

SEBASTIAN CABILLAS, PLAINTIFF AND APPELLEE, VS. ALFONSO APDUHAN ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4759. September 23, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Sebastian Cabillas filed a complaint against Alfonso Apdujan, Nicolasa Perucho, and Restituta Perucho for the restitution of a parcel of land of which they had deprived him in April, 1899, through intimidation by the, at that time, insurrectionary leaders, and for the payment of the products of said land since the 15th of August, 1902, together with the costs of the proceedings.

In addition to a general denial the defendants, as a special defense, offered the plea of *lis pendens*.

The Court of First Instance of Misamis, deciding the suit, held that the plaintiff is the owner of the land described in the complaint and in the decision, and ordered each of the defendants to return to the plaintiff the respective portion of said land in their possession. The claim for loss and damages was dismissed, and the defendants sentenced to pay the costs.

Against the above judgment the defendants have appealed to this court, and assigned the following errors:

- The conclusion in the judgment that the plaintiff had purchased the land in question from Pedro Yjao, and that he had been in the uninterrupted, quiet and peaceful ownership thereof for more than ten years previous to April 3, 1895.
- The finding that the defendants had deprived the plaintiff of the land in question.
- The holding by the lower court that the record of the possessory information of the plaintiff had not been impugned as false.
- The fact that the lower court ordered the restitution of the land, holding that the plaintiff is the owner thereof.
- In not ordering the dismissal of the complaint in view of the special defense of *lis pendens*.

With respect to the last assignment of error, it is true that an action was brought in the justice of the peace court of Langaran between the same parties herein, having in view the same object, that is, the restitution of possession of the same land, the parties occupying the same positions, to wit, Cabillas as plaintiff and Apdujan and the Peruchos as defendants.

But in that action, as in the present, the matter at issue being an act of spoliation committed in 1899 and brought before the justice of the peace court in 1906, it is clear that said court had no jurisdiction in the matter, and the plaintiff, as appears from the record in the case, instead of going on with the appeal interposed against the judgment of the justice of the peace, filed a new complaint before the Court of First Instance, this time for the recovery of the ownership and possession of the land.

The defense of lis pendens can not act as a bar to a new complaint when the judge who heard the other or former complaint was disqualified for lack of jurisdiction of the subject-matter thereof.

As to the first assignment of error, the finding of the court below is not erroneous, because the following facts appear in the possessory information which constitutes the title of possession of the plaintiff, to wit: That the petitioner, Cabillas (1) had acquired by purchase from Pedro Yjao the land which as the fifth parcel appears among the several parcels that are the subject of the information, as stated in the petition, the same being situated in Docaling, with the area and boundaries shown in the complaint herein; and (2) had been in the possession thereof for more than ten years, uninterruptedly keeping it under cultivation, the date of the petition being April 1, 1895. The persons who testified to said facts in that possessory information were the defendant, Alfonso Apdujan, and one of his witnesses, Isidro Rillas, the principal one in this controversy.

As to the second assignment of error, the testimony of three witnesses was duly considered by the trial court and neither violation of the law, preponderance of evidence to the contrary that should be considered, nor any other reason showing any error whatever has been charged against his findings.

The finding in the judgment, that the information offered as evidence by the plaintiff had not been impugned as false, is not erroneous. "The applicable part of the document Exhibit A-see folio 99-is offered as evidence. It, is a legal and authentic copy of the record of possessory information by means of which the possession of the land referred to in the complaint was recorded in the registry of property of the Province of Misamis, in favor of the plaintiff, who was enjoying said possession as owner during the time shown by Exhibit A until April, 1899, when the spoliation which gave rise to this action took place. No objection by the attorney for the defendant.-Judge. Exhibit A is admitted as evidence."

Restituta Perucho appears to be the daughter of Nicolasa Perucho. The latter was the mistress of Apolonio Yjao. Nicolasa and Restituta Perucho claim no title to the land they hold other than that they inherited it from Apolonio Yjao. Neither does Apolonio Yjao allege any other title than that he inherited the same from Pedro Yjao, whom he calls his brother; the women call him their cousin, and others neither the one nor the other. Apolonio Yjao as the owner of the land adjoining that in question was duly summoned by the plaintiff in the said possessory information proceedings in 1895, and does not appear to have offered any objection whatever. As stated in said information, Pedro Yjao had sold said land ten years before, and, as attested by the plaintiff in this action, during the whole of said period continued to work the same, but for account of the plaintiff, and afterwards the plaintiff worked it for himself until despoiled of it in 1899, as already stated.

Far from being erroneous as claimed in the fourth assignment of error, the finding with regard to the restitution to the plaintiff, Sebastian Cabillas, of the land mentioned in the complaint is, on the contrary, in accordance with the law and the merits of the case.

In view of the foregoing the judgment appealed from is hereby affirmed in so far as it orders the defendants, each of them in the respective portion, to return to the plaintiff the land described in the complaint, and so far as it sentences them to pay the costs. And the costs of this instance shall be against the appellants. So ordered.

Torres, Johnson, Carson, and Moreland, JJ., concur.

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