

RUPERTA PASCUAL, PETITIONER AND APPELLEE, VS. ALEJANDRA MINA ET AL., OPPONENTS AND APPELLANTS.*G.R. No. 6123. September 11, 1911*

Ponente: MAPA, J.

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The present controversy involves the ownership of a lot. This lot, in the beginning, as recognized by the petitioners themselves, unquestionably belonged to Francisco Fontanilla, the respondents' predecessor in interest, who acquired it on March 12, 1874, through purchase at public auction, the sale being recorded in a public instrument that was produced in evidence in this case. At the present time there is on the said lot, and has been for the past twenty-five years, a camarin or warehouse which was built by Andres Fontanilla, a brother of the aforesaid Francisco. It appears, but the fact is not clearly shown in the record, that Andres died without leaving any descendants; nor does the evidence positively show who inherited the warehouse at Andres' death, nor whether the latter, at the time he died, still continued to be the sole owner of the said building. According to an uncontradicted statement of one of the witnesses for the respondents, only six doors of the warehouse belonged to Andres, the rest belonging to Francisco. The evidence does not show how many doors the warehouse had. It is certain, however, that the co-owners of the building, at the present time, are the petitioners and the respondents, the former's share being six-sevenths of one-half of the said warehouse. Counsel for the petitioners applied to the court for authorization to sell this share of theirs and the part of the land claimed by them on which the building was erected. The respondents, as the successors in interest of Francisco Fontanilla, opposed the petition, in so far as it related to the lot, and alleged that the latter belonged solely and exclusively to them and that the co-ownership held with them by the petitioners was limited solely to the warehouse.

The argument of the respondents is, that Francisco Fontanilla merely loaned the said lot to his brother Andres in order that the latter might build on it the aforementioned warehouse. We understand this to mean, in other words, that Francisco ceded to Andres the usufruct of the lot, reserving to himself its ownership. The petitioners, on their part, maintain that Andres acquired full dominion over and the ownership of the said lot by having received it in exchange for another lot owned by him and which, consequently, he duly delivered to Francisco.

The trial court, in weighing the evidence, positively stated that it had not obtained any evidence whatever from the testimony, and decided the case in favor of the petitioners. From this judgment the respondents appealed.

Three witnesses testified in support of the claim made by the petitioners, and all three averred that the said lot belonged in the beginning to Francisco Fontanilla, but that afterwards a contract of exchange was executed between the latter and Andres Fontanilla, whereby the first ceded the said lot in exchange for the share that Andres possessed in another lot owned jointly by both. It is to be noted, however, that none of these witnesses testified positively and of their own knowledge, but gave mere hearsay testimony only, as concerns the alleged fact of the exchange. The first of them, one Simon Cristobal, testified that he became informed of this fact by its having been told to him by Andres Fontanilla; another of them, the petitioner herself, Ruperta Pascual, testified that she knew of the exchange because she was told of it by the said Simon Cristobal and by her deceased

husband, it was not stated who the latter was, but of course he was neither Andres nor Francisco Fontanilla; and the third witness, Felix Villanueva, one of the petitioners represented in the trial by Ruperta Pascual, testified that he knew of the alleged exchange because his father, a few moments before he died; told him of it. It appears that the father of this witness was one Concordio Fontanilla, whose relationship with Andres and Francisco Fontanilla is not clearly shown in the record.

It is of course manifest that such testimony is insufficient to prove the exchange alleged by the petitioners. On the other hand there is the following testimony in the respondents behalf:

- That of Alejandra Mina, one of the petitioners and a daughter-in-law of Francisco Fontanilla, who testified that the latter loaned the lot to his brother Andres with the understanding that the warehouse, which the latter would build on it, should eventually become the property of a son of Francisco's named Fructuoso, whom Andres, who had no children, had adopted and considered as his own, although this transfer did not take place as Fructuoso died and was survived by Andres; that she was certain of the loan of the lot as she was present at the time of the execution of the contract concerning this matter by the two brothers; that the agreement was verbal and was not recorded in writing, owing to the confidence and harmony that existed between the latter; that after the partition of Francisco's estate, several years before, and the witness had taken possession of the part thereof that pertained to her, she had, on several occasions, demanded of the petitioner, Ruperta Pascual, payment of the rent of the lot occupied by the warehouse, the latter always asking to be excused because she had not the money to pay it, as she was poor; and that, finally, witness proposed to the said Pascual the purchase of the warehouse on the supposition that the lot was not to be included, which purchase was not made merely because of a difference of P15 in the price.

- That of the Chinaman, Qui-Quiengco, a tenant of the warehouse, as it appears, since the time it was constructed. This witness testified that the lot was loaned by Francisco Fontanilla to his (the latter's) brother for the borrower to build thereon the said warehouse; and that he knew of that circumstance because it had been told to him by Andres himself when the latter and his brother Francisco had talked with him in regard to his helping to put up the building. Witness further testified that Andres also told him that Francisco might be at ease with respect to his lot because, as he (Andres) had no children, Francisco's children, at all events, would inherit the warehouse which he (Andres) was going to build.

- The testimony of Isaias Clemente, formerly the testamentary executor of the deceased Concordio Fontanilla, from whom, it appears, are derived the petitioners' rights. This witness testified that, in effecting the partition of the said deceased's estate, he delivered to the petitioners in accordance with the testator's wishes, the warehouse only and not the lot on which it was built.

All this testimony, given from those witnesses' own positive knowledge and uncontradicted by any other of a similar nature, sufficiently supports, in our opinion, the respondents' claim, especially if account is taken of the fact, which strongly corroborates the same, that the title deed of the litigated lot still remains in the name of Francisco Fontanilla and is held by his successors, the respondents. This shows that the property was not conveyed to Andres Fontanilla, for if such had been the case, it is natural and logical that the transfer would have been recorded at the bottom of the said deed or that instrument would have been delivered to the said Andres, which is the least that could and ought to have been done to have accredited in some manner such transfer, in the event that it had been thought unnecessary, for any reason, to have expressed in due form the exchange alleged by the petitioners. What is certain is that the latter presented no good proof of such exchange, for which reason it can

not be held to be proven that the said contract was actually made nor that, by virtue thereof, Andres Fontanilla acquired the ownership of the lot in question inasmuch as contracts may not be presumed but must be proven, in order that they may produce due legal effect. Neither is the fact that the latter held the possession of the disputed lot for more than twenty years, proof of the prior execution of the said contract of exchange, since possession, considered in itself, may be derived from or be the result of juridical acts that have nothing at all to do with such a contract; Andres, for instance, might very well have had possession through the mere tolerance of the owner of the lot, or by an express cession which the latter may have made to him of the usufruct of the same, as the respondents claim and have sufficiently proved. Neither may the petitioners invoke, in the present case, the presumption of ownership derived from possession, since such presumption is completely destroyed by the aforementioned proof, which shows positively that Francisco Fontanilla was the real owner of the lot and that he never conveyed the ownership thereof, but only the usufruct, to his brother Andres.

The judgment appealed from is reversed, and it is decreed that the respondents are the owners of the said lot. No express finding is made as to the costs of either instance. So ordered.

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

Carson and Moreland, JJ., dissent.

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