

VICENTA ACUÑA ET AL., PLAINTIFFS AND APPELLEES, VS. THE CITY OF MANILA, DEFENDANT AND APPELLANT.

G.R. No. 3662. November 19, 1907

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The plaintiffs in this case, Isabel, Rosario, Trinidad, Concepcion, Vicente, Generosa, Trinitario, Perpetua, and Victorina Salgado y Acuña, children of the deceased Generoso Salgado and Doña Vicenta Acuña, the latter as mother representing the said minor children, have filed the present suit having in view two objects, one to recover the possession of a parcel of land belonging to them alleged to be at present held by the city of Manila, and the other to recover damages for such detention.

In order to prove the right of control or ownership to the land in dispute, the plaintiffs herein filed by way of a title thereto proceedings of possessory information, duly registered on the 24th day of May, 1893, in the register of property of the city of Manila, district of Quiapo, wherein the said property is situate, together with oral evidence as to the material fact of possession and the receipt of monthly rentals thereon paid by tenants who for a period of time occupied portions of the said property, and of the last tenant who finally held the whole property under a lease, all until the said property was taken over and held by the city of Manila in the month of July, 1901. From this date on the defendant city continued to receive the rental from the said last tenant, who built thereon a house of strong materials.

The defendant city, aside from the theory advanced that the property in question must have formerly been part and portion of a public street according to a map in its possession, failed to present evidence of ownership or of better right thereto.

And the trial court, upon the allegations made and evidence produced, entered the following conclusion: "That the land as described in the complaint was in the possession of and belonged to one Vicente Salgado prior to the year 1865, and that it remained in the possession and control of the said Salgado until his death, which took place in the year 1875 or 1876; that from that date such possession and control passed to his son, Generoso Salgado, who died in 1881, when the right of ownership and possession passed from the deceased Generoso Salgado to his children, the plaintiffs in this action, which plaintiffs are not Vicenta Acuña; and that Vicenta Acuña did administer the said property for and in the name of her children, the plaintiffs herein, from the date of the demise of her husband, the said Generoso Salgado, until and up to 1901, when the defendant city wrested from her and took possession of the property above referred to."

Likewise—

"That the amount of the lease of said property is 25 pesos per month during the whole period intervening from 1901 up to and while the said plaintiffs are deprived by the city of Manila of the possession thereof."

In consequence, the trial court entered judgment in favor of the plaintiffs as against the defendant city, directing

that the said parcel of land as described in the sentence be restored to the possession of the former; that payment to the plaintiffs be made of the sum of P1,425, that being the amount of the lease of said land until and up to October 1, 1906, and the sum of P25 per month from that date until and up to the time that restitution be made to the plaintiffs of the said parcel of land, and for the costs of the suit.

From this sentence the defendant city appealed.

On the hearing of the appeal by this court, counsel for appellee in his assignment of errors presented seven points, which have been reviewed by this court with the following result:

- That the trial court did not err in deciding that Vicente Salgado, deviser of the plaintiffs, was in possession of the said parcel of land prior to 1865; that Vicenta Acufla was its administratrix in 1900 and 1901; that she leased the property to a Chinaman named Dy Anco for the sum of 25 pesos per month (assignments 1 and 3); because the first point is proven by two witnesses, Ildefonso Tambunting and Vicenta Acuña, the second by three witnesses, Juana Buenaventura, Marcela Aguinaldo, and Sixto Javier, who were former tenants of the property, and the third by the witness Ki Ya; proof to the contrary not being offered.

- Neither has the court erred in the second point in deciding that the property in question is a part and portion of the land, object of the possessory information proceedings, because this point was already agreed upon in the records from the beginning of the trial.

The fourth assignment of error, to the effect that the defendant city refused to grant Dy Anco a license to build a house, is of no importance; but, after all, it was proven by the testimony of Vicenta Acufla and has not been overcome by evidence in any form or manner.

The fifth and sixth assignments of error, with reference to the date as to when the forcible possession by the city began and the amount of the rentals, offer no points of issue for the reason that these facts are based on the testimony of two witnesses, which has not been overcome in any form or manner. And the seventh, far from being a point of error, is on the contrary a consequence of what has been alleged and proven.

We, therefore, hereby affirm the judgment appealed from in all its parts with the costs of this instance against the appellant. So ordered.

Torres, Johnson, Carson, Willard, and Tracey, JJ., concur.

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