

MARIA SINGAYAN, PLAINTIFF AND APPELLEE, VS. CALIXTA MABBORANG ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4100. March 26, 1908

Ponente: MAPA, J.

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MAPA, J.:

It is stated on pages 1 and 2 of the bill of exceptions presented in this matter that "the defendant filed with the court below a petition asking for a new trial on the ground that the conclusions contained in the judgment were openly and manifestly contrary to the weight of the evidence; said petition was overruled on the 27th of February, 1907, and immediately, on the 28th of February, 1907, the defendant presented a notice of appeal and an exception to the overruling."

On page 13 of the said bill of exceptions there is a copy of the petition for a new trial, and on page 14 the order of the court overruling said petition; then follows the writing of the 28th of February, 1907, alluded to' on page 2, which reads literally as follows: "Now comes the defendant in the above-entitled case, and states to the court that she will prepare and forward a bill of exceptions in order to submit said action before the Supreme Court." As may be seen, said writing contains no exception whatever to the order overruling the motion for a new trial, and no such note of exception exists in the bill of exceptions either before or after the presentation of said writing. Neither does an examination of the original record show that said exception had ever been taken therein.

This case is identical with that of *Rubert & Guamis vs. Luengo & Martinez et al.*[1] (5 Off. Gaz., 663). In that case it was also said, in the statement of proceedings at the commencement of the bill of exceptions, that an exception had been taken to the overruling of the motion for a new trial, when in reality the fact was just to the contrary. We then decided that the evidence could not be reviewed on account of the absence of said exception, and the same doctrine is herein applied. This is a fundamental question in an action, inasmuch as it directly affects the jurisdiction of this court in reviewing the questions of fact. Without the taking of an exception, our jurisdiction in this matter is limited simply to the questions of law which may arise from the conclusions contained in the judgment appealed from.

The court below has set down as a conclusion of fact "that Joaquin Tugad (of whose intestate estate the plaintiff is the administrator) was in peaceful possession of the land described in the complaint, and that in the year 1896 he was illegally, violently, and by means of threats deprived of the land by the defendant, Calixta Mabborang, and that the said Calixta Mabborang is now illegally in possession of said land."

This premise being established, the unavoidable consequence in law is, that the defendant must make restitution to the plaintiff of the land, of the possession of which she violently deprived Juan Tugad; it was so decided and justly ordered in the judgment appealed from.

The appellant points out as an error the admission of Exhibit A of the plaintiff. This document was presented in order to prove that an action was brought years ago in connection with the same land now sued for, before the proper court of the justice of the peace.

Whether the said exhibit should or should not have been admitted, the truth is that its contents can not materially affect the decision in the matter. The conclusion above transcribed, derived from the testimony of several witnesses, as deduced from the judgment itself, is sufficient to fully justify the decision herein contained. Therefore, the error that may have been committed, assuming that any actually exists, can not in any case cause the repeal of the judgment appealed from, for the reason that it does not affect the essential rights of the appellant. (Sec. 503, Code of Civil Procedure.)

The judgment appealed from is hereby affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Willard, and Tracey, JJ., concur.

[1] 8 Phil. Rep., 554.

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