

LUCIA PEREZ ET AL., PLAINTIFFS AND APPELLEES, VS. DOMINGO CORTES ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 3821. February 16, 1910*

Ponente: TORRES, J.

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On the 21st of September, 1905, Lucia, Eduvigis, and Inocenta Perez presented an amended written complaint in the Court of First Instance of Oriental Negros, alleging that the two first named were the owners of a parcel of land situated in the sitio of Looc, in the town of Guiljungan of the said province, about 30 hectares in area, and bounded on the north by the small river Nagcalhin, on the south by lands now owned by Ciriaco Jambalos, formerly belonging to Victor Jambalos and Pelagic Villegas, on the east by the sea and by land belonging to Pedro Olang, and on the west by the land of Dorotea Malahay; that their predecessor, Liberato Perez, had recorded the possessory information of the above-described land in the registry of property of Oriental Negros on the 16th of April, 1895; that the plaintiffs Lucia and Eduvigis transferred one-half of the said land to Dominga Bolado, the mother of Inocenta Perez, on January 21, 1902, which half has a capacity of 20 gantas of corn seed, and is bounded on the north by the other half, on the south by lands of Juan Palermo and Andrea Carampatana, on the east by the beach and the said other half, and on the west by lands of Tomasa Planas and the small river; that Dominga in turn transferred to Inocenta Perez the said half of the estate on May 25 following, and the land described is a part of the said half; that in January, 1903, the defendants, Domingo Cortes and his wife Dominga Ubaldo, usurped and unlawfully retained the land last described, and still retain it without possessing any right thereto, and that in consequence of said usurpation and retention by the defendants of the aforesaid land of Inocenta Perez, the plaintiffs suffered damages to the extent of P250 by reason of benefits and products not received, for which reason they prayed that judgment be entered in their favor, declaring the plaintiffs Lucia and Eduvigis, as heirs of the late Liberato Perez, to be the lawful owners of the whole of the land described in the complaint; that the transfer made by said heirs of one half of the land to Dominga Bolado and that effected by the latter to Inocenta Perez be ratified and confirmed; that the defendants be ordered to restore the parcel of land described in paragraph one of the complaint, usurped and unlawfully retained by them, and to pay P250 as damages for the benefits and products not received, and to pay the costs.

The defendants, after demurring to the complaint, filed an answer thereto on the 8th of February, 1906, denying all the allegations contained in each and every one of the paragraphs therein, and asked to be absolved therefrom with the costs against the plaintiffs. '

By another written answer to the amended complaint the said defendants denied paragraphs 1, 2, 4, 5, and 6, and admitted paragraph 3 of the complaint, alleging that they were and still are in possession as owners of part of the land mentioned in the said paragraph 3; that said land is bounded on the north by lands of Inocenta Perez, on the south by that of Juan Palermo, on the east by that of Pelagio Villegas, and on the west by land belonging to a non-Christian; that said portion of land was included in a false possessory information in the name of Liberato Perez in 1895, and was fraudulently recorded in the registry of property; that in 1895 Liberato Perez was not, nor

had ever been in possession of said land, and that the person who was in possession in said year was Vicente Perez, the real owner; that Perez transferred his rights to Pedro Olang, and upon the death of the latter, his widow, Dominga Ubaldo, inherited the said parcel; for these reasons they asked that the entry made in the registry of property be canceled and that the possessory information be declared null and void in so far as the land of the defendants is referred to, and that the latter be absolved of the complaint with the costs against the plaintiffs.

The case came up for trial and evidence was adduced by the parties, their exhibits being made of record. On the 6th of March, 1906, judgment was rendered by the lower court ordering that Inocenta Perez be restored in the possession of the usurped land which the defendants who retain it must vacate, the same being the property of Lucia Perez and Eduvigis Perez, and that Inocenta be indemnified by the defendants in the sum of P250 for losses and damages, with interest thereon at the rate of 6 per cent per annum from the 21st of September, 1903, and that the said plaintiffs shall recover costs from the defendants.

The latter excepted to the foregoing decision and moved for a new trial on the ground that it was contrary to law, and that the findings were manifestly contrary to the weight of the evidence; the motion was overruled, to which the petitioners excepted and presented the corresponding bill of exceptions which was approved and submitted to this court.

It has been fully proven in the case that Liberato Perez, the father of two of the plaintiffs, by virtue of the possession he enjoyed as owner for more than sixty years, without counting that of his ancestors, lawfully acquired by means of extraordinary prescription, under the provisions of article 1959 of the Civil Code, the ownership of about 30 hectares of land described in the complaint. There can be no question therefore as to the right of his two daughters, plaintiffs herein, to recover possession of the duly identified portion of said land from the defendants who, forcibly and without any reason whatever, took possession of said land; the said daughters succeeded their father in his rights and obligations from the moment of his death (art. 661, Civil Code), and as actual proprietors of a portion of the estate retained at the time the complaint was filed, they were entitled to bring an action against the holders and possessors thereof to recover possession (art. 348, Civil Code), it appearing in the case that said portion was forcibly taken possession of, and retained up to the present day; by the express will of the owners of the said portion, Inocenta Perez, another of the plaintiffs, enjoyed the possession and usufruct of the same.

Impugning the right of the plaintiffs, the defendants alleged that they were and still are the owners of the part or portion of land claimed, for the reason that Pedro Olang had acquired it in 1895 from its lawful owner and possessor, Vicente Perez, and that Dominga Ubaldo inherited it upon the death of her husband, the said Olang; for said reason they asked that the possessory information filed by Liberato Perez while living for the ownership of the whole parcel of land be declared null, as well as its registration in the registry of property, because the portion of land in controversy was fraudulently included in said information and recorded in the registry in the said year.

It is nowhere shown that Vicente Perez was either the owner or in possession as such, in 1895, of the portion of land in controversy, nor that Pedro Olang had lawfully acquired or had been in possession thereof; hence, the defendant Dominga Ubaldo could not have succeeded to any right to that part of the land, notwithstanding the documentary evidence and the testimony of the witnesses with which she attempted to show such right.

It appears to be proven in the case that in January, 1903, Dominga Ubaldo and Domingo Cortes, her second husband, took possession of the said portion of land and ejected therefrom the laborers that Inocenta Perez employed to work thereon, and from the day of the usurpation to the present day they have retained the estate, and in spite of this act of spoliation, an actual transgression which is not permitted even to the lawful owner, and without having presented any deed of transfer by which Olang might have acquired the ownership of said portion

of the land, his widow now claims to be the owner of the same. Dominga Bolado, mother of the plaintiff Inocenta Perez and of Vicente Perez, only received one-half of the 30 hectares of land to which the possessory information refers, and took possession thereof in January, 1902; before the expiration of said year, the actual date not appearing, the said Vicente Perez died; his mother was still living, and the latter before her death transferred the possession of the said moiety of the land to her only surviving daughter, Inocenta. From all of the foregoing it is logically deduced that Vicente Perez was never in possession of the estate in 1902 under title of ownership, from which date his mother took charge of the same in usufruct, for the reason that he died a few months later, and much less in 1895, because Liberato Perez, who possessed it in its entirety as the real owner, was still living.

It may be true that Vicente Perez owed Pedro Olang 100 pesos in the year 1895, but it can not be admitted that⁴ he gave the said land as security; it did not belong to him, nor could he in any manner dispose of it without the knowledge or consent of its lawful owner, and, seeing that he died before his mother, he could not have succeeded her in the enjoyment of the said portion of land.

Apart from the foregoing, Pedro Olang and Doroteo Malahay, when they were informed of the petition presented by Liberato Perez asking for the possessory information already referred to, stated that they, as adjoining owners, agreed to the facts stated in the said petition, and that they had no objection or claim to make in the matter. After the above statement made by Olang in April, 1895, it is not likely that he acquired from Vicente Perez the land covered by said information; this document was attested by Malahay as municipal captain, they knowing that it did not belong to the latter but to Liberato, and in consequence Pedro Olang could not have transmitted any right to his widow since he had not received any from Vicente Perez, his supposed predecessor in the possession of the estate.

The record does not show that Vicente Perez was ever in possession of any portion of the land covered by the possessory information, and consequently he could not transmit any right to Pedro Olang, nor the right of possession to said portion of the land.

The widow of the creditor Pedro Olang claims to rest the right of the latter, and therefore her own right, on the document marked "Exhibit A," dated January 15, 1895, wherein it appears that Vicente Perez declared to have mortgaged to Pedro Olang for the sum of 100 pesos a parcel of land owned by him situated in the barrio of Looc, with a description of its boundaries, on the condition that he would continue to work it and obtain the benefits therefrom, but if it were not redeemed within a period of three years, that is to say on the 14th of January, 1898, the land would then become the property of the creditor. The document is a private one, and could not therefore be entered in the register, and although it has been attached to the record of the case it does not appear that the signature of Vicente Perez at the foot of the same was offered in evidence or was duly identified.

The contract entered into by means of the said document is one of loan with mortgage; not one of sale under pacto de retro, because beyond the word rescate (redemption) said document does not contain any word to show that the agreement was a sale a retro.

However, even if there were a doubt as to whether the contract entered into by Vicente Perez was one of mortgage or one of sale, on the hypothesis that he could dispose of the property, while it is not possible to decide the question by the language of the document, in justice it must be assumed that the debtor assumed a lesser obligation and that in accord with the creditor he bound himself to execute a mortgage which involves a greater reciprocity of interests than a contract of sale under pacto de retro, in spite of the fact that both the latter and that of mortgage involve a valuable consideration in accordance with the provisions of article 1289 of the Civil Code,

On this supposition, in the absence of payment, on the obligation becoming due the creditor would be entitled to have the mortgaged property sold to satisfy the debt, but not to appropriate or dispose of it. (Arts. 1857, 1858, and

1859, Civil Code.)

The land in question is comprised within a larger tract of 30 hectares, referred to in the possessory information instituted at the request of Liberato Perez in the court of the justice of the peace of Guiljungan and finally approved on the 7th of April, 1895, a date posterior to that of the above-mentioned document of mortgage in favor of Pedro Olang; this information was recorded in the registry of property on the 16th of the said month of April; and if the contract of mortgage of the 13th of January were a true contract, it can not be understood how Pedro Olang and Doroteo Malahay made statements in the month of April following in conformity with the facts contained in said possessory information, nor can the declaration given by Higinio de la Serna in said information agree with that made in this suit, as they are markedly opposed and contradictory. From all of the foregoing it is deduced that the said document was prepared in order to somehow legalize the right which the widow of Pedro Olang believes she has to the land in question.

As was agreed to in the aforesaid document, although the same be contrary to law, in the absence of payment of the 100 pesos the mortgaged land could not become the property of the creditor until the 14th of January, 1898, that is, after the lapse of three years, and in the meantime the debtor, Vicente Perez, was to continue in the possession and enjoyment of the fruits of the land; yet the defendants sought to prove that Pedro Olang or his widow had been in possession of the property, as owner of the same, for the last nine or ten years, the result being that their witnesses testified to facts which were not true, undoubtedly for the purpose of legalizing the forcible usurpation of the land in 1903.

The certified copy of the said information duly recorded in the registry of property is a public document, one which is protected by articles 390, 391, 393, and 394 of the Mortgage Law, and by sections 299 and 331 of the Code of Civil Procedure, and unless it be proved to be null or invalid, which has not been done by the defendants, it must be sustained by the courts.

With respect to the legal capacity of the plaintiffs to bring this suit and appear therein, their respective rights are based on the provisions of section 115 of the Code of Civil Procedure, because it involves their own property, and their respective husbands have no personal rights or interest therein.

For the reasons above set forth by which the errors assigned to the court below have been refuted, it is our opinion that the judgment appealed from should be and is hereby affirmed, and the defendants are ordered to vacate the land in question and deliver it to the plaintiffs, and to pay to Inocenta Perez the sum of P250 for the reasons stated in said judgment, with legal interest thereon, and to pay the costs of this instance. So ordered.

Johnson, Carson, and Moreland, JJ., concur.

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