

EDUARDA GAREN ET AL., PLAINTIFFS AND APPELLEES, VS. AGAPITO PILAR ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 5610. September 27, 1910*

Ponente: TORRES, J.

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On May 23, 1908, counsel for the spouses Eduarda Garen and Gelasio Disol filed a written complaint against Agapito Pilar, Fermin Domingo, Bruno Domingo, Angela Rosapa, and Jayme Pasion, alleging that the plaintiffs were the owners of two parcels of land with the respective areas of 20 hectares and 50 ares, and 20 hectares 50 ares and 6 centares; the first, which is situated in Nagrebcan, bounded on the north by property of Hermenegildo Dimaya and Lucas Nuque, on the east by that of Manuel Morales, on the south by that of Lucas Nuque and by a hill, and on the west by the land of the said Hermenegildo Dimaya and Lucas Nuque; and the second parcel bounded on the north by a hill and the land of Rita Aduana, on the east by an estuary and the land of Gabriel Maulit, on the south by the property of Eleuterio Castro and by a hill, and on the west by that of Dimas Pambid and by a hill; that the said two parcels of land, used for the cultivation of rice and tobacco, had been in the possession of the plaintiffs, as the owners and proprietors thereof; that in March, 1908, the defendants, alleging a right of ownership, proceeded to plow the said land and to plant corn and destroyed the four thousand hills of corn which the plaintiffs had planted therein, paying no heed to the pater's repeated objections, thereby causing them damages to the extent of P40, an amount that they should have obtained from the corn which was destroyed. Counsel therefore prayed that judgment be rendered decreeing: First, that the plaintiffs are the sole owners of the two parcels of land before described; second, that the defendants shall abstain in the future from exercising acts of ownership over the said property; and, third, that the said defendants shall pay to the plaintiffs P40 for losses and damages occasioned, and the costs.

Counsel for the defendants in their answer denied each and all of the points and each and all of the allegations set forth in the complaint, and as a special defense alleged that the plaintiffs' averment, contained in the second paragraph of the complaint, that they are the sole possessors and owners of the said land, was false, inasmuch as the defendants were coowners with the said plaintiffs and should occupy, and had been occupying for many years, each one of them a sixth part of the land in question, as they had all of them acquired the same by inheritance from their forefathers. It was further alleged in the said answer that the third paragraph of the complaint was false, inasmuch as the defendants had, for a very long period of time, possessed the portion of the said land that belonged to their ancestors and that they had been occupying the same, and continued to occupy it, up to the date of the complaint; that they had destroyed no crop whatever belonging to the plaintiffs, since they had never entered upon the part of the land situated in the southern district of Nagrebcan, nor upon the sixth portion thereof in the northern district of Cabaroan, it being strange that the plaintiffs, in describing the boundaries, in their complaint, of the whole of the property, should have included therein the part thereof which the defendants were then occupying; and that the conduct of the plaintiffs was inexplicable in prosecuting this suit, inasmuch as, on March 15, 1905, they filed, in the justice of the peace court of Batac, a civil action against Agapito Pilar, one of the defendants herein, for the unlawful detention of realty, the same now in litigation, and the case having

been taken to the Court of First Instance by appeal, the other defendants herein made a motion for intervention, and afterwards the said plaintiffs withdrew that suit and instituted another action, on January 7, 1907, against the said Agapito Pilar, concerning the ownership of the same land now in question, with prayer for the issuance of a final injunction, which suit was decided by the court in favor of the defendant who was absolved from the complaint, with the costs against the plaintiffs; that the latter took no appeal from that judgment and, consequently, the question now at issue had become *res adjudicata*. The defendants therefore prayed that judgment be rendered acquitting them from the complaint, with the costs against the plaintiffs.

The case having come to trial, oral evidence was adduced by both parties, the exhibits being attached to the record, and the court, on February 23, 1909, rendered judgment wherein it declared that Eduarda Garen, together with her husband, Gelasio Disol, was the owner of the land described in Exhibits Nos. 1 and 2, and that she should take possession of the same after it had been surveyed by an expert surveyor for the purpose of a verification of the measurements specified in the said documents. No special finding was made as to the costs. Counsel for the defendants was notified of the said judgment, took an exception thereto and asked for its annulment and a new trial. He also requested in advance, that his exception be recorded in case his petition should be denied, as in fact it was. A proper bill of exceptions was then filed, approved and forwarded to the clerk of this court, together with a transcript of the evidence.

By the institution of the proper action for the recovery of possession, the plaintiffs in this suit are endeavoring to regain control of two parcels of land alleged to belong to them and to be unlawfully detained by the defendants since March, 1908.

For the purpose of establishing their right, the plaintiffs exhibited, as a title, an authorized copy of a possessory information obtained through the justice of the peace court of Banna, Ilocos Norte, at the instance of Apolinario Garen, the father of the plaintiff Eduarda Garen, which information was recorded in the property registry of the said province on June 3, 1895. Notwithstanding the fact that one of the defendants, Agapito Pilar, sued the said Apolinario Garen in the justice of the peace court of the pueblo before mentioned for the redelivery of the two parcels of land situated in Nagrebcan and Cabaroan and referred to in the complaint, the suit was decided favorably to the defendant Garen. It was ordered in the judgment that the latter should be protected in his possession of the said land, and that the plaintiff Pilar should forever refrain from further interference therein, and pay the costs. This judgment, on being appealed by the plaintiff, was affirmed by the Court of First Instance by another judgment of the 29th of April, 1895, containing the clause "without prejudice to such right of ownership as the appellant may have in the said property." A new suit was filed by the said Agapito Pilar against the present plaintiffs, Eduarda Garen and Gelasio Disol, in the justice of the peace court of the aforementioned pueblo, and judgment was rendered for the second time, on July 11, 1902, in favor of the defendants, Garen and Disol, whereby it was ordered that they should be protected in their possession of the said land, and the plaintiff Pilar was sentenced forever to refrain from further interference, and to pay the costs.

So that it is incontrovertible that Eduarda Garen, the successor of her father, Apolinario Garen, is the sole possessor, as the legitimate owner, of the two parcels of land which are the subject of the action for recovery. This is proved by the said possessory information recorded in the property registry. Her right of possession, as owner, is further confirmed by two final judgments, of an executory character, rendered in two suits which were prosecuted, one of them in two instances, by one of the defendants, Agapito Pilar. The fact was fully proved, even by the testimony of some of the witnesses for the defendants, that the latter themselves and for themselves took possession of the land, in March, 1908, and continue to detain the same to the detriment of the plaintiffs.

The defendants allege that, together with the plaintiff, Eduarda Garen, they are coowners of the land in question, and that Apolinario Garen, Eduarda's father, personally obtained the said possessory information, by an agreement

made with the other coowners who contributed their share of the expenses, though the names of the latter were not expressed in the application, and that the said instrument was issued solely in the name of Apolinario Garen, in accordance with a written agreement which they affirm was retained by the latter. This assertion is incredible, because, if this written agreement was a security for the other coowners of the land, and the possessory information was obtained only by Apolinario Garen, the document expressive of such agreement should be held by those who were in need of insuring their rights; and, as such proof is lacking, the existence of the agreement can not be admitted.

With respect to the evidence adduced by the defendants in rebuttal of that of the plaintiffs, on its examination, as a whole, it is found that the defendants have not satisfactorily established their allegation that they are the coowners of the land in question; therefore the plaintiffs are entitled to recover possession of the property.

The withdrawal by the plaintiffs, Eduarda Garen and husband, of the complaint for the restitution of possession, filed against Agapito Pilar, who had forcibly occupied the said land - a withdrawal which was allowed by order of the court of January 7, 1907, under promise to file a new complaint (page 27 of the record) - in no way affects the ownership rights of the plaintiffs and does not imply an acquiescence in and acceptance of the despoliation, notwithstanding the repeated final judgments which have supported the defendants in their alleged right in the said land.

Neither have the plaintiffs lost their rights of ownership in the disputed property on account of the judgment of December 16, 1907, denying them the remedy of a permanent injunction against Agapito Pilar, solicited by the plaintiffs on January 7, 1907, on the occasion of the usurpation and despoliation before referred to, inasmuch as they could still prosecute an action for the recovery of possession, which they did do by initiating this suit. The basis of the action was not weakened by the other documents exhibited by the defendants.

Notwithstanding the lack of proof of the coownership alleged by the defendants, the plaintiff party exhibited two affidavits in connection with the land tax. In one of them (page 21 of the record) Gelasio Disol, the husband of Eduarda Garen, declared that he was the owner of a parcel of land of only 6 hectares 13 ares and 10 centares in area, situated in Cabaroan, and in the other affidavit (page 22 of the record) the same affiant likewise declared that he was the owner of a parcel of agricultural land in Nagrebcan of 2 hectares 13 ares and 75 centares in area. These two affidavits have served as a rectification of the area of the two parcels of land claimed in plaintiffs' complaint. Moreover, in the judgment appealed from, Eduarda Garen was found to be the owner of the land described in Exhibits 1 and 2 (pages 21 and 22 of the record), and it was ordered that she be given possession thereof, after a verification by an expert surveyor of the measurements expressed in the said documents, to which the plaintiffs made no objection whatever and consented to the said judgment, and the counsel who represented them asked for its affirmation in his brief presented in this second instance.

For the foregoing reasons, it is proper, in our opinion, to affirm, and we do hereby affirm, the said judgment, with the costs of this instance against the appellant party.

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

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