

AGUSTIN ALDEA, PLAINTIFF AND APPELLANT, VS. INOCENTES FUENTES, DEFENDANT AND APPELLEE.*G.R. No. 5899. February 12, 1913*

Ponente: TORRES, J.

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This appeal, through a bill of exceptions, was raised by the plaintiff, Agustin Aldea, from the judgment rendered on October 12, 1909, whereby the Honorable Jose C. Abreu absolved the defendant, Inocentes Fuentes, from the complaint, with the right to collect from the plaintiff the costs of the trial. Counsel for the latter moved for a reopening of the case and a new hearing, which motion was overruled by an order of January 8, 1910, whereupon said counsel excepted.

On July 21, 1908, counsel for Agustin Aldea filed a written complaint in the Court of First Instance of Capiz against Inocentes Fuentes, setting forth that, by virtue of an instrument executed in his favor by Juana de la Peña, on May 24, 1905, before the justice of the peace of Mambusao, he was the owner of two parcels of irrigated land situated in the places known as Ilo and Naboongan, Mambusao, of 4 hectares 27 ares and 86 centares, being bounded on the north by the property of Maria Arluida, on the east by Calle San Jose, on the south by the property of Diego Orleans, Ramon Veedor, and Juan Lopez; and on the west by the properties of Juan Lopez and Sixto Lema; and the second parcel of 1 hectare 74 ares and 80 centares, on the north by the property of Luciana Laguda; on the east by and on the south by that of Santiago de la Cena; and on the west by the Dumalag Road; that, prior to the date of the sale of the said land, March 2, 1900, Juana de la Peña had mortgaged the same to Pedro Arcenas as security for a debt she owed him, and, the said debt not having been paid by Peña at its maturity, the latter stipulated with the plaintiff, Aldea, that she should sell him the lands in question, in consideration whereof he should pay her debt to Arcenas, which was done; that, on or about the month of February, 1907, while Aldea was in the full enjoyment of possession and usufruct of the said lands the defendant, Fuentes, took possession of them, despoiling him of possession thereof, and by intimidation obliged the latter's tenant, Vito Navarra, to cease to occupy and cultivate them; that, when a demand was made upon Fuentes for the restitution of the said lands, he refused to restore them and unlawfully continued to hold them from February, 1907; and that, as a result of such despoliation, the plaintiff had been deprived of the fruits and products of the said lands, whereby he had suffered losses and damages to the amount of P600. He therefore asked that judgment be rendered in his behalf by sentencing the defendant to the payment of the said sum as losses and damages, to restore to the plaintiff the said two parcels of land, and to pay the costs of the trial.

Counsel for the defendant in reply denied each and all of the allegations contained in each and all of the paragraphs of the complaint, and, as a special defense, set forth: that the land held by Juana de la Peña in the sitio of Naboongan, also known as Maralag, the boundaries whereof were described in paragraph 1 of the complaint, was then partially under the control of the plaintiff's mother-in-law, Josef Jaber, with whom he was living, and partially under that of one Eustaquio Aro; that the land held by the defendant in the sitio of Ilo, Mambusao, has an area of only "2 cavaness and 10 gantas of seed rice" and does not amount to 4 hectares and 86 ares, which land he

had acquired from Juana de la Peña in payment of a debt and had possessed without interruption since 1901; that Peña had another parcel of land in the same sitio of Ilo, of an area of "half a cavan of seed rice," adjoining; the land he had received from the said Peña, which parcel of land was to have been conveyed to him by Peña as a part of the land not mortgaged in his name, but that, instead of so doing, she conveyed it to Josefa Jabar, the plaintiff Aldea's mother-in-law; and that the said parcel of land was then in the possession of Dalmacio Navarra, an uncle by marriage of the plaintiff. He therefore prayed that he be absolved from the complaint, with the costs against the plaintiff.

The case came to trial on July 17, 1909, evidence was introduced by both parties, and, on October 12 of the same year, the judgment aforementioned was rendered.

The plaintiff in this case claims to own a certain piece of land of 4 hectares 27 ares and 86 centares, situated in the place called Ilo, of the pueblo of Mambusao, of which he alleges he was violently despoiled by the defendant, who, he avers, has usurped the same since February, 1907.

Notwithstanding the allegations of Agustin Aldea in his complaint, it is not shown by the record to have been duly proved that the plaintiff was in possession of at least the parcel of land of the area of "2 cavanases and 10 gantas of seed rice," which the defendant, Inocentes Fuentes, now holds and has held since 1901 when it was conveyed to him through a contract of antichresis because its original owner, Juana de la Peña, had not paid him a sum which she had owed him from July 23, 1900, as evidenced by Exhibit 2, translated on the next page.

If the plaintiff Aldea has not succeeded in proving in this suit the right of possession which he claims to have in the land of lesser area now held by the defendant by virtue of a perfectly legal contract executed between the latter and the previous owner of the land, in 1890, neither has he proved the alleged despoliation or usurpation which the plaintiff charges the defendant with having committed, through a violent act performed one day of the month of February, 1907, and consequently there is no lawful reason for the success in law of the improper complaint whereby this litigation was commenced.

Though it be true that Juana de la Peña may have sold to Agustin Aldea, in May, 1905, a parcel of land of greater area, as stated in Exhibit A, and the land now held by the defendant was comprised within that sale, yet once it is proved that on the said date the vendor was not in possession nor could dispose of the land of the area of "2 cavanases and 10 gantas" which she herself had, many years before through a legal contract, ceded or conveyed to her creditor, Inocentes Fuentes, the latter being in legitimate possession of the land which he had received from his debtor by virtue of the contract recorded in the said Exhibit 2, therein translated, it is not proper nor just that the defendant be deprived of his legitimate possession upon the petition of Agustin Aldea who, in order to give an honest appearance to his claim, which he himself probably believed was not a lawful one, saw fit to allege an act of despoliation that could not have been performed, and which he did not succeed in proving, for the reason that the alleged despoiler was, in 1907, in legitimate possession of the land said to have been unlawfully seized in 1901, as shown to have been fully proven at the trial and according to the opinion very correctly held by the lower court in the judgment appealed from.

In addition to the lack of due proof of the possession and despoliation alleged by the plaintiff in his complaint, the defendant, on his part, proved in a satisfactory and conclusive manner that from 1901 to 1904 four persons successively leased the land in question on shares, subject to the defendant Fuentes' control, and that subsequently the original owner herself, Juana de la Peña, and Vito Navarra leased from this same defendant the said land of "2 cavanases and 10 gantas of seed rice" in area, though the latter afterwards had to rescind the lease in 1907 on account of Navarra's failure to pay rent for the years 1905 and 1906, wherefore Fuentes had to sue him in the justice of the peace court of Mambusao and obtained a judgment against him; but Navarra appealed therefrom to

the Court of First Instance where, through agreement of the parties, the case was left pending until the judgment in the present suit.

The witness Vito Navarra, presented by the plaintiff Aldea as having been a former lessee of the land, according to a contract of lease which Navarra himself stated he had executed with Pedro Arcenas, a former possessor and transferee of the land, denied that he ever was a tenant on shares and lessee of the defendant, Inocente Fuentes; but the testimony of this witness is invalidated by the evidence introduced by the defendant and by the letter, Exhibit 1, addressed to the latter, wherein Vito Navarra requested Fuentes to permit him to cultivate the land concerning which the writer had already spoken to the defendant; and, as held by the trial court in his judgment, the Exhibits F and G, which purport to be receipts issued by Pedro Arcenas to Vito Navarra, on December 25, 1905, and January 15, 1907, each for 20 cavanos of rice, are not credible, in view of the facts and circumstances stated in the said judgment, for the reason that both documents were written at the same time on two parts of one and the same sheet of paper divided into halves. '

If it is true that, since May 24, 1905, the plaintiff, Agustin Aldea, has been the owner of the land of greater area, including the property in dispute, and that Pedro Arcenas since that date has ceased to own the same, it is inexplicable how, on December 25, 1905, and on January 15, 1907, according to said receipts, Exhibits F and G, Arcenas still could have collected rents from the land of which he was no longer the owner or possessor, but which was held and owned by Aldea, according to the latter's allegations.

Aside from this positive conclusion derived from the evidence, it was proved furthermore, that the defendant, Fuentes, has been since 1902 paying the land tax on the said land of the area of "2 cavanos and 10 gantas of seed rice," which had been levied against him from that year up to date, a fact the plaintiff could not establish.

Article 445 of the Civil Code prescribes: "Possession, as a fact, cannot be recognized in two different personalities, except in cases where there is no division. Should a question arise as to the fact of the possession, the actual possessor shall be preferred; when there are two, the oldest shall be preferred; if the dates of the possession are the same, the one presenting a title; and if all these conditions are equal, the thing shall be placed in deposit or judicial keeping until the possession or ownership thereof is decided in the proper manner."

Solely with reference to the possession of the land in litigation, it is unquestionable that the defendant Fuentes, the present possessor of the property, has been in possession thereof longer than the plaintiff, and, on the hypothesis that Juana de la Peña delivered the land to the defendant, Inocentes Fuentes, under a lawful contract it is undeniable that the debtor, Pena, cannot reacquire the enjoyment of the land that is the subject of the antichresis, without previously paying in full what she owes to her creditor (art. 1883 of the Civil Code); and it cannot be alleged that the plaintiff has a better right, since the contract contained in the instrument, Exhibit 2, executed by Peña in the defendant's favor bears a date long prior to that of the instrument presented by the plaintiff, Exhibit 1. Although this latter document was certified by the justice of the peace of Mambusao, but is not, however, of a public character and the said justice of the peace, when he certified it, did not hold the office of notary.

For all the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, such judgment should be, as it is hereby, affirmed, with the costs against the appellant.

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

Trent, J., concurs in the result.

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