

**SILVESTRA LUBRICO, PLAINTIFF AND APPELLANT, VS. LEONA ARBADO, DEFENDANT AND APPELLEE.***G.R. No. 4001. January 05, 1909*

Ponente: TORRES, J.

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On the 30th day of June, 1906, Silvestra Lubrico, by her attorney at law, brought an action against Leona Arbado for recovery of possession, praying that the defendant be ordered to return to the plaintiff 18 hectares of land, the property of said plaintiff, as being an integral part of 70 hectares, 50 ares, and 47 centares of land which belonged to her father, Guillermo Lubrico, as shown by a deed of ownership issued in favor of the latter.

The plaintiff further demanded that the defendant be obliged to restore to her the fruits collected, amounting to 1,500 cavanos of unhusked rice, at the rate of 500 cavanos per annum, in addition to the pending crop, the corresponding damages, and costs.

In support of her contention she alleged that she is the only general heir of her deceased parents, Guillermo Lubrico and Venancia Jaro, who left her the said land, situated in Camansi, barrio of Castellana in the municipality of Pontevedra, Occidental Negros. The property is bounded on the north by land formerly belonging to Pedro Camon and now to Felix Robles; on the east by the land of the heirs of Mariano Arteca, now pertaining to Balbino Lacson, and by that of Clara Luna, now the property of Hermogenes Traspicio; on the south by the land of Marcos Montafio and Isidro Esteves, which has been transferred to the Chinaman Chiuva; and on the west by the River Camansi, the Mansalagao Creek, and the land of Margarita Velez. That the herein-described land was the property and in the possession of her father, by virtue of the title deed No. 4402, issued July 2, 1888, by the Direccion Civil, and duly inscribed in the registry of property on June 20, 1906; that notwithstanding these facts, the defendant, Leona Arbado, three years ago appropriated a tract of about 18 hectares of said land on the east side bordering the land of Clara Luna (formerly of the heirs of Mariano Arteca), the unlawful detainer taking possession of almost one-fourth of the land of the plaintiff on the east side in a straight line from north to south, approximating 18 hectares; that for three years the defendant has had the usufruct of the said portion of land, annually collecting therefrom a crop of not less than 500 cavanos without allowing the plaintiff any participation therein, notwithstanding the fact that she is the hereditary owner, and that in order to avoid litigation and consequent trouble the plaintiff requested the defendant, in a friendly manner, to return the land unlawfully appropriated by her together with the fruits therefrom, but that Leona Arbado refused to make such restitution.

The defendant, Leona Arbado, was cited to appear and served with a copy of the complaint. Her demurrer to the preceding complaint was overruled, whereupon on the 15th of September, 1906, she presented a written answer denying each and every allegation contained in the complaint, and, as a special defense, set forth that she, the defendant, was the owner of the land claimed, and that she had held possession thereof for more than forty-three years, counting the time the land was held by her antecessor; she therefore prayed that the complaint be dismissed with costs against the plaintiff.

The documents offered in evidence by the plaintiff were made of record, and without any proof being adduced by the defendant the court below rendered judgment on the 16th of January, 1907, absolving the defendant, Leona Arbado, with the costs against the plaintiff.

The latter excepted to the foregoing judgment as soon as she was notified of it, and, on the same date, January 17, 1907, presented a written motion for a new trial in accordance with the provisions of Act No. 190, on the ground that the said decision was not in accord with the weight of the evidence, inasmuch as she, having proven her ownership of the land, of which that portion which the defendant claimed to have been in possession of for more than forty-three years formed an integral part, it devolved upon the defendant to prove the alleged possession, in order to counteract her ownership, evidenced as it was by documentary proof; that after the trial was new evidence was discovered of which the plaintiff had no knowledge, and which she could not have discovered during the trial even by the exercise of the greatest diligence, as she was sick and absent from the capital; that it had been impossible for her to offer further proofs than the documentary evidence already presented; she therefore submitted affidavits regarding the facts mentioned. The motion was overruled on the 25th of January, 1907; the plaintiff excepted and presented the corresponding bill of exceptions, which was approved and submitted to this court.

The question at issue in this action is the recovery of a parcel of land with an area of about 18 hectares alleged to have been owned by the plaintiff and retained by the defendant for more than three years prior to the date of the complaint.

Paragraph 2 of article 348 of the Civil Code provides that-

"The owner has a right of action against the holder and the possessor of the thing to recover the same."

It is an incontrovertible principle of law that, in order that an action to recover may be successfully prosecuted, it is necessary to identify the thing claimed, and to verify the claimant's right of dominion. This is established by various decisions, among others, those of May 18, 1866, December 30, 1881, and May 10, 1895, which already constitute the rule of courts.

It has been fully proven in the record, by means of documentary evidence, that Guillermo Lubrico, deceased, and his wife, were the owners of a parcel of land of 70 hectares, 50 ares, and 47 centares, situated in Camansi, in the town of Pontevedra, and whose area and boundaries are set out in the title by "composition" with the Government issued in his favor by the Direccion Civil on July 2, 1888, in the time of the former sovereignty, and duly registered on the 20th of June, 1906. It also appears to have been fully proven, by the same kind of evidence, that the plaintiff is the legitimate daughter of the said Guillermo Lubrico and Ignacia or Venancia Jaro; that the latter were lawfully married, and are now deceased.

These facts, as well as that the 18 hectares of land claimed in the complaint form a part of the larger tract situated in Camansi, in the town of Pontevedra, to which the said title refers, and the fact that the defendant is now in material possession of the said parcel of 18 hectares, have not been disputed; on the contrary, they have been admitted in this litigation.

The detention of the said land by the defendant, Leona Arbado, being alleged in the complaint and denied by the latter, with the averment that she has possessed, and still possesses, the same as owner for more than forty-three years, including the time her ancestor was in possession, it is unquestionable that the land claimed by the plaintiff, also as owner, is actually in the possession of the defendant, as asserted by the latter, and that it has so been for forty-three years; hence, the property is clearly identified, and the plaintiff is not under the necessity, other than by her allegation, of proving the detention or occupation, already admitted by the defendant, nor the period of the

usurpation. This latter detail is of no importance for the decision of the contention, inasmuch as the person detaining the property admits the possession of the land claimed for a much longer period.

When each of the contending parties alleges his right of ownership to certain property, in order to decide the question it is sufficient to ascertain and determine which of the two holds title of ownership.

The plaintiff, Silvestra Lubrico, in due course presented her title to the land which she inherited from her parents, of which the parcel of 18 hectares that the defendant alleges she possesses as owner forms an integral portion; but the latter has not produced her title, nor has she proven her right of dominion over the said parcel of land, nor in what manner her ancestor acquired it, and, what is even worse, the said defendant has not proven that she possessed the land as the owner thereof for the number of years that she claims.

If in order to be respected in the possession of a thing mere possession is sufficient, unless a better right be established by another person, yet from the time when it is shown that such possession is unlawful and to the prejudice of the real owner who has established his claim by means of a lawful title, the property usurped must, in justice, be forthwith restored to the true owner.

An action of recovery is a right pertaining to the owner, the ownership being duly proven, and lies against any person in possession who, without title, unlawfully detains the property of the plaintiff. (Puruganan vs. Martin, No. 3616, 8 Phil. Rep., 519.)

If in her answer the defendant had limited herself to denying the facts alleged in the complaint, the duty to prove them would have devolved upon the plaintiff; but since the said defendant has alleged as a special defense that she is the owner of the 18 hectares of land which is the subject of the complaint, and that, including the time that her ancestor was in possession, she was in possession thereof for more than forty-three years, she can not evade her obligation to prove her ownership and the lengthy possession that she alleges, inasmuch as ownership supposes, possession on the part of the owner unless it be proven that another is in possession of the property, as happens in the present case, in which the defendant, Arbado, possesses the parcel of land in question without lawful right.

It is alleged in the complaint that the plaintiff, Silvestra Lubrico, is an only child, and therefore the sole general heir of the original owners of the property, and no proof was offered at the trial to show that there was any other descendant entitled to succeed besides the plaintiff, who, on her part, has shown herself to be the legitimate daughter of the late Guillermo Lubrico and Venancia Jaro.

If heirs succeed the deceased by their own right and operation of law in all his rights and obligations by the mere fact of his death, it is unquestionable that the plaintiff, in fact and in law, succeeded her parents and acquired the ownership of the land referred to in the said title, by the mere fact of their death. (Arts. 440, 657, 658, 659, and 661, Civil Code.)

Even in the event that there should be a coheir or a coowner of the parcel of land in question, once the right of the plaintiff, and consequently her personality, has been proven, the defendant has no right to dispute them, because she is not a coheir nor a coowner of the property, nor does it appear that she ever had any right to the land, she being a mere usurper thereof.

With reference to the proceeds that the defendant has collected from the land and the loss and damages suffered by the plaintiff in consequence of the detention, no evidence has been offered as to their value or extent, therefore, upon ordering the restoration of the detained land, it is not possible to direct the corresponding restitution of the fruits or any indemnity for their value.

Therefore, and in view of the fact that the judgment appealed from is not in accordance with the law, it is our

opinion that the same should be reversed, and that Leona Arbado be, and is hereby, sentenced to restore to Silvestra Lubrico the parcel of land of 18 hectares claimed in the complaint, without any special ruling as to the costs in either instance. So ordered.

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

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