# BRUNO VILLANUEVA, PLAINTIFF AND APPELLANT, VS. MAXIMA ROQUE ET ALL., DEFENDANTS AND APPELLEES.

*G.R. No. 4065. March 02, 1909*

Ponente: ARELLANO, C.J.

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**ARELLANO, C.J.:**

Bruno Villanueva, as administrator of the intestate estate of his father, Julian Villanueva, claims the ownership of a fish pond situated in the pueblo of Tambobong, Province of Rizal, 1 hectare and 62 ares in extent, and bounded as follows: On the north by Tiuala Creek; on the east by the fish pond of Simeon Bias; on the south by the fish pond of the late Pablo A. Roque and the land of Julian Villanueva, occupied by the plaintiff; and oil the west by this same land and that of Pio Lim. This land was in former times a mangrove swamp which formed part of the land of Julian Villanueva mentioned above.

The complaint sets forth these additional facts: That in 1877, 1878, and 1879 Pablo A. Roque managed this fish pond by virtue of a contract of copartnership for the working thereof, entered into between the latter and Julian Villanueva, by virtue of which Pablo A. Roque furnished the necessary capital to convert the said swamp into a fish pond; that this contract Avas to last ten years, or until 1887; that before this period had expired, Rosauro Roque, son of Pablo A. Roque, made a new contract with Julian Villanueva in order to continue the lease of the fish pond for a period of six years (that is. from 1888 to 1894) for the sum of 150 pesos; that in 1894 the plaintiff claimed the return of the fish pond, but Rosauro Roque refused to return it; that in December, 1898, the plaintiff tried to sue the latter before the president of the pueblo, but the case did not proceed "by reason of the breaking out of hostilities between the Americans and the Filipinos ;" that this fish pond later passed into1 the possession of Benigno Navarro, who sold it to1 Francisco Goson in September, 1902.

Francisco Goson is now in possession of the fish pond in dispute, but it is joined to another that is mentioned in the complaint as the southern boundary thereof, and now forms with it a single fish pond. It thus results that this fish pond, which he defends as his own, has on the north the same boundary as the one in. question, that is, Tiuala Creek; while to the south the boundary is different, being the fish pond owned by Jeronimo and Luisa Enriquez, of which no mention is made in the complaint.

This fish pond, which is bounded on the north by Tiuala Creek and on the south by the fish pond owned by Jeronimo and Luisa Enriquez, he defends by the following title: A purchase made by himself in September, 1902, from Benigno Navarro who inherited the same from his daughter Paula Navarro, the latter in her turn inheriting it from her mother, Tranquilina Roque, and she in turn from her father, Pablo A. Roque.

He also defends the title of Pablo A. Roque, through the purchase which the latter made from Nicolas de los Santos who, it is certain according to possessory information proceedings ad pcrpetuam, instituted by the same on the 29th of October, 1876, possessed a parcel of land in the sitio of Balot, barrio of Tonsuya, town of Tambobong, bounded on the south "by the fish pond of Don Jeronimo and his sister, Da. Luisa Enriquez," and on the north "by the land of Don Pablo Aceveros Roque," which land was on the 3d of July, 1878, sold to Pablo Aceveros Roque,

and upon the death of the latter, it being then converted into a fish pond, went to his daughter Tranquilina Roque on the 22d of June, 1883, and it was thus explicitly designated, "fish pond," in the deed of adjudication in favor of the husband of Tranquilina Roque, Benigno Navarro, who inherited it from his deceased daughter, Paula Navarro, the immediate successor to Tranquilina Roque.
The complaint states that in or about the year 1876, Julian Villanueva had treated with Pablo Roque regarding the transformation of his marsh land in the said sitio of Balot into a fish pond, Pablo Roque furnishing the money for the expenses under the agreement that the profits during the ten years already stated should be equally divided between them.

The complaint therefore asserts that the possession of Pablo Roque was that of the partnership, and that of his son Rosauro Roque was by virtue of the lease; hence the succeeding possessors could not possess the fish pond except originally on account of the partnership, and later by reason of the lease.

But the defendants state that Francisco Goson and all of his antecessors have been in possession as owners, and they ask title by prescription.
It has already been said that the actual possessor, Francisco Goson, obtained the fish pond through the inheritance of Pablo Roque, as the heir of his daughter Paula Navarro who, in her turn, had inherited the same from her mother, Tranquilina Roque. It was Rosauro Roque who delivered it to Benigno Navarro because it was he who managed it until the 16th of August, 1902, the date when the instrument of adjudication to Benigno Navarro of the identical fish pond belonging to Pablo Roque was executed.

On this supposition it appears quite evident that the possession as owners, which the defendants claim over the fish pond sued for, is not proven by any of the writings or documents offered in proof thereof; on the contrary, it is notoriously contradicted by these very documents. None of such documents extends the marsh land bought by Pablo Eoque from Nicolas de los Santos toward the north as far as Tiuala Creek, which on this line of the fish pond in question is the limit. The final proof is the original title of Nicolas de los Santos which says that his marsh land is bounded on the north "by land belonging to Pablo Aceveros Koque," that is, the one now sued for, and on which, in 1876, according to the plaintiff, work was undertaken to convert it into a fish pond by the capitalist Pablo Aceveros Eoque, and that from 1877, under his management, it commenced to yield profit in fish to himself and to Julian Villanueva, who was in partnership with him for the working of the same.

The possession of Pablo Aceveros Eoque over this land which is the northern boundary of that belonging to Nicolas de los Santos, which Pablo Aceveros Eoque really bought in July, 1878, in order to also convert it into a fish pond, is what must be investigated to see whether or not the record shows that Pablo Aceveros Eoque held it by his own right or title of ownership or merely because he appeared as the capitalist who in 1876 paid all the expenses for turning the swamp of Julian Villanueva into a fish pond, and which already in 1877 he managed as a fish pond such as it now is, united to the swamp of Nicolas de los Santos, likewise converted into a fish pond.

And as to the possession as owner of said land, the northern boundary of the land of Nicolas de los Santos, now possessed by Francisco Goson, according to the deeds offered by the defendants, there is absolutely no proof nor any indication of said possession.

Contrary to what some of the witnesses for the defendants believe, the plaintiff does not claim the whole °f the fish pond now possessed by Francisco Goson, as described by said witnesses and by the immediate antecessor of Francisco Goson, Benigno Navarro, also a defendant herein, or, that is to say, the one that is bounded °n the south by the fish pond belonging to Jeronimo and Luisa Enriquez, and which extends towards the north as far as Tiuala Creek, a boundary not mentioned in any of the writings presented by the defendants. He only claims the fish pond bounded on the north by Tiuala Creek, and on the south by the fish pond of Pablo Eoque which is part of the only


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one now possessed by Francisco Goson, which is even now separated by a dike (pilapil) or ridge which exists between the one and the other; that is, between the fish pond sued for and its southern boundary, the real and true fish pond of Pablo Roque.

With respect to his possession by title of the partnership, the record offers the following testimony:

Bruno Villanueva states that his father and Pablo Roque stipulated that the latter should furnish the money to convert the swamp opposite his father's land into a fish pond, and that, after being so converted, they were to divide the profits; that said contract was reduced to writing and remained in the hands of Pablo Eoque. (Folio 10.) When crossexamined as to the date on which said document was executed, he said that it was made in 1876.

Rosalio Bautista declares that the fish pond sued for lies opposite the land now occupied by Bruno Villanueva; that it was a parcel of land possessed long ago by Julian Villanueva, "a swamp, prior to being converted into a fish pond under the agreement entered into between Pablo Eoque and Julian Villanueva, the former paying all the expenses with the right to retain the products for ten years." (Folio 13.)

Pedro Mendoza, Avho performed the work of converting said swamp into a fish pond, says that the land belonged to Julian Villanueva who paid the wages, but that Pablo Eoque supervised the work done by the witness who, with the help of another, built up the dikes; "on the several occasions when Pablo Eoque went to the said fish pond he asked us whether in ten years he would be able to recover the money he had laid out, and we answered in the affirmative." (Folio 26.)

And in connection with the lease of Eosauro Eoque, the following testimony exists:

That of the said Bruno Villanueva, according to which his father made with Rosauro Roque a lease of the fish pond for a period of six years beginning in 1888, and for the price of 150 pesos; to this end a document was executed which exists in the possession of Rosauro Roque.

That of Rosalio Bautista who accompanied Julian Villanueva when he went to arrange for the lease of the fish pond at a time when the latter needed money, the reply of Rosauro Roque being that, if he needed money, he should apply to no one but him, and they then agreed that he would give Julian Villanueva 150 pesos for the lease of his fish pond for six years, and upon the agreement having been made he promised to bring the money to his house on the following day. (Folios 21 and 22.)

Also that of Mariano Alonso Avho says that when he was present at the house of Julian Villanueva one Sunday, Rosauro Roque appeared and said to the latter, "Here is the money." Julian sent for some paper and caused his son to draw up a document for the lease of a fish pond for six years; a fish pond situated in the sitio of Balot, barrio of Tou&uya, Tambobong, well known to the witness as belonging to Julian Villanueva. (Folio 34.)

This witness further states that he also knows the fish pond of Pablo Roque in the same sitio and which is now united to that of Julian Villanueva, and that the fish pond of the former adjoins the land where Bruno Villanueva has his house. Said fish ponds were in former times independent of each other, according to the witnesses Mendoza and Bautista, the latter adding that he knows the land where the house of Bruno Villanueva is situated in Balot, Tonsuya, around which land is the fish pond in question, and close to it, scarcely separated by a dike (pllapil), is that of Pablo Roque who purchased a sabang from Nicolas de los Santos and converted it into a fish pond.

The witness Rosalio Bautista, being perfectly acquainted With the two fish ponds, made a sketch during the proceedings, which may be seen at folio 21 of the record, describing in detail the one and the other; which fact should be taken into careful consideration because it coincides in every way with the documents of the


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defendants.

Said document forms part of the title deeds that the latter have presented in connection with their pretended claim of ownership and appears between the bill of purchase of Pablo Aceveros Eoque and the order of hereditary adjudication to Benigno Navarro, being folio 75 of the record.

In this document of the defendants, also a sketch, the two united fish ponds are described in detail with great exactitude, such as they now stand, forming one sole fish pond in the possession of Francisco Goson, with the boundaries uniformly set forth by the declarations of the witnesses of both parties in the suit, as hereinbefore stated. There it may clearly be seen that the fish pond in question is in front of the land of Bruno Villanueva, and surrounds said land on three sides, and that between the one fish pond and the other there is little more that a dike indicated by a line of dots which, according to one of the witnesses of the defendants serves to set aside a fish hatchery; it can easily be taken away, and should this be done, then the two fish ponds would appear as a single one; therefore, by means of said dividing line, the fish pond sued for and the true one of Pablo Roque, the only one ever acquired by the latter from Nicolas de los Santos, according to all the title deeds offered in evidence, are perfectly marked out; said title deeds, far from proving .ttte possession of the antecessors of Pablo Roque as owner of the fish pond sued: for, rather indicate the precarious possession of Pablo Roque of the land adjoining the swamp acquired by him from Nicolas de los Santos, land and swamp converted by himself into a fish pond, the former in 1876 and the latter in 1878, bearing the expenses for the work on the former as capitalist partner, according to the testimony of witnesses for the plaintiff, and in the latter case, as the absolute owner.

It is in every sense significant that in this sketch which forms a part of the title deeds of the defendants, upon designating the land of Bruno Villanueva as the western boundary of the fish pond situated in front of said land, the following notation appears: "Building lot owned by me," a thing which no other person but Bruno Villanueva is able to say, because neither Goson nor any member of the Roque family, nor Nicolas de los Santos, could thus express himself, in view of the fact that said land on which Bruno Villanueva has his house is, according to the witnesses of both parties, beyond controversy the property of Bruno Villanueva. It would be logical to infer that said sketch was drawn by either Julian Villanueva or Bruno Villanueva, and that the fact that it is now in the possession of the defendants denotes relations had between the Villanuevas and the Roques.

That Julian Villanueva had possessed the fish pond now sued for by his son, Bruno Villanueva, is a fact beyond all doubt; the defendants have admitted it. Still, they maintain that Julian Villanueva was there as a mere guard for the fish pond, and this theory is sustained by their witnesses Serapio Cruz, Miguel Ignacio, and Silverio de los Santos.

But the possession of Julian Villanueva being recognized by the defendants, it does not suffice to say and to endeavor to prove that said possession was not by title of ownership unless it be previously proven that the rightful possession or that based on the right of ownership belonged to another, in the present case, to Pablo Roque; it not having been proven that it belonged to another, actual possession proven in the proceedings can not be qualified as precarious, and it will be the only one that can prevail in an action. It has already been shown that the possession based on the right of ownership claimed by the defendants, far from having been proven by the documents offered in evidence has been clearly contradicted by the said documents.

Consequently all of said documents presented for the purpose of showing real and just title of possession of the part of Pablo A. Roque do not in any way prove 'it, and inasmuch as Pablo A. Roque had no real and just title, his heirs and successors lack legal right to obtain by prescription the dominion of the thing said to be possessed with a just title. It is an undeniable conclusion that Pablo Eoque did not buy from Nicolas de los Santos the land or fish pond in question, because the land that Nicolas de los Santos possessed and sold to Pablo Roque was bounded on

the north by the land afterwards the fish pond now sued for. Therefore the alleged title of purchase of the fish pond in question in favor of Pablo Roque and his successors never existed. And for it to become theirs by prescription, the successors of Pablo Roque lack true and just title, which, though incomplete, is required as a legal requisite to this method of acquisition.

The possession which the defendants have recognized in favor of Julian Villanueva is confirmed by the witnesses already mentioned who testified with respect to the contract of partnership for operating the fish pond, made, with Pablo A. Roque, and regarding the lease entered into with Eosauro Roque, all of which are acts of dominion which reveal that the possession recognized in favor of Julian Villanueva was on the basis of ownership; and as such testimony has in no way been contradicted by the defendants, they must be considered in connection with the de facto possession admitted, in the sense that Julian Villanueva did possess it as owner.

The plaintiff, upon being crossexamined by the defendant as to what date and year his father had bought the fish pond now in litigation, answered, that a portion of said fish pond had already been inherited by his father from his mother, and the other portions were bought by him from different persons according to receipts which he had in his possession, and upon having been requested by the adverse party to produce such receipts, he exhibited them and they are now attached to the record as evidence for the plaintiff expressly admitted by the defendants; they are documents of acquisition, one of a building lot, and the other of a lot and swamp, both in the sitio of Balot, Tonsuya, the former bounded on the east by the Catmon River, now a fish pond of Simeon Bias, according to his own description and that of some of his witnesses, and the sketch at folio 75.

Benito Hilario, a witness of the plaintiff, states that he inberited from his mother a piece of land in the sitio of Balot, and that he ceded it to Julian Villanueva; that the said piece of land adjoins a marsh or swamp that is now converted into a fish pond and owned at the present time by Francisco Goson. This last answer was given on crossexamination by the adverse party.

The witnesses for the defendants themselves agree as to all the boundaries of the fish pond sued for, only that they believe it to be the whole of the fish pond now in possession of Francisco Goson, such, however, not being the case, as shown by the express terms of the complaint, the evidence offered by the plaintiff, and the two sketches hereinbefore referred to.

Not only by a preponderance of evidence in favor of the plaintiff, but because the proof of the title with which the defendants pretended to justify their possession resulted contra produeentem, it is not possible to accept any possession in the nature of ownership as a basis for a title by ordinary prescription.

Therefore the judgment appealed from is hereby reversed, and in accordance with the prayer contained in the complaint it is held: That the fish pond described therein and in the proceedings belongs to the intestate estate of Julian Villanueva, without any special ruling as to costs in this instance. So ordered.

Torres, Alapa, Johnson, Carson, Willard, and Trucey, JJ.,, concur.


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