

VOLENTINA CLEOPE PLAINTIFF AND APPELLEE, VS. VICENTE PASUMBAL ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 34519. December 05, 1931

Ponente: MALCOLM, J.

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MALCOLM, J.:

In 1927, the plaintiff in this case obtained a default judgment against the defendants for the recovery of the land described in the complaint, together with fifty pesos damages and costs. Thereafter, in a special proceeding filed in this Court, G. R. No. 31443, an order was issued to the court below to hear the case on the merits, giving the defendants an opportunity to be heard and to present their answer to the complaint. Pursuant to this order, a trial was had, following which the Judge of first instance then sitting in the province reached much the same conclusion as that of the first Judge of first instance, and accordingly rendered judgment declaring the plaintiff with the right to recover the ownership and possession of the land mentioned and described in the plan Exhibit A of the plaintiff, plus the amount of P150 annually from April, 1927, until the effective delivery of land, with costs in favor of the plaintiff.

On appeal counsel for the appellants states that the principal question is one concerning the identity of the land. Suffice it to say, with reference to this question, that we agree fully with the trial Judge that the land in question is covered by plaintiff's documents Exhibits C, E, and F, as explained in Exhibit A. Defendants' purchase of land from the Spaniard Alejandro Ros was too indefinite in nature as to boundaries to give them any control over the disputed land.

A minor question concerns the allowance of damages. It is observed that counsel for the appellants malces this statement, "Pero, en ninguna partet'se puede hallar las 'pruebas' en que el Juzgado dice se apoyo para declarar que el terreno produce cien pesos al afio. Si estamos equivocados, esperamos que la parte apelada nos señalara dichas pruebas", to which no answer was interposed by counsel for the appellee. Moreover, it could be logically deduced that, considering the indefiniteness of the boundaries between plaintiff's land and defendants' land, the defendants were in possession in good faith.

By virtue of the foregoing, the judgment appealed from will be affirmed, with the elimination therefrom of the words "plus the amount of P150.00 annually from April, 1927 until the effective delivery of land", without special pronouncement as to costs in this instance.

Ten days from the publication of this decision, judgment will be entered, and five days thereafter, the record will be remanded to the court below.

Avanceña, C. J., Street, Romualdez, and Imperial, JJ., concur.

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