

## CASIMIRO MANUEL, PLAINTIFF AND APPELLANT, VS. JOSE CASTILLO, DEFENDANT AND APPELLEE.

*G.R. No. 30850. September 06, 1929*

Ponente: ROMUALDEZ, J.

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### ROMUALDEZ, J.:

Of the three above-entitled cases, G. R. No. 30850 is the civil case No. 4776 of the Court of First Instance of Pangasinan in which Casimiro R. Manuel "is the plaintiff and Jose Castillo is the defendant; G. R. No. 30851 is registration proceeding No. 6080 in which Matias San Andres is the applicant and Saturnina Rosina et al., are the oppositors; and G. R. No. 30852 is registration proceeding No. 6550 in which Jose Castillo is the applicant, and Matias San Andres et al., are the oppositors.

The judgment of the court below provides:

"1. Judgment is hereby entered dismissing Matias San Andres's application in registration proceeding No. 6018;

"2. Absolving defendant Jose Castillo in civil cases Nos. 4719 and 4776 brought against him for the recovery of property by Matias San Andres and Casimiro Manuel, respectively.

"3. Decreeing the adjudication and registration of the whole parcel or lot No. 3 of plan Exhibit 1 Castillo, applied for in registration proceeding No. 6550 as his exclusive property, but by virtue of the agreement between applicant Jose Castillo and the municipality of Balungao, subject to a municipal right of way five meters wide and four hundred thirty meters long, from east to west on the northern portion of this parcel of land; and when this judgment becomes final, let the proper decree issue.

"Without any pronouncement as to costs in each and every one of these cases." (Pp. 32 and 33, Casimiro Manuel's bill of exceptions.)

Matias San Andres and Casimiro R. Manuel appealed from this judgment, but as the former failed to file his brief in time, this court dismissed his appeal.

The parties litigant in this court are therefore Jose Castillo as appellee, and Casimiro R. Manuel as appellant. And the controversy between them concerns a piece of land 75 hectares in area, described in the aforementioned registration proceeding No. 6550 (G. R. No. 30852) commenced by the latter, as lot 3, plan Exhibit 1-Castillo.

The errors assigned by the appellant to the trial court are as follows:

"1. In not finding that Jose Castillo's proposal to purchase the land in question from Casimiro Manuel was proved.

"2. In not finding that Casimiro Manuel's ownership to said land was proven and in absolving Jose Castillo from the complaint.

"3. In ordering the adjudication and registration of the land in question in favor of Jose Castillo, and in

dismissing Casimiro Manuel's opposition.

"4. In denying the motion for a new trial."

With respect to the first assignment of error, it cannot be deemed sufficiently proven that the appellee offered to purchase the land in question from the appellant. The appellee testified that Olimpio Cirilo offered to sell him the land, but when he (Castillo) discovered that it was his land, he refused to buy it. Furthermore, considering all the evidence of the case, the alleged proposal to purchase on the part of the appellee is incompatible with the latter's conduct in holding the same land as owner thereof.

The second and third assignments of error refer to the result of the evidence. After having considered the evidence, we find that it preponderates in favor of the appellee. We deem it sufficiently established that said land was inherited by the latter from his father Adolfo Castillo who held it until the year 1899 when he died, Federico Castillo, the brother of the decedent, having undertaken the administration thereof up to the year 1900, when Jose Castillo, the appellee herein, entered into possession of the land and has continued to possess it as owner publicly, continuously, and adversely to all the world.

The appellant contends that the land in question is a part of a larger tract belonging to Rosendo Bueno, and that the children of said Rosendo sold the parcel in question to the herein appellant. The latter admits that at least since 1917 it is the appellee who, by means of his tenants, has been in possession. The allegation of possession and ownership by Rosendo Bueno or his caretakers and children has been sufficiently overcome by the appellee's evidence.

The appellant also contends that the appellee cannot invoke in his favor prescription under section 41 of the Code of Civil Procedure alleging that his possession commenced in the year 1900 when said Code had not yet been approved, and that section 38 thereof provides that the provisions of the Code relating to prescription "shall not apply to actions already commenced, or to cases wherein the right of action has already accrued." But it should be taken into account that the proviso in the same section reads:

"That all rights of action which have already accrued, except those named in the last preceding paragraph, must be vindicated by the commencement of an action or proceeding to enforce the same within ten years after this Act comes into effect."

And it will be noted that the rights of action excepted from said proviso to said section are a continuing and subsisting trust, and an action by the vendee of real property in possession thereof to obtain the conveyance of it, neither of which applies to the case at bar. We believe section 41 of the Code of Civil Procedure is applicable to the instant case. This section has been repeatedly applied to cases of prescription where the possession began before said Code came into effect, as in the cases of *Jones vs. Insular Government*, *Ramos vs. Insular Government*, and *Balpiedad vs. Insular Government*, found in volume 6, *Philippine Reports*, pages 122, 184 and 135, respectively.

The last assignment of error is a consequence of the preceding ones.

There being no merit in the present appeal, the judgment appealed from is hereby affirmed in all its parts, with the costs of this instance against the appellant. So ordered.

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

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