

SAGASAG, PLAINTIFF AND APPELLEE, VS. VICTORIA TORRIJOS, DEFENDANT AND APPELLANT.*G.R. No. 3434. September 18, 1907*

Ponente: TORRES, J.

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On the 30th of July, 1905, Sagasag, a nonChristian, filed a complaint in the Court of First Instance of Ilocos Sur. against Victoria Torrijos, praying the court to place him in possession of 96 groups of bamboo owned by him, that the same be awarded to him, and that the defendant be sentenced to pay damages and costs. The plaintiff stated that he was in possession of the groups of bamboo, as owner, for more than thirty years, and that the same were planted at a place called Tano, bounded on the north by Zanja; on the south and east by Nicolas; and on the west by land belonging to the defendant, who, without his knowledge or consent, unlawfully deprived him of the possession thereof, seized the bamboo thickets, and ordered the cutting down of more than 100 pieces of bamboo, which were afterwards taken over to Ilocos Sur in or about the month of September, 1904.

In answer the defendant moved that the complaint be dismissed with costs against the plaintiff, and that judgment be entered against him directing him to pay damages, and praying for such other and further remedy as might be proper in the premises. To this end she made a general denial of the facts contained in the complaint and set forth as special defense that she had been in possession for more than twenty years, as owner, of the bamboo claimed by the plaintiff as well as the land whereon the same was growing.

On the 21st of November, 1905, both parties petitioned the court to appoint commissioners to inspect the land containing the bamboo and to report, in view of the documents exhibited, whether the groups of bamboo in question were within or without the land owned by the defendant, with a statement as to those which belonged to the plaintiff but were sold by Torrijos, and also as to those which, without her knowledge or consent, had been cut down by a stranger who was not a tenant of the defendant.

The petition was granted by the court, and two commissioners having proceeded to the barrio of Tano, town of Bucay, Abra, Ilocos Sur, a survey of the land was made by them in the presence of both parties. The commissioners reported that the barrio of Tano was of considerable extent and that many portions thereof were planted with bamboo; that the field belonging to Victoria Torrijos was included in the tract and that around and within the same there were planted 62 groups of bamboo; that the latter were those which had been cut down with the knowledge and consent of the owner; that toward the north side of the land of the defendant there were 22 other groups of bamboo thickets which had been cut down by strangers without her knowledge or consent, but that the latter were not within her land.

In view of the evidence adduced by the parties the judge rendered judgment granting the possession claimed by the plaintiff and sentencing the defendant to deliver to the former the 100 pieces of bamboo or the value thereof, and to pay the costs. To this judgment the defendant excepted and moved for a new trial on the ground¹ that further and very important evidence of which she was not previously aware had been discovered, and because the

court's decision was contrary to law and its conclusions openly and manifestly contrary to the weight of evidence. A statement of the newly discovered evidence was made and she closed her petition by asking that the judgment be vacated and a new trial ordered, leaving the term allowed for perfecting a bill of exceptions in suspense until the motion for new trial was heard and decided. The motion having been dismissed, the bill of exceptions was approved and transmitted.

From the allegations of the complaint in this case and of the final judgment appealed from, it is apparent that the question at issue is the possession of 406 groups of bamboo which the plaintiff held in the barrios of Guimloong, Bunaao, Laguyan, and Tano, within the limits of the town of Bucay, district of Abra, Ilocos Sur, from which possession arises, according to the judgment, the possession of the land whereon said groups of bamboo were growing.

The petition of the defendant, Victoria Torrijos, praying that the judgment be vacated and a new trial granted having been overruled on the 23d of May, 1906, for the reasons stated in the order, it does not appear that the defendant and appellant took any exception thereto. Therefore, the evidence adduced by both parties at the trial can not, under the law, be reviewed upon appeal. Section 1 of Act No. 1596 provides:

"Section four hundred and ninety seven of Act Numbered One hundred and ninety, entitled 'An act providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands,' is hereby amended so as to read as follows:

" 'SEC. 497. Hearings confined to matters of law, with certain exceptions.—In hearings upon bills of exception in civil actions and special proceedings, the Supreme Court shall not review the evidence taken in the court below, nor retry the questions of fact, except as in this section hereinafter provided; but shall determine only questions of law raised by the bill of exceptions. But the Supreme Court may review the evidence taken in the court below and, after giving due weight to the fact that the judge who tried the case saw the witnesses when they testified, affirm or reverse by a preponderance of the evidence, or modify by such preponderance, the judgment there rendered, as justice may require, in the following cases:

" ' (2) If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the evidence was insufficient to justify the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence, and render such final judgment as justice and equity may require. * * * "

Section 2 of the same act prescribes that—

"Section one hundred and forty six of Act Numbered One hundred and ninety is hereby amended so as to read as follows:

"SEC. 146. Method of procedure in applications for new trial.—The application shall be made by motion in writing, stating the ground therefor, of which the adverse party shall have such reasonable notice as the judge may direct. When the application is made for a cause mentioned in the first or second subdivisions of the last section, it must be made upon affidavits, and counter affidavits from the adverse party may likewise be received.

" 'The overruling or granting of a motion for a new trial shall not be a ground of exception, but shall be deemed to have been an act of discretion on the part of the judge, within the meaning of the second sentence of section one hundred and fortyone. If, however, the motion for a new trial was made on the ground that the evidence was insufficient to justify the decision, an exception may be taken to the order overruling such motion, and such exception may be reviewed by the Supreme Court as in other cases.' "

An order of court overruling a motion to vacate a judgment and to grant a new trial, on the ground that the evidence was insufficient to sustain the judgment, is subject to exception which, if properly taken, permits the evidence to be reviewed by the Supreme Court, as in other similar cases, in accordance with the provisions of section 146 of the Code of Civil Procedure, as amended and as quoted above.

However, even considering that the motion for a new trial upon the grounds stated by the appellant in her petition was in accordance with the provisions of section 1 of Act No. 1596, amendatory to section 497 of the Code of Civil Procedure, after the overruling of the motion on the 23d of May it does not appear that an exception was taken. Hence the evidence in this case can not be reviewed nor can conclusions be drawn from the facts therein proven, following the provision of section 1 of the act above referred to.

Under the circumstances it becomes necessary to accept the considerations and conclusions stated by the court in the judgment appealed from, it being, impossible to review them even if they are not sustained by the evidence and the merits of the case.

Therefore the judgment appealed from should, in our opinion, be affirmed, with costs against the appellant, and it is so ordered.

Arellano, C. J., Johnson, Willard, and Tracey, JJ., concur.

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