

HUGO APUNDAR, PLAINTIFF AND APPELLANT, VS. DALMACIO ANDRIN AND FLAVIANA PILAPIL, DEFENDANTS AND APPELLEES.

G. R. No. 16220. November 19, 1921

Ponente: STREET, J.

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STREET, J.:

This action of forcible entry and unlawful detainer was originally instituted in the court of the justice of the peace of San Remigio, Cebu, by the plaintiff, Hugo Apundar, to recover from the defendants, Dalmacio Andrin and Flaviana Pilapil, the possession of a parcel of land located in said municipality, having an extension requiring 3 gantas of maize for seeding purposes, and with boundaries as described.

The plaintiff alleges in substance that for a long period of time prior to February 15 of the year 1915 he had exercised peaceful and undisputed possession over the parcel of land in question and that upon that date the defendants entered upon the same with force and intimidation, excluding the plaintiff therefrom and uprooting the tobacco plants which the plaintiff had set out over an area of one-third thereof, to his damage in the amount of P250. Wherefore, he prays to be restored to possession and that the defendants be required to pay damages and costs. In the Court of First Instance, to which the case came upon appeal, judgment was rendered absolving the defendants from the complaint, and the plaintiff appealed.

No question is made as to the location and identity of the land which is the subject of the complaint; nor is it disputed that, on or about the date stated, the defendants entered upon the land, though without violence or intimidation, and have subsequently cultivated it, thereby excluding the plaintiff therefrom. The sole disputed point has reference to the prior possession which the plaintiff claims to have been exercising over the property at the time he was put out.

Upon this point the plaintiff says, and the testimony submitted in his behalf tends to show, that the land had been given to him in 1889 by a kinsman, Numeriano Andrin, who still owns and occupies a parcel immediately adjacent to that in question and lying on the south, or southwest, side thereof; and the plaintiff asserts that he had remained in continuous and uninterrupted possession from that date, in the character of owner, until he was dispossessed by the defendants.

The defendants, on the contrary, assert that the plaintiff never had anything to do with the land until the year 1911, when the defendant Flaviana Pilapil, widow of Mercido Andrin, and mother of the defendant Dalmacio Andrin, permitted the plaintiff to enter upon and work the land as a cropper on shares; that he remained there in said capacity of cropper and punctually divided the crops harvested therefrom until in the year 1915, when he refused to make further division of the crops, claiming to be himself the owner of the land, whereupon the defendants resumed the occupation and cultivation of the land.

In support of this view of the facts the defendants introduced in evidence the document Exhibit B, showing that in the year 1895, the defendants' predecessor in interest, one Bonifacio Magdadaro, procured a possessory information to be duly drawn up and inscribed, covering a parcel of land in the same barrio of an area of 12

gantas, of which parcel that now in question forms the extreme southern portion. They also showed that the said Bonifacio Magdadaro remained in possession of the land included in said possessory information until the year 1902, when he sold it to Mercado Andrin for the sum of P200 (Exhibit C). From said date Mercado Andrin remained in possession until his death, leaving the same in the possession of his widow, Flaviana Pilapil, and his son Dalmacio Andrin, the defendants in this case.

The documents above-mentioned clearly show the falsity of the plaintiff's pretense to have been in possession of the questioned parcel in the character of owner since 1889, when he is supposed to have obtained the same by donation from Numeriano Andrin; and particularly the possessory information, extended in the year 1895, shows that the plaintiff Hugo Apundar could not then have been in possession of the questioned parcel in the character of owner, since said document calls for Numeriano Andrin as the adjacent proprietor on the south; and of course if the latter had six years previously given the questioned land to Hugo Apundar, the document would have called for Hugo Apundar as the adjacent proprietor on that side, instead of Numeriano Andrin. It is not pretended that the alleged gift of the property by Numeriano Andrin in 1889 to Hugo Apundar was evidenced by any writing; and the correct inference to be drawn from the evidence in our opinion is that the alleged gift is entirely a creature of the imagination. This is corroborated by the testimony of the defendant Dalmacio Andrin—which has remained undenied by witnesses for the plaintiff—tending to show that this action of unlawful detainer was promoted by Numeriano Andrin largely out of ill-will to the defendants and with a view to depriving them of this land. The proof in our opinion clearly shows that the parcel in question never pertained to Numeriano Andrin to give to anybody; that it was included in the possessory information obtained by Bonifacio Magdadaro in 1895; that the entire parcel covered by the possessory information passed in 1902 from Bonifacio Magdadaro to Mercado Andrin, who occupied it with his family until his death; that thereafter the entire tract, including the questioned parcel, passed into the possession of the defendants, widow and son of Mercado Andrin; that said defendants in 1911 permitted the plaintiff, Hugo Apundar, to enter upon and cultivate the land as a cropper on shares; and finally that in 1915 the plaintiff refused to divide the produce of the land with the defendants, claiming to be owner; whereupon the defendants entered upon and resumed the cultivation of the land, excluding the plaintiff therefrom.

The conclusions of the trial judge upon the controverted questions of fact are accordant with the contention of the defendants, and in harmony with our own view of the case, though he loosely describes the relation between the parties, by virtue of the cropping agreement, as that of landlord and tenant—an inexactitude of expression into which it was easy to fall in view of the proof before the court.

No assignment has been interposed in this court by the attorneys for the appellant directed to the conclusions of fact of the trial judge; and no effort has been made in the appellant's brief to demonstrate error therein. On the contrary, the contention of the attorneys for the appellant is that, accepting the facts as found, the trial judge erred in applying the law to the case. In this connection said attorneys assume that the relation between the parties was that of landlord and tenant, as supposed by the trial judge, and not that of owner and mere cropper. We are of the opinion that in whichever aspect the relation be viewed the supposed error was not committed.

In the first place, if it be assumed that the agreement under which the plaintiff entered upon the land in 1911 was merely that of a letting of the land to labor on shares, the plaintiff as cropper clearly did not acquire possession in any sense as against the owner. A cropper is simply a laborer who is entitled to a certain portion of the crop for his work. The rights incident to such a contract are assimilated in the Civil Code as those of partnership (art. 1579), and the most that could be conceded to the cropper would be to say that he becomes a cotenant with the owner of the land with respect to the fruits of the soil. with the right to occupy the land for purposes of tillage. The owner remains at complete liberty to enter upon his own land at any time, though of course if he puts the cropper off

without sufficient justification in law he is civilly liable in damages, and may be compelled in a civil action to comply in good faith with the terms of his contract.

Upon this point the American authorities are exceedingly clear, and entirely in harmony with the proposition that a cropper acquires no estate or possessory interest whatever in the land which he tills. He is as much a servant as if his wages were fixed and payable in money. (8 R. C. L., 373-375.) "A cropper's contract gives the cropper no legal possession of the premises further than as an employee; the legal possession is in the employer." (17 C. J., 382.)

For default of prior possession, therefore, the plaintiff in this action must fail—assuming, as before stated, that his status was that of an ordinary cropper on shares.

In the second place, assuming that a true relation of landlord and tenant had been created between the defendants on the one part and the plaintiff on the other, as the trial judge appears to have supposed, it is equally clear that the plaintiff cannot maintain this action. To establish this it is sufficient to point out that, after having entered into possession in 1911 under the agreement already mentioned, the plaintiff in 1915 denied the title of the defendants and began to assert ownership in himself. This operated as a renunciation of his rights under his contract and as a forfeiture of the lease, with the result that the owner became entitled to reenter peacefully, as he did, and resume possession.

In *Medel vs. Militante* (41 Phil., 526), we held that when the tenant denies his landlord's title this gives rise to a right of action on the part of the landlord to recover immediate possession of the demised premises; and it follows as a necessary corollary from this proposition that if the landlord acquires possession peacefully, as in this case, by the mere act of reentry, the tenant cannot maintain an action to put the landlord out. The existence of an affirmative right of action on the part of the landlord to oust the tenant is fatal to the maintenance of any action by the tenant. Otherwise, the absurd result would follow that a tenant ousted under the circumstances here revealed would be restored to possession only himself to be immediately put out in a possessory action instituted by the landlord. To prevent circuitry of action, therefore, we must recognize the affirmative right of action on the part of the landlord as a complete and efficacious defense to the maintenance of an action by the tenant. *Circuitus est evitandus; et boni iudices est lites dirimere, ne lis ex lite oriatur.*

Another consideration based upon an idea familiar to jurisprudence is equally decisive. This is found in one of the implications of the familiar maxim *Ubi jus ibi remedium*; the converse of which is of course equally true, namely, *Nullun jus nullun remedium*. Applying this idea to the case before us, it is manifest that inasmuch as the plaintiff's right of possession has been destroyed, the remedy is also necessarily taken away. Even under the language of the statute itself (sec. 80, Code Civ. Proc), the action of unlawful detainer does not lie unless the property is unlawfully withheld from the plaintiff, which imports an actual present right of possession in him.

Our conclusion is that in whatever light the relation of the parties to this action under the agreement of 1911 be viewed—whether as that of owner and cropper, or landlord and tenant—the present action cannot be maintained. There was no error, therefore, in the action of the trial judge in absolving the defendants; and the judgment must be affirmed. It is so ordered, with costs against the appellant.

Johnson, Araullo, Avancena, and Villamor, JJ., concur.

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