

EXEQUIEL DELGADO, PLAINTIFF AND APPELLANT, VS. MANUEL RIESGO ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 4233. March 18, 1908

Ponente: CARSON, J.

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CARSON, J.:

Complainant prays that defendants be enjoined from levying an attachment upon a certain tract of land, which he alleges to be his property.

The defendants deny complainant's claim of ownership, and allege that the land is the property of one Francisco Delgado, and that when the preliminary injunction issued at the instance of complainant was served upon them, they were lawfully proceeding to levy an attachment upon this land in pursuance of a writ of execution upon a judgment for debt in favor of Warner, Barnes & Co., and against the said Francisco Delgado.

The only question to be considered is whether the plaintiff established his claim of ownership of the land in question with sufficient certainty to justify the court in granting his prayer for an injunction to protect the claim which he asserts.

It is admitted that the plaintiff was the owner of the land in the year 1900, but it was proven that since that time it has been in the possession of Francisco Delgado, his cousin, who cultivated it, paid the taxes upon it, and with the knowledge of the plaintiff entered it in the land assessment records as his own property. It was also proven that the plaintiff had stated on one occasion that he had given the land as a wedding present to his cousin Francisco, when Francisco married his sister in 1900; and that he had stated that the land was the property of his cousin, Francisco, on an occasion when Warner, Barnes & Co. were endeavoring to induce the plaintiff to mortgage it as security for the payment of a debt due them from the plaintiff.

The plaintiff testified that his cousin, Francisco Delgado, occupied the land merely as his "man in charge;" that he paid the taxes by his direction, and while he admitted that he knew that his cousin had declared the land in his own name on the land assessment records, plaintiff swore that he had not authorized him so to do. Plaintiff did not deny the statement of the witnesses that he had told them that the land had been given to Francisco as a wedding present, although he was on the stand after this testimony had been introduced in evidence and had an opportunity to do so if he desired.

The trial court was of opinion that this evidence did not sustain the plaintiff's allegation of ownership of the land in question, and we think this finding must be sustained. The presumption that the plaintiff having been the owner of the land in 1900 continued to own it up to the time of the filing of his complaint, would appear to be rebutted, as between the plaintiff and these defendants, by evidence of its delivery to Francisco Delgado, and its occupation by him for a number of years under a claim of ownership, taken together with the plaintiff's admissions that he had given the land to Francisco Delgado and that Francisco was the owner.

It was the duty of the plaintiff to sustain his allegation of ownership by a preponderance of evidence, and, having

failed so to do, his prayer for a permanent injunction to restrain the defendants from attaching the land was properly denied.

It has been suggested that the evidence as to the statements of the plaintiff touching the gift of the land was not the best evidence of such a gift and that it was therefore improperly admitted. But no objection was made to the admission of this evidence in the court below, and in the absence of objection we think the court properly took it into consideration in rebuttal of plaintiff's claim of ownership.

Counsel for plaintiff objected in the court below to the introduction of evidence as to the payment of taxes by Francisco Delgado, and his entry of the property in his own name in the land assessment records. We agree with counsel that proof that one has paid taxes on a certain piece of land, and that it stands in his name in the land assessment records, is not conclusive proof of ownership; but such testimony would appear to be competent and material in this case in so far as it tends to throw light upon the nature of the claim, of the claim of possession asserted by the occupant of the land, with the knowledge and tacit consent of the plaintiff.

The judgment of the trial court is affirmed with the costs of this instance against the appellant. So ordered..

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ.,

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