic Apostolic Church and its representatives on the one hand and the Independent Filipino Church and its representatives or any municipality or other person on the other hand, as to the title to any and all churches, convents, or cemeteries in the Philippine Islands and real and personal property used in connection therewith, or as to the ownership, right of administration, or possession thereof."

On October 8, 1908, the said case was decided by the Supreme Court in the following terms (11 Phil. Rep., 405):

"The only property which the plaintiffs claim in the municipality of Cebu is a building formerly used as a convent in connection with the Parian Church. The evidence of the plaintiffs themselves shows that this building has not been used as a convent since 1862 or 1863; that no services were held in the church next to the convent after 1868 or 1869, and that the church itself was taken down in 1878. From 1862 or 1863 to 1887, the building was used as a tribunal for the Chinese guild (gremio de chinos). In 1887 a part of the building was, by order of the Roman Catholic Bishop of the Diocese of Cebu, converted into a hospital and it was used as such until 1898, when it was taken possession of by the municipality of Cebu, which has since occupied it.

"The facts above stated show that, by disposition of the church itself, the property has not been used as a convent for more than twenty years. Act No. 1376 gives this court original jurisdiction to hear and determine actions of this class relating to churches, convents, or cemeteries. This building is not a convent and has not been one for twenty years. It is now a hospital, and we have already held that we have no original jurisdiction to determine controversies of this class. In the case of the Roman Catholic Church against certain of the municipalities of the Province of Iloilo (10 Phil. Rep., 8), the plaintiffs, in an action brought under Act No. 1376, attempted to recover possession of a building known as the Hospital of Jaro, and it was there held that such action could not be maintained. (See also *The Roman Catholic Church vs. Certain Municipalities in Oriental Negros*, 9 Phil. Rep., 691.)

"The action must, therefore, be dismissed as to the municipality of Cebu."

So that in this action for recovery, brought by the same party plaintiff of the previous proceedings, involving the same disputed property, the plaintiff must prove ownership, not by having occupied the property as a convent but, like any other property of the church, by means of other acts and methods of holding and retaining possession of a thing in litigation.

For this reason and in view of the decision rendered in the case above-mentioned, the legal precedents cited in appellant's brief are not applicable to the case at bar—especially the principle laid down in the case of *Barlin vs. Ramirez and Municipality of Lagonoy* (7 Phil. Rep., 41) where this court said that: "Prior to the cession of the Philippines to the United States, the King of Spain was not the owner of the consecrated churches therein and had no right to the possession thereof. The exclusive right to such possession was in the Roman Catholic Church and such right has continued since such cession and now exists"—inasmuch as in the case at bar the building in question (including the lot) at the time of the cession of this Archipelago to the United States could not have been considered a church nor consecrated to the purposes of a religious temple; but, on the contrary, as stated in the

aforecited decision in case No. 3354, the building was used as a hospital and therefore had all the characteristics and conditions of any other similar privately owned property, susceptible to all the actions, claims, exceptions and defenses involved in ordinary litigation.

Is the Catholic Church the owner and proprietor of the lot on which previously stood the parish church of San Juan Bautista del Parian, a church that was abolished and aggregated to the Cathedral of Cebu, and is it also the owner and proprietor of the adjacent building which was used as a parish house? That is the question submitted to this court for decision.

The appellant alleges that since the time said Parian parish church was ordered demolished the Catholic Church has not lost its right of ownership in the land that it occupied because the Bishop of Cebu performed certain periodic acts of possession, to wit: (1) When in 1849 the Governor and Captain General of the Philippine Islands ordered the discontinuance of the Parian parish and the demolition of the church, the Bishop of Cebu protested, and as a result the Parian church continued to stand as a hermitage where religious services were held until the year 1868; (2) in 1887 the Bishop of Cebu founded a casa de socorro (house of charity) in the said pueblo of Cebu, which house was established in the building that was formerly a convent of the said Parian church, and continued in that site until 1889; (3) in 1893 the Bishop of Cebu formally claimed from the Government the ownership of the old convent and of the lot occupied by the Parian church; (4) in the same year, 1893, the governor of Cebu wished to construct a theater on the lot in question, but the Bishop of Cebu succeeded in getting him to desist from his purpose; (5) in the same year, 1893, the same Bishop of Cebu caused a stone monument and a cross to be erected on the litigated land and both stand there at the present time; (6) in 1893, the municipal council of Cebu asserted title to the disputed land, whereupon the Bishop of Cebu protested and claimed the said lot and building as being the property of the Catholic Church; (7) about the year 1898 the junta popular de Cebu occupied the said property, after being granted permission so to do by the Bishop of Cebu; and (8) the said real property was occupied by the American military authorities from 1899 to 1907, always over the protest of the Catholic Church.

The trial record shows that the following facts were fully proven, to wit, that prior to the year 1741, when the Very Reverend Protasio Cabezas, the bishop elect, assumed charge of the Diocese of Cebu, the parish of San Juan Bautista del Parian existed in the Province of Cebu; that Father Cabezas was the parish priest of the said parish before his exaltation to the bishopric (p. XII and the picture of certain bishops contained in the book entitled "Circulars and Diocesan Pastorals of Cebu"); that "it being necessary to reincorporate the pueblos of Parian and Lutaos in the city of Cebu, leaving the cathedral as the only parish church and discontinuing that of Parian," the Captain General and Governor of the Philippines, on January 31, 1849, decreed among other things the following:

"2. The Parian parish church of Cebu is discontinued, and all comprised therein and pertaining thereto shall be aggregated to the cathedral of that city, the only one to remain, whose parish shall be the whole of the pueblo.

"* * * * *

"4. As the chapel which serves as a parochial church for Parian is unnecessary, especially since in the town there exist the convents of San Agustin, Recoletos and Seminario Conciliar, the said chapel shall be completely demolished * * *.

"5. The present Parian parochial building shall be used as a tribunal de mestizos. (See plaintiff's Exhibit 2.)"

When this decree was first issued the Bishop of Cebu protested in due season against the orders contained therein and, by a written petition addressed to the proper civil authority (Exhibit 5), requested that for the time being its fulfillment be suspended in respect to the points mentioned; that the then parish priest be left in the charge of the Parian parish until such time as his death should occur or until some new provision might be made; that thereafter

a coadjutor or assistant priest be placed in charge of all cathedral parish affairs, and that the parochial building should be the dwelling of the said coadjutor. He also requested that the order to demolish the said church be suspended and that divine services be continued therein. In view of that petition, by a decree of January 4, 1850, the Governor and Vice Patron of the Philippines amended the aforementioned decree and ordered that the demolition of the Parian church, provided for in paragraph 4 of the superior decree of the 31st of the preceding month of January, should be suspended without prejudice to complying with said paragraph if necessary circumstances arose; that for the time being the said church should remain open as a hermitage, without implying however that said order for demolition was revoked, and that the holy service of mass on Sundays, other prescribed days, and those in honor of the patron San Juan Bautista could be celebrated therein with the understanding that the expenses occasioned thereby should not be paid out of the funds of the sanctorum (tax to support the parish church) but should be defrayed by such of the faithful as might be willing so to do.

In conformity with the aforementioned decrees the Bishop of Cebu, Ximeno, in February, 1850 (Exhibit 7), ordered the Parian and Lutaos parishes consolidated with the cathedral parish of the city of Cebu, and the old Parian church to remain as a hermitage. About April, 1859, the parish priest of the pueblo of Cebu complained to the bishop of his diocese of the lack of necessary personnel for the saying of mass in the Parian hermitage on the days authorized and, after the matter had been disposed of and before the papers had been filed, record was made by this same parish priest that he had no coadjutor of whose services he might avail himself for the purpose of saying mass in the said Parian hermitage (Exhibit 8).

From the testimony of the witnesses examined at the trial it appears that the Parian church was actually demolished. Father Emiliano Mercado stated that the building was taken down in 1879 (record, p. 33), Mons. Singson that this was accomplished in 1878 (record, p. 85, and Exhibit 1) and that the materials from the church were taken to the jail and used for public works. Therefore only the convent adjacent to the church was left standing and this, in conformity with the decrees of the central government, has been occupied by the tribunal de mestizos since some time prior to 1856, as the witness Escolastico Duterte testified (Exhibit 1, p. 159), and, as the witness Miguel Bondoc testified, since the year 1858 (Exhibit 1, p. 169). Both these witnesses testified that the rehearsal of the plays for the royal festivities in honor of the birth of King Alfonso XII which occurred in 1857 were held in the said convent which was then already occupied by the tribunal de mestizos.

Florentino Rallos, who was an employee of the government under the past sovereignty for 22 years, testified that about the year 1860 or 1861 the gremio de mestizos was already occupying the said convent (Exhibit 1, p. 103). Placido Cabilte stated that the tribunal de mestizos had been in possession of this convent building since 1850, and that the first gobernadorcillo, Esteban Rodos Roman, took possession in that year (Exhibit 1, p. 131). Esteban Solon, 59 years of age in 1907, testified that since the time he reached the age of discretion he had known the convent to be occupied by the gremio de mestizos (record, 179). All the witnesses who testified for the municipality of Cebu unanimously stated that the said tribunal had its quarters in the convent until the revolution broke out when the junta popular of the revolutionary government, succeeding the ayuntamiento municipal, occupied the said building, and that when the American troops came they took possession of this building. Although the ecclesiastic authorities allege that the tribunal de mestizos ceased to occupy the building upon the dissolution of the tribunal de mestizos by the Maura Law in 1893, which reorganized the municipal governments; that the junta popular sought and obtained permission from the Bishop of Cebu to occupy the convent, and that later on, under the protest of the bishop, these premises were occupied by the American troops, yet these allegations were not proven. There was no discussion as to the facts that the American troops remained in the building and occupied it until 1907, that immediately after they moved out the defendant municipality of Cebu took possession and that, up to the present time it has remained in possession of the building, using it as a

fire-station.

It was also proven that in the year 1887 the Bishop of Cebu founded in the said locality a casa de socorro, maintained by public charity, which was installed in one-half of the building in question. The repairs and the division of the building for the purpose were made by popular subscription, although it is to be supposed that the bishop contributed funds of his own toward the payment of these expenses. This charitable institution remained in the building until the year 1889 when the bishop ordered its removal, and the tribunal de mestizos recovered the exclusive use of the entire building (Exhibits 10 and 11).

In consequence of the promulgation in the Philippines of the Maura Law, in 1893, which reorganized the municipal governments and abolished the gremios de mestizos, the Bishop of Cebu, Friar Martin Alcocer, in the Communication (Exhibit 9) addressed to the Governor-General of the Philippines on January 6, 1894, urgently requested the return of the old Parian parochial building to the Church, though he made no explicit mention of the land. This petition was not granted by the government of that time, as disclosed by the documents presented by the party defendant (Exhibit 6). From the record of the proceedings in that connection it appears that on March 26, 1894, the Direccion General de Administracion Civil de Filipinas was of the opinion that from the text of the decree of the Governor-General of the year 1849, abolishing the Parian parish, sufficient points of law were found to warrant deciding the matter in favor of the Government (Exhibit 6, pp. 289-91) although, in a communication of the Counsel of Administration dated May 29, 1894, the letrado consultor (consulting attorney) of the Government decided there could be no objection whatever to the delivery of the building, when vacated, to the Bishop of Cebu for the service of that cathedral, the Government reserving the ownership and control of the property (Exhibit 6, p. 286); that information having been requested of the politico military governor of Cebu, he informed the Director General de Administracion Civil, on October 22, 1894, that the tribunal de mestizos had neither been dissolved nor incorporated with the ayuntamiento and that the tribunal continued to occupy, as it had been doing for the past 40 years, the building claimed by the Church (Exhibit 6, pp. 287-88); that therefore the said administration civil, in a communication dated July 11, 1895, addressed to the Governor-General of the Philippines (Exhibit 6, pp. 298-94) recommended that inasmuch as the tribunal of the gremio de mestizos which was abolished for a short time on account of the municipal reform was reorganized by superior order on May 12 of last year to continue until the Ministerio de Ultramar should decide the inquiry made in regard to this point; and whereas, on the other hand, the building was occupied for a very long period by express order of the higher authority (shown by the record); and whereas the circumstances which brought about the occupation of the building ought not to be lost sight of, the said tribunal having been reorganized a short time after its abolishment, the Direccion General de Administracion de Filipinas was of the opinion it was not then advisable to return the Bishop of Cebu the building claimed by him; that this could be done afterwards, if the said superior authority deemed it advisable so to do and the causes which brought about that occupation of the said property disappeared or a new use might be made of the property, as proposed by his excellency, the politico-military governor of Cebu, to wit, the installing in the building of a school of arts and trades.

From the record of the case at bar it does not appear what decision was taken by the Governor-General of the Philippines, nor was it proven that the tribunal de mestizos of Cebu remained permanently abolished. The supposition that the said corporation ceased to occupy the building is therefore unwarranted.

The statements of the witnesses put forward by the defendant municipality are worthy of special attention. They assert that the tribunal de mestizos continued to occupy the convent building until the organization of the so-called junta popular. This was corroborated by one of the plaintiff Church's own witnesses, Mateo Mercado, who stated that from 1862 or 1863 to 1898, when the revolution broke out, the gremio de mestizos remained in the convent; that since the year 1862 or 1863 no parish priest whosoever had had charge of the Parian parish

(Exhibit 1, page 17), adding however that the building never was occupied by the ayuntamiento de Cebu. The plaintiffs other witness, Enerio Denzon, testified that the gremio de mestizos ceased to exist at the time of the revolution.

From all these facts it follows that from 1859, if not before, the building in question was occupied as a tribunal by the gremio de mestizos till the time the revolution broke out, namely, for a period of more than 55 years, and that the church's performance of acts of ownership over, or collection of rentals for, the occupation and use of said building was in no manner proven—in connection with the claim of the Bishop of Cebu the Government of the previous sovereignty having specified the reservation of said ownership and control (record, p. 286).

There is no proof of the junta popular having obtained permission from the Bishop of Cebu to occupy the building, or that the present Government bound itself to pay rentals for its use by the American army from 1899 to 1907. The correspondence exchanged between the church authorities and the military government in reference to this matter was not presented in evidence in this case, and that any rental payment whatever was made in acknowledgment of the ownership of the church was not shown.

The occupation of one-half of the building by the casa de socorro between the year 1887 and 1889 can in nowise be considered a possession under title of ownership on the part and in representation of the Catholic Church, inasmuch as it is an undeniable fact that that institution was created and maintained by the charity of the inhabitants of Cebu in the form of contributions gathered under the personal direction of the Bishop of Cebu, and his intervention in, and control and supervision over the said casa de socorro can not be considered as acts of ownership performed in the name of the Church.

With respect to the ownership of the land on which was erected the Parian Church that was taken down in 1878, the plaintiff claims to have retained its right of ownership therein because, as owner of the property, it opposed the application of the ayuntamiento de Cebu for title to the said land in 1893 and, also in 1893, the proposition of Governor Junquera to erect a theater thereon, and because in the same year, by order of the bishop, it erected a monument and a cross on the said land.

The record does not show why the Parian Church was taken down, but there is no question that its removal was decreed by the Governor-General, who was vested with the character of vice royal patron as the representative of the King of Spain in these Islands. However, the demolition of the church, ordered by the highest authority of the Archipelago by virtue of his right of patronage, could not mean the secularization of the land on which stood a temple dedicated to the worship of God, consecrated in accordance with the canon laws and, under article 25 of the regulations for the application of the Mortgage Law, not susceptible of registration in the property registry as being outside of the commerce of man. Notwithstanding the disappearance of the church that formerly stood on the said land, this property partook of the character impressed upon the building that previously stood thereon.

After the disappearance of the Parian Church the land in litigation became a vacant lot accessible to the public. Neither the Government nor the municipality occupied or disposed of it as a thing belonging to either of them but the representative of the church, the Bishop of Cebu, considering that this land was devoted to the purposes of worship and that for a long time there had stood on it a temple consecrated in accordance with the laws of the Catholic Church, ordered that a stone pedestal and an iron cross (shown in the photograph exhibited at the trial) be erected on the land as an ostensible sign of the church's ownership and possession. The record does not show that any opposition was put forward at that time, either by the Government or by the municipality, to the erection of the pedestal and cross. In view of the acts performed for many years by the most prominent representative of the church which were directly opposed to all acts of occupation of the said land and to all acts based on a claim of ownership or possession of the land, it must be recognized that the Catholic Church, represented by the Bishop of

Cebu, has an indisputable right in, and is the lawful owner of, the land in litigation. This land is considered independently from the building that was a convent or parochial house. After the demolition of the church, the land was never occupied or held by the municipality of Cebu, nor has the latter disposed of it in any manner as the owner thereof; while the Bishop of Cebu, considering himself the owner of the land, in the name of the church as the proprietor thereof, performed acts of ownership by erecting on the land the said pedestal and cross as a patent and manifest proof of the property right exercised by him in the name of the church.

For all the foregoing reasons we hold that the building which was occupied for many years by the tribunal de mestizos of Cebu, then by the army and now by the firestation, through governmental disposal, is the exclusive property of the Government and hence of the municipality of Cebu, and that the land adjacent to the said building, occupied by the San Juan Bautista del Parian church, on which at the present time there stands a stone pedestal with an iron cross is the lawful property of the Catholic Church. The judgment appealed from is thus affirmed in so far as it agrees with this decision and reversed in so far as it does not. No special finding is made as to the costs of both instances. So ordered.

Arellano, C. J., Carson, and Trent, JJ., concur.

Moreland, J., did not sign.

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