

ARSENIO DE LA ROSA, ADMINISTRATOR OF THE ESTATE OF NATALIO, AND CATALINO REGALADO, DECEASED, PLAINTIFF AND APPELLANT, VS. MARIANO ARENAS, DEFENDANT AND APPELLEE.*G.R. No. 3229. February 27, 1907*

Ponente: WILLARD, J.

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There was evidence in this case to establish the following facts:

Rufino Regalado was the owner of the land in question on the 5th of December, 1864; on that day he executed his will, by which he made his brothers Catalino Regalado and Natalio Regalado his universal heirs, appointing them also his executors. In his will he acknowledged an indebtedness of 800 pesos to his wife, Gerarda Yap-Subco. He also gave her a legacy of 400 pesos. It appears from the will that he left other property besides the house in question, in which he and his wife lived at the time of his death, which took place soon after the will was made and before the 5th day of January, 1865. It does not appear that he left any heirs in the ascending or descending line. Upon his death, the executors administered the estate, including the property here in question; the rents being collected during that time for the executors, by Bernabe Perez, who was called in the will of the testator his adopted son, and who, with his wife, Placida Arriola, lived in a house on the property. Three years after the death of the testator the rents were paid by Bernabe Perez to the widow, Gerarda Yap-Subco, and from that time—that is, from the year 1867—Perez was in possession of the property as the representative of the widow; she receiving the income thereof during all of that time. Upon her death, Francisca Binarao succeeded her in the ownership of the property, and Francisca on the 27th day of July, 1896, by a public document, sold and conveyed it to the defendant who has been in possession thereof since that date.

This action was commenced on the 16th day of February, 1905, by the plaintiff as administrator of the estates of Natalio Regalado and Catalino Regalado.

It is thus seen that since 1867, the property has been continuously occupied by the defendant, and the persons under whom he claims. This covers a period of almost forty years, and the court below held that the defendant was the owner of the property by virtue of the extraordinary period of prescription of thirty years. The findings of the court, upon this point, are not manifestly and plainly against the weight of the evidence, and they therefore can not be disturbed by us. (*De la Rama vs. De la Rama*, 201 U. S., 303.)

It is claimed by the appellant in his brief in this court that there is no evidence to show that the widow of Rufino Regalado occupied the property as owner. In determining the character of her occupation, the court was entitled to take into consideration all of the circumstances of the case. One of these circumstances was the fact that since 1867, neither Catalino Regalado nor Natalio Regalado, nor any one of their heirs, some of whom lived near the property, ever made any claim whatever thereto until the commencement of this action, and the institution of this action was due to the circumstance that the plaintiff, being an employee of the Bureau of Archives, happened one day in December, 1904, when looking over other documents, to read the will of Rufino Regalado above referred

to.

There was evidence to show that the widow occupied the property as owner, and that Francisca Binarao succeeded to the ownership thereof as her heir. Whether the proof to the contrary preponderates against this evidence is not for us to determine, as has before been stated.

The findings of the court below upon the subject of the extraordinary prescription being sustained, it is not necessary to consider whether the finding in regard to a partition of the property is sustained or not, as the former finding is decisive of the case.

The answer, alleged as a defense, was the ordinary prescription, and it is claimed by the appellant that the findings upon the subject of the period of extraordinary prescription were improper. In view of the provisions of sections 109 and 110 of the Code of Civil Procedure, relating to amendment of pleadings, this contention can not avail the appellant. If an amendment to the answer were necessary, this court, by the provisions of said sections, has power to now make it.

The judgment of the court below is affirmed, with costs of this instance against the appellant. After expiration of twenty days let judgment be rendered in accordance herewith, and ten days thereafter let the case be remanded to the lower court for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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