

LORENZA QUISON ET AL., PLAINTIFFS AND APPELLEES, VS. HIGINA SALUD, DEFENDANT AND APPELLANT.*G.R. No. 4314. November 21, 1908*

Ponente: WILLARD, J.

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Upon the merits of this case the only question is one of fact, namely, is the boundary line between the land formerly owned by Fidel Salud, the father of the defendant, and land owned by Claro Quison, father and uncle of the plaintiffs, the estero or River Nagsaulay, or is it, as found by the court below, a straight line of mango and bamboo trees to the south of the above-mentioned estero? The land in controversy is situated between this line of trees and the estero.

That Claro Quison owned land to the north of the estero, is undisputed, but the defendant claims that he [Quison] never owned any land south of the estero. A large amount of evidence, principally parol, was introduced upon this question, and after an examination thereof, we are satisfied that it clearly preponderates in favor of the decision of the court below, and that it was proven at the trial that the land in question belongs to the heirs of Quison.

The defendant relied to a great extent upon the record of an action brought by Claro Quison in 1887 against one Perdeguera. Quison alleged in his complaint in that action that the defendant therein had unlawfully possessed himself of a portion of his, the then plaintiff's land. The land there in question was in the extreme northern part of the land of Quison, and therefore entirely north of the Estero Nagsaulay. Judgment was rendered in that action in favor of the plaintiff, and the gobernadorcillo of the town of San Juan de Bocboc was ordered to restore the plaintiff to the possession of the land detained by Perdeguera. In executing this judgment the officers of the law apparently gave Quison possession of all the land which he had described in his complaint in that action, which description was as follows; "On the east, the sea; on the south, land of Fidel Salud; on the west, lands of Juan de Chaves and Camilo Perez; and on the north with the arroyo called, Amoyongan." Fidel Salud was cited to appear, and did appear when possession was given to Quison. It 'will be noticed that, while the land of Quison is described as being bounded on the south by the property of Salud, nothing is said about the Estero Nagsaulay, nor does that estero appear upon the plan which accompanied the complaint in that action and which the officers had before them when possession was restored. The minute of the proceeding concerning the restitution was signed by Salud.

The importance of these documents for the defendant's case lies in the fact that in them the land is described as being in the barrio of Subuquin. We think the evidence establishes that the land here in controversy is in the barrio of Bataan, and that the dividing line between the barrios of Bataan and Subuquin was the Eiver Nagsaulay, Bataan being to the south of the river and Subuquin to the north, and the argument of the defendant is that, according to these documents, the entire property owned by Claro Quison was situated in Subuquin, and therefore was north of the Estero Nagsaulay.

Even giving the document all the weight which the defendant claims it is entitled to, it would then be merely

evidence upon the question of fact as to whether Quison did or did not own lands to the south of the River Nagsaulay, and as such evidence we think it can not overcome the evidence of the many witnesses presented by the plaintiffs who swore that as a matter of fact, they had occupied and cultivated lands belonging to Glaro Quison situated to the south of this river. It may be, perhaps, that, in view of the fact that the land in controversy in that action commenced in 1887 was a small parcel which itself was in the barrio of Subuquin, in describing the land in question the then plaintiff did not have in mind so much where all of his land lay as where the particular tract then in controversy lay.

The defendant also claims that Fidel Salud was given judicial possession of the property here in controversy in 1895. No written documents were presented to prove this possession, but admitting that proceedings relating to judicial possession were then taken in accordance with the provisions of title 13 of the Spanish Law of Civil Procedure, such proceedings could in no way prejudice the plaintiffs according to the express provisions of article 2016. The law did not require for such proceedings the citation of the adjoining proprietors, nor was there any evidence that they were in fact cited in this proceeding, and, according to the testimony of Gregorio de Villa, any possession which Fidel Salud obtained in 1895 was lost in 1901, when Quison again took possession of the premises and held them until the reconcentration when the defendant, in 1903, by reason of such reconcentration again possessed herself of the property.

We hold that the finding of the court below in favor of the plaintiffs as to the true boundary line between the respective properties is sustained by the evidence.

Some questions of procedure remain to be considered.

This action was first brought against Fidel Salud and Gregorio de Villa, the father and husband, respectively, of the defendant Higina Salud. They answered, alleging that the property in question had been conveyed to Higina Salud in 1895, and that she was the only owner thereof. Upon the presentation of this answer, the plaintiffs asked leave to present a supplementary complaint against Higina Salud. The court, in disposing of that motion, ordered the dismissal of the action so far as the defendants Fidel Salud and Gregorio de Villa were concerned, with costs. against the plaintiffs, and permitted the plaintiffs to present a complaint against Higina Salud. The plaintiffs excepted to this order and insisted that the two defendants above-named should be included in the case, but the court refused to vacate his order of dismissal. The plaintiffs then presented a complaint against Higina Salud as the only defendant. She made a motion that the complaint be stricken out, but it does not appear that the court ever made any ruling thereon. She afterwards answered the complaint and the trial was had upon the pleadings then in the case, namely, on the complaint against Higina Salud and her answer.

Higina Salud was the only one who appealed from the judgment and she now alleges in her brief that the court erred in dismissing the case as to the other defendants. This dismissal only prejudiced the plaintiffs and they have not appealed. The complaint against Higina Salud was improperly called by the plaintiffs a supplementary complaint. But the name given to it was of no importance. At the time it was presented she was the only defendant. It perhaps was error to permit the filing of that new complaint against Higina Salud in this action and perhaps the complaint should have constituted a new case, but the fact that it was placed among the papers in this case and that the trial and judgment were had and rendered therein, if it were error, was an error which in no way prejudiced the substantial rights of the defendant Higina Salud upon the merits, and is therefore no ground for reversal. (Sec. 503, Code of Civil Procedure.)

Claro Quison died in 1902. It was proven at the trial that the present plaintiffs are the next of kin and heirs, but it is said by the appellant that they are not entitled to maintain this action because there is no evidence that any proceedings have been taken in court for the settlement of the estate of Claro Quison, and that, without such

settlement, the heirs can not maintain this action. There is nothing in this point. As well by the Civil Code as by the Code of Procedure, the title to property owned by a person who dies intestate passes at once to his heirs. Such transmission is, under the present law, subject to the claims of administration and the property may be taken from the heirs for the purposes of paying debts and expenses, but this does not prevent the immediate passage of the title, upon the death of the intestate, from himself to his heirs. Without some showing that a judicial administrator had been appointed in proceedings to settle the estate of Claro Quison, the right of the plaintiffs to maintain this action is established.

The court below gave the plaintiffs P900 as damages. While the defendant has assigned this part of the judgment as error in her brief, it has not been argued therein. While it is true that the evidence relating to the damages is in some respects vague and uncertain, yet, after an examination of all of it, we are satisfied that it supports the judgment of the court below, at least to the extent of P900.

The appellant finally claims that the action can not be maintained, because some of the plaintiffs are married women whose husbands did not join with them in the action. An examination of the record shows that at least one of the plaintiffs, Lorenza Quison, was a married woman and that her husband did not join with her in the action. Section 115 of the Code of Civil Procedure is as follows:

"Married woman as a party,—When a married woman is a party, her husband must be joined with her, except:

"1. When the action concerns her property, in which her husband can have no interest or right;

"2. When the action is between herself and her husband;

"3. When, for just cause, she is living separate and apart from her husband, or by reason of an agreement in writing entered into between them.

"In either of which cases she may sue or be sued alone."

The action was brought not only to recover the possession of the land and to secure a declaration that the plaintiffs were the owners thereof, but also to recover the sum of P6,720, damages which the plaintiffs have suffered by the wrongful occupation of the land by the defendant. These damages consisted of the products of the land which the defendant had received during the time of such occupation.

Passing the question whether, as to the land itself, it being the separate property of the wife, the husband of Lorenza Quison could have any interest or right therein, we think that it is very clear that as to the rents and profits of the land he does necessarily have such an interest or right. The most that can be said in favor of the plaintiffs is that these lands were bienes parafernales. In regard to the rents of such lands, articles 1385 and 1401 of the Civil Code provide as follows:

"Art. 1385. The fruits of the paraphernal property form a part of the assets of the conjugal partnership, and are liable for the payment of the marriage expenses.

"The property itself also shall be liable, in the case of article 1362, provided that of the husband and the dowry property should be insufficient to cover the liabilities referred to therein.

"ART. 1401. To the conjugal partnership belong:

"1. Property acquired for a valuable consideration during the marriage at the expense of the partnership property, whether the acquisition is made for the partnership or for one of the spouses only.

"2. That obtained by the industry, salaries or work of the spouses or either of them.

"3. The fruits, income, or interest collected or accrued during the marriage, coming from the partnership

property, or from that which belongs to either one of the spouses."

We hold, therefore, that the husband of Lorenza Quison was a" necessary party to this action.

The case was submitted for our decision on the 21st of July, 1908. An examination of the record having disclosed the facts above stated, the court, on the 22d day of August, made an order permitting the plaintiffs, on notice to the adverse party, to move the court for permission to amend the complaint by adding thereto the names of the husbands of those plaintiffs who were married. In accordance with such order, the plaintiffs made a motion that the complaint be amended by adding thereto the names of the husbands of Lorenza Quison, Maximina Quison, Roberta Quison, and Petra Quison as plaintiffs. This motion was argued on the 5th day of October. Plaintiffs rely upon section 110 of the Code of Civil Procedure, which is in part as follows:

"The court shall, in furtherance of justice, and on such terms, if any, as may be proper, allow a party to amend any pleading or proceeding and at any stage of the action, in either the Court of First Instance or the Supreme Court, by adding or striking out the name of any party, either plaintiff or defendant, or by correcting a mistake in the name of a party, or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner."

It will be seen that this case falls directly within the terms of this section. The amendment consisted in adding the names of certain parties as plaintiffs. That amendment is expressly allowed by the section. The motion was made in the Supreme Court. That is also expressly allowed by the section, and if it is ever to be given any effect as applied to the addition of a party to an action, it must cover this case. The provision, moreover, seems to us a very wise one. If it were not allowed, the plaintiffs would either fail entirely in the action or, the present suit would have to be dismissed and they would be compelled to commence another action for the same cause, joining their husbands as plaintiffs, which second action would be but a repetition of the first and would involve both parties, plaintiffs and defendant, in much additional expense and would cause much delay, in that way defeating the purpose of the section, which is expressly stated to be "that the actual merits of the controversy may speedily be determined without regard to technicalities and in the most expeditious and inexpensive manner."

For the reasons above stated, the court, on the 5th day of October, made an order stating that on the payment by the plaintiffs of P50 for the benefit of the defendant, the motion would be granted. These terms were imposed upon the plaintiffs for the reason that the attention of their counsel was called to the defect several times in the Court of First Instance and in this court also by the brief of the appellant and that, notwithstanding this fact, he took no steps to correct the error. The plaintiffs have paid into the clerk's office the P50 mentioned in the resolution of October 5, and it is therefore now ordered that the complaint in the action be amended by adding thereto as plaintiffs the names of Santiago Sevilla, husband of Lorenza Quison; Simeon Guerra, husband of Maximina Quison; Dionisio Bravo, husband of Roberta Quison, and Vicente Amador, husband of Petra Quison.

The judgment of the court below is affirmed, without costs to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ.,

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