

NAZARIO MARCELO, PLAINTIFF AND APPELLEE, VS. CLEMENCIA MANIQUIS AND JUAN DE LA CRUZ, DEFENDANTS AND APPELLANTS.*G.R. No. 8703. October 26, 1916*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-8703/>**PER CURIAM:**

This is an appeal by bill of exceptions, raised by counsel for the defendants from the judgment of April 30, 1912, whereby the trial judge held that the parcel of land demanded in the complaint belonged exclusively to the plaintiff, Nazario Marcelo; ordered the defendants immediately to restore and to deliver it to the plaintiff; perpetually enjoined the defendants and their agents from interrupting or molesting the plaintiff's possession of the land; and, furthermore, ordered them jointly and severally to pay to the plaintiff the sum of P106.75 as the value of the products which he failed to collect, and also the costs, including the sum of P103.08 which was fixed by the court as fees of the surveyor and commissioner for inspecting the land in question and for preparing a plan thereof.

On August 15, 1911, counsel for Nazario Marcelo filed a written complaint in the Court of First Instance of Nueva Ecija, alleging as a cause of action that said Marcelo was the exclusive owner of a parcel of land situated in the sitio of Tañgos, barrio of Soledad, pueblo of Santa Rosa, Nueva Ecija; that said land had the area, metes and bounds specified in the complaint and shown in the title deed duly entered in the property registry; that on or about July 11, 1911, the defendants, without the plaintiff's knowledge and consent, appropriated to themselves a part of the said land of two cavanos and a half of seed; that up to the present time defendants had been retaining the same to the damage and detriment of the plaintiff; that such damage and detriment would continue unless defendants were restrained by an injunction from committing further acts detrimental to the plaintiff's ownership rights; that, having already been caused losses and damages in the amount of P200 and having no other easy, adequate and expeditious remedy or means to avert greater harm, plaintiff prayed the court to issue a preliminary injunction to restrain the defendants and their agents from encroaching upon his property rights in the land in question, to order the defendants to pay him the sum of P200 for the losses and damages caused, and to declare him to be the absolute owner of the said parcel of land, with the costs against the defendants.

A demurrer to the aforesaid complaint was overruled and the defendants answered denying each and all of the allegations contained therein. In special defense they alleged that the defendant Clemencia Maniquis and her husband, Mariano del Barrio, had been for more than thirty years in the quiet, public and uninterrupted possession of the land claimed in the complaint; that plaintiff knew that the land in question belonged to the said husband and wife; that, as owners, the defendant Clemencia Maniquis and her daughters Gertrudis, Pilar, Joaquina, Primitiva, Lorenza, Luisa and Consuelo, surnamed del Barrio, had held said property pro indiviso since the death of the said Mariano del Barrio, the husband of Clemencia Maniquis and the father of her above-mentioned children. Therefore the defendants prayed to be absolved from the complaint, with the costs against the plaintiff, and to have judgment rendered in favor of Clemencia Maniquis and her daughters for the ownership and possession of the said property.

After a hearing in which evidence was adduced by both parties, the court rendered the aforementioned judgment,

to which the defendants excepted and, in writing, moved for a reopening of the case and a new trial. This motion was overruled, exception was taken by the petitioners and, upon the filing of the proper bill of exceptions, the same was approved and transmitted to the clerk of this court.

Now then, the question submitted for our decision is: Who is the true owner of this parcel of land, measuring 2½ cavanases of seed, now held by the defendants, bounded according to the complaint on the north by Obdulia Punsal's lands, on the south by Ricardo Padilla's, and on the east and west by the plaintiff's?

The record proved that on January 28, 1896, the plaintiff, Nazario Marcelo, applied to the justice of the peace of Santa Rosa for a possessory information title to six parcels of land, of which the second is the one here in dispute; that these parcels, covering an area of 10 hectares and 35 centares, were bounded on the north by lands of Leoncio Sangui and Juana Sangui, on the east and south by those of Mariano del Barrio and Carlos Siao, and on the west by the property of Obdulia Punsal; that the land in litigation is rice land and is situated in Tangos, barrio of Soledad, pueblo of Santa Rosa, Nueva Ecija. By an order of February 18, 1896, the possessory information title was duly approved and subsequently entered in the property registry of the said province on June 19 of the same year. (Exhibit A, record, pp. 21-29, back.) For land tax purposes the plaintiff declared the land in question to be his exclusive property (as shown by the certified copy of his declaration Exhibit D, record, p. 30) and continued to pay the land tax on the said real estate in the barrio of Soledad from the year 1902 until 1911, the year before the hearing of this case, as appears from the eight tax receipts exhibited in evidence. (Exhibit B; record, pp. 30-37.)

It was also fully proven that on May 6, 1893, before the gobernadorcillo of the pueblo of Santa Rosa, Potenciano Marcelo sold to Mariano del Barrio, for 100 pesos, a piece of rice land of two cavanases and a half of seed situated in the sitio of Patindig-arao, pueblo of Santa Rosa and bounded as follows: on the north by the lands of Obdulia Punsal; on the south by those of Benito Sardual; on the east by property of Nazario Marcelo; and on the west by lands of Jose Marcelo. (Exhibit 2; record, p. 64.) Notwithstanding that the above-mentioned deed of sale was not duly protocolized, the purchaser, Mariano del Barrio, took steps in 1895 to secure a possessory information title to seven parcels of land of which the second is one in the sitio of Patindig-arao, of Santa Rosa, measuring 2 hectares, 20 ares and 12 centares, bounded on the north by lands of Obdulia Punsal, on the south by those of Juan Sardual, and on the east and west by the lands of the plaintiff, Nazario Marcelo. The record shows that Nazario Marcelo was advised of the said possessory information proceedings by the said Mariano del Barrio because in the notice served in connection therewith the plaintiff and others stated that they had no objection to make in respect to the said del Barrio's application. Consequently, on March 11, 1895, the same was approved, although not entered in the property registry until September 19, 1911, and this was the first inscription of the lands named in the said possessory information proceedings (Exhibit 1, pp. 53-61).

The plaintiff testified that the land in question had belonged to him for more than forty-five years; that he had inherited it from his father; that in July, 1911, the defendants dispossessed him of the land, alleging that they had purchased it from his nephew Potenciano Marcelo; that the defendant Clemencia Maniquis owned some land toward one end of his parcel; that he had been paying the taxes on the land in question since 1902.

Under oath the defendant Clemencia Maniquis, widow of Mariano del Barrio, stated that she owned only one parcel of land in the barrio of Soledad; that this parcel had been acquired by her late husband in the first place on account of its having been mortgaged to him by Nicolas Marcelo, a brother of the plaintiff, and subsequently on account of an outright sale to him by the mortgage debtor's son, Potenciano Marcelo, by means of the document Exhibit 2 (record, p. 21); that from that year 1893 (record, p. 52) her husband, Mariano del Barrio, had been in continuous possession of the said parcel of land; that the plaintiff had not even had said parcel in his possession, far less had he cultivated it. Jose Mendoza, a son-in-law of Nicolas Marcelo, a former owner of the disputed property, corroborated the above testimony with respect to the mortgaging of the land and the said subsequent sale

by Potenciano Marcelo, a son of the said Nicolas Marcelo, to Mariano del Barrio, and further testified that he married shortly after the year 1882, and that from this time knew that Mariano del Barrio had held the disputed land, the only real estate which del Barrio did have in that locality.

Obdulia Punsal, an owner of adjacent property to the north of the land in question, testified that the husband of the defendant Clemencia Maniquis had possessed and cultivated the litigated land for more than thirty years. Also Felipa Escuadra testified that the parcel of land B on the plan prepared by the commissioner appointed by the court, namely, the property in litigation, had formerly belonged to Mariano del Barrio, and that after his death Clemencia Maniquis and her daughters succeeded in his ownership.

However, the plaintiff, Nazario Marcelo, stated that the parcel of land situated toward the east of the disputed property, lot D, belonged to his brother Jose who, by reason of his gambling, was obliged to sell to Mariano del Barrio an area of 2½ cavanases of seed.

Julio Valmonte, the surveyor and commissioner appointed by the court to make an ocular inspection and to prepare a plan of the land, presented to the court Exhibit 1 which shows the lot in dispute to be designated by the letter B and to be bounded on the north by lands of Obdulia Punsal, on the south by those of Ricardo Padilla, and on the east and west by other parcels of land belonging to the plaintiff. Therefore it is seen that this description of the disputed land is almost identical with the one given in the possessory information title, Exhibit 1, in which the second parcel is shown to have nearly the same adjacent owners as the land in question. This second parcel mentioned in the possessory information proceedings, Exhibit 1, is likewise situated in the barrio of Soledad of the pueblo of Santa Rosa and measures 2½ cavanases of seed.' According to uncontradicted testimony, the deceased Mariano del Barrio owned but one parcel of land in the barrio of said pueblo. On the other hand, the plaintiff owned other and larger tracts of land which, with the exception of about 6 hectares, were all uncultivated.

These facts are disclosed by his testimony at the trial wherein he said that he did not wish to declare all of his land because it was not all under cultivation.

The second paragraph of article 348 of the Civil Code prescribes that "the owner has a right of action against the holder and the possessor of the thing to recover the same." This right is denominated in law the right to recover possession and it must be founded on positive rights on the part of the plaintiff and not merely on negative ones, as the lack or insufficiency of title on the part of the defendant." (Florentino vs. Cortes, 18 Phil. Rep., 281.)

In order that an action for the recovery of possession may prosper, according to the established jurisprudence of the courts, it is indispensable that the actor fully prove not only his ownership, but also the identity of the thing claimed. (De la Cruz vs. Nino, 18 Phil. Rep., 284.)

The plaintiff has not satisfactorily proven himself to be the owner of the land now held by the defendants under title of ownership nor has he demonstrated that he has at any time been in possession of the second parcel of land described in the possessory information Exhibit 1 (record, p. 53) inscribed in the registry. The possessory information which he presented as Exhibit 3 (record, p. 22) does not relate to the parcel of land held by the defendants and does not constitute a just and lawful title proving his ownership rights in the aforesaid parcel of land owned by the defendants. Moreover, the boundaries of the second parcel of land mentioned in the possessory information he has presented and alleges relates to the land he claims, not only do not conform to but also differ on three sides, from those of the parcel belonging to the defendants and Obdulia Punsal's land, which appears adjacent to that of the plaintiff on the west, forms the northern boundary of the defendant's land. It is therefore unquestionable that the plaintiff owns a different parcel, and that the title shown by him is not proof of his ownership rights in the land claimed. Furthermore, it is to be noted that when the owners of the lands adjoining the parcels specified in the possessory information were notified and summoned by the then husband of the

defendant Maniquis, the plaintiff was one of them. But nobody protested; on the contrary, they all stated that they had no objection to make against the said possessory information proceedings instituted by the defendant's predecessor in interest.

For the foregoing reasons, the judgment appealed from should be reversed and the defendants should be absolved from the complaint, as we do hereby without express finding as to costs. So ordered.

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

Moreland, J., did not take part.

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