

DOMINGO CUMAGUN, PLAINTIFF AND APPELLEE, VS. JULIANA ALLINGAY, DEFENDANT AND APPELLANT.*G.R. No. 5453. August 04, 1911*

Ponente: TORRES, J.

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On February 28, 1907, Domingo Cumagun, the administrator of the estate of the deceased Pedro Cumagun, filed a complaint in the Court of First Instance of Cagayan against Juliana Allingay, alleging: that the said Pedro Cumagun was the owner and in peaceful possession, for many years, of a sementera or parcel of rice land inherited from his father and located in the barrio of Macusi, in Penablanca, Cagayan, the situation and boundaries of which are specified in the complaint; that on August 17, 1893, Cumagun gave the said sementera as security to Caspar Mapagu for 25 pesos with the condition that, until this sum should be returned to the creditor Mapagu, the latter might use the land mentioned; that thereupon Mapagu delivered the sementera to the spouses Pedro Danguilan and Juliana Allingay for their use, on condition that they deliver to Mapagu a third of the annual crop; that Pedro Cumagun died intestate on January 20, 1895, while he was still the owner of the said sementera, which was redeemed on June 3, 1903, by Maxima Cumagun, a sister of the deceased, who also paid the creditor Mapagu the 25 pesos aforementioned; that on November 21, 1905, the plaintiff, Domingo Cumagun, was authorized by the Court of First Instance to administer the estate of the deceased Pedro Cumagun; that the plaintiff, as such administrator, was entitled to the possession of the land in question, but that, notwithstanding his demand made upon the defendant Allingay, in writing, after the redemption of the land and one year prior to the beginning of this suit, to give him possession of the property by reason of its redemption, she refused to turn it over to him; that the defendant was unlawfully holding the sementera in question, and by its detention had occasioned to the plaintiff damages to the amount of P200. The complaint concluded by asking that judgment be rendered in plaintiff's favor by sentencing the defendant to restore to him the said sementera and to pay him P200, the amount of the losses and damages sustained, with the costs.

The defendant in her answer denied each and all of the allegations contained in the said complaint, in each and all of its paragraphs.

The case having come to trial, the court, after hearing the plaintiff's testimony, rendered judgment on March 6, 1909, in favor of the plaintiff as the administrator of the estate of the deceased Pedro Cumagun, by ordering the defendant, Juliana Allingay, to deliver to him the possession of the aforesaid sementera and to pay him the sum of P127.50, the amount of the damages suffered by the plaintiff by the unlawful detention of the property from December, 1905, to March, 1909. The costs were assessed against the defendant. The latter took exception to this judgment and, by a written motion, asked for a new trial on the ground that the findings contained in the judgment were openly and manifestly contrary to the weight of the evidence. This motion was denied and an exception was taken by the defendant whose counsel duly presented the proper bill of exceptions which was certified and forwarded to the clerk of this court.

This suit concerns the recovery of "possession of a piece of agricultural land which was delivered, as security for

a loan, by the owner of the property, which land is now detained by a tenant on shares of the creditor, although the debt has been fully paid for over a year.

The defendant, the widow of the tenant on shares, Pedro Danguilan, in refusing to return the said land alleged that she was the owner of the same by prescription, inasmuch as, in 1891, Gaspar Mapagu delivered the property to her said husband, who thereafter had cultivated it as his own and had held it quietly and peacefully for nearly twenty years, and that, for this reason, she and her husband should be declared to be the owners of the land, as they had acquired it by prescription.

Besides the fact that the defendant has not, in a satisfactory manner, proven the dominion which it is claimed she and her husband, in his lifetime, exercised over the land in question,, held by them as owners, and the nature of the just title under which the defendant now holds the said property, in the notarial instrument, Exhibit B, it is recorded, as a statement made by Gaspar Mapagu that, as Maxima Cumagun had paid him the sum of 25 pesos, borrowed by the owner of the said land, Pedro Cumagun, he returned to the former, on June 3, 1903, the instrument of debt, Exhibit A, and conferred upon her, the said Maxima Cumagun, authority to take charge of the land: referred to, she receiving it from the defendant, Juliana Allingay, the widow of Pedro Danguilan, as the latter were his tenants on shares and raised tobacco and corn on it.

This averment, recorded in a notarial instrument and corroborated by other evidence found in the record, does not appear to have been impugned or invalidated by any proof to the contrary, as the defendant produced no evidence of any kind at the trial.

Article 1941 of the Civil Code prescribes that possession, one of the requisites under the preceding article, No. 1940; must be in the capacity of an owner, because the possession enjoyed in such capacity alone can serve as a title to acquire ownership, in accordance with the explicit provision of article 447 of the same code, which says:

"Only the possession acquired and enjoyed by virtue of ownership can serve as a title to acquire it."

From these legal provisions it is logically deduced that the possession of the lessee, of the trustee, of the pledgee, of the tenant on shares or planter, and of all those who hold in the name or representation of another, can not serve as a basis of prescription, for it is inconceivable that the latter could be based on a possession devoid of the requisites established by law, because it would then become a cloak for fraud and bad faith.

The defendant Allingay had, with her deceased husband, Pedro Danguilan, been holding the land in question in the capacity of tenants on shares or planters of Gaspar Mapagu, the usufructuary creditor of Pedro Cumagun, and therefore the possession now enjoyed by the defendant can be in no wise in the capacity of owner; moreover, in refusing to deliver the property to the successor of its legitimate proprietor, she acted in bad faith, with the deceitful intention of appropriating the land to herself without just reason or title.

In view of the evidence shown by the record in this case, and no proof to the contrary having been produced, the land in litigation was beyond doubt the property of the deceased Pedro Cumagun, and consequently, his son, the administrator of his estate, was entitled to regain its possession from the defendant who, on her part, has not proved that she had any good reason to detain it to the plaintiff's prejudice.

Furthermore, the contract guaranteed by the said land, according to Exhibit A, was one of loan, and not of sale with right to repurchase, nor does the frequent use of the word redemption, both in said instrument and in Exhibit B, acknowledging payment of the debt, prove that such a second contract was made, and that the nature of the first was changed, for it was obviously the will and intention of the contracting parties to guarantee, by the land in question, the loan of 20 pesos [25 pesos], without interest, as the creditor was to enjoy the property by having the usufruct thereof. Neither were the defendant and her deceased husband contracting parties in the alleged contract

of sale with right to repurchase, and it has not been disclosed in this suit how and why they received the land from the alleged purchaser in order to legitimately acquire it by prescription.

With respect to the identity of the land claimed, this was duly proved at the trial, especially by the documents presented, and is not affected by the error or grave mistake of measurement in the complaint, inasmuch as, according to the provisions of section 109 of the Code of Civil Procedure, the facts are found according to the evidence and the action determined by the facts established.

As regards the notarial instrument, Exhibit B, its authenticity does not appear to be disputed or impugned by the appellant, and, as such, was admitted by the court, for the objection thereto made by the defendant amounts to the contention that the contents of the said instrument can not be considered as a cancellation of a mortgage; this is true, but the contents of that document are corroboratory proof of the facts set forth in the complaint.

For the foregoing reasons, and having determined the errors assigned to the judgment appealed from on March 6, 1909, it is proper, in our opinion, to affirm the same, as we hereby do, with the costs against the defendant.

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

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