

DAMIANA MANINANG, PLAINTIFF AND APPELLANT, VS. AGUSTINA CONSOLACION, DEFENDANT AND APPELLEE.

G.R. No. 3942. December 26, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action of ejectment brought in the Court of First Instance of Capiz.

The plaintiff was the daughter of one Cornelio Maninang, deceased. The plaintiff succeeded to the property in question as heir of her father.

On the 16th day of June, 1876, Cornelio Maninang petitioned the political-military governor to be granted the right to use for pasturing a certain tract of land situated in the sitios of Matabia, Sibanla, Mangabuc, Balanacan and Culasi, in the barrio of Lonoy, of the municipality of Sapián of the Province of Capiz.

On the 17th day of June, 1876, this petition was referred to the gobernadorcillo, the cura parroco and the principales of the pueblo of Sapián, for the purpose of making an examination of the lands described in the petition and to prepare a plan or croquis of the same. The gobernadorcillo, the cura parroco, and the said principales made an examination of said land and later, on the 28th of September, 1876, made a report to the political-military governor of the province, in which report they made the following statement:

"The said land is baldio (common or waste land), and as shown in the plan indicated, eminently suitable for the raising of cattle; but as there are some irrigated and cultivated parcels included therein belonging to the inhabitants of the locality, the undersigned gobernadorcillo and principales, together with the cura parroco of this town are of the opinion that said lands may be granted to the said Maninang for the purposes stated in his petition, with the exception of the irrigated and cultivated parcels indicated, for the reason that they are owned by private individuals"

On the 30th day of September, 1876, the political-military governor of the province made the following order:

"Let it be returned to the gobernadorcillo of Sapián, in order that the owners of the cultivated parcels of land within the tract petitioned for by Don Cornelio Maninang appear at the tribunal within fifteen days to indicate on the map the portions that respectively belong to them, together with the names of the owners, after which he will render a report to this government for its action."

On the 30th of October, 1876, in accordance with the foregoing order of the political-military governor, the gobernadorcillo of the pueblo of Sapián presented the following plan or croquis of the lands, together with the names of the persons who were then occupying the parcels of land within the tract of land, for the use of which the said Cornelio Maninang had petitioned:

(Insert Images)

The names of the occupants of the different parcels of land, together with the number of the parcel of land which each occupied, within the limits of the land petitioned for by Cornelio Maninang and reported by the

gobernadorcillo, were as follows:

Parcel No. 1.—Salvador Olmedo. Parcel No. 8.—Casimiro Obligar.

Parcel No. 2.—Saturnino Balbua. Parcel No. 9.—Mamerto Orosco.

Parcel No. 3.—Don Teodoro Obligacion. Parcel No. 10.—Castor Tupar.

Parcel No. 4.—Don Hilario de la Cruz. Parcel No. 11.—Saturnino Valboa.

Parcel No. 5.—Casimiro Ofial. Parcel No. 12.—Alejo Polinar.

Parcel No. 6.—Pedro Bordugo. Parcel No. 13.—Polinario Ondillo.

Parcel No. 7.—Pedro Obsequio. Parcel No. 14.—Francisco Dalida.

Parcel No. 15.—Oatalino Dalida,

On the 16th day of November, 1876, the said political military governor made the following order or decree:

"Cornelio Maninang, of the town of Sapián of this district, has presented a petition that certain waste lands or sitios and mountains of Matabia, Sibánla, Mangabuc and Culasi, within the boundaries of the said town be granted him for the purpose of pasturing his cattle. The petition being forwarded to the gobernadorcillo of the said town in order that he, in accord with the principales and the cura parroco investigate the statements of the petitioner, the said gobernadorcillo prepared a report on the 28th of September in which he sets forth that the lands in question are baldios, and may be granted the party in interest, Maninang, for the purposes indicated, save a few parcels of irrigated and cultivated land contained therein that belong to the inhabitants in the neighborhood. In view of this report of the afore-mentioned gobernadorcillo to the effect that the irrigated and cultivated parcels cited in the preceding paragraph are those marked on the accompanying plan and numbered from 1 to 15, and whose owners are Salvador Olmeda, Saturnino Valvua, Don Teodoro Obligacion, Hilario de la Cruz, Casimiro Oficial, Pedro Burdugo, Pedro Obsequio, Casimiro Obligar, Mamerto Orocio, Don Castor Tupar, Alejo Polinario, Polinario Ondillo, Francisca Dalida, and Catalino Dalida: In view of article 9 of the Bando Superior of the 30th of October, 1827, and articles 71 and 73 of the Ordinances of Good Government which authorize the granting of waste lands and establish the form and restrictions with which it should be effected: I grant the prayer of D, Cornelio Maninang, and adjudicate to him the waste lands or sitios and mountains of Matabia, Sibánla, Magaboc, Culasi, and Balanacan within the jurisdiction of the town of Sapián, with the limitations expressed in article 9 and with the exception of the parcels numbered on the plan from 1 to 15 as already having owners or proprietors."

On the 28th day of November, 1876, in accordance with the decree of the said political-military governor, the gobernadorcillo of the pueblo of Sapián, together with the cura parroco, put Cornelio Maninang into possession of the land granted to him for the purpose of using the same in accordance with his petition of the 16th of June, 1876. Cornelio Maninang continued in possession of the land, using the same for pasturing his animals, until the time of his death. After the death of Cornelio Maninang the present plaintiff entered into the possession of the same.

On the 2d day of August, 1906, the plaintiff commenced an action of ejectment against the defendant, alleging that she was the legitimate owner of the land described in said above plan or croquis and alleged that the defendant, about the time of the insurrection in the Philippine Islands, together with her brother-in-law, Ramon Hontiveros, took possession of a part of said land without the knowledge or consent of the plaintiff and continues to occupy sixteen hectares of said land in the sitio of Culasi.

The defendant filed a general denial to the petition of the plaintiff.

After hearing the evidence adduced during the trial of the cause, the lower court found that the land which the defendant, Agustina Consolacion, occupied was land which was expressly excluded from the land originally ceded to Cornelio Maninang. By reference to the croquis or plan of the lands which the plaintiff claims, it will be seen that in the sitio of Culasi there were two parcels of land exempted. These were numbered respectively 12 and 13. No. 12 was occupied at the time of the said cession by Alejo Apolinario. No. 13 was occupied at the same time by Apolinario Ondillo. The rights of these two persons to these parcels of land were expressly recognized in the said cession to the father of the present plaintiff.

The plaintiff attempted to prove that the land which Alejo Apolinario owned had been sold under an execution issued by the Court of First Instance of that province. This fact, however, is disputed by the witnesses for the defense.

The defendant shows by his proof that Apolinario Ondillo was the father of Alejo Apolinario, Clemente Apolinario and Nepomuceno Apolinario. That Apolinario Ondillo died and left his parcel of land (No. 13) to his sons. This fact is not disputed.

The evidence further shows that the three sons entered into the possession of their respective shares of said parcel of land and continued to occupy the same, reaping the fruits thereof for some years.

The defendant claims that the land which she occupies was purchased either directly or indirectly from the said Alejo, Clemente, and Nepomuceno Apolinario. The evidence shows that Alejo Apolinario and Clemente Apolinario sold the shares which they inherited from their father to Ramon Hontiveros and that Ramon Hontiveros sold the same land to the defendant.

There was some question in the court below concerning the admissibility of the deed executed and delivered by Nepomuceno Apolinario to Agustina Consolacion. The lower court rejected the said deed and refused to allow it to be admitted in evidence, by reason of alleged irregularities appearing upon its face. However, Nepomuceno testified that he sold his interest in his father's estate (the said parcel of land No. 13) to the defendant and received payment therefor. The proof shows that the defendant entered into a contract to purchase the interest of the said Nepomuceno and paid the purchase price for the same.

The mere fact that the deed from Nepomuceno to the defendant was irregular and not admissible in evidence does not defeat the transfer of all the rights which the vendor had in the said property, as between himself and his vendee. Certainly the plaintiff can not object simply because the parties to the contract failed to comply with the forms required by law. The plaintiff never had any interest in that parcel of land.

It seems clear to us that the defendant has certainly acquired the right to occupy parcel No. 13 as indicated in said croquis, for the reason that she has by purchase succeeded to the rights which Apolinario Ondillo had at the time of the cession to the father of the plaintiff. The plaintiff alleges that the defendant was in possession of sixteen hectares. There is nothing in the original cession which shows in any way the amount of land included in any of the parcels of land expressly reserved in the cession to the father of the plaintiff. Alejo, Clemente and Nepomuceno contend that their father, Apolinario Ondillo, owned twenty hectares of land. Certainly Apolinario Ondillo was entitled to occupy all of parcel 13, whatever its extension was at that time. Agustina Consolacion having succeeded to the rights which Apolinario Ondillo had in said parcel, she is entitled now to occupy the same to the exclusion of the plaintiff, whether its extension be sixteen hectares more or less. There is nothing in the record which justified the holding that she is entitled to occupy any land outside of the limits of said parcel 13.

In view of all the evidence adduced during the trial of the cause, we are of the opinion and so hold that the defendant, Agustina Consolacion, by virtue of her succession, by purchase, to the interest of which Apolinario

Ondillo owned at the time of the cession of said grant of the lands in question to the father of the plaintiff, is entitled to continue to occupy the same whatever its extent may be; and for the purpose of avoiding future litigation with reference to the boundary lines of said parcel 13, the cause is hereby remanded to the lower court, with direction that said court take such steps as may be necessary for the purpose of having the limits of said parcel 13 marked out.

The lower court discussed some questions in its decision relating to the rights of the plaintiff to any portion of the land included in the original grant. We deem it unnecessary to discuss these questions, some of which are assigned as errors by the appellant, for the reason that the defendant did not present the question of the legality of the grant made by the Spanish Government to the defendant. The fact that the grant was made by the government is undisputed. Whether the grant was in conformity with the law or not is a question which the government may raise, but until it is raised by the government and set aside, the defendant can not question it. The legality of the grant is a question between the grantee and the government.

The plaintiff objects to the introduction of any evidence on the part of the defendant to show title to the property which the defendant occupies. The defendant presented a general denial to the complaint of the plaintiff. The plaintiff alleged ownership and right of occupation. Under these allegations the plaintiff had a right to present any evidence in support of these allegations. Under the general denial the defendant had a right to introduce any evidence which would go directly to disprove the allegations of the plaintiff; therefore any evidence which showed ownership on her part would go directly to disprove the allegation of the plaintiff, to wit: ownership on the part of the plaintiff. Occupation by the plaintiff was admitted by the defendant.

The plaintiff also relies upon her right to the lands in question upon an *informacion posesoria* which she obtained. The *informacion posesoria* can in no way affect the right of the defendant. (Arts. 392 and 394, Mortgage Law; resolution of the *Direccion General de los Registros*, November 19, 1885; *Commentary on the Civil Code*, M. Scaevola, Vol. 8, p. 146.)

We deem it unnecessary to discuss the other assignments of error made by the plaintiff.

For the foregoing reasons, the judgment of the lower court is hereby revoked. The defendant, Agustina Consolacion, has a right to occupy all of the land included within said parcel 13 and no more. The plaintiff, Damiana Maninang has a right to occupy the remainder of the land in the sitio of Culasi to the exclusion of the said defendant.

The cause is hereby remanded to the lower court with direction to take such steps as may be necessary to determine the metes and bounds of said parcel 13 and to enter a judgment in accordance herewith. So ordered.

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

Tracey, J., concurs in the result.

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