

SISENANDO PALARCA, PLAINTIFF AND APPELLANT, VS. CATALINO BAGUISI ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 12381. April 04, 1918*

Ponente: FISHER, J.

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This is an appeal from a judgment of the Court of First Instance of Tarlac, dismissing plaintiff's complaint. The suit was filed against certain defendants alleged to be unlawfully in possession of a part of the property claimed by plaintiff. Affidavits were filed here, after the case was submitted, for the purpose of showing that the value of the property in dispute is in excess of P10,000.

The record of this case is in such a condition that we are unable to render a final judgment, but are compelled to return it to the trial court for further action.

Plaintiff contends, and the record shows, that the decision in this case was rendered by a judge who did not hear the evidence, and that at the time the decision was rendered no transcription had been made of the stenographic notes of the testimony of several important witnesses. Under these circumstances, it is evident that the trial judge was not in a position to make complete findings. While this court has held that it is not necessary that cases should be decided by the judge before whom the evidence was taken, if he ceases for any reason to exercise judicial authority in the particular court in which the case was tried before rendering his decision, and must be decided by the successor of such judge, it is obviously necessary that the judge by whom the decision is rendered shall have either heard the witnesses or read the transcript of the stenographic record of their testimony. When the trial judge neither hears the witnesses nor reads their testimony, his findings and conclusions based upon an examination of only a part of the record cannot be accepted as a proper disposition of the case. Nor can this defect be remedied by the inclusion of the missing evidence in the record brought before this court on appeal. We exercise appellate jurisdiction only over cases tried in the Court of First Instance. To require us to examine evidence which has not been heard or even read by the trial judge, is to require us to do something which the law does not authorize. We must, therefore, return the case to the trial court, in order that complete and specific findings may be made there upon all the issues of fact raised by the pleadings, and that upon such findings the court below may render judgment in accordance with its opinion as to the law applicable to the case. It will not be necessary, of course, to retake the evidence.

In cases of this nature, in which an action in ejectment is brought against several defendants, each claiming individually the ownership of a certain tract of land apparently embraced within the area of the larger tract claimed by plaintiff, the trial court should make specific findings upon the evidence, with respect to the property claimed by each defendant, should determine whether or not it is included within the boundaries of the tract claimed by plaintiff, and if the defense of prescription is interposed, the length of time which in the opinion of the court the evidence shows that each of the defendants and their predecessors in interest have been in possession of the land, and the facts tending to show the character of that possession, as being adverse or not.

While it is not strictly necessary for us to say anything more in disposing of this appeal, we have deemed it advisable, following the practice adopted in other similar cases, to indicate our opinion upon a matter of fundamental importance in this litigation. The action being in ejectment, it is incumbent upon the plaintiff to show title in himself to the land in question—he cannot rely upon the weakness of the title of the defendants. From an examination of the documents upon which plaintiff relies, it appears that he contends that the original owner of the land in dispute transmitted his title to the persons named as grantors in the deed of April 15, 1911 (Exhibit B), who in turn conveyed it to plaintiff. It appears, however, from an examination of the deed of April 15, 1911, that several of the persons purporting to have joined in the conveyance, to plaintiff were minors. There is nothing to show that any judicial authorization was obtained by the sale of the interests of these minors. As to some of them, it appears that an attempt has been made to transfer their interests by having their grandmother sign "for myself and my grandchildren." As to others a similar attempt to convey their interests was made by their mother. As to the interests of these minors, if any, in the land in question, such a conveyance is absolutely void. If those minors had any interest in the land in question at the time the deed of April 15, 1911, was executed, they still retain those interests. At best, therefore, this deed could have produced only a community property between plaintiff, as successor to the interests of the adults, who signed the deed, and the minors. The plaintiff, so far as the record shows, is not, as he asserts, the sole owner of the land—leaving out of consideration for the time being the question as to whether any part of it belongs to defendants—but merely a coowner with the minors, who appear by the terms of the deed of April 15, 1911, to have been the owners at that time of an undivided interest in the property. We hold that a coowner cannot maintain an action in ejectment without joining all other persons interested. Section 114 of the Code of Civil Procedure requires that every action must be prosecuted in the name of the real party in interest, and that any person who has an interest in this subject matter and who is a necessary party to a complete determination of the questions involved, should be made a party to the proceeding. The same article provides, in its last paragraph, that if any person having an interest in the subject of the action, and in obtaining the relief demanded, refuses to join as plaintiff with those having a like interest, he may be made a defendant, the fact of his interest and refusal to join being stated in the complaint. Were the courts to permit an action in ejectment to be maintained by a person owning merely an undivided interest in any given tract of land, a judgment in favor of the defendant would not be conclusive as against the other coowners not parties to the suit, and thus the defendant in possession of the property might be harassed by as many succeeding actions of ejectment, as there might be coowners of the title asserted against him. The evident purpose of section 114 is to prevent the multiplicity of suits by requiring the person asserting a right against the defendant to include with him, either as coplaintiffs or as codefendants, all persons standing in the same position, so that the whole matter in dispute may be determined once and for all in one litigation.

We desire to call the attention of counsel, furthermore, to the very unsatisfactory condition of the briefs filed in this case. It is the duty of the attorney to aid the court by making specific reference to those parts of the record upon which they rely for support in their contentions regarding the facts. (Rules of the Supreme Court, article 19.) Unless this is done, it is not incumbent upon us to explore the record for the purpose of discovering evidence upon which to reverse the findings of the trial judge, merely because the appellant made a motion for the new trial, and excepted to its denial. The presumption is that the findings of the trial court are correct and the burden rests upon the appellant to state explicitly wherein the court is believed to have erred and to designate specifically, by reference to the page of the record, all the evidence upon which he relies to demonstrate his contention. The statute does not impose upon us the absolute duty of reviewing the evidence in civil cases coming before us by bill of exceptions when a motion for a new trial upon the statutory grounds has been made and denied, but merely provides we may do so. (Code of Civil Procedure, Section 497, paragraph 2.) The pressure of work upon this court is so great that we cannot, in justice to other litigants, undertake to make an examination of the voluminous transcript of the testimony, unless the attorneys who desire us to make such examination have themselves taken

the trouble to read the record and brief it in accordance with our rules.

The judgment of the court below is set aside, and the case is remanded for further proceedings in accordance with this opinion. No costs will be allowed on this appeal. So ordered.

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

Malcolm, J., concurs in the result.

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