

LORENZO MARZON, PLAINTIFF AND APPELLEE, VS. JULIANO UDTUJAN, CLETO MARZON, ROSENDO BAUYA, AND VALERIANO BAUYA, DEFENDANTS AND APPELLANTS.

G.R. No. 6525. September 14, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 2d of January, 1908, the plaintiff commenced an action against the defendants, for the purpose of recovering the sum of P1,700 as damages for the destruction of 500 banana plants, the greater portion fruit bearing, 100 "viga" plants, and 50 abaca plants.

The defendants on the 22d of July, 1908, filed a general demurrer to the complaint, which demurrer was overruled by the lower court.

On the 26th of August, 1908, the defendants filed a general denial to each and all of the facts set out in the complaint and on the 15th of July, 1909, the defendants filed a special defense in the form of an amended answer or motion, alleging that the lower court was without jurisdiction to hear and determine said cause.

The cause was duly tried in the lower court and on the 7th of August, the Hon. Isidro Paredes rendered a decision in favor of the plaintiff and against the defendants, jointly and severally, ordering them to pay to the plaintiff the sum of P900, with costs.

From that judgment the defendants appealed to this court and made the following assignments of error:

"I. The lower court erred in holding to be proven the fact that the defendants went upon the plaintiff's land, described in the complaint, in the month of May, 1907; and in holding that it had jurisdiction to try this complaint.

"II. The lower court also erred in holding that the plaintiff's action in this case has not been prescribed."

With reference to the first assignment of error the defendants and appellants in their brief, filed in this court, make the following statement:

"The evidence establishes beyond all doubt the following facts:

"That in the month of May, 1897, the defendants went upon a piece of land which the plaintiff says is his, and cut down 500 banana plants, 100 'viga' plants, and 50 abaca plants, worth approximately P700. There is no evidence in the record showing where the aforesaid tract of land is situated."

It will be noted by this admission of the appellants that the defendants had committed the acts alleged in the complaint which resulted in damages to the plaintiff. It will be noted also by the above admission, that the special defense is that the lower court had no jurisdiction, for the reason that there was no proof that the land in question was within the jurisdiction of the court. The action was a personal action for damages done to land. There may be some question as to the requirement that such an action shall be brought in the Court of First Instance within the

jurisdiction of which the land is located. However, admitting that the action must be brought in the court within the jurisdiction of which the land is located, even then it is asserted that under the complaint which alleges that the land was located in the "barrio of Ginagdanan, municipality of Argaw," that the court could take judicial notice of the fact that the said land was within the jurisdiction of his court. The court had a perfect right to take judicial notice of the fact that the municipality of Argaw was within his jurisdiction (sec. 275, Code of Procedure in Civil Actions), in the absence of an allegation that the said barrio was Within the jurisdiction of the court.

With reference to the other error alleged to have been committed by the lower court assigned in the first assignment of error, to wit; That the acts done by the defendants causing damages to the plaintiff were done in the year 1897, the lower court in his decision found that, notwithstanding the fact that the witnesses for the plaintiff stated that said acts causing damages were committed on the 8th of May, 1897, that they intended to say on the 8th of May, 1907. The lower court in his decision gave strong reasons for believing that when some of the witnesses for the plaintiff declared that the acts complained of had been done in 1897, they intended to say 1907, We find no reason, after a full consideration of the evidence adduced during the trial of the cause, taking into consideration the findings of fact by the lower court, to modify the decision of the lower court in any way, based upon the first assignment of error above quoted.

With reference to the second assignment of error above quoted, to wit: That the cause of action was prescribed, it is sufficient to say in answer to this assignment of error, that the question of prescription was neither raised by demurrer nor answer in the lower court and therefore can not be raised here. The question of prescription can not be raised by demurrer. It must be raised by answer. (*Domingo vs. Osorio*, 7 Phil. Rep., 405.) However, even admitting that the defense of prescription had been made in the lower court it could not be maintained for the reason that the present cause is a personal action and does not prescribe until the lapse of fifteen years. (Art. 1964, Civil Code.) The action would not have been prescribed even admitting that the damages were committed in 1897 instead of 1907.

We find no reason for modifying the judgment of the lower court; therefore the same is hereby affirmed.

Torres, Mapa, Carson, and Moreland, JJ., concur.

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