

GREGORIA ABLANG, PLAINTIFF AND APPELLEE, VS. MARIANO FERNANDEZ AND CATALINO JANDOC, DEFENDANTS AND APPELLANTS.

G.R. No. 7399. August 06, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action commenced in the Court of First Instance of Ilocos Sur to recover the possession of three parcels of land located in the municipality of Vigan of said province.

On the 19th day of January, 1911, one Vicente Donato, claiming to be the legitimate son and private administrator of the property of one Chan-Peco (alias Oles), who was alleged to be absent from the Philippine Islands in the Chinese Empire, presented a complaint against the said defendants. To said complaint the defendants demurred. The demurrer was sustained and the plaintiff required to amend his complaint. On the 1st day of March, 1911, an amended complaint was presented, in which the name of the plaintiff in the first complaint (Vicente Donato) was substituted by that of Gregoria Ablang. In the amended complaint the now plaintiff (Gregoria Ablang) alleged that she was the legitimate wife of the said Chan-Peco (alias Oles); that her husband was absent and that she did not know his whereabouts; that, Chan-Peco (Oles) was absent and was the absolute and true owner of the lands in question and was in possession of the same through the plaintiff, and had been in possession of the same for a period of thirty years.

We deem it unnecessary, by reason of the issues presented, to state more of the facts contained in the complaint.

To the complaint the defendants presented a demurrer in which they alleged:

First, that the plaintiff had not legal capacity to maintain the action, and, second, that the complaint did not state facts sufficient to constitute a cause of action.

Upon a consideration of said demurrer the lower court overruled the same and required the defendant to answer. To the ruling of the lower court overruling the demurrer the defendant duly excepted. Later the defendant did answer, and the cause was brought on for trial. After hearing the evidence the lower court found that the plaintiff was entitled to the possession of the lands in question, and rendered a judgment accordingly.

From the judgment of the lower court the defendants appealed, and in this court made a number of assignments of error, one of which, the second, was as follows:

"The lower court erred in overruling the demurrer presented to the amended complaint."

In support of the contention that the lower court committed an error in overruling their demurrer, the defendants and appellants alleged that the plaintiff was without authority to maintain the present action, by virtue of the provisions of articles 181, 185, 187, and 220 of the Civil Code. It will be remembered that the plaintiff in the second complaint alleged that she was the wife of Chan-Peco; that Chan-Peco was absent and that she did not

know his whereabouts; that she was administering his property. No allegation is made in the complaint that she had been appointed, in accordance with the provisions of the law, by the courts to administer the property of her absent husband, nor to maintain an action with reference to the same. Said article 181 provides:

"When a person has disappeared from his domicile and his whereabouts is unknown, and he has not left any attorney to manage his property, the judge, on petition of a lawful party or the public attorney, may appoint some person to represent him in whatever may be necessary."

Said article 185 provides that:

"The declaration of absence may be demanded by:

"1. The consort who is present.

"2. The heirs instituted in his testament and who present a trustworthy copy of the same."

Said article 187 provides that:

"The administration of the property of the absentee is to be granted, according to the order established in article 220 and the persons specified therein

Under article 220 the administration of the property shall be granted as follows:

"1. To the consort not legally separated.

* * * * *

"3. To the children."

The complaint shows upon its face that the plaintiff, Gregoria Ablang, is the wife of Chan-Peco, the admitted owner of the property in question; that he is absent and that his whereabouts are unknown. The plaintiff as the wife of the absentee has failed utterly to allege sufficient facts to show that she has complied with the conditions mentioned in the articles above quoted of the Civil Code. In the absence of such allegations, it is clear that she has not legal capacity to maintain the present action.

The judgment of the lower court overruling the demurrer to the complaint is therefore hereby reversed, and it is hereby ordered that the cause be remanded to the lower court, with permission to the plaintiff to amend her complaint within a period of ten 'days after notice of the foregoing decision.

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

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