

**JACINTO CAÑETE, PETITIONER, VS. JOVITO MAGALLANES,
RESPONDENT.***G.R. No. 47667. February 19, 1943*

Ponente: OZAETA, J.

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This action was commenced by the petitioner against the respondent in the Court of First Instance of Masbate to recover the ownership and possession of a parcel of land together with damages. The Court of First Instance rendered judgment in favor of the plaintiff, ordering the defendant to deliver the possession of the land in question to the plaintiff and to pay to the latter the sum of P6,612 as damages, plus the costs. Upon appeal by the defendant, the third division of the Court of Appeals, in a three-to-two decision, revoked the judgment appealed from and declared that neither of the parties litigant had proved his pretended right of ownership over the land in litigation. The case is now before us on certiorari to review the decision of the Court of Appeals.

The Court of Appeals found that, as admitted by the plaintiff himself, the land in question originally belonged to the Government, but that the plaintiff also claimed that he had been in the possession of it as owner publicly, continuously, and adversely from the year 1917 until the month of January, 1935, when the defendant usurped his possession.

The Court of Appeals found in effect that the defendant had no right or color of title whatever to the land in litigation; but that neither could the plaintiff claim valid title to said land because he admitted that it belonged to the Government and that he only declared it for tax purposes to see whether the Government would cede it to him. That being the case, the Court of Appeals said, such precarious possession, even tho it lasted for more than ten years, did not give the plaintiff any right because it was neither adverse nor in the concept of owner.

The right as between the plaintiff and the Government over the land in question cannot be adjudicated in this case for the simple reason that the Government is not a party herein. It is only the relative rights of the plaintiff and the defendant over said land that the court is called upon to determine. The facts found by both the trial court and the Court of Appeals show that the plaintiff has a better right. That is sufficient to entitle him to recover the possession of said land from the defendant. This not being a land registration or cadastral case, it is not necessary for the plaintiff to prove title against the whole world, but only against the defendant. The right of the Government or that of any other person or entity not a party in this action cannot be affected by the judgment herein. It results, therefore, that the Court of Appeals erred in declaring that neither of the parties litigant is entitled to the possession of the land in litigation, thus "leaving both parties in midair," in the words of Mr. Justice Montemayor, one of the two dissenters.

With regard to damages, petitioner has made no assignment of error on that aspect of the case. In any event, upon consulting the decision of the trial court, we find that the only evidence adduced in support of plaintiff's claim for damages was his own testimony to the effect that before the month of January, 1935, he collected about P174 a month from the tenants of the land in question. Upon that basis alone the court awarded P6,612 to the plaintiff as

damages, representing rents at the rate of P174 a month from January, 1935, to the date of the decision of the trial court.

We find as a matter of law that the trial court's judgment for damages is untenable. The measure of damages in an action like the present is the reasonable value of the use and occupation of the land in litigation. The fact that the plaintiff was able to collect P174 a month as rent before his dispossession by the defendant does not necessarily prove that he could have always collected the same amount as rent had he continued in the possession of the property in litigation. The rental value of any property varies with the times and the circumstances; and that is especially true as to the land in question which, it appears from the decision of the trial court, is in a mining region and seems to be rented by workers in the mine. This action was commenced in October, 1937, and the trial took place in March, 1938. In the absence of any evidence that the 1934 rents prevailed invariably until 1938, they cannot be considered as the reasonable value of the use and occupation of the land in question during the years subsequent to 1934.

Wherefore, with revocation of the judgment of the Court of Appeals, let another judgment be entered ordering the defendant to deliver to the plaintiff the possession of the land described in the complaint, with costs against the defendant. So ordered.

Yulo, C. J., Moran, and Bocobo, JJ., concur.
Imperial, J., concurs in the result.

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