

CIRIACO TUMACDER, PLAINTIFF AND APPELLANT, VS. JOSE NUEVA ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 5708. August 30, 1910*

Ponente: TORRES, J.

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On December 3, 1904, the legal representative of Ciriaco Tumacder filed a written complaint with the Court of First Instance of Ilocos Norte in which it was alleged that the plaintiff was the possessor under title of ownership of a lot situated in the place called Hatba, of the district of the pueblo of Bacarra; that the perimeter of said lot measured 238 meters and it was bounded on the north and the west by land belonging to ditchers of Cabulalaan; on the south by a path; and on the east by a ditch; that toward the end of October, 1904, Jose Nueva, Quiterio Subia, Casimiro Subia, and Estanislao Galiza, who were of legal age and lived in the same pueblo, began to excavate in the southern part of the said lot, and in the eastern side thereof dug a ditch, to the serious detriment of the owner of the lot, and that, therefore, this suit was brought against the parties named in the complaint to secure a permanent injunction. The plaintiff accordingly prayed that, after due process of law, judgment be rendered against the defendants by ordering them to close up or fill in the openings they had made in his lot, and to abstain perpetually from repeating the acts which are the subject of the complaint; and that they be sentenced to pay damages and costs.

The four defendants having been summoned, set forth in their written answer to the foregoing complaint, on January 4, 1905, that they denied the first charge therein made, as well as the serious detriment referred to in the second charge in connection with the said ditch. They alleged that the land concerned belonged exclusively to the spouses Andres Lazo and Marcela Tamano, residents of Bacarra, who acquired the same by purchase, through the execution of an instrument, from its former owners, Antero Subia, Cirila Tumacder, Maria Tumacder, Lucas Aquiat, Simplicio Quebral, and Exequiel Tumacder; that the said spouses, the vendees and owners of the land, entered into an agreement with the company of ditchers of Cabulalaan, organized by the defendants, whereby the said company was to open the ditch referred to in the complaint, for the purpose of converting the land into a rice plantation; that by virtue of the agreement mentioned, the defendants opened the said ditch, the owner Lazo first having notified all his tenants on shares, among them the plaintiff, to remove their houses that were built on the land to other land in Libong adjacent to that owned by the said Lazo; that this notice was complied with by nearly all of the latter, except the plaintiff, who, abusing the kindness and confidence of the owners of the property, not only wished to usurp the land on which his house was built, but also the lands occupied by his cotenants and the land belonging to the spouses Lazo and Tamano, where there was no house at all. The defendants therefore prayed that in due course of time judgment be rendered in their favor by denying the final injunction solicited by the plaintiff, and that the costs be charged against the latter.

The case having come up for trial and testimony having been adduced by both parties, the documents exhibited by the defendants being attached to the record, the court, on September 1, 1905, pronounced judgment denying the remedy sought in the complaint and taxed the costs against the plaintiff who, on being notified of the result, stated

that he excepted to the said judgment and signified his intention to forward through the regular channel a bill of exceptions, which was filed, approved and transmitted to the clerk of this court.

This litigation was initiated by virtue of the remedy known as permanent injunction, sought by the plaintiff Tumacder as possessor under title of ownership, to the end that the defendants be prohibited from continuing to excavate a part of his land to form therein a ditch, to the serious detriment of his interests, and be further compelled to close or fill in the opening they had made in his said lot.

To settle the question at issue, it is necessary to decide whether he who seeks the remedy has or has not a right to object to the act which is the cause of the complaint.

Section 171 of the Code of Civil Procedure provides:

"If upon the final trial of the action it shall appear that the plaintiff is entitled to an injunction perpetually restraining the commission or continuance of the act complained of, the court shall grant a final injunction perpetually restraining the defendant from continuing the act."

The defendants in their answer to the complaint, after a denial of the grounds in support thereof, alleged that they proceeded to open the said ditch by the order of their masters, Andres Lazo and Marcela Tamayo, of whom the defendants were mere tenants on shares, as was also the plaintiff himself; that, for the purpose of performing the work, the tenants who occupied the place through which the ditch was to pass had to remove their dwellings to another locality designated by the owners, and that the plaintiff was the only one who refused to do so and was usurping the lot occupied by his house and the lots of others of his cotenants.

The judge, in view of the pleadings and proofs by both parties, found the fact to be established that Andres Lazo and his wife acquired the land concerned from various owners, among them Exequiel Tumacder, the father of the plaintiff, and that therefore the latter had no right to the property, as it had already been transferred by his father. On this ground the court denied the final injunction prayed for by the plaintiff.

The appeal raised by the latter having been admitted and no motion having been made in first instance for a new trial, this court will only determine the issues of law involved in the said appeal. It would be improper to review the judgment with respect to the facts and the evidence adduced at trial. In case No. 4322 (Martinez vs. Campbell et al., 10 Phil. Rep., 626) the following doctrine was established:

"When a motion for a new trial has not been made, the statement of facts set forth as proven in the judgment appealed from must be accepted. This court has no jurisdiction to review the same upon appeal, but is only called upon to resolve questions of law set up by the appellant."

For the foregoing reasons, and because the judgment appealed from is in accordance with law, it is proper, in our opinion, to affirm as we do hereby affirm the same, with the costs against the appellant.

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

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