

ZACARIAS CONSPECTO, PLAINTIFF AND APPELLEE, VS. MAXIMO FRUTO ET A!., DEFENDANTS SILVESTEE FURING, MARCELO BANASTAO, LEON FRUTO, MICAEL BARRAMEDA, EUTIQUIO BIGATA, FRANCISCO ESTO...

G. R. No. 8975. July 13, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

The purpose of this action is to recover the possession of a parcel of land composed of 59 hectares and 65 centares. The action was commenced on the 9th day of March, 1912. The parcel is particularly described in the second paragraph of the complaint. The plaintiff alleges that he is the owner; that the defendants are illegally dispossessing him of the possession thereof. The defendants claim possession by prescription. At the close of the trial the lower court decreed the possession of all of said parcel to plaintiff except that portion occupied by the defendants Francisco Gamba and Miguel Gabiaso. From that decision the other defendants, Maximo Fruto, Silvestre Furing, Marcelo Banastao, Leon Fruto, Micael Barrameda, Eutiquio Bigata, Francisco Estopare, Alfonso Boncan, and Florentino Hitosis, appealed to this court and made the following assignments of error:

"I. The court has erred in not holding prescription of action against the plaintiff.

"II. The court has erred in not holding prescription of ownership in favor of the defendants.

"III. The court has erred in sentencing the defendants Maximo Fruto, Silvestre Furing, Marcelo Banastao, Leon Fruto, Micael Barrameda, Eutiquio Bigata, Francisco Estopare, Alfonso Boncan, and Florentino Hitosis to deliver to the plaintiff the parcels of land they possess as owners, which are described in pages 10, 11, and 12 of the stenographic notes.

"IV. The court has erred in not sentencing the plaintiff to pay for the improvements made by the defendants, after it had ordered restitution or delivery to the plaintiff of the parcels of land they possess.

"V. The court has erred in ordering the defendants to deliver to the plaintiff the parcels of land they possess, without their first being reimbursed for the value of the improvements."

A motion for a new trial was made in the lower court by the appellants. That motion was never decided. Apparently it was abandoned by the appellants for the reason that before it was decided they presented their bill of exceptions. They evidently concluded to rely upon the facts stated in the pleadings and not denied and the decision of the lower court and the law applicable thereto. The presentation of a bill of exceptions pending the decision of a motion for a new trial is an abandonment of said motion.

The defendants denied each and every fact alleged in the complaint. In the absence, therefore, of a motion for a new trial, we are limited to the facts stated in the decision.

They are as follows:

- That in 1893 Jose Ramos Goy Senco purchased the said parcel of land from the Government, At that time the land was wild and uncultivated (baldio realengo).
- The title of Jose Ramos Goy Sengco was not registered until the 17th of July, 1897.
- On the 13th day of April, 1897, Jose Ramos Goy Sengco sold said land to Venancio Liquigan, which sale was evidenced by a public document.
- The title of Venancio Liquigan was duly registered on the 14th day of October, 1912.
- Venancio Liquigan died in the year 1907.
- On the 14th day of October, 1911, the heirs of Venancio Liquigan sold said land to Zacarias Conspecto, the plaintiff herein.
- The title of Zacarias Conspecto was duly registered on the 15th day of October, 1912.
- There is no proof that Zacarias Conspecto, nor any of his predecessors, had ever been in possession of any part of the land. The lower court found that he and his predecessors had not been in actual possession of the land.
- That the defendant Francisco Gamba had been in possession of a portion of said land for a period of thirty years.
- That Miguel Gabiaso had been in possession of a portion of said land for a period of thirty years.
- That Alfonso Boncan had been in possession of a portion of said land since, and perhaps before, the year 1894. He presented an informacion posesoria which shows that he had purchased the land which he occupied in 1891 or in 1892.
- That Florentino Hitois had been in possession of a portion of said land since 1890. He presented documents showing possession, one of the 20th day of June, 1890, and another of the 2d of August, 1891. These documents were executed by the gobernador civil del pueblo (civil governor of the town). Said documents were not recorded.
- That the other defendants, Maximo Fruto, Silvestre Furing, Marcelo Banastao, Leon Fruto, Micael Barrameda, Eutiquio Bigata, and Francisco Estopare, had been in possession of their respective parcels for a period of twenty years more or less.
- That in 1907 said Venancio Liquigan commenced an action in the Court of First Instance of the Province of Sorsogon against the defendants herein to recover possession of the land in question. That action was later dismissed. The real reason for said dismissal does not appear of record.

From the foregoing facts it clearly appears that on the 14th day of October, 1911, when Zacarias Conspecto purchased the land from the heirs of Venancio Liquigan, each of the defendants was in possession, and had been for a long time, of his respective parcel. There is no proof that, knowing that the land or a portion of it was in the actual possession of others than the vendor, the buyer made any inquiry concerning the rights of such possessors.

One who purchases real property which is in the actual possession of others should, at least, make some inquiry concerning the rights of those in possession. The actual possession by others than the vendor should, at least, put the purchaser upon inquiry. He can scarcely, in the absence of such inquiry, be regarded as a bona fide purchaser as against such possessors.

Upon these facts appellants assert in their first assignment of error that the lower court committed an error in not deciding that the cause of action had prescribed. In support of that alleged error they call our attention to sections 38 and 40 of the Code of Procedure in Civil Actions. They argue that they have been in the open, adverse, and notorious possession for a period of more than ten years and, therefore, the right of action on the part of the

plaintiff had prescribed.

In reply to that argument the appellee contends that the said sections of the Code of Procedure in Civil Actions do not apply to the present case. The appellee insists that the articles of the Civil Code should be applied. That period of prescription is thirty years and not ten years. He cites in support of that contention article 1963 of the Civil Code. He also cites the decisions of this court in the cases of Araneta vs. Garrido (5 Phil. Rep., 137); Tubucon vs. Dalisay (7 Phil. Rep., 183); and Palacio vs. Sudario (7 Phil. Rep., 275). It is true that in each of said decisions we held that the provisions of the Civil Code were applicable to the facts in those cases and that the provisions of the Code of Procedure in Civil Actions relating to prescription did not apply. Appellee, however, overlooks the fact that in each of said decisions the period of ten years provided for in section 40 of Act No. 190 had not yet expired at the time said actions were commenced. In the present case, the action not having been commenced until the 9th of March, 1912, and Act No. 190 having taken effect October 1, 1901, it will be seen that more than ten years elapsed in the present case before the commencement of the action. When the entire period of prescription provided for under Act No. 190 has expired between the time the right of action has existed and the time when it is actually commenced, we think that the provisions of said Act (No. 190) should be applied. Especially should said provisions be applied in view of the provisions of section 39 of said Act, which provides that "civil actions can only be commenced within the period prescribed in this chapter after the cause of action accrues." We see no escape from the conclusion that section 40 must be applied to the facts in the present case.

Before deciding, however, that the right of action has prescribed under the provisions of section 40 of Act No. 190, we deem it necessary to make reference to the fact found in the record, to wit, that in the year 1907 Venancio Liquigan commenced an action for the possession of the land in question, and ascertain what effect, if any, said action had on the running of the period of limitation. It will be remembered that that action was dismissed. While the commencement of the action would of course, stop the running of the statute of limitations, its dismissal or voluntary abandonment by plaintiff would leave the parties in exactly the same position as if no action had been commenced at all. Said action by reason of its dismissal or abandonment took no time out of the period of prescription. (Smith vs. Gibbon, 6 La. Ann., 684; Harrison vs. Meyer, 22 La. Ann., 580; Flanagan vs. Pearson, 61 Tex., 302; Alexander vs. Pendleton, 8 Cranch [U. S.], 462.)

Where a suit, commenced within the period of limitation, is abandoned or dismissed by reason of the death of the plaintiff, the operation of the statute is prevented if the suit is recommenced, within a reasonable time, by the representatives of the deceased. (Martin vs. Archer, 3 Hill, [S. C.] 211.) The personal representatives, executors, or administrators must, however, elect to pursue the suit within a reasonable time. Failure to carry the suit on by the personal representatives will amount to an abandonment. (Richards vs. Maryland Insurance Co., 8 Cranch [U.S.], 84.) The commencement of the action by Venancio Liquigan in 1907 against the defendants, and its subsequent dismissal or abandonment, did not take any time out of the period of prescription.

In the case of Probst vs. Presbyterian Church (129 U. S., 182), Mr. Justice Miller, speaking for the court, said: "An entry into land without right or title, followed by continuous, uninterrupted possession under claim of right for the period of time named in a statute of limitations (prescription), constitutes a statutory bar, in an action of ejectment, against one who otherwise has the better right of possession."

It is the essence of the statute of limitations that, whether the party had a right to the possession or not, if he entered under the claim of such right and remained in possession for the period (ten years) named in the statute of limitations, the right of action of the plaintiff who had the better title is barred by that adverse possession. The right given by the statute of limitations does not depend upon, and has no necessary connection with, the validity of the claim under which the possession is held. Otherwise there could be no use for the statute of limitations or adverse possession as a defense to an action, for if the decision is made to depend upon the validity of the

respective titles set up by the plaintiff and the defendant, there can be no place for the consideration of the question of adverse possession. It is because the plaintiff has a better title that the defendant is permitted to rely upon such uninterrupted possession, adverse to the plaintiff's title, as the statute prescribes, it being well understood and an element in such cases, that the plaintiff does have the better title, but that he has lost it by delay in asserting it. (*Probst vs. Presbyterian Church*, *supra*.)

Neither is it necessary that the defendant should have a proper title, under which he claims possession. It is sufficient, if he asserts ownership of the land, and that this assertion is accompanied by an uninterrupted possession for the period named in the statute. It is this which constitutes adverse possession—claiming himself to be the owner of the land. If the one in possession asserts his right to own the land in dispute, asserts his right to the possession, and his possession has been adverse and uninterrupted, it constitutes a bar which the statute intended to give him. (*Ewing vs. Burnet*, 11 Peters [U. S.], 39, 52; *Harvey vs. Tyler*, 2 Wallace [U. S.], 328, 349; *Coke's Institutes*, First Part, 153.)

The late Mr. Justice Willard, in his "Notes on the Civil Code," makes the observation that article 1963 of the Civil Code has been repealed by section 40 of the Code of Procedure in Civil Actions.

In the case of *Pelaez vs. Abreu* (26 Phil. Rep., 415), this court held that article 1963 of the Civil Code had been repealed by the provisions of the Code of Procedure in Civil Actions.

Sections 40 of Act No. 190 is plain and unambiguous. It plainly says: "An action for the recovery of title to, or possession of, real property, or an interest therein, can only be brought within ten years after the cause of such action accrues." In the present case, the action for the recovery of the possession of the real property in question was not brought within ten years after the cause of action had accrued.

In view of the foregoing facts, we see no escape from the conclusion that the action is barred, by virtue of the provisions of said section 40, and that the lower court committed the error complained of by the appellant, under the first assignment of error.

In view of the foregoing conclusions, we deem it unnecessary to discuss the other assignments of error. The judgment of the lower court relating to the appellants is therefore hereby revoked and they are relieved from any liability under the complaint; and without any finding as to costs, it is so ordered.

Arellano, C. J., Torres, Carson, Trent, and Araullo, JJ., concur.

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