

PEDRO DEL ROSARIO, PLAINTIFF AND APPELLEE, VS. TOMAS CELOSIA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 8638. December 27, 1913*

Ponente: TORRES, J.

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This is an appeal through a bill of exceptions, by the defendant Tomas Celosia from a judgment of September 28, 1911, wherein Judge Jose C. Abreu ordered the defendant to restore to the plaintiff possession of the land described in the complaint, to refrain from troubling or disturbing the plaintiff in his possession of the property, and to pay the costs.

On March 20, 1911, counsel for Pedro del Rosario filed a written complaint with the Court of First Instance of Bohol and alleged, among other things, that the plaintiff was the owner and proprietor of a piece of agricultural land, one-half of which he had acquired by original cultivation and exclusive, public and peaceable possession for about thirty years, and the other half by purchase on August 10, 1881; that the said land was situated in the place called Cabiguan, barrio of Pangoan, now Buenavista, of the pueblo of Jetafe, Province of Bohol, with an area of 17 hectares, 18 ares and 8 centiares, bounded on the north and east by government lands, and on the south and west by a mangrove swamp; that, on January 19, 1911, up to which date the plaintiff had for about thirty years been holding the said land as the owner thereof, the defendant Tomas Celosia did, without just or lawful reason, usurp and appropriate to himself the property in question and refused to return it to the plaintiff, notwithstanding the friendly demands so to do made upon him; that, on January 24, 1911, the plaintiff brought an action against the said defendant, in the justice of the peace court of Jetafe, because of such usurpation, but the justice of the peace, on March 10 of the same year, pronounced a judgment of acquittal unwarranted in law; that the plaintiff had, by reason of the said usurpation, suffered losses and damages estimated at P350, and that other important losses and damages might result by the usurper's continuance in possession during the pendency of this case. Said counsel therefore prayed that the defendant be sentenced to recognize the plaintiff's right to the possession and ownership of the land and to pay an indemnity of P350 and the costs. He further petitioned the court to issue a preliminary injunction against the defendant to restrain him until the final decision of this suit.

Counsel for the defendant denied each and all of the facts set out in the complaint and in special defense alleged that Isidoro Celosia and Macario Torregosa, whose true surname was also Celosia, had erroneously been included in the complaint; that these parties had no interest whatever in the present suit, as they were mere witnesses of the defendant; that Tomas Celosia had been from time immemorial, the owner and possessor of the land described in the complaint, and that the plaintiff had never been in possession thereof. He therefore asked that judgment be rendered in his client's behalf by absolving him from the complaint, with the costs against the plaintiff.

Upon the hearing of the case, on September 22, 1911, and the production of evidence by both parties, the aforementioned judgment was rendered.

The action brought in this case by counsel for Pedro del Rosario is unquestionably one for recovery of possession

and cannot be confused with the so-called plenary action for possession, which may be instituted even one year following the usurpation and has for its sole object the recovery of possession by the person who legitimately enjoyed it before he was despoiled thereof; while in the complaint filed by the said Rosario it is contended that the defendant should recognize the plaintiff's ownership and possession of the land sought to be recovered, that is, his control over it, for the reason that the plaintiff is its lawful owner.

The fact is established in this case and admitted by both parties that the plaintiff brought suit before the justice of the peace of Jetafe for the restitution of possession of this same land, on the allegation that it was detained and usurped by the defendant Tomas Celosia; but that court, deeming such demand improper, absolved the defendant from the complaint. The record does not show that the plaintiff appealed from that ruling of the Court of First Instance.

After the judgment of the justice of the peace of Jetafe had become final, the plaintiff brought suit in the Court of First Instance in an action for the recovery of possession, whereby the present case was properly instituted, for after the justice of the peace had by a ruling of a final character denied the right of action for the restitution of possession of the land, there could only have been brought, as the plaintiff did bring, the proper action for recovery founded on the alleged right of control over the litigated property, and it is to be noted that in the juridical conception of dominion or control over a thing is comprised that of its ownership and possession.

Since a judgment that became executory was rendered by the justice of the peace of Jetafe upon the question at issue, relative to the detention or usurpation of the land in dispute, it is no longer permissible to bring a plenary action for possession, which lies only in the case where more than one year has elapsed since the date of the usurpation (art. 460, No. 4, Civil Code), as the action for restitution of possession, provided in section 80 of the Code of Civil Procedure, is no longer applicable and because only that plenary action lies in behalf of the lawful possessor or person deprived of his possession.

The fact is that an action was brought in this case for recovery of possession, of the land in litigation, and for its successful issue it was indispensable that the plaintiff's ownership of the land should have been proven. This was not done.

In the judgment appealed from it is recognized that none of the litigants proved title to the said property, and the testimony taken at the trial does not show that the plaintiff is the owner of the land in question; and, as the final judgment of the justice of the peace acquitted the defendant, who was charged with usurping and detaining the land—an acquittal which implies that there was no such usurpation on January 19, 1911, as charged in the complaint—it is of course to be presumed that the defendant was in possession of the said land even before that date, though he did not prove his right of ownership of the land under a satisfactory title.

The defendant somehow succeeded in proving by witnesses that his father, Hermenegildo Celosia, held the land in question more than thirty years ago, and that upon his father's death, he entered into and continued in possession of the property. On the other hand, it was proved that the land which Pedro Caina sold to the plaintiff, Pedro del Rosario, is different from that now held by the defendant, which is situated in the place called Cabiguan, while the land claimed by the plaintiff and acquired by him from Pedro Caina is located in the place known as Maubit, far from Cabiguan.

At all events, the ruling in the judgment appealed from being restricted solely to the question of possession of the land in dispute, leaving therein undecided the question of ownership, the sole object of the action brought for recovery, as the trial judge did not consider it to have been duly proved, it would be improper to affirm the said judgment, since the matter of the restitution of possession therein ordered has already been finally decided by the justice of the peace adversely to the plaintiff's claim, and the law does not warrant the allowance in this case of a

restitution of possession which was disallowed by another competent judge in a final judgment, especially in behalf of the plaintiff, who has not proved his ownership of the land which he tries to recover.

Article 446 of the Civil Code prescribes: "Every possessor has a right to be respected in his possession; etc."

As it was proved at trial that Tomas Celosia was then in possession of the land in question, and it was not shown by the plaintiff that Celosia usurped this property, both law and justice require that he be protected in his rights and respected in the possession he enjoys of the land in litigation. In a judgment rendered in a case initiated through an action for recovery, when it is held therein that the ownership claimed has not been duly proven, it is improper to order the restitution of possession, particularly when such restitution has already been denied by a judgment that has become final, because to do so would be tantamount to a re judgment of a matter once tried and decided.

For the foregoing reasons, the judgment appealed from is hereby reversed and the defendant, Tomas Celosia, is absolved from the complaint; without express finding as to costs.

Arellano, C. J., and Johnson, J., concur.

Carson, Moreland, and Trent, JJ., concur in the result.

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