

**VICENTE RODRIGUEZ Y HERMANOS, PLAINTIFFS AND APPELLEES,
VS. JOSE TAINO, DEFENDANT AND APPELLANT.***G.R. No. 5413. July 13, 1910*

Ponente: TORRES, J.

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On February 18, 1909, Vicente Rodriguez and brothers, through their attorneys, filed with the Court of First Instance of Tayabas a complaint amending their previous one of January 5 and alleging, as a cause of action, that they are the owners of a parcel of rice land, of an area such as is commonly sown with 2 1/2 cavares of seed, situated in the barrio of Remedios of the pueblo of Mauban, Province of Tayabas, the boundaries of which are, on the north, the land of Epifania Rodriguez, on the east, the lands of Clara Escueta, and on the south and west, the Quinainit River; that they occupied the said parcel until the year 1906, when they were dispossessed by the defendant Jose Taino who, since then, has usurped it and occupied it without the permission and notwithstanding the opposition of the plaintiffs who, in consequence thereof, have been deprived of the said land and of its fruits and products, by reason of which they have suffered injury and damages to the amount of P300; that they therefore pray that the aforescribed land be restored to them and that the defendant be sentenced to the payment of the said amount and the costs.

The defendant Jose Taino, in answer to the preceding complaint, denies each and all of the allegations thereof except such portions as he subsequently admits or modifies, and alleges that the land claimed belongs to Epifania Rodriguez Sanchez, a native of these Islands now residing in Cadiz, Spain; that in 1906 the defendant took possession of the said land as the administrator of its said owner and is at the present time in possession as such administrator, duly authorized to administer her properties in Tayabas; wherefore he prays that the case be dismissed with the costs against the plaintiffs.

The case having come to trial, the testimony was taken and Bamon Rodriguez and Igmidio Talabon were examined as witnesses for the plaintiffs; the witnesses for the defendant were the last named, and Hugo Lopez and Francisco Pastrana. Their testimony was not recorded stenographically at the trial, although in the bill of exceptions the following statement is made:

"Be it likewise recorded for the purposes of this bill of exceptions, that the facts proved in this case are all those mentioned and related as proved in the judgment pronounced by the court and which is as follows."

This judgment was rendered on March 31, 1909, and it is ordered therein that the plaintiffs recover from the defendant the possession of the land in litigation, with the costs of the trial against the defendant, whose counsel, by a motion of the 5th of April following, made a motion for a new trial on the grounds that the judgment was not in accordance with the law and that the evidence did not justify the judgment of the court. This motion was denied, to which exception was taken by the defendant party, who duly filed the corresponding bill of exceptions which was certified and forwarded to the clerk of this court.

The purpose of the present litigation, according, to the terms of the claim made in the amended complaint, is to

obtain the restitution of the land from the possession of which the plaintiffs were deprived by the defendant Jose Taiflo; and therefore the action brought has for its object the recovery of the said land from the third party who usurped it and holds it to the prejudice of the plaintiffs. Article 444 of the Civil Code prescribes that "Acts which are merely tolerated and those clandestinely executed, without knowledge of the possessor of the thing, or by force, do not affect the possession."

Article 446 of the same code provides that "Every possessor has a right to be respected in his possession; and should he be disturbed therein, he must be protected or possession must be restored to him by the means established in the laws of procedure."

In accordance with the legal precepts laid down in the preinserted article of the Civil Code,, it is unquestionable that the action for the recovery of possession, prosecuted by the plaintiffs against the defendant, who personally and against the will of the legitimate possessors of the said land, usurped and now holds it, is maintainable under the law.

It is a doctrine established by the jurisprudence of this court that, even after the promulgation of the Civil Code, which did not repeal article 1635 of the previous Law of Civil Procedure, the accion publiciana subsists to obtain from the court protection of the right of possession. Consequently, the action prosecuted by the plaintiff for the recovery of the possession unlawfully taken by the defendant is proper, without prejudice to the right that lies with the latter with respect to the ownership, which must be proven in opposition to the presumption of title which already existed in favor of the legitimate possessor who in the present case is the plaintiff, he having enjoyed a quiet and peaceable possession of the land for a period of about twenty years when he was unlawfully deprived thereof by the defendant. (Bishop of Cebu vs. Mangaron, 6 Phil. Rep., 286.)

In the case of Ledesma vs. Marcos (9 Phil. Rep., 618), the doctrine is established that the provisions of Act No. 136 and the Code of Civil Procedure which give exclusive jurisdiction to the justices of the peace for one year after the cause of action arises, to try cases of detention of real property, do not assume to deprive the Courts of First Instance of their jurisdiction in other cases for the recovery of possession of realty.

So that the loss of possession dealt with in article 460 of the Civil Code may only be recovered within one year and one day by means of the action for the recovery of possession prescribed by section 80 of the Code of Civil Procedure, but when it is a question of real property its restitution may nevertheless be claimed, in a Court of First Instance, even after one year and one day, by means of the proper plenary action for the recovery of possession, that is, the old action known as publiciana.

The act of spoliation is a positive attempt against the rights of a private party and against public order and must instantly be suppressed, without regard to the title held by the injured party, in order to avoid disturbances in the community and to prevent anyone from taking the administration of justice into his own hands; therefore, whoever possesses a thing as the owner of it, as well as he who holds it merely as tenant while the dominion appertains to another, is entitled to ask for the restitution thereof by prosecuting the proper action against the despoiler, even though the latter be the proprietor or owner of the property. (Roxas vs. Mijares, 9 Phil. Rep., 252.)

The facts are established in the judgment appealed from, that Ramon Rodriguez, for himself, and in representation of his coheirs, was in possession of the land in question (which is admitted by the defendant); that Taino entered into the possession of the property, not in his own name, but as the representative of Epifania Rodriguez, residing at the present time in Spain, notwithstanding the objection of the plaintiffs: wherefore it is said in the judgment appealed from, in considering the propriety of the restitution, that if the said Epifania Rodriguez has any title of ownership to the said property she may show it on the institution of a proper action.

For the foregoing reasons, and accepting those contained in the judgment appealed from, it is proper in our opinion to affirm, and we do hereby affirm the said judgment, with the costs against the appellant. So ordered.

Arellano, C. J., Mapa, Johnson, and Moreland, JJ., concur.

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