

SILVESTRA TENORIO Y VILLAMIL, PLAINTIFF AND APPELLEE, VS. THE MANILA RAILROAD COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 6690. March 29, 1912

Ponente: CARSON, J.

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CARSON, J.:

This is an action to recover damages for the alleged unlawful detention and occupation by defendant of a small parcel of land, the property of the plaintiff, situated near the railroad station in Dagupan in the Province of Pangasinan.

Plaintiff alleges that the land in question, some 1,219 square meters in extent, is worth P7,314.40; that before it was entered upon by defendant, two small houses erected thereon brought her a rental at the rate of P280 per annum, of which she has been deprived by defendant since the month of March, 1907; that the defendant company compelled her to move three buildings from the land taken by it, whereby she had suffered damages in the sum of P400 and that as a result of the unlawful occupation of this tract of land by the defendant company she had suffered further damages to the extent of P250 from the accumulation of water on an adjoining parcel of land of which she is the owner.

Defendant company answering, admits that it has taken and is now occupying a small part of the land in question, 314 meters in extent; but alleges that it is now and always has been ready and willing to pay the plaintiff a fair price for the land thus taken and all damages to the remainder of her land resulting therefrom.

In explanation of the fact that it took possession of and continues to occupy this part of the land in question without the express consent of the plaintiff and without having made payment therefor, defendant company alleges that the land taken is a part of certain lands described in condemnation proceedings instituted in the Court of First Instance of the Province of Pangasinan, whereby, by virtue of the authority lawfully conferred upon defendant company, it sought to have the land in question, and other lands in that province, condemned for use as a roadbed; and while the facts are not fully developed in the record, it does appear that condemnation proceedings were regularly instituted for the purposes indicated, and there are indications in the record that the land in question was included in the lands sought to be condemned therein, but that in those proceedings it was described as the property of one Silvino Tenorio, although the name of the true owner, the plaintiff in this action, is, as she alleges, Silvestra Tenorio.

The defendant company both by demurrer and answer, undertook in the court below to question plaintiff's right to maintain this action (which is an ordinary action for damages for trespass on plaintiff's land) on the ground that under the statutory provisions for the condemnation of lands by virtue of which defendant company had already instituted proceedings looking to the condemnation of the land in question, it was the duty of the plaintiff to seek redress in, those proceedings. But while we agree with counsel for defendant company that, had the defendant company before entering upon and taking possession of the land in question, proceeded in accordance with the provisions of law touching condemnation proceedings, by virtue of which it claims to have been acting, in that

event the plaintiff would not be entitled to bring a separate action; we are of opinion that in the absence of proof of a substantial compliance with the provisions of law touching such proceedings the plaintiff was clearly entitled to institute any appropriate action to recover the damages which she may have suffered as a result of an unauthorized and unlawful seizure and occupation of her property.

"The mode in which land may be condemned and the steps to be taken for that purpose are prescribed either by the statute or charter conferring the right of eminent domain or by a general law. The remedy so provided is exclusive, and as a general rule the steps prescribed by the statute must be followed or the proceedings will be void. Since these statutes are in derogation of general right and of common-law modes of procedure, they must be strictly construed in favor of the landowner, and must be at least substantially or as sometimes said, 'fully and fairly' complied with. Indeed the general rule in the absence of statutory provision to the contrary, is that they must be strictly complied with. * * * Thus the statutes must be complied with as to filing and contents of petition or application, * * * notice to the landowner and other persons interested in the property, * * * and all other conditions precedent prescribed by the statute." (Cyclopedia of Law and Procedure, vol. 15, pp. 815-817, and cases cited. See also American and English Encyclopedia of Law, vol. 10, p. 1054, and cases cited.)

The mode in which the defendant company was authorized to exercise the power of eminent domain is to be found in various Acts of the Commission of which the following are pertinent citations:

"The Government of the Philippine Islands, or of any province or department thereof, or of any municipality, and any person, or public or private corporation having by law the right to condemn private property for public use, shall exercise that right in the manner hereinafter prescribed." (Act No. 190 of the Philippine Commission, sec. 241.)

"The complaint in condemnation proceedings shall state with certainty the right of condemnation, and describe the property sought to be condemned, showing the interest of each defendant separately." (Act No. 190, sec. 242.)

"In addition to the method of procedure authorized for the exercise of the power of eminent domain by sections two hundred and forty-one to two hundred and fifty-three, inclusive, of Act Numbered One hundred and ninety, entitled 'An Act providing a Code of Procedure in civil actions and special proceedings in the Philippine Islands/ the procedure in this Act provided may be adopted whenever a railroad corporation seeks to appropriate land for the construction, extension, or operation of its railroad line." (Act No. 1258, sec. 1.)

"Whenever a railroad corporation is authorized by its charter, or by general law, to exercise the power of eminent domain in the city of Manila or in any province, and has not obtained by agreement with the owners thereof the lands necessary for its purposes as authorized by law, it may in its complaint, * * * in the Court of First Instance of the province where the land is situated, join as defendants all persons owning or claiming to own, or occupying, any of the lands sought to be condemned, or any interest therein, within the city or province, respectively, showing, so far as practicable, the interest of each defendant and stating With certainty the right of condemnation, and describing the property sought to be condemned. Process requiring the defendants to appear in answer to the complaint shall be served upon all occupants of the land sought to be condemned, and upon the owners and all persons claiming interest therein, so far as known. If the title to any lands sought to be condemned appears to be in the Insular Government, although the lands are occupied by private individuals, or if it is uncertain whether the title is in the Insular Government or in private individuals, or if the title is otherwise so obscure or doubtful that the company can not with accuracy or certainty specify who are the real owners, averment may be made by the company in its complaint to that effect. Process shall be served upon residents and nonresidents in the same manner as provided therefor in Act Numbered One hundred and ninety, * * *." (Act No. 1258, sec. 3.)

* * * The provisions * * * as to persons not notified of the condemnation proceedings, shall be such as are defined in sections 248 to 253, inclusive, of Act No. 190." (Act No. 1258, sec. 5, last five lines.)

"Nothing herein contained shall be construed so as to injure, prejudice, defeat, or destroy the estate, right, or title of any person claiming land or any part thereof, or any interest therein, who was not made a party defendant to the condemnation proceeding and did not have actual or constructive notice of the proceeding in such manner as the law requires." (Act No. 190, sec. 253.)

The record wholly fails to disclose that process requiring the plaintiff to appear and answer the complaint filed in the condemnation proceedings was served upon her, or upon any of the occupants of the land; and this, notwithstanding the fact, as found by the trial court and practically conceded by counsel for defendant, that she was the known owner of the land, in question.

The statute authorizing the defendant company to exercise the power of eminent domain, being in derogation of general right and conferring upon it exceptional privileges with regard to the property of others of which it may have need, should be construed strictly in favor of landowners whose property is affected by its terms. Hence before any right to take possession of land under this statute could have been lawfully exercised by the company, the provisions of the statute must have been "fully and fairly" complied with. Manifestly, the seizure and occupation of property without first serving process on the owners or occupants is so gross a violation of one of the most essential conditions precedent prescribed by the statute, that no claim by the company that it is acting or desires to act under the authority of its charter in taking possession of this property can be heard by way of defense to an action for damages for the unlawful trespass. The right to take such land, over the objection of the owner, and to have a fair valuation placed thereon in special proceedings prescribed by law for that purpose, is made to depend upon the compliance by the company with certain conditions precedent, and of course no rights can or do arise unless such conditions are fully and fairly complied with. Not only did the defendant company fail to prove in the lower court that it had served process on the owner and the occupants of the land, but it did not even claim to have done so when its counsel undertook to introduce in evidence the record in the pending condemnation proceedings. And, indeed, no such claim has at any time been made on its behalf.

Plaintiff's evidence as to the value of the land appropriated is not wholly satisfactory but in the absence of any evidence whatever, worthy of the name, to put in doubt the testimony of her witnesses, we do not think that we would be justified in reversing the findings of fact by the trial judge who arrived at his conclusions after seeing and hearing these witnesses testify.

Counsel for defendant company assigns among other errors the action of the trial judge in excluding certain testimony and insists that the exclusion of these witnesses justifies and requires the reversal of the judgment of the court below and the return of the record for a new trial. But while we agree with counsel that the trial judge erred in excluding certain evidence offered by the defendant, we are satisfied upon a review of the whole record that the result would not have been otherwise had this evidence been admitted, and we do not think that a reversal should be granted for error of this character.

We think that the evidence of defendant, including the map, whereby counsel undertook to show the exact amount of the land of the plaintiff occupied by the roadbed of the railroad; as also the evidence offered touching the assessed valuation of the land of the plaintiff should have been admitted for what it was worth. But we do not think that had this evidence been admitted, and granting that it would have been to the effect claimed for it by counsel for the defendant, that the result would have been different.

The conclusion of the trial judge from the evidence before him was that the entire tract mentioned in his judgment had been rendered substantially worthless to the plaintiff by the unauthorized occupation of a part of it by the defendant company, and we do not think that the evidence on which he based this conclusion would be affected by proof that only a part of the tract was actually occupied and retained in possession. The theory on which the trial judge correctly proceeded was that defendant company having unlawfully taken possession of a part of the

tract of land in question, and by its operations thereon rendered the whole tract worthless to the plaintiff, plaintiff is entitled to abandon the entire tract, and recover damages for its full value. So also proof of the assessed valuation of the land in question, while proper and competent evidence in a case of this character, is at best of but very little value in a judicial inquiry as to its actual market value. We do not believe that the weight to be given the practically undisputed testimony of the witnesses for the plaintiff as to the actual market value of the land in question would have been materially affected by proof that this land was assessed at a valuation greatly less than that placed upon it by the trial judge.

The judgment appealed from should be and is hereby affirmed with the costs of this instance against the appellant.

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

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