

DOMINGO GUTIERREZ, PLAINTIFF AND APPELLANT, VS. MARIANO ROSARIO AND BERNARDO ROSARIO, DEFENDANTS AND APPELLEES.

G.R. No. 4145. January 28, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record it appears that the plaintiff commenced an action in the court of the justice of the peace of the pueblo of San Carlos, of the Province of Pangasinan, to recover from the defendants the possession of a certain parcel of land described in the second paragraph of the complaint, in an action of forcible entry and detainer. Upon a consideration of the facts adduced during the trial of the cause the justice of the peace dismissed said action. From this judgment of the justice of the peace the plaintiff appealed to the Court of First Instance of said province.

The cause was finally heard by the judge of the Court of First Instance. After hearing the evidence adduced during the trial of the cause, said judge found from a preponderance of the evidence that the defendants had been in possession of the land for more than one year prior to the time of the commencement of the action in the court of the justice of the peace and, applying the provisions of section 80 of the Code of Procedure in Civil Actions, decided that the action was improperly commenced before the justice of the peace; that the justice of the peace did not have jurisdiction to try said cause; that an action of forcible entry and detainer can not be commenced in the court of a justice of the peace where the defendants have been in possession of the land for a period of more than one year prior to the commencement of the action. From this judgment the plaintiff appealed to this court and made the following assignments of error:

- "1. The court erred in holding that the plaintiff arid appellant has no right to be restored in the possession of the land described in the complaint.
- "2. The court erred in not rendering judgment in favor of the appellant regarding the possession of the land described in the complaint, with damages and costs.
- "3. The court erred in denying the motion for new trial filed by the appellant."

With reference to the first assignment of error, the lower court did not decide that the plaintiff was not entitled to the possession of the land in question. The decision of the lower court was to the effect that an action for the possession of the land in question could not be maintained in the court of the justice of the peace for the reason that more than one year had elapsed after the alleged illegal possession and before the commencement of the action. It is possible that in an action of ejectment, commenced in the proper court, the plaintiff may be able to show that he is entitled to the possession of the land in question.

We deem it unnecessary to discuss the second and third assignments of error above noted for the reason that the court, not having jurisdiction over the action, could not decide whether or not the plaintiff was entitled to damages for the illegal possession of said land.

The action being one for forcible entry and detainer, commenced in the court of the justice of the peace, could not be changed to an action of ejectment by an amendment of the pleadings in the Court of First Instance. (Alonso vs. Municipality of Placer, 5 Phil. Rep., 71.)

The above conclusion, of course, in no way indicates that the plaintiff is not entitled to the possession of the land in question. The conclusion is simply that the alleged wrongful possession having extended over a period of more than one year, the justice of the peace had no jurisdiction to consider it.

For the foregoing reasons the judgment of the lower court is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Mapa, Carson, Moreland, and Elliott, JJ., concur.

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