

APOLONIO DEATO AND DIEGA FRANCISCO, PLAINTIFFS AND APPELLEES, VS. CLARO ZACARIAS AND CRISTINA LORENZO, DEFENDANTS AND APPELLANTS.

G.R. No. 8541. July 20, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the Province of Bulacan on the 31st day of January, 1911. Its purpose was to recover the possession, as owner, of a certain piece or parcel of land particularly described in paragraph 2 of the complaint, together with damages for the use and occupation of the same.

It appears from the answer of the defendants that sometime prior to the commencement of the present action, the defendants had obtained possession of the land in question by virtue of a judgment rendered by a justice of the peace in an action of desahucio, which was, on an appeal to the Court of First Instance, revoked.

After a careful consideration of the evidence adduced during the trial of the case by both the plaintiffs and the defendants, the Honorable Simplicio del Rosario reached the conclusion that a large preponderance of the evidence showed that the plaintiffs were the owners of the parcel of land in question, and ordered the defendants to deliver the possession of the same to them. The lower court further found that there was no evidence sufficient to justify a judgment for damages in favor of the plaintiffs and against the defendants for the use and occupation of the land.

From that judgment the defendants appealed to this court.

The only assignment of error made by the appellants is that the lower court erred in rendering a judgment in favor of the plaintiffs and against the defendants. The only argument adduced by the appellants in support of said assignment of error is that the judgment of the said justice of the peace giving them the possession of the land was *res adjudicata* and therefore final in their favor. The answer to that argument is:

(a) That the judgment of the justice of the peace giving them the possession of the land in question was, according to their own admission in the answer, reversed on an appeal to the Court of First Instance; and furthermore

(b) That the judgment of a justice of the peace in an action of desahucio is not *res adjudicata* in a subsequent action between the same parties to determine the title to the property. (Ty Laco Cioco vs. Muro, 9 Phil. Rep., 100; Roman Catholic Church vs. Familiar, 11 Phil. Rep., 310; Roman Catholic Archbishop of Manila vs. Municipality of Rosario, 14 Phil. Rep., 176.)

In an action of desahucio the right of possession is the only question involved. In an action to recover land as owner the question of title and ownership is the only question involved. There are cases where the ownership may be in one person and the right to possession in another. For example, the tenant is entitled to the possession of the land as against his landlord, and might recover the same in an action of desahucio, while the landlord, thereafter,

might recover the title to the land in an action brought for that purpose. In the latter action the tenant would not be permitted to plead the action of desahucio as res adjudicata against such action.

After a consideration of the facts and the law applicable thereto, we are of the opinion, and so hold, that the judgment of the lower court should be, and is hereby, affirmed, with costs. So ordered.

Arellano, C. J., Araullo, Street, and Malcolm, JJ., concur.

CARSON, J., concurring:

Understanding as I do, that the general doctrine touching res adjudicata announced in the principal decision, is not in conflict with the doctrine announced in Peñalosa vs. Tuason (22 Phil. Rep., 303), wherein we distinguished between the effect of judgments in summary actions of ejectment, as res adjudicata and their effect as an estoppel as to those matters in issue or points controverted upon the determination of which the finding or judgment was rendered, I concur.

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