

VICENTE BRIONES, PLAINTIFF AND APPELLANT, VS. PETRA PLATON DEFENDANT AND APPELLEE.

G.R. No. 4625. December 18, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

This is an appeal from a judgment of the Court of First Instance of Batangas, dismissing a complaint in an action to recover an orange grove in Tinuric in the municipality of Tanauan. More than fifty years prior to this action, Domingo, Castillo and his wife died owning a tract of 25 cavares de cabida including the land in question, and leaving it in undivided shares among his four children. The last of them, Domingo Castillo, died more than thirty years ago and this litigation has arisen between descendants of the second and third degrees, the plaintiff alleging that in 1903 all the members of the family agreed upon a partition which was carried into effect in 1907 by certain deeds which are in evidence. It seems that none of the defendants took part in this partition nor had they any knowledge, of it, one witness, Epifanio Atienza, saying that, while none of the other heirs of that part of the family were present, he, as the eldest male, assumed to represent the rest of that branch and to divide the land for them. Apparently he held no power to that effect, either written or oral.

The Court of First Instance put its judgment upon the ground of prescription in favor of the defendants, but this, we think, was error. It is plain, however, that the defendants are not bound by an operation in which they took no part, and for that reason the plaintiff can not succeed in recovering the exclusive possession of the land occupied by them, which is the object of his action. Upon this ground the judgment of the court below dismissing the action is hereby affirmed, leaving both plaintiff and defendants to assert in a proper way whatever rights may have originally been theirs in the property in suit, whether as tenants in common or otherwise.

As hereby modified, the judgment is affirmed, with the costs of this instance. So ordered.

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

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