

LEON RAZOTE ET AL., PLAINTIFFS AND APPELLANTS, VS. JUAN RAZOTE (ALIAS BANDONG), NORBERTO RAPATALO, GREGORIO RAPATALO, AND EUGENIA DE FRANCIA, DEFENDANTS AND APPELLEES.*G. R. No. 24863. August 05, 1926*

Ponente: OSTRAND, J.

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This is an action for the partition of a parcel of land situated in the barrio of San Jose of the municipality of Alaminos, Pangasinan, the plaintiffs alleging that they are the owners of a four-fifths interest in the land, having inherited the same from their father, Juan Razote 1.^o. The original complaint was filed on September 30, 1920, Norberto Rapatalo and Juan Razote, a brother of the plaintiffs, being the only parties defendant. Norberto Rapatalo, through his counsel, filed an answer denying the allegations of the complaint and setting up as a special defense "that he is in legal possession of the land in question, it being alleged in the complaint itself that he purchased the land from Juan Razote in the year 1913." On November 24, 1923, counsel for the defendant Norberto Rapatalo filed an amended answer in which he denied generally the allegations of the complaint and pleaded as a special defense that he only had possession of the land during the years 1913 and 1914 and that he, in 1915, made a donation of the land propter nuptias to his son Gregorio Rapatalo by reason of the latter's marriage to Eugenia de Francia, and that he, the said defendant, had no further interest in the land. The plaintiffs thereupon on December 13, 1923, filed an amended complaint to the same effect as the original complaint, but including Gregorio Rapatalo and Eugenia de Francia as additional defendants.

At the beginning of the trial in the Court of First Instance the parties entered into the following stipulation of facts:

"1. That the identity of the land in question is known to the witnesses for both parties and that they know the description of the land.

"2. That on June 9, 1913, the defendant Juan Razote (alias Bandong) sold the land to his codefendant Norberto Rapatalo and that on that same date Norberto Rapatalo entered into the possession of the land and enjoyed the fruits thereof until the year 1915.

"3. That on March 26, 1915, the defendant Norberto Rapatalo granted said land by donation propter nuptias to his son Gregorio Rapatalo and that from that date up to the present time Gregorio Rapatalo has been in possession of the land and has enjoyed the products thereof.

"4. That a deed of sale was executed by the defendant Juan Razote (alias Bandong) in favor of his codefendant Norberto Rapatalo, the deed having been acknowledged before Mr. Jose Rivera, attorney and notary public.

"5. That a deed was also executed by Norberto Rapatalo in favor of his son Gregorio Rapatalo, which is Exhibit 2, ratified before the same notary public, attorney Jose Rivera.

"6. That on September 30, 1920, the plaintiffs filed a complaint for partition of property against Juan Razote and his codefendant Norberto Rapatalo.

"7. That in December, 1923, the same plaintiffs filed an amended complaint, including the spouses Gregorio Rapatalo and Eugenia de Francia as defendants, as a consequence of the answer in which it is alleged that the defendant Norberto Rapatalo has no longer any right or interest in the land in question, having transferred the same in 1915 to his son Gregorio Rapatalo."

Upon these stipulations counsel for the defendant Rapatalo moved that the case be dismissed on the ground that Gregorio Rapatalo had acquired title to the land by prescription, but no ruling was made upon this motion.

After receiving the testimony of some witnesses in regard to points not covered by the stipulation of facts the trial court rendered judgment in favor of the defendants, denying the partition of the property and absolving the defendants from the complaint. From this judgment the plaintiffs appeal.

In our opinion the judgment appealed from must be affirmed. Leaving aside the question of credibility of witnesses upon the disputed facts, and in regard to which opinions may differ, it clearly appears from the stipulation of facts, which is not impugned and which is binding upon the parties, that the defendant Gregorio Rapatalo, by himself and through his predecessor in interest, Norberto Rapatalo, had held adverse possession of the property for over ten years when he was made a defendant in the case in December, 1923, and that he therefore has acquired title to the land by prescription. But it has been suggested (1) that inasmuch as action was brought against Norberto Rapatalo within ten years from the time he obtained possession of the land, his possession cannot be tacked to that of Gregorio; and (2) that it is not clearly shown by the evidence that the possession held by Norberto and Gregorio was of the character required by section 41 of the Code of Civil Procedure.

Neither one of these contentions can be successfully maintained. Section 41, *supra*, reads as follows:

"Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. * * *"

The rule is almost universal that if there is privity between successive occupants, the adverse possession of the predecessor may be tacked to the adverse possession of the successor, whether the former had title to the land or not. (See 2 C. J., 82 et seq.; 1 R. C. L., 717 et seq.) The very few exceptions to this rule are based on special statutory provisions which do not exist in this jurisdiction.

The provisions of the section quoted are taken from section 2734 of the Annotated Code of Mississippi of 1892, under which Code, tacking of successive possessions has always been allowed. (*Crowder vs. Neal*, 100 Miss., 730.) The same rule has also uniformly been followed in this jurisdiction.

As already stated, it is stipulated that Norberto Rapatalo bought the land on June 19, 1913, and held possession until March 26, 1915, when he ceded it to his son Gregorio, who continued the possession uninterruptedly until December, 1923, when he was made a party to the case. It also appears from uncontradicted testimony that when the cession was made Gregorio moved from the barrio of Pugo, where his father is living, to the barrio of San Jose, where the land in question is situated, and that he alone enjoyed the fruits of the land during that time. There was therefore no cotenancy between him and his father and there is no indication of collusion between them with

intent to defraud the plaintiffs. As there was privity of possession between the two, the predecessor's possession must, under the rule stated, be tacked to that of the successor.

At this point attention is called to the clear and positive language of the section above quoted. It is there in effect stated that the manner in which the possession is commenced is immaterial; to confer title it is sufficient that the possession has been actual, open, public, continuous and adverse for the period of ten years saving only certain rights of persons under disability. Nowhere in our statutes is any exception made in a case such as the present, and if there is no exception it stands to reason that section 41 applies with full force, and if the possession is of the character described in said section for the period of ten years, it gives the possessor a "full and complete title." That the possession in the present case was of that character, is fully shown by the evidence. That it was continuous, is not disputed; that it was adverse and under claim of ownership, is shown by the facts that both Norberto and Gregorio held the land under conveyances in fee simple; that it was actual, open, and public, is sufficiently proven by the testimony to the effect that the land was cultivated to its full extent and by the stipulation that Norberto enjoyed its fruits during the time of his possession and that Gregorio received the products during the succeeding period.

Now, as to the suggestion that Gregorio's rights were affected by the fact that an action for partition of the land was brought against his father some five years after the father had divested himself of all interest in the land, it must be considered that after the land had been ceded to him, Gregorio held adverse possession not only against the plaintiffs but as against the whole world, including his father. Can an action brought against a person, in regard to whom the possessor of the land holds adversely, be regarded as an interruption of the possession of the actual possessor? The question answers itself. It is elementary that an action against a stranger to the possession cannot interrupt the running of the statute of limitations as to the actual possessor if the latter's possession has been open and notorious, as is admittedly the case here.

The blood relationship between Norberto and Gregorio has nothing to do with the question; an action against the father is not an action against the son, and it is again to be noted that there is no indication in the record of collusion between the father and son to mislead the plaintiffs into bringing the action against the wrong party. It is probable that Gregorio knew that an action had been brought against his father, but that knowledge did not interrupt his possession; he was under no obligation to inform the plaintiffs of their mistake; it was their duty to be vigilant and to see that the action was brought against the proper party in interest.

Some stress has been laid on the admission of possession contained in the original answer filed by Norberto's counsel. Aside from the fact that mistakes are frequently made by lawyers in preparing pleadings and that when such pleadings are subsequently amended but little weight can be given to original errors in the allegations, it is here to be observed that the question of possession is not in controversy; that is definitely settled by the stipulation of facts. It may also be noted that the wording of the allegation of possession in the answer indicates that it was not based on information furnished by the defendants but upon allegations contained in the complaint.

For the reasons stated the judgment appealed from is affirmed, with the costs against the appellants. So ordered,

Avanceña, C. J., Street, Villamor, Romualdez, and Villa- Real, JJ., concur,
Johns, J., dissents.

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