

MAXIMO CALAVIA ET AL., PLAINTIFFS AND APPELLANTS, VS. LEONCIA CALAVIA, DEFENDANT AND APPELLEE.

G.R. No. 5903. February 21, 1911

Ponente: CARSON, J.

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CARSON, J.:

This action was instituted to secure the judicial partition of the tract of land described in the complaint. Plaintiffs insist that they, together with the defendant, are the descendants of a common ancestor, the original owner of the land; that on his death, about forty years ago, defendant's father took possession of this tract of land and continued in possession until his death in the year 1897; that since that date defendant has been in possession; but that by right of inheritance, they are entitled to share with the defendant in the ownership and profits of this property, and in this action to have a decree for the judicial partition of the common property and an assignment of their respective shares in accordance with the laws of descent.

Defendant denies the allegations of the complaint, and alleges that she, together with her husband, acquired the tract in question by purchase from the owners of the various parcels of land of which it is composed.

Plaintiffs' evidence is limited to the oral testimony of a few interested witnesses speaking largely from hearsay, who testify that they have always understood that the land in question was originally the property of one Maria Bautista, the wife of Pablo Bautista; that on her death it fell into the hands of her husband, Pablo Calavia, who died some forty years ago; that on his death, one of his sons, the father of the defendant, took possession and continued in possession until he died 'in February, 1897, when his daughter, the defendant, took possession; and that since that time she has retained exclusive possession, and denied the right of the plaintiffs to share in the fruits and profits.

We do not think that this vague and uncertain oral testimony as to the alleged mode by which the defendant acquired possession of the land in question is sufficient to overcome the definite and positive testimony of defendant that she acquired it in her lifetime by purchase from the owners of the three separate parcels of which it is made up; and even if it were granted that this land did at one time belong to the common ancestor, we think that the plaintiffs' own evidence casts such a doubt upon their claim to share therein by right of inheritance, that judgment was properly rendered in the court below in favor of the defendant in possession.

Testifying on their own behalf, some of the plaintiffs admit that after the death of Pablo Calavia, a part of his property was divided among his heirs, though they insist that the land in question was not included in the extrajudicial partition made at that time. No attempt is made to account for the omission of this particular tract of land from the terms of the partition agreement. Plaintiffs also admit that until this action was instituted, no steps had ever been taken by themselves or their predecessors in interest to establish their claim to an interest in this property, from which they allege they have been excluded for some forty years. While there is nothing in the record which would justify us in doubting the sincerity and good faith of these plaintiffs in their claim of an interest in this property, we agree with the trial judge that the evidence on which they base their claim is wholly

insufficient to overcome the presumption in favor of the right of possession and ownership of the defendant, arising from the admitted fact that an extra judicial partition of a part, at least, of the property of the common ancestor was made after his death, and the uninterrupted possession for so many years of this particular part of the land by the defendant and her father.

The judgment of the lower court in favor of the defendant should, therefore, be affirmed with the costs of this instance against the appellants. It is so ordered.

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

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