

**LORENZO FORTUNA ET AL., PLAINTIFFS AND APPELLANTS, VS.
AUREA CORRALES ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 5647. November 23, 1910*

Ponente: TORRES, J.

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The plaintiffs, Lorenzo Fortuna and Melecio Dionisio Fortuna, by a writing of June 3, 1908, alleged that they were the owners in quiet and peaceable possession of the properties, twenty-six parcels in number, described in a separate document and attached to the complaint as an integral part thereof, which rural lands are situated in the pueblo of Narvacan and were inherited by them from their deceased father, Valentin Fortuna; but the defendants, pretending to be the owners of the said properties, on or about the beginning of the year 1908, seized the share of the crop that pertained to the plaintiffs in the distribution made with the latter's tenants on shares, consisting of 60 bundles of palay valued at P20, 9 piculs of corn in the ear valued at P24.30, and also 2 cartloads of sweet potatoes valued at P5, which effects, all told, were worth P49.30. The complaint further alleged that the defendants strictly prohibited the tenants of the said lands from giving any account of and share in the crops in the future to the plaintiffs, but ordered that they account to them, the defendants, with the warning that, should they fail to obey, they would cease to be the tenants and the lands would be taken away from them; that the defendants by this illegal action deprived the plaintiffs of the right that they had in the said lands and continue to hold the same up to date, on which account the plaintiffs suffered damages to the amount of P300; wherefore they asked that judgment be rendered against the defendants, compelling the latter to deliver to the plaintiffs the fruits illegally collected, or their equivalent in cash, P49.30, sentencing them forever to hold their peace, and to cease disturbing the plaintiffs in their peaceable possession, to pay an indemnity for loss and damage in the sum of P300, and the costs of the trial.

At the end of the complaint appears a statement of the properties, described and designated under the letters A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z.

The defendants, Aurea Corrales and her husband Lazaro Alapriz, in answer to the complaint and after admitting paragraph 1 thereof, denied each and all the other facts alleged from the second to the last paragraph, inclusive, of the said complaint, and further set forth: That the lands in question belonged to the defendant, Aurea Corrales, as the transferee of the rights of her aunt, Patricia Fortuna, then deceased, who, during her lifetime, and for an uninterrupted period of about twenty years, was in peaceable possession of the said lands, and that the defendants, by the filing of this complaint, suffered loss and damage estimated at P350, and therefore asked that the court render judgment by absolving them from the complaint and sentencing the plaintiffs to the payment of the said amount as losses and damages, and to pay the costs.

With the permission of the court, the defendants amended paragraph 3 of their answer above-mentioned and then changed the latter to read as follows: The defendant Corrales, assisted by her husband, alleges: That, with the exception of the lands designated by the letters O, P, and T, which she does not know, and that designated by the letter N, which is virtually the same as that specified under the letter J, she possesses all the lands in question as

the transferee of all the rights and obligations of her said aunt, Patricia Fortuna, now deceased, who during her lifetime was in quiet and peaceable possession of them for a period of eighteen years, until her death in 1908. That these lands belonged to Petrona Fortuna who, before her death eighteen years ago, provided in her will that they should all pass to the care of her sister Patricia, the predecessor in interest of the defendants, with the powers and duties therein imposed upon her. The defendants prayed the court to allow this amendment which constituted their defense.

The case came to trial, oral evidence was introduced by both sides, and the documents exhibited were attached to the record, after, exception had been taken by both parties, respectively, with regard to the admission of some of the said exhibits, as shown by the bill of exceptions. The court, in view of the evidence, and on May 25, 1909, rendered judgment by absolving the defendants, without special finding as to costs.

The plaintiffs on being notified of this judgment took exception thereto and made a written motion for a new trial, on the ground that the judgment excepted to was contrary to the weight of the evidence and to the law. This motion was overruled, exception was taken by the plaintiffs, and, on the presentation of the required bill of exceptions, the same was certified and forwarded to the clerk of this court.

It is claimed by the brothers Lorenzo and Melecio Fortuna that the spouses Aurea Corrales and Lazaro Alapriz should deliver to them the fruits of the 26 parcels of land or their value of P49.30, and they pray that the latter two be ordered to cease disturbing them in their quiet and peaceable possession of the said land and be sentenced forever to hold their peace, to pay P300 as losses and damages, and the costs of the trial. This petition was opposed by the defendants, who asked that they be absolved from the complaint, by reason of the defendant Aurea Corrales being the owner of the lands in question, and that the plaintiffs be sentenced to pay P350 as an indemnity for losses and damages, and the costs.

From the different kinds of evidence as shown by the record to have been introduced, it has been proven that the defendant spouses are in peaceable possession of the lands claimed, except those designated by the letters J, O, P, and T, while the plaintiffs do not possess nor enjoy the said lands, and have in their favor a composition title issued by the director general de administration civil of the previous sovereignty, on February 8, 1893.

It is a question of pro indiviso property left at death by their reputed owner, Petrona Fortuna, who, notwithstanding the fact that she executed a testament in July, 1889, did not name any heirs in it, nor did she dispose of the greater part of her property, but merely willed some of it to her husband and certain other relatives, among them her nephew Melecio. It is therefore considered that the testatrix, known to have been the owner of the said pro indiviso property, died intestate with respect to the major part of her property, and that her near relatives, according to the laws in force on the date of her death, are entitled to inherit such unbequeathed portion of her estate.

It is true that the purpose of this litigation is not at the present time the partition of her property, but, apparently, the determination as to the possession, and ownership of 26 parcels of land derived from the succession of the deceased Petrona Fortuna, which are now held by the defendant, who received them as a gift from a sister of the testatrix, Patricia Fortuna, who, however, was not an heir, but a mere administratrix.

The plaintiffs Lorenzo and Melecio Fortuna are nephews, sons of a brother of the deceased testatrix, and are consequently entitled to the intestate estate of the latter. However, their claim to the property in question is not founded by them on such hereditary right, but on a right of absolute ownership which they allege was enjoyed by their father during his lifetime, Valentin Fortuna, now deceased, and for this purpose they presented at the trial, as a title of ownership of the said land, the title issued by the direccion general de administration civil, by virtue of composition with the State.

So that, as against the title by gift alleged by the defendant Corrales, there exists that by composition presented by the plaintiffs. However, the latter, as shown by the proofs found in the record, were never, nor are they at the present time, in possession of the lands in dispute which they say belong to them and were inherited from their deceased father, the previous owner of the properties under a composition title; while the defendant, the sole possessor of the lands in question, substituted in the possession of the same as donee the donor, Patricia Fortuna, who had been in possession of them since the death of the testatrix, Petrona Fortuna, the record showing it to have been proven, by private documents, how and in what manner the testatrix had acquired the aforementioned lands.

When Valentin Fortuna died on October 25, 1906, his sister, Patricia Fortuna, was still living, and she succeeded the testatrix Petrona in the possession of the lands herein concerned and made a gift of them to the defendant, Aurea Corrales, according to a notarial instrument executed by the donor on February 19, 1908, prior to the latter's removal to the Island of Culion, where shortly afterwards she died of leprosy, from which she was suffering. The defendant, Corrales, in turn, then succeeded to the possession and enjoyment of these lands, according to the testimony of the tenants on shares who cultivated them, even while the donor, Patricia, was still living and with whom, as owner, they had contracted some ten years before, as some of these tenants testified; while several of them affirmed that the said Patricia, prior to her departure for Culion, charged them to make all arrangements after she was gone with the donee, Aurea Corrales. So that the record shows full proof that neither Valentin Fortuna, during his lifetime, nor afterwards his sons, now the plaintiffs, possessed in any manner whatever the lands in controversy, the possession of which has been successively held by the sisters Petrona and Patricia and finally by the said Aurea Corrales, the present possessor.

Although the possession of the land was an indispensable condition in order that, in accordance with the law, a title to the same by composition with the State might be obtained during the time of the previous sovereignty, and without discussing in this decision the legal value and juridical efficacy of the title issued by the direccion civil on February 8, 1893, to Valentin Fortuna and presented by the plaintiffs for the purpose of accrediting their right to the land in question, it is nevertheless certain that the character of the action brought by the plaintiffs does not clearly appear in the complaint.

Notwithstanding the allegation therein made by the plaintiffs, that they are the owners and proprietors of the said lands, the record does not show that they brought an action for the recovery of possession, for they take it for granted that they are in possession of the lands although it is found that they are not, and they merely ask that the defendants be sentenced to deliver to them the fruits which the said defendants illegally collected, or their value, to forever hold their peace, to abstain from disturbing them in their quiet possession, and to pay an indemnity of P300, the amount of the losses and damages sustained.

Neither can it be deduced from these petitions that the plaintiffs intended to exercise a plenary action for possession, inasmuch as they categorically declare in the complaint that they are in present possession of the lands mentioned, this not being true.

It having been proved in an irrefutable manner, and beyond all peradventure of doubt, that neither the plaintiffs nor their predecessors in interest ever possessed the said lands, since they have been successively held without any interruption whatever by their original owner, Petrona, her sister, Patricia, and the donee, Aurea, all under the title of owners, it is understood of course that the petitions contained in the complaint are neither proper nor could be made, for the reason that they are within the competency of the proprietor or the possessor with the title of owner of the property from which the fruits claimed were derived.

If an action at law is the legal remedy which the citizen has at his command to ask through the courts for what is his own, or for what is owing him by another, it is indispensable that the said action, together with the grounds on

which it is based, appear, clearly classified, in the complaint or claim, in order that the courts may be able to decide the matter at issue in accordance with the pleadings and evidence furnished by both parties.

Perhaps the title by composition presented by the plaintiffs might have served for filing suit for the recovery of possession; but as against the value and legal worth which such a title may have in itself, there exists the right acquired by the defendant, Aurea Corrales, in the said lands by virtue of public, adverse, and continuous possession in good faith, under good title, and for more than ten years, counting from the date of the above-mentioned composition title, under and in accordance with the provisions of section 41 of the Code of Civil Procedure.

However, leaving aside the said composition title, which perhaps is not as good as another might be, for the purpose of usurping an inheritance by some relatives to the detriment of others, and notwithstanding the before-mentioned deed of gift, the record shows it to have been fully proven: (1) That the lands in litigation belonged exclusively to the testatrix Petrona Fortuna, who acquired them by purchase from various persons very many years before the 8th of February, 1893, the date of the composition; (2) that the said testatrix did not name any heirs in her will, nor dispose of the said lands in favor of anyone, but only of their fruits; (3) that for the purpose of administering her property which was not bequeathed to the persons designated in her said will she appointed her sister, Patricia Fortuna, and, on the latter's death, her brother, Valentin, the plaintiffs' father; (4) that the said property still remains pro indiviso up to date, and all the nearest relatives of the testatrix are entitled to it, according to the provisions contained in articles 947, 948 et seq. of the Civil Code, notwithstanding the gift or donation made by Patricia Fortuna to the defendant, Aurea Corrales; and (5) that, in consideration of the reasons herein above set forth, the claims made by the plaintiffs can not be sustained.

Therefore, it is proper in our opinion, to affirm, as we hereby do, the judgment appealed from, without special finding as to costs.

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

Moreland, J., concurs in the result.

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