

IGNACIO ARROYO, PLAINTIFF AND APPELLEE, VS. CARMEN YULO AND HER HUSBAND, SABAS LOCSIN, DEFENDANTS AND APPELLANTS.*G.R. No. 5740. January 07, 1911*

Ponente: ARELLANO, C.J.

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The purpose of the complaint filed in this case is to recover possession of a parcel of land and to obtain the payment of damages for its unlawful occupation. The plaintiff alleged: (1) That he was the owner of certain urban property, consisting of a house and lot, in the district of Molo of the municipality of Iloilo, which was sufficiently described in the complaint; (2) that, adjoining his property on the north is the lot belonging to the defendants, and on which the latter erected, northeast of the plaintiff's house, a temporary camarin or warehouse with roof and sides of old burnt galvanized iron; (3) that this temporary warehouse occupied an area of about 90 square varas on the northeastern part of the land of the plaintiff, and that notwithstanding the demands made by the latter upon the defendants to vacate the said land by removing the warehouse with which they had occupied it, they refused to do so and, instead, claimed title, ownership, and control over the disputed land, thereby causing the plaintiff damages to the extent of P3,000. The complaint concluded by asking that judgment be rendered whereby, first, it be found that the plaintiff is the exclusive owner of the portion of land, of 90 square varas, occupied by the temporary warehouse of the defendants, as an integral part of the land described and which belongs to the plaintiff; second, that the defendants be compelled to remove and place elsewhere the said warehouse constructed on the said northeastern portion of the plaintiff's land; and, third, damages in the amount mentioned in the complaint, and the costs.

The defendants denied all the facts alleged in the complaint, and, in a cross complaint, asked for a partition of the lot claimed by the plaintiff to be his own, alleging that they were entitled to an equal share therein, for the reason that the said property belonged to an estate, as yet undivided, in which they were interested. The plaintiff, in turn, denied the facts set forth in this cross complaint.

The case having come to trial, the Court of First Instance of Iloilo rendered a judgment, in which he found the following:

"1. That the original owner and possessor of the land in question, as established by the evidence, was the Chinaman, Liboro Ramiro (alias Bonga), whose heirs succeeded him in his ownership and possession and subsequently transferred their rights, ownership and interest in the aforesaid land to the herein plaintiff, who has, continuously and without interruption, maintained his possession as owner;

"2. That the plaintiff and his predecessors in interest have possessed and occupied the land in question, as owners, in good faith, openly, notoriously, and publicly for a period of more than thirty years prior to the initiation of this suit;

"3. That about eight or nine years ago, the defendants constructed on the plaintiff's land a camarin or warehouse made of old galvanized iron and other second-hand material, as shown in the photograph, Exhibit C, as No. 2, and erected on that part of the plaintiff's land that is indicated in the rough sketch, Exhibit B, as

No. 3;

"4. That the true boundary line of the northern part of the plaintiff's land is that given as "4 to 6" in the rough sketch, Exhibit B, and within which boundary is included the aforementioned warehouse constructed by the defendants;

"5. That the said defendants refused to remove the said warehouse from the place before cited, after a demand had been made upon them so to do, and, instead, alleged that they owned the land on which it is built;

"6. That, owing to the form of construction of the roof of the said warehouse, the water shed by this roof falls against the wall of the plaintiff's house and has thereby caused him damage to the extent of P100;

"7. That the just and reasonable rental for the plaintiff's parcel of land, illegally occupied by the defendants during eight years, is two pesos for each month, or, for the period of eight years, P192.

"Therefore, this court is of the opinion that the plaintiff is entitled to a judgment against the defendants for the recovery of the ownership and possession of the land in question as described in the complaint and shown in the plan; Exhibit B, and for damages in the sum of P292, with the costs, moreover, against the defendants."

From this judgment, rendered on August 3, 1909, the defendants appealed and also moved for a new trial, which motion was denied by the court and the record does not show that the defendants took any exception to such ruling.

The latter filed a bill of exceptions with this court wherein they made five assignments of error; but in view of the provisions of the law, it does not lay within the power of this court in the present case, to review the evidence, the conclusion upon which, by the lower court, is argued in the specification of the errors alleged against the judgment appealed from.

Pursuant to section 497, paragraph 3, of the Code of Civil Procedure now in force, if the excepting party files a motion in the Court of First Instance for a new trial upon the ground that the findings of fact are plainly and manifestly against the weight of evidence, and the judge overrules the motion, and due exception is taken, the Supreme Court may review the evidence, make such findings upon the facts and render such final judgment as justice and equity may require. The appellant not having taken exception to the denial of his motion for a new trial, this court ought not to review the evidence adduced in first instance nor could it do so in the present case, though it required review, owing to the failure to bring up the evidence pursuant to the provision of law above quoted, and must accept the findings of fact established by the trial court and only examine the direct application of the findings of law, on which the judgment rests, to the facts that were proved. This examination having been made, it is our opinion that the judgment accords with the facts found by the learned Court of First Instance to have been proved, and that the conclusions based thereon are in agreement with the provisions of law governing the matter at issue.

We therefore affirm that judgment, with the costs of this instance against the appellant. So ordered.

Torres, Johnson, Moreland, and Trent, JJ., concur.

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