

FELIX MEDIRAN, PLAINTIFF AND APPELLANT, VS. MAXIMIANO VILLANUEVA ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 12838. March 09, 1918*

Ponente: STREET, J.

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Upon December 22, 1915, the plaintiff, Felix Mediran, instituted an action of forcible entry and unlawful detainer in the court of the justice of the peace of the municipality of Amadeo, Cavite, against the defendants Maximiano Villanueva, Jacinto Villanueva, and Pedro Villanueva, to recover the possession of a parcel of land situated in said municipality, alleging that he had been in possession thereof until on or about December 15, 1915, when the defendants unlawfully entered thereon and thereafter forcibly detained the same from him. The prayer was that judgment should be entered in favor of the plaintiff for the possession of said premises and that the defendants be adjudged to pay damages for the unlawful detention, together with costs.

Upon January 11, 1916, a judgment in favor of the plaintiff was entered in the court of the justice of the peace against Jacinto Villanueva and Pedro Villanueva, and the two latter thereupon appealed to the Court of First Instance of the Province of Cavite. In said court the plaintiff substantially reproduced his original complaint, omitting the name of Maximiano Villanueva therefrom, as this party had been shown to have had no part in the act which was the subject of the complaint. The two defendants Jacinto Villanueva and Pedro Villanueva answered the complaint with a general denial and by way of special defense asserted that they were the owners of the property in question, claiming to have inherited the same from their father who died nearly 20 years before. At the hearing in the Court of First Instance judgment was rendered in favor of the defendants, and the plaintiff in turn has appealed to this court.

It appears, by what we consider to be a clear preponderance of the evidence, that the plaintiff, Felix Mediran, for many years prior to the occurrence which led to the institution of the present action, had been in lawful and undisturbed possession of the premises in question and during a large part of this time had cultivated portions thereof either in person or by means of a laborer whom he placed in charge of the premises to cultivate the same on shares. The property, it appears, is located some distance away from the poblacion of Amadeo and in comparatively unfrequented parts. During the years 1913 and 1914 no crops of any importance were grown on the land, owing to the excessive drought then prevailing, though maize may have been planted during these years in certain portions of the property.

About the middle of December 1915, while laborers employed by the plaintiff were engaged at work preparatory to planting, the defendants appeared on the scene and ordered them to depart, which they did. Upon being notified of this incident the plaintiff repaired to the land and there found the defendants busy in the fields. The plaintiff thereupon ordered the defendants to desist, but they replied with a threat to the effect that if he bothered them something ill would befall him.

There is evidence in the record tending to show that the defendants had previously appeared on these premises in

October of the same year, or before, and had then done acts which indicated an intention to exercise dominion over the property. This incursion, however, was not known to the plaintiff at that time, and the first intimation which he received of the fact that the defendants were upon the property was in December, as already stated.

Upon the foregoing statement of facts we are of the opinion that the plaintiff should be restored to possession and that the Court of First Instance was in error in giving judgment for the defendants. The action of the lower court seems to have been based in part upon the idea that the defendants had not used force in sufficient degree to give rise to a right of action under section 80 of the Code of Civil Procedure, as amended, and in part upon the idea that inasmuch as the defendants asserted that they were owners of the property, a question of ownership was raised, with the result that the jurisdiction of the court was thereby defeated.

Upon the first point, it will be noted that the statute defining the conditions under which the action of forcible entry and detainer will lie, in so far as it relates to the situation where a trespasser unlawfully seizes and withholds possession, is in the following words:

"Anyone deprived of the possession of any land, or building by force, intimidation, threat, strategy, or stealth, * * * shall at any time within one year after such unlawful deprivation or withholding of possession be entitled, * * * to restitution of the land, building, and premises possession of which is unlawfully withheld, together with damages and costs." (Sec. 80, Code of Civil Procedure, as amended.)

In order to constitute the use of "force," as contemplated in this provision, the trespasser does not have to institute a state of war. Nor is it even necessary that he should use violence against the person of the party in possession. The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary. Under the statute entering upon the premises by strategy or stealth is equally as obnoxious as entering by force. The foundation of the action is really the forcible exclusion of the original possessor by a person who has entered without right. The words "by force, intimidation, threat, strategy or stealth" include every situation or condition under which one person can wrongfully enter upon real property and exclude another, who has had prior possession, therefrom. If a trespasser enters upon land in open daylight, under the very eyes of the person already clothed with lawful possession, but without the consent of the latter, and there plants himself and excludes such prior possessor from the property, the action of forcible entry and detainer can unquestionably be maintained, even though no force is used by the trespasser other than such as is necessarily implied from the mere acts of planting himself on the ground and excluding the other party.

Juridically speaking, possession is distinct from ownership, and from this distinction are derived legal consequences of much importance. In giving recognition to the action of forcible entry and detainer the purpose of the law is to protect the person who in fact has actual possession; and in case of controverted right, it requires the parties to preserve the status quo until one or the other of them sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership. It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order. Therefore, where a person supposes himself to be the owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competent jurisdiction; and he can not be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an action to try the property right.

Upon the second point it is clear that under the law now in force it is beyond the jurisdiction of a justice of the peace to adjudicate in any case upon the question of the title of real property, or to declare that one person rather

than another is the owner. But it does not result from this that when an action of forcible entry and detainer is instituted to recover possession the defendant can defeat the proceeding merely by asserting ownership in himself. Though the jurisdiction to determine the question of ownership is vested exclusively in the superior court, the inferior court of the justice of the peace possesses full power to determine the right of possession and assess the damages incident to the unlawful detention. To this end it may consider the evidence of ownership.

Section 68 of Act No. 136, as amended by section 3 of Act No. 1627, reads as follows:

"A justice of the peace shall have no jurisdiction to adjudicate questions of title to real estate or any interest therein, and whenever a case requiring such adjudication is brought before him it shall be his duty, upon discovering the same, to suspend further proceedings therein, and certify the cause forthwith to the Court of First Instance." (This was superseded by the amendatory provisions contained in section 3 of Act No. 2041, and section 1 of Act No. 2131; but as the latter provisions were held to be invalid in *Barrameda vs. Moir*, 25 Phil. Rep.f 44, the provision above quoted remains in force.)

The introduction into the statute of the words which we have printed in italics was most unfortunate. What should have been stated, if it was necessary to state anything, in place of these words was a rule to the effect merely that no judgment entered in a case originating in the court of a justice of the peace should affect the title of real property or operate as *res adjudicata* with respect thereto. The result of the words actually employed in this statute is to place upon the justice of the peace in all these cases the duty of deciding, as a preliminary question affecting his jurisdiction, whether the action involves possession only or ownership as well. The determination of this question has often been a source of great perplexity to both courts and litigants; and when a mistake is made it is followed by very inconvenient results. For instance, if the justice of the peace erroneously decides that the action involves a question of ownership, and certifies the case into the Court of First Instance, and the latter court discovers that the only question is one relating to possession, no judgment can there be entered upon the merits, and the cause must be returned, so it is decided, to the court of the justice of the peace in order that he may proceed to hear the cause.

Now, how are we to determine whether a particular action is a purely possessory action, and as such within the jurisdiction of the court of the justice of the peace, or an action founded on property right, and therefore beyond the jurisdiction of such court? In considering this problem the averments of the complaint and character of the relief sought are primarily to be consulted; but it would be a mistake to suppose that an action involves a question of title merely because the plaintiff may allege in his complaint that he is the owner of the land. Just as the plaintiff may introduce proof of his title in order to show the character of his prior possession, so he may allege ownership in himself as a material and relevant fact in the case, and the insertion of such an allegation in the complaint cannot by any possibility place the cause beyond the jurisdiction of the magistrate's court, provided it otherwise sufficiently appears that what the plaintiff really seeks is the restoration of possession as against an intruder who has seized the property within the period of one year. Much less can the defendant in such an action defeat the jurisdiction of the magistrate's court by setting up title in himself. In this connection it should be borne in mind that the factor which defeats the jurisdiction of the court of the justice of the peace is the necessity to adjudicate the question of title. The circumstance that proof of title is introduced at the hearing or that a claim of ownership is made by either or both of the parties is not material. The simple rule to be applied in all such cases is therefore this: If the complaint shows that the plaintiff had prior possession of the premises and that within the period of one year he has been deprived thereof by a trespasser, who excludes him and withholds possession without right, the action must be considered to be within the jurisdiction of the justice of the peace, for the purpose of restoring the plaintiff to possession, regardless of any claims of ownership put forth by either party, provided the prayer of the complaint is limited to such relief.

It will be here observed that the plaintiff must prove a prior possession in himself. The question arises, what sort of possession is here intended? The answer evidently is that the plaintiff merely "has to show actual possession, possession in fact, or as it is expressed in article 430 of the Civil Code, "natural possession," supposing this term capable of being properly used with respect to the possession of such a thing as land. As between a person who has possession of this kind and a mere intruder who enters by force, intimidation, threat, strategy, or stealth the presumption of law favors the former and to him accordingly the protection of the law is extended. Possession of a piece of property may be wholly precarious or unrighteous, yet if the possessor has in his favor priority of time, he has this security, that he is entitled to stay upon the property until he is put off lawfully by a person having a better right. Of course, if one person merely holds for another, as in the case of a servant for a master, the actual possession must be conceded to be in the latter, since possession, as a fact, cannot be recognized in two different personalities (art. 445, Civ. Code.)

There is one point at which section 80 of the Code of Civil Procedure undoubtedly jars upon the mind of a person imbued with the conceptions of the Civil Code relative to possession. That section, it will be observed supposes that a person who has possession may be deprived of such possession by force, intimidation, threat, strategy, or stealth. As a corollary it results that the intruder, by the same token, acquires possession in himself. But under the doctrine of possession which informs the Civil Code, this is an impossibility, since, in article 444 of the Civil Code, it is said that acts which are merely tolerated and those clandestinely executed, without knowledge of the possessor of a thing, or by force, do not affect the possession. It is thus apparent that in a situation where the civil law says a change of possession is impossible, the Code of Civil Procedure supposes a change of possession to take place. Evidently the word "possession," as used in section 80 means nothing more than the physical possession, not legal possession in the sense contemplated in article 444 of the Civil Code.

A few words upon one additional point. Can the fact of possession be established by the plaintiff in an action of forcible entry and detainer by proof of ownership? The answer is that, under certain conditions, it can. Of course, if a party can prove external acts of dominion over a particular piece of ground, as continuous cultivation or the uninterrupted taking of produce from the fields, he has no need to resort to proof of ownership. The proof of actual possession, based upon these acts of dominion, is sufficient. But the case may be that of a man who owns a tract of land in a remote or unfrequented part of the country. He has, we may suppose, acquired title by composition with the State, and he has not been exercising acts indicative of actual possession over the whole tract at all times. An obtruder enters secretly upon the land and proceeds to occupy a portion thereof to the exclusion of the owner. It can not be open to question [that] that owner may here prove, in an action of forcible entry and detainer, that the patch of ground in dispute is part of the larger part of which he is owner and of which he has had possession. In this case the document of title would be admissible in evidence as defining the limits of his holding and the character of the possession asserted by him.

From what has been said it results that the judgment of the Court of First Instance entered in this case in favor of the defendants should be reversed; and judgment will be here rendered condemning the defendants, Pedro Villanueva and Jacinto Villanueva, to restore the possession of the land in question to the plaintiff Felix Mediran. It is further adjudged that the plaintiff recover of said defendants the sum of P30 as damages, together with the costs of this proceeding in the three instances. So ordered.

Arellano, C. J., Johnson, Araullo, and Fisher, JJ., concur.

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