

**ESTANISLAO NICOLAS ET AL., PLAINTIFFS AND APPELLEES, VS.
REMIGIO NICOLAS ET AL., DEFENDANTS. JOSE BONDAN ET AL.,
APPELLANTS.**

G.R. No. 29009, October 24, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an action for the recovery of land, the delivery of fruits received and for damages.

After trial the Honorable Fermin Mariano, judge, in order to better investigate the facts and to decide the case rightly, reopened the case and received the testimony of Abraham de Peralta, a man of culture and disinterested, and, in the opinion of the court—and on this point we find nothing to contradict the trial judge—and then rendered judgment declaring and ordering the following:

"The court declares the plaintiffs and defendants, surnamed Nicolas, pro indiviso coowners of the parcel of land in San Julian Grande or Culao of the municipality of Dingras, Ilocos Norte, with boundaries set forth in the complaint, and described on the plan Exhibit 1 of the defendants (page 83 of the second file in civil case No. 2348 of this court); that the plaintiffs as coparticipants are entitled to the portion of the same parcel of land; that each and every one of the defendants except those eliminated and Severino Ramos, is obliged to make restitution to the plaintiffs to the prejudice of the right of those surnamed Nicolas, defendants, (who were sued) as coowners of the same parcel, pro indiviso; and they must likewise indemnify the plaintiffs and deliver to them one-half of the 'uyones and baares of palay' herein mentioned, produced by their respective lots during nine years from 1918 to 1926, deducting those delivered to the ex-receiver Ignacio Flores, from the harvest of the year 1925-1926; that the defendants surnamed Nicolas who consider themselves coowners with the plaintiff shall deliver also to the latter one-third of the aforesaid 'uyones of palay' reaped from the five parcels of land during the same time, that is, 1918 to 1926, without prejudice to the determination of their part after a formal partition of this larger parcel of land in dispute.

"Should the defendant be unable to deliver to plaintiffs one-half of the 'uyones of palay and baares' produced by the lots which each one possesses and has possessed, retains or has retained within the parcel in question during the said years, according to the statement herein made, they shall pay them in money in accordance with the aforesaid evaluation herein, with the costs against the defendants.

"It is so ordered."

The defendants appealed, making the following assignments of error as committed by the trial court, to wit:

"1. In declaring the plaintiffs to be owners and possessors pro indiviso of the parcel of land described in the plaintiffs' complaint, such declaration not being justified by the evidence, and the exhibits of the plaintiffs, constituting the best proof that such community of interests does not and did not exist.

"2. In including the lots occupied by the defendants from time immemorial and inherited from their forebears, and the lot which the plaintiffs received from Abraham de Peralta and Dorotea Bonoan, which only measured

20 hectares, thus adjudicating to them a larger lot, that is, some 35 hectares, by declaring the plaintiffs possessors of said lots in common.

"3. In failing to dismiss the complaint for the defect of joinder of actions, it having been duly proven by the plaintiffs' evidence that there is no community.

"4. In failing to consider the oral and documentary evidence of the defendants individually, and in giving the plaintiffs' oral evidence more weight, the latter being contradictory, improbable, against common sense and fabricated.

"5. In giving or granting a greater area of land to the plaintiffs than they asked for and alleged themselves to be the owners of in civil case No. 741, and greater than the Supreme Court adjudicated to them, to the prejudice of the defendants.

"6. In basing its judgment on the testimony of Abraham de Peralta, which was favorable to the interests of the defendants rather than those of the plaintiffs.

"7. In holding that the plaintiffs have been in possession of said land from time immemorial, as they alleged, without any interruption, having at the same time believed Abraham de Peralta's testimony to the effect that he had been exclusively in possession thereof for ten years and more.

"8. In holding that Paulo Formantes and his companions, being prominent persons, the first being a well-known merchant and the others land owners, went to usurp the plaintiffs' lands accompanied by some municipal policemen, and in not declaring that it was the plaintiffs who were to usurp the parcels of land occupied and possessed by them as owners, but that they failed on account of the intervention of the authorities, and of the justice of the peace court of Dingras.

"9. In not holding that the plaintiffs' complaint is merely a scheme to deprive defendants of their property.

"10. In basing its adverse judgment on that of the Supreme Court in favor of the same and against other persons, the herein defendants-appellants not having been parties to, nor even being aware of, said case.

"11. In basing its judgment on the testimony of the plaintiffs and of Dorotea Bonoan and Abraham de Peralta, who were the former defendants in that case, and who are now parties herein against the defendants-appellants, all of them now having a common interest.

"12. In not holding that the plaintiffs' right of action, if it ever existed, has prescribed.

"13. In not holding that the plaintiffs are estopped from claiming a greater portion than what they formerly claimed.

"14. In holding that; the plaintiffs have possessed as owners the parcels of land belonging to the defendants, according to their evidence and documents.

"15. In not holding that the documents which the plaintiffs have and did not exhibit at the hearing, and which they had exhibited before in case No. 741 against Abraham de Peralta et al., would be prejudicial to them, as in fact they are, because the defendants, and especially Paulo Formantes, are mentioned therein as adjacent owners.

"16. In not considering as evident proof of the ownership of the defendants of their respective lots, the existence for many years of houses belonging to their tenants and to themselves thereon, such houses being already very old.

"17. In granting the plaintiffs unreasonable and exorbitant damages.

"18. In not absolving the defendants-appellants from the complaint, there being a greater preponderance of the

evidence in their favor.

"19. In not finding that the defendants-appellants are the exclusive owners of the lots which they alleged and proved to belong to them by documentary and oral evidence, respectively."

The evidence sufficiently shows that the possession of the plaintiffs has been as coowners pro indiviso of the land in question. On the other hand, the acquisition of the same by inheritance by the defendants, and their possession from time immemorial have not been proven. Consequently, the first and second assignments of error have not been committed, neither the third, which is a consequence of the first.

The fourth refers to the consideration which the trial court gave the evidence. We see no reason to doubt the correctness of such consideration. The fourth assignment of error lacks merit.

The difference in area between the land described in the complaint herein and that which was the subject matter of the former civil case No. 741, does not necessarily mean that there was a real increase of land. In view of the evidence in the case, it may be presumed to be due to an error in calculation. The adjoining owners of the land in this case and in the former one are practically the same. The fifth assignment of error has no ground.

The sixth, seventh and eleventh assignments of error also deal with the appreciation of the evidence. As in the case of the fourth assignment of error, we cannot see any worthy reason for doubting the correctness of the trial court's action in considering the probatory value and force of the testimony of Abraham de Peralta and Dorotea Bonoan.

The weight of the evidence is not in favor of the eight and ninth assignments of error.

Passing to the tenth, it is to be noted that the conclusions reached in the judgment appealed from are not based solely on the judgment rendered in the former case. In addition the lower court considered the testimony offered by the parties and its preponderance as evidence.

The prescription alleged in the twelfth assignment of error has not been sufficiently established and cannot therefore be invoked.

Inasmuch as the fifth assignment of error has no merit in it, the thirteenth must likewise fail, being intimately connected therewith. The same thing holds good for the fourteenth, which is intimately connected with the aforementioned first and third errors already considered.

There is not sufficient reason to consider the presumption of unfavorable evidence against the plaintiffs simply because they did not present certain documents as evidence. It does not appear that they were necessary evidence. (Sec. 334, par. 5, Code of Civil Procedure; *Modesto vs. Leyva*, 6 Phil., 186.) The fifteenth assignment of error has not been proven.

The next two, the sixteenth and seventeenth, turn on the consideration of the evidence. In view of the diligence shown by the trial court, in the study and consideration of the present case, as it appears from the record, the oft-repeated rule of this court of respecting the findings of fact made by the trial court that saw and heard the witnesses testify, is here especially applicable.

The last two assignments of error are a sequel of the preceding ones.

There being no reason to reverse or modify the judgment appealed from the same is hereby affirmed, with costs against the appellants. So ordered.

Johnson, Street, Malcolm, Ostrand, and Villa-Real, JJ., concur.

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