

**PEDRO P. ROXAS ET AL., PLAINTIFFS AND APPELLEES, VS. MARIA DE LA PAZ MIJARES, DEFENDANT AND APPELLANT.***G.R. No. 3823. November 23, 1907*

Ponente: TORRES, J.

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A complaint was filed by Pedro P. Roxas and Carmen de Ayala de Roxas in the court of the justice of the peace of Manila praying that judgment be entered in their favor for the recovery from the defendant, Maria de la Paz Mijares, of the possession of a parcel of land between the entrance or ground floor of houses Nos. 82 and 88 in Calle Dulumbayan, of 3 meters and 90 centimeters by 2 meters and 17 centimeters, measured from a distance of 1½ meters from a small door belonging to No. 86 in said street, and the possession of the old latrine of house No. 82, the same being at the left end in the rear of the said house within the perimeter of the one numbered 86, Avith costs and any other remedy which might be considered just and equitable.

The case having been tried, the justice of the peace rendered a decision in favor of the plaintiffs on the 2d of March, 1906, sentencing the defendant to reinstate the former in the possession of the said parcel of land situated between the entrance or ground floor of houses Nos. 82 and 88 as well as the possession of the old latrine of house No. 82 at the left end of the rear thereof, within the perimeter of the one numbered 86, cautioning the defendant to open the passage leading to the said parcel of land, to remove the wall which closed the arch at the entrance, and to place it upon the far side of the extension in its original position, with costs against the defendant who appealed from the said judgment.

A complaint was filed with the Court of First Instance on the 16th of March, 1906, and notwithstanding the fact that the defendant's demurrer was overruled, on the 29th of said month the plaintiffs stated in writing that they withdrew their former complaint filed with the Court of First Instance, and that taking advantage of the privilege granted by section 112 of the Code of Civil Procedure, they relied upon their pleading as filed with the justice of the peace; however, on a new motion made by the defendant on the 3d of April following, the court directed the plaintiffs to amend their complaint.

On June 1, 1906, the plaintiffs stated in their amended complaint that Carmen de Ayala de Koxas, the lawful wife of Pedro P. Roxas, is the owner of the building of strong materials erected on her own ground at No. 4, Calle Dulumbayan, district of Santa Cruz, bounded on the right by house No. 2, owned by Pedro S. Gruet and brothers, on the left by house No. 6, owned by Brigida del Bosario, and on the back by Calle Salcedo; that said lot has an area of 215 meters and 72 centimeters square; that the defendant, who is a widow, is now the owner of the house built of strong materials together with the ground at No. 6 on said Calle Dulumbayan, bounded on its right by house No. 4 of the said Carmen de Ayala, on the left by house No. 8, belonging to the estate of the late Catalino Valdezco, and on the back by Calle Salcedo; that said lot has an area of 215 meters and 7 centimeters square; that the defendant, Paz Mijares, is now the owner of said property No. 6 because she inherited the same from her mother, Brigida del Eosario y de los Angeles; that on November 27, 1894, the plaintiff and Brigida del Rosario, the defendant's predecessor, executed before a notary a public deed which was duly registered in the registry of

property in connection with both premises, and therein Brigida del Rosario acknowledged that the dividing wall in house No. 4 which separates the said premises Nos. 4 and 6 in said street, for its whole length to Calle Salcedo, which is the limit of both houses, is owned exclusively by Carmen de Ayala, and that in view thereof she renounced and waived all rights which as owner of house No. 6 she might have to the said dividing wall, and she further engaged and bound herself, as soon as the adjoining house No. 4 and the next one No. 2 were demolished, to construct on her account and risk a wall to support the upper and lower floor of the right side of her house No. 6, in order that the dividing Avail acknowledged as the property of Senora Ayala de Roxas should remain free and unencumbered.

Further, that the latter assigned and conveyed in favor of Brigida del Rosario, whenever the time arrived for demolishing the houses Nos. 4 and 2, whether through condemnation proceedings or because it so suited the owner, the rooms of the upper story of her property No. 4 outside of the said dividing wall between the premises Nos. 4 and 6—that is to say, on the lower story of the last named—and therefore she transferred to Brigida all the rights of ownership which she might have over said rooms, both owners, to continue in the possession and enjoyment of their respective properties in the same manner until the aforesaid demolition should take place, and then the contract entered into between both parties was to go into full effect; that on the said 27th day of November, 1894, the plaintiff, Carmen de Ayala, was in possession, and was for a long time prior to and after said date until the 9th of May, 1905, possessed of the said extension of ground, viz, 3.90 by 2.17 meters below the rooms of the house which she assigned to the defendant, said possession being material and de facto; that on or about the 9th of May aforesaid, the plaintiff was deprived by the defendant of the possession of the said extension of ground by means of fraud, craft, and deceit, the latter occupying the same and closing the entrance to it by obstructing the arch and erecting a wall far beyond the place where it formerly stood; that said construction was carried out by the defendant without the knowledge or consent of the plaintiff, her house not having yet been demolished, she having instituted her action in the court of the justice of the peace before the expiration of one year from the spoliation; that when said agreement was signed on the 27th of November, 1894, the plaintiff was in possession of a latrine at the upper story of her house which projected over the perimeter of the defendant's ground, and the latter closed the passage to said latrine which should continue to be enjoyed by the plaintiff until her house was demolished, this not having yet taken place, all of which facts are an open transgression of said agreement and have injured the plaintiff, Carmen de Ayala de Roxas; that for said reason the plaintiff asked that judgment be entered in her favor for the recovery of possession from the defendant, Maria de la Paz Mijares, of the said extension of ground lying between houses Nos. 82 and 88 in Calle Dulumbayan, of 3.90 by 2.17 meters measured from a distance of 1J meters from a small door in No. 86 Dulumbayan, and the possession of the old latrine of house No. 82 over the perimeter of No. 86, with costs and any other just or equitable remedy.

The defendant, Maria de la Paz Mijares, in her answer dated June 4, denied all the allegations contained in paragraphs 6, 7, 8, 9, and 10 of the complaint, and as a defense alleged that all the work carried out by her in her own house was done in compliance with orders from the Board of Health of Manila, therefore, she asked that the complaint be dismissed with costs against the plaintiffs. Evidence having been adduced by both parties and the documents and plans submitted having been read and recorded, judgment was entered on the 13th of November, 1906, in favor of the plaintiffs as against the defendant who excepted thereto, and upon the filing of the proper bill of exceptions it was approved and forwarded to this court.

From the terms of the complaint and the answer thereto it is inferred that the action prosecuted by the plaintiff was for the recovery of possession of a certain extension of ground situated below houses Nos. 4 and 6, between Calles Dulumbayan and Salcedo, of 3.90 meters in width by 2.17 meters in length, together with an old latrine at the rear end of No. 6.

The area and boundaries of each property, owned respectively by each of the contending parties, are properly described in the notarial deed executed on November 27, 1894, by the original and former owner of the said two buildings, Pedro S. Gruet, by the purchaser of house No. 4, Carmen de Ayala de Roxas, and by the person who acquired house No. 6, Brigida del Rosario, no question whatever being pending between the parties herein with regard to such matters or with respect to the title of ownership thereto.

This controversy presents only the question whether the agreement between the two above-mentioned ladies, De Ayala and Del Rosario, in clauses A, B, and D of paragraph 7 of the aforesaid deed has been actually violated by the defendant, Maria de la Paz Mijares, successor to Brigida del Rosario, one of the contracting parties, as affirmed in the complaint.

Disregarding the condition as to the demolition of house No. 4 owned by Seiora de Ayala, the present owner of the adjoining house No. 6, Senora Mijares, voluntarily occupied the aforesaid portion of land measuring 3.90 by 2.17 meters, depriving the plaintiff of the lawful possession thereof inasmuch as she closed the passage to said portion of land from the hall or ground floor of Sefiora Ayala's house and changed the position of the wall that inclosed the same, causing the wall to run farther back, thus evidently violating the contract to the prejudice of the plaintiff; Avhereas it was agreed between both owners that they should continue to possess and enjoy their respective properties as they actually existed until such time as the demolition, as provided in subdivision B, should take place, after which the contract was to go into full force and effect. The demolition does not appear to have ever taken place, therefore there is no lawful reason why the defendant should occupy the said portion of land, closing the passageway thereto and preventing the use of the same by the plaintiff without the knowledge and consent of the latter, who, either by herself or by her tenants, had an unquestionable right to use the land; the defendant, moreover, further extended the wall in violation of the agreement.

The defendant, having succeeded her predecessor, Brigida del Rosario, in her rights and obligations, can in no way disregard the agreement entered into by her principal, as it is a principle of law that whoever enters into a contract does so for himself and for his heirs, and that the latter as successors to all the rights of the former succeed him also in all his obligations; this principle is stated in numerous decisions and it constitutes a settled legal rule. Article 1278 of the Civil Code reads:

"Contracts shall be binding, whatever may be the form in which they may have been executed, provided the essential conditions required for their validity exist."

Article 1255 of said code provides:

"The contracting parties may make the agreement and establish the clauses and conditions which they may deem advisable, provided they are not in contravention of law, morals, or public order."

It was agreed that until the demolition of the house of the plaintiff should take place the position and condition of both houses, connected in the manner and form described in the deed, should continue as theretofore. Disregarding the agreement, the defendant usurped a portion of the land possessed by the plaintiff, closed the passageway thereto and altered the position of the wall inclosing it, and by such action she committed a real act of spoliation which is illegal; therefore she is obliged to restore things to the same condition as before because slje knowingly violated the contract which bound both parties and which constitutes the law whereby this contention is to be decided and to which the decision of this court .must conform.

Article 446 of the Civil Code provides:

"Every possessor has a right to be respected in his possession ; and should he be disturbed therein, he must be protected or possession must be restored to him by the means established in the laws of procedure."

The fact that the plaintiff was in possession of the aforesaid portion of land having been proven, and the act of spoliation having been admitted by the defendant upon her statement that all the works carried out in her own house were made in compliance with orders of the sanitary department, the restoration sought herein should forthwith be ordered in view of the fact that such orders of the sanitary department can never serve as an excuse for an attempt against the possession lawfully enjoyed by the plaintiff.

Spoliation is a positive attempt against public order and must instantly be suppressed without regard to the title held by the injured party, in order to avoid disturbances in the community and prevent anyone from taking the administration of justice into his own hands; therefore, whoever possesses a thing as the owner of it, as well as he who holds it as tenant while the dominion appertains to another, is entitled to ask for the restitution thereof by prosecuting the proper action against the usurper even though he were the proprietor or owner of the property.

The fact that the property No. 6 was leased and occupied by a tenant on May 9, 1905, when the usurpation took place is no bar to the owner thereof, the plaintiff, exercising her right by claiming the restitution of possession of which she was deprived by the defendant, inasmuch as the lessee held and enjoyed the property on behalf of the plaintiff, who, according to No. 3 of article 1554 of the Civil Code, is obliged to maintain the lessee in the peaceful enjoyment of the lease during all the time of the contract, and according to article 1553 of said code, to the warranty inherent in contracts of sale.

If the lessee is obliged to give notice to the owner with the least possible delay of any usurpation or injurious alterations which any other person may have made or is openly preparing to make to the thing leased, under article 1559 of said code, it is evident that the owner is entitled to defend his property from any aggression in order to prevent serious injury to his interests which would happen if this was left to the tenant who has no interest and has no real right in the property leased. Whatever may be the nature of the disturbance occurring, so long as it may affect the possession or the right of the owner over the leased property, he is entitled to institute the proper action; and it would be a judicial absurdity to deny him such a right and trust the defense of his interests to the tenant whose obligations and rights are entirely different.

As it does not appear that the plaintiff excepted to that portion of the judgment which held that she is not entitled to recover the latrine described in the complaint, this matter can not be considered in this cause.

For the reasons above set forth, it is our opinion that the judgment appealed from should be affirmed with the costs against the appellant, and it is so ordered.

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

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### CONCURRING

#### **WILLARD, J.:**

I agree in that the judgment should be affirmed, but consider that the action followed is that provided by section 80 of the Code of Civil Procedure.

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