

## ANDRES CALON Y MARTIN, PLAINTIFF AND APPELLEE, VS. BALBINO ENRIQUEZ ET AL., DEFENDANTS AND APPELLANTS.

*G.R. No. 9277. February 15, 1916*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

The purpose of the present action was to recover of the defendants a certain parcel of land, composed of 26 hectares, 57 ares, and 79 centares, located in the sitio of Balanay, municipality of Tarlac, Province of Tarlac, P. I., particularly described in the 2d paragraph of the complaint.

The plaintiff alleged that he was the owner of the land and that he had acquired the same by a "composicion con el estado," during the time of the Spanish government; that the defendants had illegally and unlawfully taken possession of a portion of said parcel of land, to his damage and prejudice in the sum of P1,400.

The defendants interposed a general and special defense. They alleged that they were the owners and entitled to the possession of the land in question, for the reason that they had occupied the same for a long period of years.

Upon the issues thus presented the question was submitted to the Honorable Julio Llorente, judge,' who, after hearing the evidence, reached the conclusion that a preponderance of the same showed that the plaintiff was entitled to the possession of said parcel of land and that the evidence was not sufficiently clear to justify a judgment for damages against the defendants for said illegal occupation. From that decision the defendants appealed to this court and made several assignments of error.

The first and second assignments of error present questions of fact only. The appellants attempt to show that they had been in possession of the land for a period of thirty years or more. The lower court found that the proof adduced during the trial of the cause did not support that contention. We have examined the proof and have reached the conclusion that a preponderance of the evidence supports the conclusion of the lower court.

The third assignment of error alleges that the lower court committed an error in not ordering an ocular inspection of the land in question. Whether or not a nisi prius court shall make an ocular inspection of the land in litigation depends upon the sound judgment and discretion of the court. His refusal will never constitute a reversible error. It is the duty of the parties litigant to present proof which will accurately and definitely describe the property in question and its relation to adjoining property. In the present case the complaint describes by metes and bounds the parcel of land in question. Not only does the complaint accurately describe the land, but the documents presented by the plaintiffs also certainly identify the land in question. Under said circumstances it was unnecessary for the court to make an ocular inspection.

We find no reason in the record for changing or reversing the judgment of the lower court. The same is therefore hereby affirmed, with costs. So ordered.

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

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