

1 Phil. 366

[ G.R. No. 547. September 11, 1902 ]

**FLORENCIO POZADAS, PLAINTIFF AND APPELLANT, VS. DOMINGO MARTINEZ ET AL., DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**TORRES, J.:**

Appeal by counsel for Florencio Pozadas, allowed in both effects, from the order of the 24th of June, 1901, directing the reversal of the order giving Pozadas possession of the land referred to in this proceeding which is declared to be contentious, preserving to the parties their respective possession of land, with one-third part of the costs to the municipal president of the town of San Carlos, the other two-thirds of the costs to be paid by the plaintiff and the defendant, the said Pozadas being enjoined from molesting Domingo Martinez in his possession of the land in question.

By petition of the 13th of May, 1901, Florencio Pozadas, alleging that he was the owner of a parcel of land situated at a place called Pata, of the town of San Garlos, the extent and boundaries of which appear from the public instrument by which the land was acquired, recorded in the Register of Property, and which he exhibited as evidence of his rights of ownership, asked that he be judicially put in possession of the said land in accordance with the provisions of article 2015 of the Law of Civil Procedure then in force. The petitioner prayed that the municipal president of San Carlos, acting as justice of the peace, be authorized to execute the order, and that the petitioner be given a transcript of the order directing that he be given possession of the lands, and also a transcript of the record of its execution, and that the public instrument exhibited by him be returned.

By order of the same date the court granted Pozadas's petition, without prejudice to third persons with better right. On the 22d of May, after the publication of the edicts citing the owners of the adjacent lands; Pozadas was put in possession of the land referred to in the deed mentioned, without opposition on the part of any third person, and the area and

boundaries of the land were recorded in the minutes of the proceeding. But the judge, by an order of the 25th of May, after an examination of these minutes, and in view of certain defects observed in the citation of the owners of the adjacent lands and the insufficient description of the boundaries, declared the act by which possession was given to be null and void, and ordered the municipal president of San Carlos to repeat the proceedings, after compliance with the formalities indicated.

The proceeding by which Pozadas was to be put in possession of the land claimed having been had *de novo*, the area and boundaries of which land were recorded in the minutes of the 31st of May, Domingo Martinez and Magdalena Martinez, husband and wife, appeared and made opposition thereto.

These individuals filed a petition on the 29th of May with the municipal president, the commissioner, asking that by virtue of the claims set forth therein, supported by documentary evidence, the possession which was about to be conferred *de novo* on Pozadas be suspended, if the land of which Magdalena Martinez was in possession as owner was included therein, and that report of this opposition be made to the Court of First Instance; but the municipal president, without granting this petition, notified the claimant Martinez to prosecute his claim before the Court of First Instance. This he did by filing a petition, dated the 1st of June, asking that the possession last conferred upon Pozadas be set aside, and that the latter be ordered to assert his rights in the corresponding civil action.

After an ocular inspection by the court, in pursuance with an order made by him in furtherance of justice, and upon a report by the clerk of the court, the order here appealed was entered, upon the ground that the possession given Pozadas by the last proceeding constituted an ouster from a judicial possession formerly conferred by final judgment rendered in a contradictory suit—a stronger title than a deed of sale, even if supported by a title obtained by composition with the State, which might be set aside in a similar action; that such a title might serve as a basis for obtaining the possession of realty by voluntary jurisdiction proceedings, provided this realty be not possessed by a third party, but that such proceedings should be suspended as soon as opposition is made by any third person, who can not be ousted without first having had his day in court; and that, therefore, it was the duty of the president of San Carlos to have suspended the proceedings by which he was conferring possession, in view of the opposition of Martinez and his wife.

This is a question concerning a proceeding of voluntary jurisdiction instituted for the purpose of obtaining judicial intervention in order to avoid damage which might be suffered

in a property right, the petitioner to that end availing himself of the provisions of article 2015 of the Law of Civil Procedure then in force.

The judge, in accordance with the provisions of article 2016 of the same Law, ordered that the possession solicited be given without prejudice to the rights of third persons.

It is true that on the 22d of May, 1901, Pozadas was placed in possession of the land to which the proceeding referred without opposition on the part of any third person, but it is also true that, by an order of the 25th of the same month, and for the reasons therein expressed, the proceeding by which possession was given was declared void, and directions were given that the proceeding be effected anew.

The order of the 25th of May having become final and unappealable, as the appellant took no exception thereto, we can not now discuss the question as to whether this order was correct or not; and therefore the new proceedings for giving possession of the 31st of the same month would have been perfectly legal had it not been for the opposition of Martinez and his wife before Pozadas was put in possession of the land. This opposition, made in due time, was sufficient to have given the proceedings a contentious character.

It must be remembered that the judicial order of possession can be executed only in case no opposition is made by a third person interested in the matter. This is the situation of Martinez and his wife, who allege that they are in possession under a claim of ownership of a piece of land included in the estate which was and is the object of Pozadas's claim. The moment that opposition was made to the proceedings, as was that of Martinez and his wife, before possession was given, the execution of the order of possession should have been suspended, and the proceedings of voluntary jurisdiction dismissed, with the result of converting the action into one of contentious jurisdiction, in accordance with the provisions of article 1817 of the Law of Civil Procedure.

From these considerations it is evident that the order appealed is without error, and, although the possession given Pozadas by the municipal president of San Carlos on the 31st of May, 1901, was in violation of the provisions of the said article 1817, nevertheless the fact that he was a layman and that he acted in good faith, as shown by the text of the order of the 20th of May, exempt him from responsibility or liability to any disciplinary correction, and for this reason no special order should have been made concerning the costs in the first instance.

Upon these grounds, therefore, we are of opinion that the order of the 24th of June, 1901,

should be affirmed, with the costs of the second instance to the appellant, but the said order is understood as reversed with respect to the costs of the first instance and is to be understood as standing without any special declaration as to the costs of that instance. So ordered.

*Arellano, C. J., Cooper, Willard, and Ladd, JJ., concur.*

*Mapa, J., did not sit in this case.*

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