

**EVARISTA SINAPILO, PLAINTIFF AND APPELLEE, VS. PETRA GRACIA, DEFENDANT AND APPELLANT.***G.R. No. 9183. October 28, 1914*

Ponente: TORRES, J.

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A bill of exceptions in this case was forwarded to us through an appeal taken by the defendant from a judgment rendered on December 16, 1912, by the Honorable Herbert D. Gale, judge of the Court of First Instance. In the said judgment, it was held that the plaintiff was the absolute owner in fee simple and entitled to the possession of the parcel of land in question, and the defendant, who unlawfully held the said land, was ordered immediately to restore possession thereof to the plaintiff and to pay the costs in the Court of First Instance and the justice of the peace court. The defendant was also perpetually enjoined from in any manner disturbing<sup>1</sup> the plaintiff in her possession of the said land.

On May 9, 1912, Evarista Sinapilo, with the permission of her husband, sued in the justice of the peace court of Candelaria, Tayabas, for the recovery of possession of a parcel of land belonging to her, valued at P150, which had been detained and held since the previous year by the defendant, Petra Gracia, but the latter, in her answer, denied that the plaintiff possessed any title of ownership to the said land or that she, the defendant, had unlawfully held and detained the land in question, and she therefore prayed that she be absolved from the complaint, with the costs against the plaintiff.

After a hearing of the case, the justice of the peace rendered judgment for the plaintiff, from which the defendant appealed to the Court of First Instance.

The plaintiff consequently reproduced before the said appellate court the complaint she had filed in the justice of the peace court. Counsel for the defendant, after denying each and all of the paragraphs of the same, excepting the facts admissible at trial and in special defense, alleged in an additional answer that the land in dispute was acquired by the defendant and her deceased husband, Juan Gala, from Tomas Regidor, in 1889; that since that time she had held the property quietly, peaceably and without any interruption whatever, and that the plaintiff's action had already prescribed. Said counsel therefore prayed that the defendant be absolved from the complaint, with the costs against the plaintiff.

After trial in the Court of First Instance the judgment aforementioned was rendered, to which counsel for the defendant excepted and moved for a new hearing. This motion was denied by an order of February 7, 1913, and the defendant entered a written exception and announced her intention to file a bill of exceptions because Acts Nos. 2041 and 2131 of the Philippine Legislature, which are in conflict with the Philippine Bill of July 1, 1902, and the Organic Act, No. 186, were applied in the present case; she further alleged that the judgment was executed over the protest of the defendant that her motion for rehearing was still pending.

By a written motion of March 3, 1913, plaintiff's counsel prayed that the exception taken on the 13th of the previous month of February against the said judgment be overruled and the bill of exceptions presented be

rejected, because the judgment of the Court of First Instance, being rendered on appeal from the court of the justice of the peace of Candelaria, was already conclusive and final. He maintained that the constitutional question set up as a ground for the defendant's appeal was not raised either in the justice of the peace court or in the Court of First Instance, neither before nor after the rendering of judgment by the latter tribunal, but only after twelve days had elapsed from the denial of the motion for a rehearing; that both the exception to the order issued on the motion for a rehearing and the bill of exceptions were filed after time, for as the said motion was denied on February 7, 1913, the defendant failed to take exception thereto within the legal period, and furthermore had no intention of excepting to that ruling, inasmuch as on the 15th of the same month of February counsel for the son of the defendant Petra Gracia filed a suit in the Court of First Instance against Antonio Ona and his wife, the plaintiff Evarista Sinapilo, with respect to the very same land, involved in the present suit; that he mentioned therein as one of the causes of action the fact that the said spouses were in possession of the land in litigation by reason of the judgment of December 16, 1912, now appealed from, and he submitted a copy of the said written complaint; that not till the 19th of the same month did the defendant for the first time raise the question of the constitutionality of the laws aforementioned and take exception to the judgment of the Court of First Instance, after it had already become final. Counsel therefore prayed that the court grant the prayer of his petition, and, in case it should be disallowed, that the court order the present motion, the ruling thereon and, if a denial, his exception thereto, included in the bill of exceptions. Both the regular and the additional bills of exceptions having been filed, they were approved and sent up with a transcript of the record of the proceedings referred to by the appellant, and of the parol evidence, to the clerk of this court.

In order to determine whether or not the Court of First Instance lacked jurisdiction to render the judgment appealed from, it becomes necessary to inquire whether the constitutional question and that of the jurisdiction of the justice of the peace of Candelaria to try the action for recovery of possession brought by Evarista Sinapilo, who, as owner, demanded the restitution of a piece of her land valued at P150, were brought up in due time at the hearing.

That the action for recovery brought by the plaintiff against the defendant, by reason of the latter's unlawful usurpation and detention of the land in question, was not one that lay within the jurisdiction of the justice of the peace court of Candelaria, is undoubted, since it involved the title and ownership of real estate. Therefore the trial held before the said justice of the peace is completely null and void and can produce no legal effect whatever because of his clear lack of jurisdiction to try the question brought up before him by the interested parties relative to the ownership of a piece of land.

However, the defendant having appealed from the judgment rendered by the justice of the peace in favor of the plaintiff, the case in its entirety was heard by the Court of First Instance, and during the whole course of the trial until the judgment appealed from was rendered on December 16, 1912, no constitutional question whatever was raised and no exception was taken to the lack of jurisdiction of the justice of the peace to try the case, or of the judge of first instance to exercise his appellate jurisdiction. Not until after judgment had been rendered did the appellant, in her petition of February 21, 1913, raise the question of constitutionality.

In a case like the one at bar, where no question of lack of jurisdiction was raised either in the justice of the peace court or in the Court of First Instance, and where no objection was made to the jurisdiction of the justice of the peace or of the judge of first instance in the exercise of his appellate jurisdiction, if the latter is empowered and has original jurisdiction to try the case by reason of the subject matter involved, a complaint brought before him relative to the ownership of a parcel of real estate will be considered as presented for the first time and the judge of first instance will be deemed to have taken cognizance of the case by reason of his original jurisdiction, inasmuch as during the trial no exception whatever was taken on the ground of lack of jurisdiction of the justice of

the peace or of the judge of first instance in his appellate jurisdiction. For these reasons the trial is understood to have been validly held in first instance. Consequently, an appeal from the judgment of the Court of First Instance would be proper and the Supreme Court can decide such appeal in this second instance. (Carroll and Ballesteros vs. Paredes, 17 Phil. Rep., 94.)

In order that the said exception of lack of jurisdiction on the part of the justice of the peace or of the judge of first instance may be sustained, it is imperative that at least it be made at the hearing of the case in the Court of First Instance and prior to the rendition of judgment. If this requisite is omitted, no attention or consideration can be given to the exception upon the hearing of the appeal before the Supreme Court, for the reason of its having been taken out of season and de hors the trial by the Court of First Instance. Such an important omission cannot be repaired by entering the exception after judgment has been pronounced, nor by alleging it as a ground for the appeal to this court.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from have been refuted, the said judgment is held to be in accordance with law and should be, as it is hereby, affirmed, with the costs against the appellant.

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

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