

1 Phil. 225

[G.R. No. 567. April 16, 1902]

**PIO ESPIRITU, PLAINTIFF AND APPELLANT, VS. MARIANO DESEO, DEFENDANT
AND APPELLEE.**

D E C I S I O N

COOPER, J.:

On June 20, 1901, Pio Espiritu brought this action against Mariano Deseo to recover the possession of certain lands, together with damages, upon the ground that the plaintiff had been in the possession as lessee of the said lands, the property of the Augustinian Friars, from the year 1884 to the year 1898, at which time he was dispossessed by the defendant. The defendant made the following allegations in opposition to the complaint: (1) That the alleged lease upon which the plaintiff bases his complaint has not been proven by any competent evidence; (2) that the action which plaintiff might properly have brought for the recovery of possession is the restitutory interdict, but that the possessory action corresponds exclusively to the owner of the property; and (3) that the plaintiff has lost the right of possession by the expiration of more than one year.

The defendant further alleges that he has been in possession of the said lands and the lot in question for seventeen years, of the former by composition with the State and of the second by right of testamentary succession.

After a careful examination of the record we have not been able to find therein any evidence of the existence of any contract of lease of the lands in question executed by the Augustinian Friars in favor of the plaintiff, or any evidence from which might be deduced the existence of any right on the part of the plaintiff to the lands in question. The presentation of receipts which show the payment of the amount of the annual ground rent corresponding to several years prior to the act of dispossession by no means tends to demonstrate that the plaintiff on the date at which this action was brought had any subsisting contract of lease on said lands.

The plaintiff might have brought the summary action of restitutory interdict if he had brought suit within a year from the time of the execution of the act alleged to constitute the dispossession, and which took place in 1898, founding his claim exclusively upon the possession of the property then enjoyed by him. (Law of Civil Procedure, arts. 1634 and 1635.) The benefits of this former possession were lost by reason of the possession of the defendant for more than one year.

Not having the possession or ownership of the lands in question or any apparent right with respect to the same, the action can not be maintained.

It is not necessary to decide in this case whether the tenant can bring a possessory action, because the alleged lease has not been proven, nor is it necessary to determine the true character of the action brought by him. Neither is it necessary to decide whether he can maintain any action for the purpose of recovering the rents, issues, and profits or damages thereof, inasmuch as the record does not disclose their amount.

The judgment of the Court of First Instance is therefore affirmed, with the costs to the plaintiff.

Arellano, C. J., Torres, Willard, Mapa, and Ladd, JJ., concur.
