

**ELEUTERIA VILLANUEVA ET AL., PLAINTIFFS AND APPELLEES, VS.
VALERIANO CLAUSTRO, DEFENDANT AND APPELLANT.***G.R. No. 6610. August 24, 1912*

Ponente: ARELLANO, C.J.

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The subject matter of this suit is a piece of land formerly covered by the water of the river that runs between Vigan and Bantay, pueblos of the Province of Ilocos Sur, and now dry, for the river has changed its course toward the north of the town of Vigan. The plaintiffs, as successors in interest of Mariano Villanueva, now deceased, claim that the said land, which comprises approximately 13 ares and is occupied by Valeriano Claustro, belongs to them and demand ownership or possession, thereof. At first, suit was also brought against Victoriana de la Cruz, but as she recognized the plaintiffs' ownership, the action was maintained only against Valeriano Claustro.

Valeriano Claustro, in his written answer under date of March 21, 1910, alleged as a special defense that he and his wife, Isabel Rivera, had been in possession of the said land publicly and peaceably for twenty years, without interruption.

Mariano Añete, a man 62 years old, a witness for the defendant, testified that the lot in question had formerly been covered with water, but was gradually converted into dry land as the result of floods, then shrubs and castor oil plants grew on it and as soon as it could be occupied, the defendant took it and built his house on it. Witness did not know why the latter occupied the land, nor under what conditions he went there, and further stated that the lot of the Villanuevas, the plaintiffs, lay south of it.

Two other witnesses of the defendant, as well as his wife, Isabel Rivera, testified that the land in question was the bed of the river that ran behind the masonry wall of the house of the Villanuevas and that about thirty years ago (they testified on April 28, 1910) it had become dry, because the river had taken a more northerly course. Isabel Rivera herself, wife of the defendant, testified that as she and her husband had no lot they occupied the land mentioned and there built their house, which was several times washed away by the water during the freshets of the river, and that at that time the house of the other defendant, Victorina de la Cruz (excluded from the complaint, as aforesaid) was next to hers. All these witnesses testified to a possession of some twenty-three years on the part of the defendant, and his wife specifically stated that they considered themselves owners of the lot, merely because they had cleared it.

The defendant, however, in a complaint filed before the justice of the peace court against Agustin Teaño for recovery of possession, averred on May 11, 1905, that he had been in possession of the land for ten years; so that, in March, 1910, he could only establish a possession of fifteen years.

The following facts are admitted and well proved: (1) That the plaintiffs are the legitimate successors in interest of Mariano Villanueva; and (2) that Mariano Villanueva is the recognized owner of the real property which was

bounded on the north by the river that runs between Vigan and Bantay, and now by the land in question, which was abandoned by the river on account of its flowing farther to the north where its normal channel has now been for more than thirty years.

It is superfluous to consider the evidence which the plaintiffs have presented by means of three witnesses, relative to the possession, claimed by them to be precarious, of the defendant, through mere tolerance on the part of Mariano Villanueva, it being sufficient that the plaintiffs presented the ownership title of their land adjoining the river, acquired on December 2, 1868, which states "that the said land is bounded on the north by the river which runs through this part of the town."

The Court of First Instance of Ilocos Sur decided the suit by finding the plaintiffs to be the legitimate owners of the tract of land claimed and described in the complaint, and by sentencing the defendant, Valeriano Claustro, to quit the land and deliver it to the plaintiffs, without special finding as to costs.

Having heard the appeal raised by the defendant with a statement of the errors assigned to the judgment appealed from, the following considerations arise:

First. The law provides that the beds of rivers which remain abandoned because the course of the water has naturally changed belong to the owners of the riparian lands throughout their respective lengths (Civ. Cod., art. 370). If, according to the defendant's witnesses, the land disputed was the old bed of the river, which remained abandoned because the course of the water had naturally changed, it belongs to the owner of the riparian land that bordered on the river, who, according to these same witnesses, was Mariano Villanueva, and whose lot, inclosed by a wall, was bounded on the north by the said river on the date the land was acquired, December 2, 1868.

Second. The right in re to the principal is likewise a right in re to the accessory, as it is a mode of acquisition, provided by law, as the result of the right of accretion, since the accessory follows the nature of the principal, and there need not be any tendency to the thing or manifestation of the purpose to subject it to our ownership, as it is subject thereto ipso jure from the moment the mode of acquisition becomes evident. If, according to the defendant's witnesses, more than thirty years had elapsed since the river had abandoned its old bed, for more than thirty years such abandoned river bed had fallen to the private ownership of Mariano Villanueva, even without any formal act of his will; no one else since then could occupy it except as a trespasser.

Third. The occupation of a thing belonging to another may lead to another mode¹ of acquisition, which is the prescription of ownership, whenever the possession of such thing under ordinary prescription, which is that alleged of twenty years, is accompanied by the other requisites prescribed by law, such as good faith, proper title and legal period of time (Civ. Cod., art. 1940). But in the present case a proper title for possession is entirely lacking, inasmuch as the only one alleged by the defendant's wife, to wit, that they had no other lot than that they cleared the land in question, is not a proper title, nor any title at all. Mere occupation is not a title of acquisition except when it concerns "things which can be; appropriated by reason of their nature, which have no owners, such as animals which are the object of hunting and fishing, hidden treasure, and abandoned property." (Civ. Cod., art. 610.)

Fourth. If, pursuant to section 41 of Act No. 190, Code of Civil Procedure, occupation of real property may constitute a title of ownership by prescription after the lapse of ten years, yet these ten years must be "after this Act comes into effect" (Id., sec. 38); and for the purposes of the enforcement of the Act, it is not understood to have come into effect until October 1, 1901, though it really appears to have been passed on August 31, 1901, and from then, 1901, to August 20, 1909, when this suit was commenced, the said ten years did not elapse.

By no mode or title of acquisition whatever has the defendant been able to acquire ownership of the land in

question, which, by express provision of the law, belonged to the plaintiffs as the legitimate successors in interest of Mariano Villanueva.

The judgment appealed from is affirmed, with the costs of this instance upon the appellant. So ordered.

Torres, Mapa, Johnson, Carson, and Trent, JJ., concur.

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