

## ANDRES GARCHITORENA, PLAINTIFF AND APPELLEE, VS. AMBROSIA POSTIGO, DEFENDANT AND APPELLANT.

*G.R. No. 4650. December 29, 1908*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

On the 10th of January, 1907, the plaintiff commenced an action in the Court of First Instance of the Province of Ambos Camarines, for the purpose of recovering of the defendant, upon the theory that she was the owner, the possession of the following-described parcel of land:

"Rural property, that is, a parcel of land in the sitios of Mabalodbalod and Higfiaroy, jurisdiction of Tigaon, Ambos Camarines, P. I., having a superficial area of two hundred and seventy-nine (279) hectares, which is bounded on the north by the HigSaroy River, on the east by the road from Higfiaroy to Mabalodbalod, on the south by the Osini River, and on the west by lands formerly owned by Garchitorena Hermanos and now by Andres Garchitorena, Ponciano Badurria, and Luis Jallores."

The plaintiff alleged that the defendant, without the knowledge or consent of the plaintiff, had taken illegal possession of and continues to occupy some parcels of land situated within the boundaries of the plaintiff's land, and that the parcels of land so illegally taken possession of by the defendant, situated within the boundaries of the lands of the plaintiff, were as follows:

"1. In the sitio of Palanog, seven (7) pisosones.

"2. In the sitio of Ulag, three pisosones and a half.

"3. In the sitio of Tabog, one (1) hectare.

"4 In the sitio of Gajo, 2 pisosones."

And that the defendant had occupied said parcels of land about five years.

The plaintiff, in addition to asking that the possession of the property be returned to him, prayed for a judgment for P3,600, as damages for the wrongful detention of said parcels of land.

To this complaint the defendant filed a demurrer, upon the ground that the same was ambiguous, unintelligible and vague, which demurrer was subsequently overruled by the lower court.

On the 18th day of July, 1907, the defendant filed the following petition:

"I

"That the abaca lands in question, which are the subject- matter of the complaint, are as follows, according to the plaintiff's description: A parcel of land in the sitio of Palanog, another in the sitio of Ulag, another in the sitio of Tabog, and another in the sitio of Gajo, all of which sitios belong to the jurisdiction of Tigaon, Ambos; Camarines.

"II.

"That the first parcel of land, namely that in Palanog, was bought by the defendant and her deceased husband from Messrs. Ramon Bongat, Alfonso Padua and Apolonio Bongat; the second, that is, that in Ulag, from Messrs. Isidoro Fabricante and Simeon Avila; and the fourth, i. e., that in Gajo, from Mr. Raymundo Peñalosa, all of them residents of the municipality of Tigaon, Ambos Camarines, with the exception of the latter, who at present resides at Baao, in the same province.

"By virtue of all the foregoing, the plaintiff asks the court to summon said persons to be present at the proceedings for eviction and to enforce the warranty, so that they may take part in the case, should they wish to do so."

On the 19th day of July, 1907, on petition of the defendant, the lower court made the following order:

"Counsel for the defendant in the above entitled case asks the court for an order for the citation of Ramon Bongat, Alfonso Padua, Apolonio Bongat, Isidoro Fabricante, Simeon and Simon Avila, and Raymundo Peñalosa, for the purposes of the eviction proceedings and warranty so that they may appear in the action, if they desire to do so.

"After examination of the orders and provisions applicable to the case, it is hereby ordered that the clerk of this court issue the summons asked for, in accordance with the law."

On the 7th day of August, 1907, each of the persons named in the above-mentioned order, except Raymundo Peñalosa, appeared and answered, denying each and all of the facts set up in the complaint of the plaintiff. On the same day the defendant filed her answer, denying each and all of the facts stated in the complaint, alleging that she was the legitimate owner of the said parcels of land and that she and her husband had occupied the same quietly and without interruption for more than twenty years.

After hearing the evidence adduced during the trial, the lower court found that the plaintiff was the absolute owner of the lands described in his title of "composition" with the State, and ordered that the defendant should immediately deliver the possession of all of the lands of which she pretended to be the owner and which were included within the limits of the lands Of the plaintiff, to the plaintiff.

From this decision of the lower court the defendant appealed and made the following assignments of error:

"1. The court erred in not holding that the defendant and her husband and her ancestors were uninterruptedly in possession of the four parcels of land in question, prior to and after the time the plaintiff asked for the purchase, by 'composition' with the State, of the property described in the first paragraph of his complaint.

"2. In not considering the prescription of dominion in favor of the appellant with respect to said four parcels of land.

"3. In not holding that the plaintiff had made several proposals to the defendant regarding the purchase of the four parcels of land in question, after the purchase by 'composition' with the State, executed by the plaintiff before the filing of the complaint.

"4. In admitting, as competent evidence of the appellee's ownership, the document Exhibit A regarding the total area of 279 hectares.

"5. In not considering, as a presumption favorable to the defendant's right, the fact that the plaintiff voluntarily abstained from presenting the plan attached to the grant obtained by such 'composition.'

"6. In not holding that the defendant was the sole and true owner of the four parcels of land in Palanog, Ulag, Tabog, and Gajo."

There was much conflict in the evidence offered by the respective parties. The following facts however, seem to be clearly proved:

First That the plaintiff had a titulo de composicion con el Estado issued in his favor in January, 1890, and recorded in the registry of property in the Province of Ambos Camarines in the month of January, 1891.

Second. That the defendant, Ambrosia Postigo, was the wife of Enrique Borjal, deceased, and claimed the right to occupy the lands located in the sitios of Palanog, Ulag, Tabog and Gajo, by virtue of succession to the interests of her husband.

Third. That upon the 30th day of July, 1892, Enrique Borjal obtained a possessory information of two parcels of land in the sitio of Palanog, one parcel in the sitio of Balite, one parcel in the sitio of Maraya and two parcels in the sitio of Tabog, altogether constituting about 16 hectdreas. The possessory information for each of these parcels of land was registered in the registry of property of the Province of Ambos Camarines on the 26th day of August, 1892.

Fourth. There was nothing in el titulo de composicion con el Estado issued to the plaintiff which would indicate that the sitios of Palanog, Ulag, Tabog, and Gajo were within the description of land claimed by the plaintiff; nevertheless during the trial, the attorney for the defendant admitted that these sitios were within "the description of the highlands of this plantation" (Salvacion).

Fifth. That el titulo de composition con el Estado issued in favor of the plaintiff and the various possessory informations issued in favor of the husband of the defendant were each registered in book 1, volume 8 of the registry of property of the Province of Ambos Camarines, at pages respectively 17, 121, 125, 129, 133, 137, and 145, and but for the admission of the defendant that the lands which the plaintiff claims are within the land in question, it would be difficult to conclude from the record that the lands occupied by the defendant are within the boundaries of the plaintiff's land, for the reason that in each registration of the informacion posesoria the register of property stated that he had examined the registry of property and had found nothing therein which would oppose the registration of the lands claimed by the defendant.

There was some confusion in the evidence with reference to the lands situated in the sitio of Gajo. It is not clear whether the sitios of Maraya and Balite were the same as the sitio of Gajo, The admission of the defendant however makes it unnecessary to determine this question.

During the trial of the cause the plaintiff exhibited a plan and questions were asked relating to it, but the same was not offered in evidence. From the questions that were asked relating to said plan, it would appear that the plaintiff was claiming the lands included in said plan. One witness stated that the lands included in the plan amounted to about 607 hectares. It would thus appear that the plaintiff was attempting to recover or claim at least, the right to occupy a larger tract of land than that which he obtained by his titulo de composicion con el Estado. However, the attorney for the plaintiff, during the trial, made the statement that it was not his desire to claim any lands not included within the original grant from the State.

Admitting as the parties did during the trial that the lands occupied by the defendant were within the limits of the lands granted to the plaintiff by the State, and in view of the titulo de composicion con el Estado of the plaintiff, bearing date of the 16th of January, 1890, and the informaciones posesorias issued in favor of the husband of the defendant in July, 1892, and granting that the defendant and her husband had actually occupied said parcels of land from the date of the said possessory informations, the question arises, has the plaintiff a right to recover possession of all the land included within the description under his titulo de composicion con el Estado? No question is raised, neither could a question be raised by the defendant with reference to the validity of el titulo de

composicion con el Estado held by the plaintiff. (Compania General de Tabacos vs. Topifino, 4 Phil. Rep., 33.

Neither is there any question raised with reference to the fact that the husband of the defendant held a possessory information to the different parcels of land situated in the sitios above named. Each of the possessory informations were granted upon the express condition that they were granted to Enrique Borjal "without prejudice to any third person who may have a better right to the property." Therefore, even though the defendant had obtained her right to occupy the said parcels of land by virtue of the said possessory informations, said right was subject to the prior rights of the plaintiff. Neither can the defendant claim the right to said land under a prescription. At most, she and her husband had not occupied the land for a period exceeding sixteen years. A possessory information is not a justo titulo con buena fe, under which the occupant of land can obtain title by prescription. (Art. 1957, Civil Code.)

Therefore, we are of the opinion, and so hold, that under the foregoing facts and the law applicable thereto, the plaintiff is the owner and entitled to the possession of the land included within his titulo de composicion con el Estado, a more particular description of which is found in said titulo de composicion, composed of 276 hectares and no more. Therefore, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Torres, Carson, and Willard, JJ., concur.

Arellano, C. J., Mapa and Tracey, JJ., dissent.

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