

PEDRO P. ROXAS, PETITIONER AND APPELLANT, VS. ALEJANDRO AND CONSOLACION AGUIRRE, OBJECTORS AND APPELLEES.

G.R. No. 3771. January 02, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

This is a bill of exceptions allowed in the proceeding instituted by Pedro P. Roxas in the Court of Land Registration for the purpose of inscribing his title to the hacienda of San Pedro Macati. Three other bills of exceptions allowed in the same proceeding have just been disposed of in case No. 3788, entitled Pedro P. Roxas vs. The Municipality of San Pedro Macati.[1]

In the court below the appellees, Alejandro and Consolacion Aguirre claimed to be the owners of two small tracts of land included in the 1,761 hectares which the entire estate contained. The first of these parcels claimed by the appellees contains about 240 square meters. The court below sustained the contention of the appellees as to the first tract, holding that they had acquired title thereto by extraordinary prescription. As to the second parcel, that court decided in favor of the petitioner. The petitioner excepted to the decision of the court below as to the first parcel and has brought the question involved therein here for review.

That the petitioner was the owner of the entire tract of land described in his petition was established by documentary evidence. The only question in the case is whether or not he has lost his ownership of this small piece of land by the fact that the appellees have been in the adverse occupation thereof for more than thirty years, as owners.

The court below found as a fact from the oral and documentary evidence that the appellees and their grantors had been in the actual possession of this piece of land for more than thirty years. Some criticism is made in the brief of the appellant in this court on the oral testimony given by the witnesses for the appellees, but after an examination thereof we can not say that the evidence preponderates against the decision of the court below. We therefore agree with that court that the appellees and their grantors had been in the actual and uninterrupted possession of this property for more than thirty years.

To establish their contention it was necessary, however, that they prove not only that they had been in such actual possession of the property for thirty years but that they had so possessed it as owners. There were offered in evidence by the appellees in the court below, and admitted by that court, certain documents, one of which was a deed executed before a notary public on the 3d of August, 1867, by Vicente del Bosario, whereby he sold and transferred the ownership of the tract of land here in question to Leoncio Aguirre, in the name of and as the father of his daughter, Juana Aguirre. This Leoncio Aguirre was the father of the appellees. The appellant excepted to the admission of these documents and one of the questions discussed in the brief here relates to that exception. In support of it he cites article 389 of the Mortgage Law, which in part is as follows:

"From the time this law goes into operation, no document or instrument which has not been recorded in the registry shall be admitted in the ordinary or special courts or tribunals, in the councils or offices of the

Government, by which interests subject to record are created, conveyed, acknowledged, modified, or extinguished, according to the same law, if the object of the presentation be to enforce, to the prejudice of third persons, the interests which should have been recorded."

It appeared that the title deeds of the petitioner had been recorded in the registry of property.

Whether or not this deed which had never been recorded would be admissible against the recorded, title of the appellant for the sole purpose of showing that the appellees acquired by the deed the ownership of the property, is a question which we need not determine. If the deed was admissible for any purpose, either for the purpose of proving the acquisition of ownership thereby, or for the purpose of characterizing the possession which the appellees had enjoyed, then the exception can not be sustained. That it was essential for the appellees to prove that they occupied this property as owners in order to establish title by prescription, is clear. The best way of proving that fact was to show that they entered into possession under a deed which purported to convey to them the entire title to the property.

The case here is in this respect somewhat similar to the case of *Carmen Ayala de Roxas vs. Juana Valencia*[1] (6 Off. Gaz., 5). In that case the defendant had occupied land belonging to the plaintiff since 1857. She entered into possession under a deed, but, as held by this court, that deed did not purport to convey to her the land itself, but only the house that stood upon the land. It was accordingly held that she was not occupying as owner and that her long possession had not given her title to the property by prescription.

In this case, however, the deed under which the grantors of the appellees entered purported to convey to them the land itself, and there is no doubt but that since 1867 they have been occupying the property as owners.

That instruments not recorded are admissible in such cases when the matter of prescription is concerned is well settled. Article 35 of the Mortgage Law is as follows:

"A prescription which does not require a just title shall not prejudice third persons if its possessory title is not recorded.

"Neither shall a third person be prejudiced by a prescription which required a just title if the latter is not recorded,

"In either case the time of the prescription shall begin from the date of the record.

"As to the legal owner of the realty or interest which is being prescribed, the title shall be determined and the time computed in accordance with common law."

The authorities agree that the owner of the land, as to which the statute of limitations is running, is not a third person. (*Legislation Hipotecaria*, Moscoso, p. 262; *Legislation Hipotecaria*, Galindo y Escosura, vol. 2, pp. 524 to 529.)

Article 389 relied upon by the appellant says that an unrecorded instrument shall not be admitted to the prejudice of third persons. The appellant in this case not being a third person for the purposes of the prescription, can not claim the benefit of said article 389. This is practically admitted by him in his brief in this court.

He claims, however, that at one time Vicente de Fernandez had acquired the right of usufruct from the petitioner over a part of this property and that as to the appellees he is a third person and entitled to the protection of article 389. If this litigation were between Fernandez and the appellees, it would be necessary to consider that question, but he is in no way a party to this proceeding and, as we understand the case, his right of usufruct has expired.

The judgment of the court below in reference to the first parcel described in the opposition of the appellees is affirmed, with the costs of this instance against the appellant. So ordered.

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

[1] Page 408, supra.

[1] Page 322, supra.

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