

DOLORES RUSTIA, PLAINTIFF AND APPELLANT, VS. MAXIMIANO FRANCO ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 15149. December 13, 1920*

Ponente: STREET, J.

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The plaintiff, Dolores Rustia, brought this action in the Court of First Instance of the Province of Pampanga to secure an injunction to restrain the defendants from cutting bamboo from certain land alleged to belong to the plaintiff and to recover damages for the plants already cut. In accordance with the sprayer of the complaint, a preliminary injunction was issued ex parte upon the giving of a bond. Some of the defendants answered, denying participation in the alleged trespasses and disclaiming all interest in the land from which the bamboo in question had been cut, while three, to wit, Cecilio Franco, Benito Laren, and Mariano Manalili, admitted that bamboo had been cut by them from the land described in the complaint or in that vicinity but asserted that said land belonged to Benito Laren, Mariano Manalili, and Gregoria Dizon, wife of the defendant Cecilio Franco.

It appears in evidence, and was found by the trial judge, that the defendants have at various times, not only in 1917 but in several previous years, cut bamboo from a cañaveral lying on both sides of the estero Macabucod, but the proof does not show with any certainty how many bamboo had been cut by them on either side of the estero. The plaintiff claims that the land of which she is the owner comprises an area of nearly 24 hectares, lying on the north side of the estero Macabucod, which said estero forms the southern boundary of part of the property. We consider the title of the plaintiff to the parcel in question to be fully proved by the documents introduced in evidence as well as by oral evidence. In this connection it appears that the plaintiff is a grand daughter of Doña Eulalia Bartolome, who died testate on August 12, 1899, at the age of 84. The aforesaid Doña Eulalia is said to have acquired the property from Potenciano Eugenio y Camacho, a resident of Malabon, who had obtained a composition title thereto in the year 1888. The document accrediting the ownership of Potenciano Eugenio y Camacho was presented in evidence by the plaintiff as Exhibit A. The introduction of said document was objected to by the attorney for the defendants, but this objection was overruled. In December of the year 1904, the descendants of Eulalia Bartolome entered into a partition agreement by which the property of their said ancestor was divided, upon which occasion the lot in question was assigned to the plaintiff. No document was introduced to show how the title to said parcel had passed from Potenciano Eugenio to Eulalia Bartolome; but in view of the long continued possession of Dolores Rustia, as heir and successor of Eulalia Bartolome, it is unnecessary to trace the title further back than to Eulalia Bartolome. The Exhibit B, which is the deed by which the heirs of Eulalia Bartolome partitioned her property among themselves, must be considered properly before the court in relation with, and as explanatory of the testimony of the plaintiff, Dolores Rustia. Upon the statements made by her, corroborated by the testimony of witnesses introduced in her behalf, it is clear that she has maintained actual possession from the date of the partition, subject only to the occasional wrongful intrusion thereon of the defendants. The result is that the defendants in cutting bamboo under claim of ownership on the north side of the estero Macabucod have unjustifiably invaded the plaintiff's rights, and the question now is, whether the defendants can be permanently enjoined from the repetition of these acts.

The trial judge was of the opinion that an injunction suit could not be maintained; and he accordingly dismissed the case, relying upon the authority of the decision of this court in *Liongson vs. Martinez* (36 Phil., 948). The case was accordingly brought to this court upon appeal by the plaintiff, Dolores Rustia.

It must be admitted that some of the language used in the case cited seems to support the position of the trial judge, but that was a case where the plaintiff sought by means of a preliminary injunction to oust the defendants from possession. The practice there reprobated by this court was the granting of a preliminary injunction with a view to disturbing a person in possession who is claiming title as owner.

As appears from numerous decisions of this court, of which *Devesa vs. Arbes* (13 Phil., 273), is an example, it is considered inexpedient to allow the actual possessor of land to be disturbed or ejected by means of a preliminary injunction while the title remains undecided. The plaintiff, being out of possession, should not be given the benefit of the extraordinary remedy of injunction until his title, or right to possession, is adjudicated. The person in actual possession must be presumed *prima facie* to have the better right.

It must be remembered, that to invoke successfully the doctrine of those cases the defendant must have possession. The situation is quite different where the person in possession, claiming in the character of owner, seeks protection from the wrongful acts of a mere intruder. As was said by Justice Johnson in *Liongson vs. Martinez*, *supra*, "The writ of injunction may be issued to restrain acts of trespass and the illegal interference with the possession of land, under certain conditions."

In the American system of procedure, from which the provisions of the Code of Civil Procedure relative to injunctions are taken, the injunction is recognized as a perfectly legitimate remedy to protect the owner of land, being in possession, from illegitimate acts of repeated intrusion by a stranger, as where a person who has no right enters from time to time to cut wood or carry off other products. The intermittent nature of such acts, and the probability, not to say certainty, of repetition in the future, makes the legal remedy by an independent action to try title inadequate and justifies the granting of the equitable remedy. (Pomeroy, *Equity Jurisprudence*, Third Edition, vol. 4, sec. 1357.)

In applying the American authorities at this point, it is desirable to bear in mind-in order not to be completely misled-that in the past, under the American and English system of law, courts of law and equity were entirely separate; and it so happened that originally, while the courts of law had jurisdiction to adjudicate questions of title, only the courts of equity could administer injunctive relief. The result was that the latter courts in the beginning showed great diffidence in interfering by the remedy of injunction whenever there appeared to be a *bona fide* dispute over the ownership, which ought to be determined in a court of law. It therefore came to be accepted in common-law States that an injunction to prevent interference with rights in real property should not be granted until the plaintiff has fully established his title or right by a proper action brought for that purpose. This meant, of course, that the plaintiff, in a State where separate courts of law and equity existed, must, first, resort to an independent action in the court of law. It seems to have resulted, furthermore, that the rule was accepted in, some of these States that if, in an action for injunction in a court of equity, the defendant claimed ownership in himself, the preliminary injunction would be dissolved and the plaintiff would be required to go into the court of law. Some American cases are cited upon both these points in the opinion in *Liongson vs. Martinez* (36 Phil., 948). But these cases can have no application in a country like this, where both the legal and equitable jurisdiction are exercised indiscriminately by every court, both original and appellate.

In the case before us the plaintiff alleges that the ownership of the questioned land is in herself, that the defendants by repeated acts of trespass have at different times entered thereon and unlawfully cut bamboo belonging to her, and that they further threaten to continue such unlawful acts in the future. In the petitory part of

the complaint she asks that a permanent injunction be granted, prohibiting the defendants from repeating these wrongful acts and that she be granted whatever other remedy may be appropriate. The defendants (or such of them as seem to be interested in the matter) answered the complaint, admitting that they have cut the bamboo to which reference is made, but justify such acts on the ground that they are owners of the land where the bamboo was cut. Wherefore, the defendants themselves in turn ask that they be awarded damages against the plaintiff and that they be granted any other appropriate relief. As the plaintiff did not formally reply to this cross-complaint, she must be taken to have denied the same generally. (Sec. 104, Code of Civil Procedure.)

In this state of the pleadings, the ownership of the property from which the bamboo was cut was in issue, and it would have been proper for the trial judge, upon the proof before him, to have declared that the plaintiff is the owner of the land in question and in consequence to have enjoined the defendants from molesting the plaintiff by cutting bamboo therefrom in the future.

In the view we take of the case, the judgment must be reversed; and judgment will be entered, declaring the plaintiff, Dolores Rustia, to be entitled to the permanent injunction as prayed for in sub-section (b) of the second paragraph of the petitory part of the complaint; and the defendants will be enjoined from hereafter molesting her by cutting bamboo from the property described in the complaint, reserving to the defendants or any of them the right to institute any appropriate action, if so advised, to establish ownership and recover the property. [1] For uncertainty of proof no award for damages will be made. No special pronouncement will be made as to costs. So ordered.

Mapa, C. J., Araullo, Malcolm and Villamor, JJ., concur.

[1] Amended upon motion to rehear, March 5, 1921.

[1] NOTE BY REPORTER.-As the judgment was originally entered, the dispositive part of the decision contained a declaration of ownership in favor of the plaintiff; but upon motion to reconsider, the right was reserved to the defendants of instituting an action to try the title, as above stated, the court observing that considering the manner in which this case had been tried in the court below, it was to be feared that the proof relative to ownership had not been fairly ventilated.

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