

**ENRIQUE, TOMAS, VICENTE, ELVIRA, ARTURO, AND JOSEFA,  
SURNAMED BERNIA, PLAINTIFFS AND APPELLEES, VS. JOSE M. KERR  
AND JULIANA SANTOS, DEFENDANTS AND APPELLANTS.**

*G.R. No. 44204. December 24, 1938*

Ponente: DIAZ, J.

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**DIAZ, J.:**

The main question to be decided in the appeal taken by defendants from the judgment of the lower court is whether or not they are bound to pay plaintiffs P56,327 plus legal interest from December 27, 1934 and the costs of the suit. The judgment appealed from declares them bound to pay said sum. Appellants, however, contend that the lower court, in rendering judgment, committed the following errors set forth in their brief:

"I. The lower court erred in not finding that the defendants-appellants had been in prior possession of the land in question by themselves and their predecessors in interest since time immemorial.

"II. The lower court erred in not finding that there was voluntary delivery of the material possession of the land in question by the plaintiffs-appellees through their administrator, the Pampanga Sugar Mills, to the defendants-appellants.

"III. The lower court erred in not finding that the defendants-appellants were possessors in good faith of the land in question.

"IV. The lower court erred in not finding that the defendants-appellants voluntarily abandoned possession of the land in question after the harvest of the 1925-1926 sugar cane crop.

"V. The lower court erred in not finding that the plaintiffs-appellees could have recovered possession of the land in question without the necessity of filing the present action.

"VI. The lower court erred in condemning the defendants-appellants to pay damages in the sum of P56,327 and to pay interest thereon from the time of the filing of the complaint.

"VII. The lower court erred in not holding that the plaintiffs-appellees should reimburse the defendants-appellants for the expenses they incurred in the land in question during the time of their possession.

"VIII. The lower court erred in not granting defendants-appellants' motion for new trial and in not absolving said defendants-appellants from the plaintiffs-appellees' complaint."

The proven facts which must be taken into account in deciding the question may be briefly restated as follows: The intestate estate of appellees' predecessor in interest, through its judicial administratrix commenced in the justice of the peace court of Floridablanca, Province of Pampanga, on October 5, 1925, civil case No. 148 for forcible entry, entitled "Sebastiana Rodriguez, Judicial Administratrix of the Intestate Estate of the deceased Arturo Bernia, plaintiff, vs. Jose Kerr, defendant", for the purpose of seeking restitution of the land which plaintiff in said case alleged to have been usurped from the intestate estate of which she was the administratrix by defendant Kerr, and for the payment by the latter to said administratrix of the sum of P500 as damages occasioned

by the usurpation. It having been shown in said justice of the peace court that the land in question was also the subject of litigation between the same parties in registration case No. 584 of Pampanga, the justice of the peace court refused to act thereon, limiting itself to remanding the case to the Court of First Instance of Pampanga. Upon the case reaching the latter court, Sebastiana Rodriguez, plaintiff therein, in her capacity as judicial administratrix of the intestate estate of the deceased Arturo Bernia, reproduced her complaint on December 18, 1925, but instead of asking for P500 by way of indemnity for damages, she prayed therein for the sum of P5,000 (civil case No. 3312 of the Court of First Instance of Pampanga; G. R. No. 44204, Dec. 24, 1938). In answer to the complaint, defendant Kerr denied generally and specifically the facts alleged therein. Subsequently, and with the consent of the parties, the court ordered that said case be heard jointly with registration cases Nos. 584 (G. L. R. O. Rec. No. 23476) and 710 (G. L. R. O. Rec. No. 27661) which were also pending therein and in which Jose M. Kerr et al. were applicants and Enrique Bernia et al. were oppositors (case No. 584), and the latter, in turn, were applicants and Jose M. Kerr et al., oppositors (case No. 710). On July 30, 1926, also with the consent of the parties, the court ordered the postponement of the hearing of said case (civil case No. 3312) until the two registration cases aforementioned have been decided.

In view of certain facts which took place after the filing of the first complaint, Enrique Bernia, Tomas Bernia, Elvira Bernia, Arturo Bernia, and Josefa Bernia, all of whom are children of the late Arturo Bernia, acting in substitution of Sebastiana Rodriguez, who had been judicial administratrix of the intestate estate of said deceased, filed on December 27, 1934, a supplementary pleading not only against Jose M. Kerr this time, but also against his wife Juliana Santos for the purpose of recovering from the last two payment of the following amounts: P11,000 representing the value of 1,100 piculs of centrifugal sugar which, they alleged, defendants had appropriated to themselves; that of P54,000 representing the produce which they were unable to enjoy allegedly because the defendants usurped the land in question from the years 1926 to 1934; and P5,000 by way of indemnity for having been deprived of the quota corresponding to them for said land by reason of defendants' fault, besides the costs of the suit. Defendants Jose M. Kerr and Juliana Santos filed two separate answers to said supplementary complaint, denying generally and specifically the facts alleged therein, without interposing any special defense. After trial the lower court rendered judgment against defendants who appealed therefrom.

The land alleged to have been usurped by defendants, which pertained to plaintiffs' predecessor in interest (Arturo Bernia) is included in the area having the following boundaries:

On the north, lands of Arturo Bernia; on the east, land of Arturo Bernia or of Ignacio Dimson; on the south, land of Maximo Dimal, Canlaman or Malabo River and its branch called estero Panayupan; and on the west, lands of Lamberto Songco derived from Juan Beltran, if there were no Dinalupihan road. This land was definitely declared by this court as the property of plaintiffs in land registration cases Nos. 584 and 710 (G. R. Nos. 35746 and 35747, Apr. 11, 1934) in which the principal parties were also the appellees and appellants in this case. After carefully considering the evidence adduced by the parties in the lower court, this court declared in those cases that Arturo Bernia, appellees' predecessor in interest, had exercised acts of ownership not only over the land now in question, occupying and possessing the same as owner, but also over the great mass of land of which it formed and still continues to be a part since a period much earlier than the commencement of the said registration cases and the original case instituted by the judicial administratrix of the intestate estate of the late Arturo Bernia in the justice of the peace court of Floridablanca to demand from appellant Jose M. Kerr the restitution of said land and the payment by the latter of the sum of P500 for damages.

Before the rendition of the final decision of this court in the aforesaid registration cases (Nos. 584 and 710; G. R. Nos. 35746 and 35747 of this court), which was promulgated on April 11, 1934, another decision was rendered on November 13, 1923 in registration cases Nos. 242, G. L. R. O. Rec. No. 14314, and 273, G. L. R. O. Rec. No.

14879, G. R. No. 20912 of this court, Nov. 13, 1923), in which Arturo Bernia et al., on one side, and Jose M. Kerr et al., on the other, litigated the ownership of the same lands which later were the subject matter of the two cases aforementioned, namely, cases Nos. 710 and 584 or G. R. Nos. 35746 and 35747, respectively. That decision affirmed in substance that of the lower court by recognizing the rights of Arturo Bernia to have recorded in his name in the registry some of the lands for which he applied and denying his application with respect to the others due to the opposition of Jose M. Kerr and other oppositors, but neither did it declare the latter, much less Kerr for that matter, as having any right to some or to any portion of the lands aforementioned. In view of the outcome of cases Nos. 242 and 273, Arturo Bernia and the herein appellees commenced another registration case No. 710, G. L. R. O. Rec. No. 27661 (G. R. No. 35747), and the appellants spouses Jose M. Kerr and Juliana Santos, on their part, instituted registration case No. 584, G. L. R. O. Rec. No. 23476 (G. R. No. 35746) Which terminated in the manner set forth in the decision rendered on April 11, 1934. (Exhibit A, Bernia.)

When the complaint was filed in the justice of the peace court of Floridablanca in case No. 148 aforementioned of which the justice of the peace refused to take cognizance for lack of jurisdiction and which led to the filing of the original as well as the amended and supplementary complaints in case No. 3312 (G. R. No. 44204) by the judicial administratrix of the intestate estate of Arturo Bernia and by the appellees, respectively, they (the administratrix and the appellees) no longer had possession of the land in question nor could they enjoy the fruits thereof until the year 1934 for the reason that appellants occupied the same and disposed of the sugar therein produced, selling the same for their benefit under the following circumstances: A little over one year after the promulgation of the judgment of this court in land registration cases Nos. 242 and 273 (Exhibit 1), G. R. No. 20912[1] (Exhibit 2), that is, either in May or June, 1925, appellants, through Jose M. Kerr, making use of a copy of said judgment, went to the manager of the Pampanga Sugar Mills which at that time administered the land in question together with other lands belonging to the appellees and their predecessor in interest Arturo Bernia in order to demand from said manager the possession of the land aforesaid, notwithstanding that they then knew that the estate of said deceased was under administration and under the charge of the judicial administratrix Sebastiana Rodriguez, alleging that they won the same in the courts. Having accomplished their purpose, they possessed the land from then on until the year 1934, in spite of the opposition of said Sebastiana Rodriguez and of the appellees and enjoyed the fruits thereof to the exclusion of the latter and, in consequence, to their damage and prejudice. This constituted in itself a strategy to dispossess the intestate estate of Arturo Bernia and the appellees of the said land because the only person with whom they should have dealt, had they acted in good faith, was the judicial administratrix of the intestate estate, who alone was called upon to defend the interests of the same.

Resorting to the same strategy, appellants were able to withdraw on March 25, 1926 from the Pampanga Sugar Mills a warehouse receipt which represented 415 piculs of sugar belonging to the intestate estate of Arturo Bernia and to the appellees, which was the produce of the cane planted on the land in question during the agricultural year 1925-26 (Exhibits B-1 and B-2, Bernia). Said warehouse receipt was subject to a lien of P1,157 in favor of the Pampanga Sugar Mills. Were it not for the objection of this company, based on another lien in its favor, which amounted to P11,584.41, appellants would have also withdrawn therefrom another warehouse receipt of the intestate estate and of the appellees which represented 479.5968 piculs of sugar (Exhibit 11). Said warehouse receipt is now in the possession of the company.

In the milling for the agricultural year 1925-26, the land in question produced for its owner or owners alone 894 piculs of sugar which is the total of those set forth in the two warehouse receipts aforementioned—one for 415 piculs and another for 479.5968 piculs. The price of sugar at that time, according to the valuation given by Kerr himself, was P9.50 per picul (Exhibit B, Bernia) from which it results that the 415 piculs of sugar taken by appellants from the manager of the Pampanga Sugar Mills under the circumstances above stated, were valued at P3,942.50 without deducting what appellants are presumed to have paid for the lien which the Pampanga Sugar

Mills had on the warehouse receipt corresponding to the said quantity of sugar. If the deduction were made, said sum would be likewise reduced to P2,785.50.

In the millings for 1926-27 and 1927-28, it must be presumed that the same land produced for its owners alone at least the same yield of 894 piculs of sugar. At that time, the price of sugar was P7.55 per picul (Exhibit E), which means that if the owners of the land had occupied and planted the sugar cane as they had done in previous years, they could have obtained an income of P6,749.70 in each of said years.

In the milling for 1928-29, upon the same basis of 894 piculs of sugar as yearly produce for the owners of the land only, the market value of said article at that time being P6.36 per picul, appellees could have benefited from said price, but were not able to do so for the reason that appellants had taken possession of the land so that the loss suffered by the former in said year was P5,685.84.

In the milling for 1929-30, the current price of sugar was P5.41 per picul. Consequently, upon the same supposition that the land produced at least 894 piculs of sugar during that agricultural year, the owner suffered a loss of P4,836.54.

In the milling for 1930-31, the price of sugar was P5.51 per picul; in that for 1931-32, it was P3.58; in that of 1932-33, it was P5.12; and in that of 1933-34 it was P5.31, resulting accordingly—assuming, of course, that the land did not produce less than 894 piculs of sugar per year had appellees cultivated it—in the following losses suffered by the latter: P4,925.94 in the first year; P3,200.52 in the second; P4,577.28 in the third; and P4,747.14 in the last. In other words, appellees failed to receive the fruits and rents of the land in question in the millings from 1925-1926 to 1933-34, valued at P44,258.16, without including the value of the warehouse receipt for 479.5968 piculs of sugar which is still in the hands of the manager of the Pampanga Sugar Mills for the reason that appellants were unable to withdraw the sugar which it represented when they secured the warehouse receipt for 415 piculs.

The evidence shows that for the production of a picul of sugar, planting therefor the necessary amount of cane, the planter incurs an expense of P2.22. Consequently, in the production of 7,152 piculs of sugar to which the total produce which should have corresponded exclusively to the appellees in the millings for 1926-27 to 1933-34 must have mounted, the outlay of P15,877.44 must be taken into account, for it must be supposed that appellees would have to meet that expense to produce the same quantity of sugar. Performing the necessary operation, the loss suffered by the appellees amounted only to P28,380.72.

Upon consideration of the question and of the conflicts between appellants and appellees in the light of the facts proven at the trial, which are set forth in this decision, we arrive at the conclusion and so hold that appellants, by means of strategy, were able to take possession of the land in question in the early part of August, 1925; that their possession from that time has not been in good faith; that at that time and even much prior thereto appellees and their predecessor in interest had possession of said land as owners and, as such, had been planting the same to sugar cane without interruption; that said land produced per year 894 piculs of sugar for its owners alone, excluding the part of the crop corresponding to the central which took charge of the milling of the cane; that during the agricultural years 1925-26 to 1933-34, inclusive, the land yielded a total of 8,046 piculs; that at its current market price, the value of said produce, excluding the value of 479.5968 piculs which are in the possession of the manager of the Pampanga Sugar Mills and further deducting the cost of production for the agricultural years between 1926-27 to 1933-34, is that of P28,380.72; and that this latter sum should be paid by appellants to the appellees by way of indemnity.

Having reached this conclusion, we do not find it necessary to consider the question whether or not the lower court should have granted appellants' motion for new trial on the ground that its judgment was contrary to law and

not supported by the evidence. Said question is implicitly disposed of in this decision.

In view of all the foregoing, the judgment appealed from is hereby modified in the sense of sentencing appellants to pay appellees the sum of P28,380.72 with legal interest from December 27, 1934, the date of the filing of the amended complaint and of the supplemental pleading, until complete payment. In other respects, said judgment is affirmed, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Villa-Real, Imperial, and Concepcion, JJ., concur.

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[1] November 13, 1923.

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