

VICENTE SANTIAGO, ADMINISTRATOR OF THE DECEASED JUAN DIZON, PLAINTIFF AND APPELLANT, VS. CRISTINA CRUZ, DEFENDANT AND APPELLANT.*G. R. No. 31919. March 24, 1930*

Ponente: OSTRAND, J.

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body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } It appears from the record that one Juan Dizon died on July 20, 1927, in a house where he had lived for at least twenty years prior to his death. After his death, a petition for the appointment of a special administrator was filed with the Court of First Instance of Rizal. The petition was opposed by Marta Dizon, a close relative of the deceased, but her opposition was overruled and on July 27, 1927, the plaintiff, Vicente Santiago, was appointed special administrator. As such, he took possession of the property left by the deceased, including the house above-mentioned. Two months later, Marta Dizon entered the house and made it her abode, against the will of the plaintiff. Three days later, Cristina Cruz, the herein defendant, also made the house her home on the invitation of Marta Dizon and remained there notwithstanding the objections of the plaintiff.

Trouble immediately ensued, and the plaintiff asserts that the other persons living in the house were insulted and annoyed to such an extent that they were compelled to leave. To prevent further alleged depredations on the part of Marta and Cristina, the plaintiff placed padlocks on most of the doors in the house, and on October 8, 1927, he obtained an order from the Court of First Instance authorizing him to employ sheriffs or Constabulary men to aid him in maintaining order in the house. Three days later, the court revoked said order but authorized the plaintiff to employ deputy sheriffs at his own expense.

Thereafter, Marta Dizon died, but Cristina Cruz still insisted on living in the house, and the plaintiff brought the present action against her for forcible entry and detainer. The justice of the peace rendered judgment in favor of the defendant and absolved her from, the complaint. Upon appeal to the Court of First Instance, that court rendered a judgment ordering the defendant to vacate the premises in question but absolving her from a claim presented by the plaintiff in the same case for expenses incurred by him in employing a deputy sheriff. The total amount of the claim was P2,116,71, Both of the parties appealed to this court, the plaintiff for the denial of his claim of the expenses and the defendant for ordering her to vacate the house.

In our opinion, neither appeal is well taken." The plaintiffs employment of deputy sheriffs seems to have been unnecessary, and we cannot hold that the court below erred in declining to allow him compensation for the resulting expenses.

The defendant-appellant claims that she has inherited an interest in the house and is a tenant in common with the

heirs of Juan Dizon and that she therefore cannot be legally ejected from said house. This contention cannot be successfully maintained. The plaintiff held possession of the house before Marta Dizon and the defendant took possession. They acquired such possession by force and against the will of the plaintiff, taking the law in their own hands. In these circumstances, the defendant must suffer the consequences of her lawlessness whether she is a part owner of the property or not. The fact that she was invited by Marta Dizon is immaterial; Marta had no greater right than the defendant.

The appealed judgment is affirmed without costs. So ordered.

Johnson, Malcolm, Johns and Villa-Real, JJ., concur.

DISSENTING:

Villamor, J.:

I regretfully dissent from the conclusion reached by the majority in this case.

It is to that part of the judgment appealed from which runs as follows that I cannot bring myself to agree:

"La demandada alega en su contestación, como defensa especial, que la casa en cuestión es de la 'propiedad de la comunidad de los Dizon, entre ellos la aquí demandada,' y que, como también dijo en sus declaraciones, si ella fue a vivir en dicha casa fue por haberla invitado Marta Dizon. Nada de esto constituye defensa favorable a la demandada, pues, aun cuando ella tuviera derecho como uno de los herederos sobre dicha finca, no habiéndose hecho la partición de los bienes dejados por el difunto Juan Dizon, ningún derecho tenía a ocuparla, ni ella ni Marta Dizon, por quien, según alega, fue invitada a vivir en la misma casa. Además, aunque la demandada viene a ser un pariente lejano de Juan Dizon, se ha probado por el demandante que no tenía derecho a heredar a aquel finado."

In my opinion, the question raised in this appeal is whether a cotenant or coowner may oust another coowner by a summary proceeding instituted under section 80 of the Code of Civil Procedure.

The land in question originally belonged to Feliciano Martinez. When she died the ownership passed to her children: Ysmael Dizon (the father of Marta), Maria, Magdalena and Juan Dizon. The estate of Juan Dizon is represented by the administrator, the plaintiff herein, while the defendant's right comes from the deceased Marta Dizon.

The heirs of Feliciano Martinez, agreeing upon the partition of the estate, stipulated as follows regarding the land in question: "En relation de [con] nuestra casa de hierro galvanizado, camarín de piedra de tres bolas cada uno, camarín de cocción de azúcar, camarín de azúcar, el terreno donde están enclavadas estas propiedades y todos los enseres, así como los carabaos de labor estarán a nuestro usufructo contain de los hermanos, sin que nadie de nosotros pueda prohibir dicho uso."

The community of property between Juan Dizon and Marta Dizon being admitted, and both decedents being respectively represented by the plaintiff and the defendant, I believe it is an error to hold that in the ejectment proceedings filed by the plaintiff against the defendant, the latter cannot allege her right to the property in question in special defense; for article 394 of the Civil Code expressly provides that each participant may make use of the thing owned in common, provided that he use it for the purpose for which it is adapted and in such a manner as not to prejudice the interest of the community or prevent the other owners from making use of it in accordance with their rights.

The judgment appealed from states that "since the partition of the estate of the deceased Juan Dizon has not yet been made, she had no right to occupy it, nor had Marta Dizon, by whom, she alleges, she was invited to live in said house." But this loses sight of the fact that the defendant and her predecessor-in-interest, Marta Dizon, do not pretend to a share in the estate of Juan Dizon. Juan Dizon and Marta Dizon, brother and sister, inherited from their father Ysmael Dizon, among other property, the house in question. This house, as the very judgment appealed from admits, is the undivided property of said brother and sister, belongs to them in common, and they are coowners or joint tenants thereof. The defendant puts forth no right to inherit from Juan Dizon, but from Marta Dizon. And even if Juan Dizon were alive, he could not claim ownership of the whole property. How can the representative, that is, the administrator have more right than the one he represents? The rights of Juan and Marta Dizon, brother and sister, as co- owners of said house, must be the very same held by their representatives, the plaintiff as administrator of Juan Dizon, and the defendant as successor of Marta Dizon. If while he lived, Juan Dizon could not have ousted his sister Marta Dizon, then today, the administrator cannot oust the defendant.

It is further stated in the judgment appealed from that the defendant has no right to inherit from the deceased Juan Dizon, but I have already pointed out that the defendant claims no such right. Her right derives from Marta Dizon, her predecessor-in-interest.

As to the collection of the fruits of the property, we have article 399 of the Civil Code, which provides:

"Art. 399. Every part owner shall have the absolute ownership of his part, and of the fruits and benefits derived therefrom, and he may, therefore, sell, assign, or mortgage it, and even substitute another person in its enjoyment, unless personal rights are involved, but the effect of the sale or mortgage, with respect to the other participants, shall be limited to the share which may be allotted him in the partition upon the dissolution of the community."

For this reason, I am of the opinion that the judgment ought to be reversed in so far as it orders the defendant to vacate the premises.

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