

**MARCELO DE LA CRUZ, PLAINTIFF AND APPELLANT, VS. NICOLAS NIÑO ET AL., DEFENDANTS AND APPELLEES. &#8211; SANTOS JARAPAN, INTERVENER-APPELLANT***G.R. No. 5797. January 13, 1911*

Ponente: TORRES, J.

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On March 17, 1905, Marcelo de la Cruz filed a written complaint with the Court of First Instance of Ilocos Norte, in which he alleged that he was the owner of various landed properties situated, twenty-six of them, in the pueblo of Dingras, and three, in that of Laoag, the area and boundaries of all of which are stated in the complaint; that, for nearly two years past, the defendants, Nicolas Nino, Eulalio Vicente, and Nemesio Vicente, had been detaining half of the said properties, cultivating them and unlawfully utilizing their fruits; and that, therefore, action was brought for the purpose of recovering possession of the said properties, together with the fruits thereon produced during the past two years. The plaintiff prayed the court, after the appropriate procedure and in due time, to render judgment sentencing the defendants to restore to the plaintiff the aforementioned lands, together with the fruits produced thereon during the past two years, to compensate him for such other damage as might be found to have been caused, and the costs.

The defendants, in their answer, denied the grounds set forth in paragraphs 3 and 4 thereof, alleging that they were false, inasmuch as, although it was true that they, the defendants, owned one-half of the twenty-eight parcels of land described in the complaint, it was no less true that they held them under just title and lawful right, as would be proved in due season, and that, therefore, they were in no wise detaining the said properties; wherefore, the defendants asked that judgment be rendered in their favor and that the costs and expenses of the suit be assessed against the plaintiff.

Before this case came to trial, Santos Jarapan filed a claim of intervention, wherein he alleged that, since November 15, 1871, he was the owner of all the properties referred to by the plaintiff in his complaint and by the defendants in their answer thereto, having acquired them in that year under just title, excepting the lands situated in Cadalayapan, Caandongan, and Polonday, mentioned in paragraphs Z, AA, and BB of the complaint; that, through circumstances over which he had no control, he had to absent himself from the province where the lands concerned are situated, and leave the property to the care and administration of a trustworthy person who duly complied with the charge intrusted to him until the year 1898, when, on the occasion of the insurrection, the said caretaker disappeared, and abandoned the said properties and up to the present his whereabouts are unknown; that, as ascertained from the complaint and answer of the litigating parties, the lands aforementioned were in the control of the plaintiff, Marcelo de la Cruz, and the defendants, Nicolas Niño, Eulalio Vicente, and Nemesio Vicente; that the tenancy of the lands in question which the said parties enjoyed was illegal, unjust, and arbitrary, for the reason that not they, but the intervener was the true owner of the said lands, with the exception of those situated in the three places aforementioned; and the plaintiff intervener asked the court to pronounce judgment in his favor by sentencing the plaintiff and the defendants immediately to deliver to him, the intervener, the lands in

litigation, and to pay the costs and expenses of the trial.

After the hearing of the case, in which oral evidence was submitted by both parties, the court, on September 23, 1905, rendered judgment absolving the defendants, Nicolas Niño, Eulalio Vicente, and Nemesio Vicente, from the complaint filed by Marcelo de la Cruz, and all of them from the action of intervention interposed by Santos Jarapan. The costs were assessed against the plaintiff and the intervener equally. Exception was taken to this judgment by the counsel for the plaintiff and the intervener, respectively, who by written motion asked for the annulment of the judgment and a new trial, and the court, after ruling upon the incident raised in connection with the appearance of attorney Bonoan in place of attorney P. Soriano, overruled the motions made for a new trial. From these rulings, the appellants took exception and presented, separately, the required bills of exceptions, which were certified, approved, and forwarded to the clerk of this court.

The action for the recovery of possession, brought in this case by Marcelo de la Cruz, is founded on the public instrument of acquisition of the lands specified in the complaint under letters Z, AA, and BB, of June 8, 1888, and on the possessory information title applied for by him and approved on September 10, 1894, with a note of inscription in the property registry, of the date of March 15, 1894, with respect to the lands specified in the said complaint, excepting the three parcels situated in Bacud, designated under the letters A, B, and C, and whose acquisition is not recorded in the aforementioned instruments.

The defendants' counsel, denying the claim made by the plaintiff in the capacity of sole owner of the lands, the exclusive ownership of which he claims, alleged that the defendants Nemesio and Eulalio Vicente and the wife of Nicolas Niño then owned one-half of the lands which were the subject of the complaint, as the children and successors of the deceased Feliciano Vicente; that the latter, during his lifetime, and the plaintiff, Marcelo de la Cruz, entered into partnership for the purpose of acquiring in common the lands in question, by purchase, and that they did so acquire the same in 1888 and held and enjoyed the said property pro indiviso, with equal rights; that, by common accord, the documents of title were drawn up in the name of De la Cruz only, although the expenses connected therewith were charged against them both; and that later, on March 18, 1897, they proceeded, likewise by common accord and in harmony, to divide by halves the said lands of common ownership, a partition which was recorded in the instrument marked "Exhibit C," written in Ilocano and translated further on folios 51 and 53 of the record.

It appears that this instrument was recognized as true and authentic by Marcelo de la Cruz in his sworn testimony at the hearing of the case (p. 6 of the record) and therefore, notwithstanding the fact that the aforementioned instrument and possessory information title are found to have been drawn up in his name, it is unquestionable that the ownership of the lands in litigation pertains to the two partners to whom the said instrument, Exhibit C, refers, and that the defendants, as the heirs of the deceased partner, Feliciano Vicente, the co-owner of the said lands, are today the legitimate proprietors of one-half of the same in the manner in which, pursuant to the agreement had between the partners, the coowners, the properties were divided equally, according to the said instrument, Exhibit C.

"A private instrument legally acknowledged shall have, with regard to those who signed it and their legal representatives, the same force as a public instrument." (Art. 1225, Civil Code.)

On this provision is based the doctrine established by the supreme court of Spain in its decisions of November 19, 1891, and February 18, 1898.

The record does not show that the said instrument, Exhibit C, was impugned or assailed as false; on the contrary, it was acknowledged by Marcelo de la Cruz, one of the two contracting parties, who, moreover, stated in his said sworn testimony that the lands in question were acquired with money belonging to himself and to Feliciano

Vicente; it must of necessity be recognized as an incontrovertible fact, perfectly proved, that the said lands were purchased by Marcelo de la Cruz and Feliciano Vicente, although the instruments of title pertaining to the lands acquired by the two partners were drawn up in the name of but one of them, Marcelo de la Cruz; and further, that, years after these properties had been held in common by them as co-owners, they agreed to divide them in equal parts as they did, which particulars were set forth in the said instrument, Exhibit C, signed by the two partners and the witness Feliciano or Luciano Villanueva who, together with another witness, Gaspar Fermin, confirmed the facts related; the third witness, Eduardo Fontanilla, stated that the lands in Cadalayapan, Caandongan, and Polonday were originally held by his father, Julio Fontanilla, who sold them to the now deceased Feliciano Vicente, and that the latter's heirs, the defendants, hold them at the present time.

The mortgage referred to by the plaintiff in his sworn testimony as having been made in favor of Feliciano Vicente, as security for a certain amount of money, does not appear to have been recorded in the oft-mentioned instrument, Exhibit C, but in the one exhibited by the plaintiff as Exhibit F, and although it is not shown that it was authenticated by the party who executed it, Feliciano Vicente, now deceased, yet it was authenticated by three witnesses who affixed their signatures thereto; moreover, the instrument was exhibited by the plaintiff himself.

In the aforesaid instrument, Exhibit F, Feliciano Vicente stated he had received from Marcelo de la Cruz, the plaintiff, the sum of P208, the amount for which certain lands named therein, belonging to the debtor and situated in the places specified, had been mortgaged to the said De la Cruz. From the context of this instrument, it is deduced that the plaintiff, De la Cruz, came to owe Feliciano Vicente, the father of the defendants, a certain sum of money and that, as security for its payment, lands belonging to the debtor were mortgaged, which probably were not all those recorded in the instrument and possessory information title exhibited by the said plaintiff as Exhibits A and B, but the half of those properties divided equally between their two co-owners. How and in what manner the debt was contracted is immaterial for the proper determination of this litigation, for whether it were a loan to the plaintiff, or whether the sum recorded in the instrument marked as Exhibit F were one-half of the total value of the lands purchased by the partners and which the plaintiff, De la Cruz, could not immediately pay to his co-partner, Vicente, as stated in his testimony by the said witness Gaspar Fermin, the said plaintiff is beyond all doubt the sole owner of one-half of the lands in question, the half which he holds, and that he is not entitled to claim the other half which belongs exclusively to the defendants as the unquestionable successors of the co-partner, Feliciano Vicente, notwithstanding the instruments, Exhibits A and B. Neither is it credible, nor probable, that the said defendants usurped precisely one-half of the lands in dispute, and if they are in possession of the same at the present time, it is fully proved that they occupy them under the title of ownership.

With respect to the action brought by the intervener, Santos Jarapan, and which is also of the nature of one for the recovery of possession, the ownership which he claims with respect to the lands in question is not shown in the record to have been proved by the documents which he exhibited, for according to the invariable rulings of the courts, in order that an action for the recovery of possession may prosper, it is indispensable that he who brings it fully prove not only his ownership, but also the identity of the thing claimed.

The intervener Jarapan did not prove, as stated in the judgment appealed from, that the said instruments, Exhibits E and F, which contain no exact descriptions of the respective situation, area, and boundaries of the properties therein mentioned, refer to the lands now held by the plaintiff and the defendants; wherefore, by such documents, the intervened ownership and the identity of the said lands can not be deemed to be established, and with all the more reason since the record shows it to have been satisfactorily proved that the said plaintiff and defendants are the owners, respectively, by halves, of the lands in litigation; and hence the aforesaid third party, who failed to establish his better right, can not be considered as owner.

For the foregoing reasons, whereby the errors attributed by the appellants to the judgment appealed from are

deemed to have been decided, it is proper, in our opinion, to affirm the said judgment, as we hereby do, with one-half of the costs of this instance against each of the appellants. So ordered.

Arellano, C. J., Mapa, Carson, Moreland, and Trent, JJ.,concur.

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