

**CANDIDO CONCEPCION ET AL., PETITIONERS AND APPELLANTS, VS.
THE CITY OF MANILA, RESPONDENT AND APPELLEE.***G.R.No. 3712. November 04, 1908*

Ponente: TRACEY, J.

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This is an appeal from a judgment of the Court of Land Registration denying an application to register as the property of Candido, Narcisa and Felix Concepcion, and A. D. Gibbs and H. D. Gale, a parcel of land in Arroceros, in Ermita, in the city of Manila, known, as lot 7 in block 6. Gibbs and Gale are grantees of a one-half interest in the property from the applicants, Concepcion, who inherited it from their father, Don Prudencio R. Concepcion.

Both the Insular Government and the Municipal Board of the city of Manila were duly served with notice of the application, which is opposed only by the city. Had the Insular Government contested the registration and established a presumptive right to the property, there might have arisen a serious question as to the prescription thereof as against the general government which is not now in the case and which, therefore, we may dismiss without consideration, leaving the only issues those raised by the city.

In seeking to prove its original title, the city of Manila has introduced many Spanish documents which reveal that its right to the land on Arroceros was Questioned by the military branch of the Government, without, so far as appears from these papers, any final determination of the question in its favor. The Auditor de Guerra, in 1871, rendered a written report thereon to the Gobernador Civil adverse to the claims of the Ayuntamiento, which does not appear to have thereafter taken further action thereon other than to refer them to their letrado for his opinion. They were based upon royal cédulas of July 18, 1604, November 14, 1686, and October 1, 1762, and also a royal auto of the Audiencia of November 20, 1780. The first of these cédulas recited a representation made to the King of a previous gift by him to it of the Parian de los Sangleyes, without in any manner affirming or recognizing it. The second related to the government of the Sangleyes in the Parian, and the third to certain buildings therein claimed to have been built by the city, as to which His Majesty gave no decision. The auto of the Audiencia declared that the barrios of Santa Catalina and Sari Anton belonged to the city of Manila, to which the inhabitants thereof should pay rent. None of these documents suffice to establish title excepting the last, and the difficulty of giving any such effect to it is that there is no satisfactory identification of the barrios specified nor of this property as situated therein. Nor, indeed, can it be said that the location of the property is definitely shown in its relation to the Parian. The city has also introduced reports and accounts of the collection for its benefit of rents of lands in this quarter which tend to show its ownership of many lots but not of those herein involved, from which it does not appear to have ever recovered rental. It furthermore appears that this parcel is included in a tract inscribed under the Mortgage Laws in the name of the city of Manila on the 5th of June, 1902, an inscription which, in their amended petition, the applicants ask to have canceled as having been unduly granted in fraud of their rights.

To make out their title, the applicants proved a summary information in favor of Don Prudencio Concepcion, their father, Resented November 13, 1872, and completed February 16, 1873, with continuous possession of the

land thereafter until ousted therefrom by the city in April, 1902, during all of which period they lived thereon or collected the rents therefrom. This information was inscribed saving the rights of third persons, and therefore does not establish the title; nor, as it had run only a little over twenty-nine years, can it serve as the origin of a prescription which in such a case must be, not the ordinary term of ten, but the extraordinary prescription of thirty years. (Civil Code, art. 1939. Third Partida, Law 21, Tit. 29. Novisima Recopilacion, Book 11, Tit. .8, Law 4.)

In order to decide whether the claim of the applicants to a title by prescription is made good, it is necessary to consider the character of their occupation immediately prior to the summary information.

Recognizing the presentation of the information as an unequivocal declaration of the claim of ownership on the part of the occupant, there remains to be covered, for this purpose only, the five preceding months to complete the period of thirty years. It would be indulging in rather a violent assumption to hold that during this short term the occupation had changed its character, in the face of the indications of the evidence, which are all to the contrary, and of the present statutory presumption arising from possession under subdivision 11 of section 334 of the Code of Civil Procedure, which, as a rule of evidence, may be taken into consideration as to past events. It is proved that the father, Prudencio B. Concepcion, was born in 1803 on the property which had been occupied by his forefathers since time immemorial. The occupants had built two houses, from which they were collecting the rents. Tenants of the property who testified had known no other landlords, and as heretofore noted, neither their names nor the names of their tenants appear on the city books as having paid rent or made other acknowledgment of a claim of ownership by the city, but on the contrary, they paid the taxes thereon, and they are omitted from the supposedly complete official lists. No license from the Ayuntamiento to occupy these particular lots or to build thereon, nor any other recognition of its title has been produced. The boundaries were defined and are shown to have been of a definite and permanent character. In the judgment of a majority of the court all those facts suffice to show that the occupation was under a claim of ownership sufficient to establish the prescription of thirty years as against the city.

The decree of the Court of Land Registration is reversed and the property is ordered inscribed in the name of the applicants, without the costs of this instance, and so much of the prior registration of 1901 as relates thereto may be canceled. So ordered.

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

Willard, J., dissents.

NOTE.—The court on November 19, 1908, in passing upon a petition for rehearing in this case; resolved that as the Royal Order of October 13, 1787, was not presented at the trial, the petition should be denied. And, on December 1, 1908, upon consideration of a motion presented by the city attorney for a reconsideration of the order of November 19, it was resolved that as the court in its decision did not pass upon the right of ownership of the Arroceros lands in general but simply with respect to the particular parcel therein discussed, the motion must be denied.

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