

**TEODORO PALANG ET AL., PLAINTIFFS AND APPELLEES, VS.
JOAQUIN CLAVANO ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 8059. September 24, 1913*

Ponente: ARELLANO, C.J.

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This suit involves a piece of urban land, intended for building purposes, with a frontage of 6 brazas and a depth of 7, which in 1904 was occupied by a frame house belonging to the defendant. This land was entirely expropriated for the widening of a street in the city of Cebu, the expropriation being in the nature of an exchange, that is, the city gave the defendant another lot or parcel of land equivalent to the condemned property, on which was rebuilt, with somewhat larger dimensions, the house he had had on the expropriated land. In all this matter the committee on street widening, which exercised its functions in the said city of Cebu by virtue of an act expressly passed for the purpose, treated exclusively with the defendant.

The plaintiffs now demand the ownership of this land in place of that other expropriated parcel, and allege that the condemned property belonged to them and that the defendant had no right whatever thereto.

The plaintiffs base their action on the following facts: (1) That the land in question originally belonged to Hilaria Peñalosa; (2) that Hilaria Peñalosa had a legitimate daughter, named Petrona Borromeo, who married Maximiano Palang, from which marriage several children were born that are the herein plaintiffs; (3) that Petrona Borromeo died in 1899, prior to the death of her mother, Hilaria Peñalosa, which occurred in 1900, and that, upon the latter's death, the plaintiffs of the surname of Palang inherited, in their mother's representation, the land left by Hilaria Peñalosa at her death; (4) that this land was held by Hilaria Peñalosa during her lifetime and was occupied by a house in which she lived, but which was destroyed by fire some time in 1886 or 1887; (5) that, after the destruction of the house, Hilara Peñalosa transferred her residence to "the tiled-roof house," one that belonged to a relative of hers named Peñalosa, and later, along in the beginning of 1902, the lot was occupied by one Maria Barba with a store, which was also destroyed by a fire that occurred on December 7 of the same year, 1902; and (6) that the lot was immediately thereafter again occupied by the defendant Joaquin Clavano, then married to Maria Barba, with the frame house aforementioned. The foregoing facts were fully admitted at the trial.

The plaintiffs contend that the land was not occupied, first, by Maria Barba, and, afterwards, by her husband Joaquin Clavano, through any right of ownership or other real right of these spouses in the property, but by virtue of a lease executed between the latter and themselves under a rental price of P6 per month, and assert that this suit originated from the fact that, although Joaquin Clavano was authorized by the plaintiffs to construct only a camarin or frame building, to be used for storage purposes, similar to the former structure belonging to Maria Barba which had been burned, he erected a large frame house. The plaintiffs state that such unauthorized action was reported by them to their father, then absent in Mambajao, who, upon his return to Cebu, advised them to bring the present suit.

Joaquin Clavano, in turn, alleged that he erected the said house, not by virtue of any authorization-given by the

plaintiffs, whom he did not recognize as vested with any right whatever in the land in question, but by reason of his own right, as being the owner of the property that he was, on account of his having purchased the same from its original owner, Valentina Peñalosa, who in turn had purchased one-half of it from her sister and coowner, Hilaria Peñalosa, and in such manner became possessed of the entire property.

It is also a fact admitted at the trial, that in "the tiledroof house" (belonging to one of the Peñalosa family) where Hilaria Peñalosa had taken shelter after the fire of 1886 or 1887, there lived her sister, Valentina Peñalosa, together with Maria Barba, and Joaquin Clavano, as well as the plaintiffs, the Palangs, and it may be affirmed that, up to the date of the complaint, 1908, complete harmony existed among them all.

The fundamental fact, which it was incumbent upon the plaintiffs to prove in bringing this action for recovery of possession, is the exclusive ownership of the lot which they claim lay in their grandmother, Hilaria Peñalosa, and this they attempted to establish in no other manner than by the testimony of one of them, Teodoro Palang, and by that of his father, Maximiano Palang. The latter did not substantiate his statements made on the stand, and the former's testimony consisted in his mere averment that he had been told by the said Hilaria Peñalosa that she had inherited the land from her mother.

If this alleged fact of inheritance is true, then, as it is admitted that Hilaria and Valentina Peñalosa are sisters, it follows that the lot in question may belong as well to Valentina as to Hilaria, or at least the presumption arises that it ought to belong to them both in equal shares, upon the basis of that mode of acquisition. When the plaintiffs had terminated the presentation of their evidence, no proof had been shown by them in support of the pretended exclusive ownership of Hilaria Peñalosa, other than the testimony of the two above-mentioned witnesses. Only in rebuttal was any direct testimony given, by the witness Maximiano Palang, and a notarial document adduced, relative to the pretended hereditary title of Hilaria Peñalosa. Maximiano Palang then testified, and notwithstanding that the question was objected to as being improper on rebuttal, that he had knowledge of a division of inheritance that had been made between Hilaria and Valentina, in which the former had been awarded the said lot. The notarial document, the plaintiffs' Exhibit A, is nothing more than a notarial certificate drawn up at the request of Hilaria Peñalosa, in which it is recorded that three persons declared that the lot concerned is of the exclusive ownership of Hilaria Peñalosa inasmuch as she inherited it from her deceased mother, Maria Angulo, that they know this on account of their being neighbors of Hilaria Peñalosa, and that the lot is probably worth about P200.

If a common hereditary right derived from a common predecessor in interest is recognized in behalf of these sisters, a hereditary right that has produced a coownership between them, the termination of such coownership is not sufficiently established by the mere assertion of a single witness to the effect that a partition of inheritance was made between the coowners, when this single witness may be challenged on account of his being the plaintiffs' father and the person who advised the prosecution of this action.

Witnesses who affirm the certainty of a right or of a fact, at the request of a party interested in its existence, and make such a statement in a simple notarial certificate without the due solemnity of an oath and without the summoning nor the presence of the party who may be injured by that affirmation, prove nothing at trial by the presentation therein of such notarial certificate, so long as it does not reproduce their testimony with the established legal formalities. Such notarial certificates, by themselves alone, were accorded no legal value as proof by the former Ley de Enjuiciamiento Civil, nor have they such at the present time under the existing Code of Civil Procedure.

If at this point the demand for recovery were to be decided, there would be no ground at all on which to allow it, whatever might afterwards be the procedure of the defendant and however deficient his exceptions or defense

might be.

"The possessor by virtue of ownership has in his favor the legal presumption that he holds possession by reason of a sufficient title and he cannot be forced to show it." (Civil Code, art. 448.)

But the defendant in turn admits that his and the plaintiffs' rights have a common origin, though not the same, and in this case he must offer satisfactory proof of his sole right at the present time, exclusive of that which in the beginning was shared by both participants.

That proof he has furnished by means of the following documents:

(1) A public instrument of December 1, 1864, proving that the brothers Mariano and Leonardo Vestil sold to the sisters Hilaria and Valentina Peñalosa, for the price of P100, a piece of land 6 brazas in frontage by 7 in depth, the boundaries of which were, without objection, specified during the trial for the purpose of identifying it with that which is the subject matter of the complaint. This public instrument is Exhibit 1 of the defendant, Joaquin Clavano. Objection was raised to its admission on the ground that it was irrelevant, but the court overruled the objection and it was admitted in evidence.

(2) An official document of December 29, 1864, whereby the provincial government of Cebu granted to the said sisters, Hilaria and Valentina Peñalosa, a permit to build a wooden house with a nipa roof on the land described in the public instrument just above mentioned. (Defendant's Exhibit 4.) No objection was made to its admission.

(3) A private document executed by Hilaria Peñalosa in favor of her sister, Valentina Peñalosa, on March 10, 1884, whereby the former sold to the latter her one-half interest, then undivided, in the land in question. The document was signed by Brigido Macachur and Lucas Macachur as witnesses. (Defendant's Exhibit 5.) The vendor and the witness Lucas Macachur having died, only Brigido Macachur, who was of legal age, appeared at the trial and vouched for the authenticity of the document and of the signature of the other witness, Lucas Macachur. The opposing party, on the presentation of this document, said: "We object to the admission of the document, on the ground that it is irrelevant." The court: "The document is admitted." No exception was taken to this ruling.

(4) The document (Exhibit 3) proving that Valentina Peñalosa in 1905 paid the taxes assessed on the said land.

(5) The notarial document (Exhibit 2) proving the sale made of all the land in question by Valentina Peñalosa to the defendant Joaquin Clavano, on February 5, 1907, admitted without objection.

The findings of the trial court were:

(1) That the land in question was acquired by Hilaria Peñalosa and Valentina Peñalosa, through purchase from the brothers Mariano and Leonardo Vestil on December 1, 1864, as proven by Exhibit 1.

(2) That the sale made by Valentina Peñalosa to Joaquin Clavano on February 5, 1907, is evidenced by Exhibit 2.

(3) But that the court cannot believe that the documentary proof of the sale said to have been made by Hilaria Peñalosa on March 10, 1884, Exhibit 5 of the defense, was drawn up on the date it bears, and is rather of the opinion that it is a forged document.

In view of these findings, it has been proven that the origin of the ownership of the land in question it not that averred in the first point of the complaint, to wit, that Hilaria Peñalosa inherited it from her mother, but the origin stated in the answer, to wit, that it was purchased by the two Peñalosa sisters from the two Vestil brothers; that, in accordance with Exhibit 4—it may be added—the house constructed on the land did not belong solely to Hilaria Peñalosa, but, presumptively, to both the sisters, Hilaria and Valentina, since shortly after they purchased the

property from the Vestil brothers, they applied for a permit to build the said house; that it is a fact—which may also be added by way of corroboration—that it was Valentina Peñalosa who, in 1905, paid the taxes on the land (Exhibit 3); and that the sale of the land, executed by Valentina Peñalosa in favor of Joaquin Clavano, is a fact which was not denied at the trial (Exhibit 2).

Considering the facts alleged and the evidence adduced, the document Exhibit 5 of the defense may not be qualified as false. Its contents, certified, vouched, and ratified by the only surviving witness and unassailed as false at the trial, cannot be held in this decision to be false. Its contents must be deemed to be true, and, consequently, Hilaria Peñalosa did sell her one-half of the land to her coowner, Valentina Peñalosa, on March 10, 1884, on which date the latter became the sole owner of the land and the joint ownership and tenancy then ceased.

For the foregoing reasons there is no warrant for the dismissal of this case "for the time being" and the reservation of the rights made for each of the parties by the trial court in his judgment.

In place thereof, it is our final decision that Joaquin Clavano is the lawful owner of the lot demanded, by reason of titles perfectly conveying ownership.

The judgment appealed from is reversed, without special finding as to costs.

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

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