

RUFINO S. ROQUE Y RAYMUNDO V. FELICIANO, RECURRENTES Y APELANTES, CONTRA ESPERANZA VIUDA DE LOGAN, RECURRIDA Y APELADA.

G.R. No. 47029, December 19, 1940

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

Se trata de una accion por detentacion ilegal de terreno. El Tribunal de Apelaciones confirmo la sentencia del Juzgado de Primera Instancia de Isabela que ordena la devolucion de la posesion del terreno objeto del litigio al demandante y condena a la demandada al pago de danos y perjuicios, aunque reduciendo la cuantia de estos.

La demandada recurre contra esta sentencia del Tribunal de Apelaciones y alega que este erro al condenar a la demandada al pago de danos y perjuicios, no habiendo alegacion alguna sobre los mismos en el cuerpo de la demanda y si solo en la parte petitoria. Esta alegacion en la petitoria es bastante (art. 81 del "Codigo de Procedimiento Civil—formulario).

Se alega tambien que el Tribunal de Apelaciones erro al condenar a la demandada al pago de las costas, no obstante de que modifiica la sentencia del Juzgado de Primera Instancia en cuanto a la cuantia de los danos. Pero el pago de las costas es cuestion que deja la ley a la discrecion del Tribunal (art. 487 del Codigo de Procedimiento Civil y Regla 131, sec. 1, de los Reglamentos vigentes).

Por estas consideraciones, se deniega el recurso y se confirma la decision del Tribunal de Apelaciones.

Imperial, Diaz, Laurel, y Horrilleno, MM., estan conformes.

Se deniega el recurso.

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