

JULIANA BENEMERITO, PLAINTIFF AND APPELLANT, VS. FERNANDO VELASCO, DEFENDANT AND APPELLEE.

G. R. No. 3554. August 17, 1907

Ponente: TRACEY, J.

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TRACEY, J.:

The plaintiff, the widow of Silvino Salvante, brought this action to recover the possession of nine parcels of land, as to which she alleges that he died intestate. The defendant was in possession, claiming by inheritance from his son, a minor, who died after his mother, who was the granddaughter of Silvino, maintaining that pursuant to the terms of the will of Silvino there had been an actual partition of the property between the children and the widow. It was in dispute whether he had come into possession by virtue of the right of his son and his wife, or by reason of a power of management from the widow. On this point there is much conflicting testimony and also upon various other questions in the case, such as the fact of the alleged partition, which was denied by the surviving daughter, as well as by the plaintiff, and the existence of a will which was identified by one of the subscribing witnesses as having been executed seventeen years after the death of the testator.

From all the testimony it would be difficult to say who is the owner of the property. It is not necessary in this action to attempt to solve that difficulty. The plaintiff has failed to show herself entitled to immediate possession of the land, as against the defendant, who is in occupation and for that reason her action must fail, without prejudice, however, to the rights of the other parties in interest or to any other proper proceeding on her behalf.

The judgment of the Court of First Instance is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres and Johnson, JJ., concur.

CONCURRING

WILIARD, J.:

It is admitted by the judge of the lower court in his decision that an extrajudicial partition of the estate of Silvino Salvante was made and that the property in question was assigned to the predecessor of the defendant. The judgment is supported by the evidence in this particular, and should therefore be affirmed.

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