

MANUEL SARITA ET AL., PLAINTIFFS AND APPELLANTS, VS. ANDRES CANDIA, DEFENDANT AND APPELLEE.*G.R. No. 7768. November 14, 1912*

Ponente: ARELLANO, C.J.

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The spouses Apolinario Cedenio and Roberta Montesa acquired during their marriage a piece of land, apparently of an area of 2 cavanos of corn upon which they had planted fruit trees. Apolinario Cedenio died in 1895 and Roberta Montesa in 1909. It is alleged that during the lifetime of the spouses, from 1886 to April, 1909, on which latter date Roberta Montesa died, Andres Candia was holding and cultivating the said land, but that, as stated in the complaint, he did so merely under a lease and paid the said spouses one hundred pesos semiannually; that, from May, 1909, he refused to pay the emphyteutic rent for the cultivation of the land, appropriated the and claimed ownership thereof; and that he also took possession of four mares, twelve carabaos, and several pieces of furniture which were in the erected on the said land a house worth 50 pesos which he also seized and claimed as his property. Apolinario Cedenio had three brothers and one sister, Macario, Domingo, Leon, and Cristeta, of whom only the last mentioned is living. Macario left five children, among them Tomas Cedenio; Domingo, same number, among them a daughter named Sofia, who died leaving a son, Manuel Sarita; and Leon, four, among them, Gregorio Cedenio. All of these except Gregorio Cedenio and his brothers sue for the ownership of the land and the other personal property of Andres Candia which, together with the fruits thereof, they requested the Court of First Instance of Cebu to sentence the latter to return to them and, further, that he indemnify the the amount of P800, and pay the costs.

Andres Candia, a nephew of Roberta Montesa as the son of her sister, testified that he had been brought up, from the time he was very young, in the house of the spouses Cedenio and Montesa; that he worked on the house which those spouses left at their death when it was under construction and, from his boyhood, assisted in the cultivation of the land; that said Apolonio Cedefio, otherwise known as Isidario Cedenio, was a cabeza de barangay of the pueblo of Sibonga, who, in order to pay certain shortages of the cabecera under his charge, on the 24th of June, sold the said land to Juan Basa Villarroza, who held it in quiet and peaceable possession for twenty-four years and at his death such possession was continued by his sons, Sinfaroso and Vicente Villarroza, from whom witness, Andres Candia, acquired the property by purchase; that at no time did he hold the same as a lessee nor pay for it any emphyteutic rent whatever; and that he never had in his possession the animals mentioned in the complaint.

The court absolved the defendant from the complaint, on the grounds that, with regard to the animals and real property sued for, there was no proof whatever that they were in the possession of the spouses at the time of their death, and, with respect to the land: (1) That the defendant was the possessor in good faith continuously and was presumed to hold under just so long as the contrary should not be proved; and (2) that neither the plaintiffs nor their alleged predecessors in interest made demand for it the period of twenty-six years, since the ownership thereof was conveyed Isidario or Apolinario Cedenio to Juan Basa Villarroza, on the 24th of June 1881, it being evident that during this very long period of time they did obtain possession of the property.

The judgment having been appealed through a bill of exceptions and the appeal having been heard, we determine: With respect to the personal property, that the opinion of the trial court is unchangeable, as, in this regard, it has not been impugned as erroneous on appeal, and is certainly in acco with the merits of the case; and, as concerns the land, (1) that this a one for the recovery of possession from the present possessor, and, in or to bring it, the plaintiffs make use of hereditary right, by styling them heirs of Apolinario Ceden; (2) that the plaintiffs are, on the one side; Ceden, who is a sister of the deceased Apolinario Ceden, on another, some nephews and nieces of the latter, his brother Macario's children; an the other, some children of Domingo Ceden, among them, Manuel Sarita, the principal plaintiff, in representation of his deceased mother, Sofia, also a daughter of Domingo Cedeño; (3) that they assert their hereditary right an intestate succession, and that the land in question was the community property of the deceased spouses, Cedeño and Montesa, as established hypothetically, especially by the plaintiffs' witnesses, Estanislao Sola Irineo Tormis; (4) that, such being the case, they could demand, as the legitimate heirs of Apolinario Cedeño, only one-half of the land, but no other half which belonged to Roberta Montesa, of whom they are not heirs ab intestato, from the fact that they are collateral relatives of this w husband: so that the claim to all the land is manifestly unfounded; (5) that, moreover, it is manifestly unfounded in so much as Sofia's son, Manuel Sarita in representation of his mother, could not act as a plaintiff, nor could Sofia, do so by representing her father, Domingo; on the hypothesis that right of representation in the collateral line can only take place in f the children of brothers or sisters (Civil Code, art. 925, par. 2), and the said Manuel Sarita is not a child of a brother, as are the children of Macario Domingo Cedeño; and; finally, that it was manifestly imprudent also to include as plaintiffs Gregorio, Lorenzo, Abundio and Jose, the children Cedeño, a brother of the deceased Apolinario Cedeño, when, as the first them testified, they did not attempt to take part in this litigation:

"Judge. Is Mr. Sevilla your attorney?

"Witness. No, sir.

"Q. Have you employed him? - A. No.

"Q. Have you spoken to him about this case? - A. No, sir.

"Q. So, then, you were never in Mr. Sevilla's office? - A. I do not know where it is.

"Q. Have you authorized this action against Andres Candia? - A. No, sir.

"Q. Have your brothers, Lorenzo, Juan, and the others, done so? - A. They have not.

"Q. So that in this suit neither you nor your brothers now have any claim against Andres Candia? - A. No."

Elsewhere this same witness said:

"My uncles and cousins spoke to me about the institution of this suit; I them that it could not be, because the land was purchased by Juan Villarroza at the time that our deceased uncle found himself obliged cover certain shortages against him in the cabecería; it was then that sold the land."

In view of the foregoing considerations, we decide, with respect to the exercise of the hereditary right derived from the intestate succession Apolinario Cedeño:

First. That Manuel Sarita, the principal plaintiff, in whose house, accused Exhibit D, there was drawn up at his request the engagement of all the plaintiffs to confide the suit to the attorney who has conducted it, has absolutely no such right, because he cannot represent his grandfather Domingo, since, as aforesaid, in the collateral line the

right of represent can only take place in favor of the children of brothers or sister not in favor of the grandson of a brother, such as is the said Manuel Sarita, the son of Sofia Cedeño who, in turn, was the daughter of Domingo Cedeño.

Second. That, on the hypothesis that such hereditary right derived the intestate succession of Apolinario Cedeño, does exist, it could o exercised by Cristeta Cedeño, the children of Macario Cedeño, and those Domingo Cedeño, but not by Manuel Sarita, because in inheritances the nearer relative excludes the more remote, excepting the right of representation in proper cases (Civil Code, art. 921); from which it is that, in pushing forward Cristeta Cedeño, the children of Macario Cedeño and those of Domingo Cedeño, to exercise such a hereditary right, it sh have been noticed that the personality of these parties as the nearest relatives excluded that of Manuel Sarita, the son of Sofia Cedeño, of a more remote degree.

Third. That, on the same hypothesis, in the eyes of the law no meaning whatever could be given to the document, Exhibit H of the plaintiffs, wherein it is made to appear that the widow of Apolinario Cedeño, Roberta Montesa, implored of the heirs of her deceased husband that she be allowed to continue in the possession of the land and the house of the family; inasmuch as, as co-owner of such property, she was entitled one-half of it and, besides, had a right of usufruct to one-half of the other half of the same, pursuant to the provisions of articles 837 and of the Civil Code, and until she was satisfied for her part of usufruction half of the other half remained liable for the payment of such part of usufruct. (Civil Code, art. 838.)

Fourth. The hypothesis disappears from the moment that it is proved that at the death of such alleged predecessor in interest in the inheritance land in question was not owned by him, it having been transferred in 1881, according to a conclusion established by the trial judge. The the action for the recovery of possession, derived from such alleged inheritance, cannot exist.

This transfer of the land affected by Isidario or Apolinario Cedeño w originally the title alleged by the defendant a title which must not presumed in the present case, but proved. It is true that the possess the capacity of owner, has in his favor the legal presumption that he holds under lawful title and cannot be compelled to exhibit it (Civil Code 446); but it is also true that when the defendant agrees with the plaintiffs that the thing demanded belonged to a determinate person during his lifetime from whom these latter claim to derive their right existence is thereby admitted of a right of ownership opposed to that the present possessor, and hence logically the necessity for the latte prove his title and exhibit it, in order to destroy the contrary presumption in favor of that prior ownership.

The defendant, according to the finding of the trial judge, has proved he has such a title, by the exhibition of three, documents: one, of sale by Isidario or Apolinario Cedeño to Juan Basa Villarrosa (Exhibit 2); another, of the sale with pacto de retro by the latter's son, Sinforoso Villarrosa, to the defendant (Exhibit 3); and the other, of final sale by the other son, Vicente Villarrosa, to the same party, Andres Candia (Exhibit 4).

Against this finding of the lower court, the appellants allege: 1. That Isidario Cedeño, the vendor, has nothing to do with Apolinario Cedeño, his predecessor in interest; and, 2. That the land in Talamban known as tha Juan Basa Villarrosa is about 15 or 20 brazas distant from the land Talamban which is concerned in this litigation.

But the finding impugned is in no wise erroneous. Tomas Cedeño, one o the plaintiffs, testified that his uncle Apolinario had the baptismal or Christian name of Isidario, was better known by the nickname of Adiot, and was the only cabeza de barangay in Sibonga with the surname of Cedeño. Domingo Cedeño, who was erroneously made to appear as a plaintiff, said that the original owner of the land in question was "his deceased uncle Isidario Cedeño," and that Isidario was the true name. The averment of the appellants that "the finding of the court is precisely contrary agreement made by both parties" (brief, 8) is in all respects incorrect the said agreement, they say, no other name than that of Apolinario wa recorded and admitted to be the name of the plaintiffs, predecessor

in interest. By that same agreement the defendant could not be heard to prove another so different name as that of Isidario for the purpose of confusing it with that of Apolinario * * * (brief, 8). The agreement only says: "By agreement between the attorneys for both parties, the complaint in this case is understood to be amended in the sense that the name of Apolonio Cedeño, which occurs in the first line of the first paragraph of the complaint, is substituted for the name of Apolinario Cedeño; it being agreed that the amended answer which the court has just admitted refers to the complaint so amended." The only point that appears to be agreed upon is that where the plaintiffs say in their complaint Apolonio, the same shall be read Apolinario; but it was not agreed that the party Apolinario might not be known by any other name than that of Apolinario, nor that the defendant should not try to prove another name as that of Isidario.

It is also in all respects inexact that the land in Talamban, the subject of the complaint, which formerly belonged to Apolinario Cedeño, is different from the land in Talamban which the defendant claims was sold by Isidario Cedeño to Juan Basa Villarrosa: The complaint says: "Boundaries: On the north, by Calixto Nejarda; on the south, by the river called Grande and Alejandro Mirafuentes; on the east, by the same river, Grande and on the west, by a large rock." Defendant's Exhibit 2 says: "Bounded the north by Calixto Nejarda; on the east by Calixto Nejarda; on the south by Alejandro Mirafuentes; and on the west by Miguel and a large rock." The plaintiffs' witnesses, Solano and Cuestas, and the plaintiffs themselves, Sarita and Tomas Cedeño, designate the same boundaries as does the defendant, giving also as the eastern boundary, besides the Calixto Nejarda * * *. The interposition of "Miguel" as being on the west, written in other documents as on the south, is perfectly explained by the defendant: It refers to Miguel Calixto who broke up the ground between the large rock and the land in dispute; and so it is that in subsequent documents it also appears as the western boundary.

For the preceding reasons, the judgment appealed from is affirmed, with the costs of this instance against the appellants.

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

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