

RAMON L. ORTIZ, PLAINTIFF AND APPELLANT, VS. ASUNCION FUENTEBELLA ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 8108. August 22, 1914

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

There has been inscribed in the property registry of the Province of Ambos Camarines, since August 6, 1892, a possessory information regarding a parcel of pasture land in the place called Tagas in the municipality of San Jose of said province; in area 27 hectares and 90 centares; bounded on the north by the rivulet Dacuilan and Calait, on the south by the San Miguel River, on the east by the sea, and on the west by the lands of Mariano Pelayo, Maria Pagueo, and Gaspar Codillo. The authenticity of this possessory information is not and never has been questioned.

The person securing this possessory information was Don Ramon Ortiz, a resident of the said town of San Jose, who, according to the contents of the information, "proved before the justice of the peace of that town the possession he had held of said land for fifteen years previously, when he had acquired it by cultivating it himself, without securing any written title;" and it was approved by order of July 2, 1892.

On March 10, 1909, Marcelina Ortiz, daughter of the said Don Ramon Ortiz, addressed to Asuncion Fuentebella the following letter:

"I have been informed that you are thinking of setting out coco palms on the lands that our parents possess in the place called Tagas, of this municipality, used as a pasture for our cattle, within the boundaries formed on the north by the rivulet Rangas Sadang, on the east by the beach, on the south by the San Miguel River that flows into the Sabang Bunga, and on the west by the lands of Gaspar Codillo and others. If this be true, I request that you desist from your purpose."

Asuncion Fuentebella answered the foregoing letter on the 19th of the same month and year in the following words:

"Regarding my idea of setting out coco palms, you are misinformed; I am not thinking of setting out coco palms, as you state, on lands belonging to your parents."

Under date of December 29 of the same year 1909, Asuncion Fuentebella appears in a public document as the vendee of all the land included in that inscribed information the vendors being the brother and sister Juan and Sotera Cano, who in said document state nothing more than the following: "This land has been quietly and peacefully possessed by our late parents for thirty years prior to this date." Thirty years preceeding this date, which is December 29, 1909, are the years that have elapsed since 1879.

In view of this attitude of Asuncion Fuentebella, Ramon Ortiz filed the present complaint, wherein he asks for restitution of the possession of said parcel of land and P200 as damages.

Asuncion Fuentebella cited Juan and Sotera Cano in defense of the title. She answered the complaint on August 21, 1911, and said that she had been in possession of the said land for more than two years and that she had set out

thereon over 5,000 coco palms and built a house, wherefore she prayed that either the complaint be dismissed, or that the plaintiff pay her P8,000 Philippine currency for the coco palms set out and the house built. The vendors, Cano and his sister, substantiated their possession from the time of inheriting the property from their parents to the time of the sale; and subsidiarily, should this defense fail, they alleged prescription in favor of the defendant Fuentebella.

After examining both the oral and documentary evidence the Court of First Instance of Ambos Camarines absolved the defendant from the complaint with the costs against the plaintiff, who appealed from the judgment.

Asuncion Fuentebella cannot make her personal possession prevail over the possession inscribed in the property registry in favor of Ramon Ortiz, it having lasted only two years before she filed her answer to the complaint. Primarily and personally the defendant has no right beyond what she has derived from Juan and Sotera Cano.

With reference to Juan and Sotera Cano's possession, the trial court's conclusions are: That these Cano defendants have not really and materially possessed a great part of the land; that Felipe Cano, the father of these defendants, had a house built on the tract, and probably exercised acts of possession over the land in the immediate neighborhood of the house and its vicinity by setting out fruit trees on a part thereof and now claims to have exercised such acts of possession over the whole of the land in question, which was only planted in breadfruits and coco palms around his house (B. of E. 15); that said land was not utilized during this time, except for what said heirs of Felipe Cano had there, consisting in some plantations of coco palms. (Ibid., 13.)

As for the law on this point, the court reached the two following conclusions:

"2. That Felipe Cano was in possession of part of the land during his lifetime and that after his death this possession passed to his children, two of whom are Juan and Sotera Cano.

"3. That Juan and Sotera Cano in the year 1908 sold this land to the defendant Asuncion Fuentebella, who then took possession thereof and has held it to date. At the time of this transfer to the defendant Fuentebella, Juan Cano and Sotera Cano were in possession of the land as heirs of their father Felipe Cano; but the heirs of Felipe Cano have not joined with those herein cited to defend the title, Juan Cano and Sotera Cano, in this sale nor have they appeared as parties and this court holds that their rights were not transferred by their brother and sister Juan and Sotera Cano to the defendant Asuncion Fuentebella." (B. of E., 16.)

From this it appears that neither Felipe Cano in his lifetime nor his children after his death possessed in the place called Tagas more space than was occupied by their house and their small plantations of breadfruit and coco palms around it, that is to say, merely a portion of the tract of 27 hectares in question, not all of it; and that, consequently, they could not sell to Fuentebella more than the space occupied by the house and some small plantations of breadfruit and coco palms, and of this small part only their hereditary portions, not those which on that hypothesis should pertain to their coheirs.

Reviewing the evidence, we find the following facts:

Sotera Cano and Juan Cano stated that they had other brothers living, Bernabe and Potenciano Cano, and also some nephews, the children of other brothers now deceased; and, according to Juan Cano, the vendee Fuentebella was acquainted with this fact.

Juan Peña, witness for the defendant, a man of 68 years of age and brother-in-law of Felipe Cano, stated that the latter had had his house in Tagas "a little outside the land in question, although his plantation of breadfruit trees was within the land in question" (p. 36); that he had had nothing but a house and that it had been destroyed; that Felipe Cano had been dead for over thirty years, for the witness was then only a boy, "a child still," according to his own words; that after Felipe Cano had died and the house had been destroyed, his widow did not rebuild it, but

that his heirs "went to live on the other side of the Mitil Creek, whither they changed their residence" (pp. 41 and 42); and the person who went to live in the place they left was Cipriano Compuesto, who built his house there; that Don Ramon Ortiz had carabaos and cattle there from the time of the Spanish Government; and that on the land in question there are coco palms that were planted by Cipriano Compuesto beside his house.

This testimony of a witness for the defendant, a resident of the place where the land in question is located, is of the greatest importance, since it amounts to confirmation of what already, on page 7, the plaintiff had testified, to wit, that in the year 1882 Cipriano Compuesto, with his consent, had set out coco palms in the place where his cattle pen (the plaintiff's) was constructed—that is, in the place where, from what the witness Juan Peña says, Felipe Cano's destroyed house had been; and that the plaintiff had allowed Cipriano Compuesto to set out those coco palms on condition that if he did not remain on the land he would have to sell them, as indeed happened, those coco palms set out by Compuesto now belonging to the plaintiff. Already, on page 6, the plaintiff had also declared that one of the western boundaries of the land in question, as appears in the information inscribed in the registry, was the land of Maria Pagueo, which passed to Cipriano Compuesto so that in the plan Exhibit B of the plaintiff, Cipriano Compuesto appears as the owner of the land that adjoins it on the west; and if, as the witness Juan Peña states, Cipriano Compuesto built his house in the very same place where Felipe Cano had his, a little outside the land in question, and that his plantation of breadfruits was on the land in question, and Compuesto also set out his coco palms on the said land with the plaintiff's permission, the consequence is that Felipe Cano's house represents nothing else than Cipriano Compuesto's, and the breadfruit trees of Felipe Cano nothing else than Cipriano Compuesto's coco palms—that is to say, that both houses were "a little outside the place in question" and that merely the plantation of breadfruit trees of the one and of coco palms of the other were those on the land in question, Compuesto's planting of coco palms, which later passed to the plaintiff, being by permission of the latter.

So the following findings of fact are to be regarded as established upon the foregoing evidence: (1) That Felipe Cano, the predecessor in interest of the Cano defendants, did not have his house on the land in question, but a little outside of it, and that on it he had only his plantation of coco palms; (2) that his house was built on the same place that later came to be Maria Pagueo's land, conterminous on the west with the land in question, according to the possessory information; (3) that this same land of Maria Pagueo became Cipriano Compuesto's, and it appears in the plan (Exhibit B), made in 1892, as conterminous on the west with the land in question, and of the latter Cipriano occupied only the place planted in coco palms.

Hence, if Felipe Cano's house had not been destroyed and his heirs had not moved their residence to the other side of the Mitil Creek and had remained in the same place in 1892, their land would have appeared as conterminous on the west with the land in question, instead of Maria Pagueo's in the possessory information and instead of Cipriano Compuesto's in the plan Exhibit B.

Consequently, in 1892, the date of the possessory information, they were not the possessors of the land in question but only perhaps possessors of a tract of land conterminous with it on the west. But they could not have continued even to be the possessors in 1892 of this adjoining land on the west, because, according to the testimony of their own witness, Juan Peña, when their father Felipe Cano died, they changed their residence to the other side of the Mitil Creek, and their father's death, according to the same witness, occurred when even he was young; hence it is not hazardous to conclude that in 1870 he was no longer alive, and that in 1882 either Maria Pagueo or surely Cipriano Compuesto was on the adjoining land. At all events it has been very convincingly proved that neither in 1892 nor in 1882 nor in 1870 nor at any time did Felipe Cano and his children possess the land that is the subject matter of the present litigation, and that at the death of Felipe Cano and after the house located a little outside of the disputed land had been destroyed his heirs did not continue to live there but moved

their residence to the other side of the Mitil Creek.

Sotera Cano testifies that outside this disputed land, toward the west at some 600 or 800 brazas from its boundary, they had a coco-palm grove and there they had their house, beside which they also had the plantations which they had inherited from their father Felipe Cano, this being the only house they had in that place, and in which they were living at the time of their father's death; that she was acquainted with the three persons, among them Maria Pagueo, whose lands were conterminous on the west with the disputed land, all three of which persons had their plantations. "These plantations," she adds, "are between our plantations" (p. 57). And Juan Cano says that when their father died they built the house located in the coco-palm grove; that coming from these coco palms where they were living to the visita (or barrio there is on the land) one had to cross a creek called Mitil and that "according to his belief the disputed land is the coco-palm grove where their house is located beside the plantations toward the west of the visita" (p. 68).

This belief or, as now shown, error of Juan Cano is the cause of all the other errors that have given rise to this suit.

To offset the possession attested by the registered possessory information it has not been proven in any way that either at the date of its inscription in 1892 or in 1882 or in 1879 could Felipe Cano or his children Juan and Sotera Cano have been in possession of the disputed land; and if the complaint was dismissed it was solely on the basis of the incorrect hypothesis that "at the time when the plaintiff obtained this title of possessory information, Felipe Cano, father of the persons herein cited to defend the title, Juan and Sotera Cano, or they themselves if he was dead, were in possession of said land or a part thereof." (B. of E., 15.) It has been clearly demonstrated that in 1879 Felipe Cano was already dead and that at his death and after the destruction of his house built on the border of the disputed land his children changed their residence and went to live on the other side of the Mitil creek, some 600 or 700 brazas from those borders, with plantations between, or with plantations between of the three persons named in the possessory information as adjoining on the west, among these Maria Pagueo.

The authenticity and efficacy of the possessory information having been proven by means of its inscription in the registry, and not impugned, restitution must be ordered of the possession claimed by the plaintiff, and also of the land in question, with the costs against the defendants. Consequently, the judgment appealed from, in so far as it dismisses the complaint, must be reversed.

With reference to the counterclaim set up by the defendant Asuncion Fuentebella, only the following facts have been proved:

That the defendant has been in possession of the land claimed in the complaint for only about two years from the date of the answer thereto, since August 21, 1911, that is, since some time before August 21, 1909;

That from the document she has presented in evidence she does not appear to have purchased the land claimed in the complaint until December 29, 1909, after she had already been warned by the plaintiff's daughter in March of that year not to set out coco palms on said land as it belonged to the latter's father;

That, if what the defendant and her witness Sotera Cano state is true, the sale was closed in 1908, but the document had not been drawn up until the price agreed upon had been paid;

That, according to the testimony of Juan Cano, the defendant purchased the land from Juan Cano and Sotera Cano, knowing perfectly that there were other coheirs, that is, their two brothers and various nephews whose number was not definitely stated;

That Juan Peña, witness for the defendant, states that Ramon Ortiz has had cattle and carabaos since the time of the Spanish Government, while it has been seen that, according to this same witness, Felipe Cano had land in

Tagas, not the land in question, but a little outside that land; and his children, not the same land their father had occupied, for this was later Cipriano Compuesto's, but some coco-palm groves distant 600 or 800 brazas to the west of the disputed land, whither they had moved their residence, it thus very clearly appearing in this suit that all this litigation has been maintained on a false basis, which is the belief of the defendant Juan Cano that the land now in question is exactly this coco-palm grove where his house is located beside the plantations to the west of the visita, or of the settlement formed on the land of Ramon Ortiz.

These facts being admitted, the defendants called to support the title have been unable to justify the sale they made of the land in question to Asuncion Fuentebella.

Did Asuncion Fuentebella possess the land in good faith? That is the point to be determined in the counterclaim.

It has not been proved that the defendant Asuncion Fuentebella has acted in pursuance of some evil plan in conjunction with her witness Irineo Peñas, who along with his father had from childhood been and after the latter's death continued to be the herdsman of the plaintiff's cattle on the land in question and was dismissed by the latter on account of his disloyalty and bad conduct. Now it appears that he is the principal laborer of the defendant in setting out coco palms.

However it be, we do not regard as decisive the evidence presented to prove that the defendant's possession was in bad faith. The nullity of the greater part of her title is not sufficient argument to prove that she knew of the defect in her mode of acquisition of a tract of land as belonging to Juan and Sotera Cano, when it is now demonstrated in this case that neither Sotera, nor Juan Cano, nor even their father Felipe Cano, had at any time possessed it, but another tract in the neighborhood, possession whereof might easily have caused error on the part of the purchaser. Defendant's bad faith began after the warning given in a letter by the plaintiff's daughter in March, 1909, for after having received it she then had ground to doubt that Sotera and Juan Cano could transfer any title of possession in the following December.

"Possession acquired in good faith does not lose this character, except in the case and from the moment that the possessor is aware that he possesses the thing illegally." (Civil Code, art. 435.)

The trial court has declared that it encountered a good deal of difficulty in deciding whether the coco palms had been set out before or after the receipt of the said letter, but it believes that, in view of the evidence, a large portion of the land, but not the whole, was already so planted; that the house was under construction but unfinished; and that "there is no other evidence in the case regarding the value of said house or the value of the coco palms, except what has been stated by the defendant." (B. of E., 14.) Everything done on the land, expenditures, outlay, improvements, from the moment when the letter was received bears the stamp of having been carried out when the possessor was not unaware that she was improperly in possession of the land. In the light of this holding must be determined all the questions that arise concerning the effects of the defendant's possession and the rights she is entitled to under the provisions of the Civil Code with respect to the house and the coco palms that have led to her counterclaim, once it has been ordered in this decision that possession of the land be restored to the plaintiff.

The judgment is reversed in so far as it absolves the defendants from the complaint, with the costs against the plaintiff.

Let possession of the land described in the second paragraph of the complaint be restored to the plaintiff, with the costs in first instance against the defendants, and without special finding with respect to those of this instance.

Let the case be returned to the lower court so that it may fix exactly the time when the construction and planting were carried out and determine and declare the rights and obligations of each of the litigating parties, after

weighing the evidence already adduced and what may be newly taken, in so far as pertinent.

Torres, Johnson, Carson, and Araullo, JJ., concur.

CONCURRING

MORELAND, J.:

I agree with the decision except in so far as it returns the case for further evidence.

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