

**LUIS ESPERANZA AND BALTAZAR BULLO, AS ATTORNEYS IN FACT
FOR FLORENTINO ESPERANZA, PLAINTIFFS AND APPELLANTS, VS.
ANDREA CATINDING, DEFENDANT AND APPELLEE.**

G.R. No. 8478. March 30, 1914

Ponente: CARSON, J.

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CARSON, J.:

This action was instituted by Luis Esperanza and Baltazar Bullo, acting as apoderados

(attorneys in fact) for and on behalf of Florentino Esperanza, for the recovery of certain described real property situated at Anaoon, municipality of Surigao, Province of Surigao, and which the petition alleges is unlawfully held and claimed by the defendant.

Upon the proof adduced at the trial of the cause judgment was entered in the court below dismissing the complaint, and from this judgment the present appeal is prosecuted.

The trial judge made a very full statement of the facts upon which he based his judgment, and after a careful examination of the record we are of opinion that the record fully supports the conclusions reached by the lower court. Practically the only question presented by this appeal is the degree of credit which should have been accorded to the witnesses who testified. Not only have the plaintiffs failed to establish their contention by a preponderance of the evidence but even out of the mouths of their own witnesses they have refuted the very facts upon which their claim rests.

The record establishes that one Julian Catmon, the grandfather of the defendant, was the owner and in possession of various parcels of land during his lifetime, including the parcel now in question. After his death these several parcels of land were partitioned among his children and the parcel in question came into the possession of his daughter Venancia Catmon, who was married to Ramon Catinding and to whom there were born four children, Policarpio, Andrea (the defendant), Ruperto and Eulogio. The record shows that Venancia Catmon and Ramon Catinding were married during the lifetime of Julian Catmon and that they built a small house on the land and lived there for a number of years. Andrea Catinding, the defendant, appears to have made her home with her grandfather, Julian Catmon, who lived in another house nearby on the same land. Venancia Catmon the first wife of Ramon Catinding and the mother of the defendant, died, and shortly therefore Ramon Catinding married one Sabina Butron and with his second wife came and lived on the land in question for a short space of time.

The record does not establish the dates of these various events. It merely shows that for many years the land in question was in the possession of the grandfather; that it passed from him to his daughter Venancia, who with her husband Ramon Catinding and their children continued living on the land; that after the death of Venancia the surviving husband Ramon married again and came and lived with his second wife on the land for a short time only. In the meantime it appears that Andrea, the defendant, had married a Spaniard named Gonzalez, who died in 1896. During at least a part of the time that Andrea was married to Gonzalez she did not live on the land, but it appears that her brother Eulogio, who was married at this time, had been living on the land. The record shows that

there were at least two houses on this land. After the death of her husband in 1896 Andrea returned to the land and has continued living there up to the present time, or at any rate was living on the land at the time his action was instituted.

In December, 1898, Ramon Catinding and Sabina Butron executed a deed to the land in question to Baltazar Bullo who claims that he purchased it for his grandson Florentino Esperanza, and again in May, 1904, Ramon Catinding and Sabina Butron went before a justice of the peace at Surigao and executed another deed to Baltazar Bullo for the same land. This last deed appears to have been executed in order to overcome any defects that might be found in the first instrument. A great deal of the proof offered by plaintiffs relates to the execution of these deeds. It is not denied that these deeds were executed but it is claimed by the defendant that Ramon Catinding and Sabina Butron had no title whatever to the land, and for that reason no rights or interests which could be conveyed by these deeds.

Plaintiffs deny that the land in question was ever a part of the land of defendant's grandfather, Julian Catmon, or that it had ever been the property of Venancia Catmon, defendant's mother; they assert that the land was entered upon by Ramon Catinding and Sabina Butron while it was yet unclaimed and uncultivated land; that it was first cultivated by them and that their title in the land was by reason of this original occupancy. While the plaintiffs introduced some evidence tending to establish this fact they utterly failed to establish it by a preponderance of the evidence. Even the plaintiffs' own witnesses, Maria Ciceros (pp. 35, 36, 37 of the record) and Baltazar Bullo, the person who claims to have purchased the land (pp. 41 and 42), admitted that the defendant had been in possession of this land for a number of years at the time the deed was executed, and had been cultivating the land and receiving the benefits therefrom. On the other hand the defendant introduced a number of witnesses who were familiar with the land in question and who testified positively and emphatically that the land had formerly belonged to Julian Catmon, had descended from him to his daughter Venancia, and that it had been held and claimed by her children since her death. The record seems to be conclusive upon the fact that Ramon Catinding's connection with this land was by reason of his wife's ownership and that she had inherited it from her father; To reach any other conclusion means absolutely to disregard the weight of the evidence in the record. The record does not support the conclusion that Ramon Catinding and his second wife, Sabina Butron, were the first to enter upon this land and cultivate it, and without proof of that alleged fact the whole case for the plaintiffs must fall.

But while we have reviewed the evidence of record in this case for a similar reason to that announced for a like action in the case of *Arroyo vs. Granada* (18 Phil. Rep., 484), that is to say, in the hope that what we have said "may have the effect of forestalling further litigation" the judgment entered in the court below must be modified, under the authority of the former decision, so as to provide for the dismissal of the complaint, not upon the merits, but upon the ground that the action was not properly instituted, having been brought in the name of *apoderados* (attorneys in fact), and not in the name of the real party in interest.

Let judgment be entered modifying the judgment entered in the court below, so as to provide for a dismissal of the complaint, not upon the merits, but on the ground that it was improperly instituted, not having been brought in the name of the real party in interest, with the costs of both instances against the appellants.

Arellano, C. J., Moreland, Trent, and Araullo, JJ., concur.

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