6 Phil. 286

[G.R. No. 1748. June 01, 1906]

THE BISHOP OF CEBU, REPRESENTING THE ROMAN CATHOLIC CHURCH, PLAINTIFF AND APPELLEE, VS. MARIANO MANGABON, DEFENDANT AND APPELLANT.

D E C I S I O N

PER CURIAM:

The complaint in this case relates to a tract of land in the district of Ermita of this city, which it is alleged is at present occupied by the defendant. The object of the original complaint was to recover the possession of the said land, while in the amended complaint the plaintiff prays that the said land be declared to be the property of the Catholic Church and that it be restored to the latter. Counsel for appellant admits in his brief that the object of the action is the recovery of possession when he refers to the judgment of the court below as being "in favor of the plaintiff in an *action to recove*r the possession of certain real estate." (Record, p. 1.)

Neither party has exhibited any title papers to the land in question nor any other documentary proof. They have only offered certain parol evidence as to the former possession of the land and as to certain acts of ownership exercised by the parties over the same.

The court below found (*a*) "that the defendant's parents and brothers had been in possession of the land in question until about the year 1877;" (*b*) "that it had not been clearly shown in what capacity they had occupied the lands;" (*c*) "that,about the year 1878 the defendant and his relatives vacated the land by virtue of an order from the municipality, which declared that the land was included within the zone of *materiales fuertes* (fire zone) and the houses in which they lived upon the said land were of light materials, and that they so vacated the land without objection;" (*d*) "that after the land was vacated the parish priests of the Ermita Church fenced the land and cleaned the same without any objection

whatsoever on the part of anyone; that the plaintiff claimed that this property had belonged to the Catholic Church from time immemorial, the defendant, his parents and brothers having occupied a part thereof by the mere tolerance of the Catholic Church;" (*e*) "that in the year 1898 the defendant, without the consent of anyone, entered upon the land in question and built thereon a nipa house and continued to live thereon without the consent of the parish priest of the Ermita Church or the plaintiff in this case." (Bill of exceptions, p. 11.) The court then "that the defendants vacate the land described in the complaint and pay the costs of this action" (p. 12).

Counsel for appellant says in his brief "that the defendant claims to be the owner of the land by inheritance." (Brief, p. 8.) It is not necessary for this court to apply to the present case the well-settled doctrine that it is not sufficient to allege a universal title of inheritance without showing the manner and form in which such title was converted into a singular title in favor of the person invoking the same, particularly where, as in the present case, the question involved does not relate to the ownership of the property but rather to who has the better right to the possession of the same. But the court below suggests that there are several brothers of the defendant who might also claim the same right to occupy the land but who, however, have not done so. The court says "from the evidence introduced at the trial and from the fact that the defendant's brothers d6 not claim any right to the land in question, it seems that the claim of the plaintiff is the more credible." (Bill of exceptions, p. 11.)

The complaint is directed against the illegal act of spoliation committed by the defendant, in October, 1898, while as he himself says there was no priest in Ermita who could take care of the church and of the land in question, the American troops having occupied the parish house according to the defendant, and the Filipino troops having occupied it according to other witnesses. This is one of the points as to which there is no dispute between the parties, the defendant and the witnesses of both parties agreeing in the main as well as upon all the important details relating to this matter.

Counsel for appellant sums up hm brief in the following paragraph:

> "The defendant was the legal owner of the property when he was unlawfully ejected by the plaintiff in 1879, and we insist that he had a right to reenter upon the land when he did so, the time for prescription not having expired since he was ejected in 1879" (p. 8).

Upon this point the court below said: “The occupation of the land by the defendant in the year 1898 was illegal, for, if he thought he had a right to the land, he should have, applied to the courts for the possession of what belonged to him, and not proceed to occupy property claimed (he should have said possessed) by another against the will of the latter.”

This conclusion of law of the trial court is entirely in conformity with the provisions of article 441 of the Civil Code. Any other conclusion would sanction the recovery of possession through violence or other unlawful and arbitrary means, and would permit a person to take the law into his own hands: “If a person thinks that he is entitled to the property which another possesses he should claim the same from the person in possession. If the latter accedes and voluntarily returns possession and acknowledges that the property does not belong to him, there is no necessity of any one interfering, but if the person in possession refuses to deliver the property, the one who believe^ himself to be entitled to it, however well founded his belief may be, can not take the law into his own hands but must seek the aid of the competent authorites.” (4 Manresa, Commentaries on the Civil Code, p. 163.) The action of the defendant in 1898 was therefore absolutely unlawful.

This possession held by the defendant in 1898 can not be added to the former possession, which was interrupted in 1877 by the order of the municipality, so as to consider such possession continuous, the time intervening not being of sufficient duration to cover the statutory period of prescription. Article 466 of the Civil Code provides that “a person who recovers possession *according to law*, which was improperly lost, is considered as having enjoyed it without interruption for all the purposes which may redound to his benefit.” But in this case it appears (1) that it can not be affirmed that the possession enjoyed by the defendant was improperly lost; that possession ceased by virtue of an order from the municipality and no proof to the contrary has been offered on this point; (2) that it is impossible to say what was the nature of the possession prior to the year 1877—that is to say, whether it was held by right or by the mere tolerance of the plaintiff in this case. The code refers to the recovery of the possession, according to tow?,’which was improperly lost, and to “recover according to law means through the proper writs and actions, or by requesting the aid of the competent authorities in the special cases where the provisions of article 441 may apply.” (4 Manresa, Commentaries on the Civil Code, p. 329.) “Of course,” continues Manresa “the acts of violence or secrecy or mere tolerance can not affect the right of possession.” Consequently the defendant in this case could never have lawfully and legally done what he did, to wit, to reenter upon the land from which he had been ejected by the city of Manila. If the order of the municipality was illegal, and the possession was improperly lost, the defendant should have requested the assistance of the competent

authorities to recover it. He should have applied to the executive or administrative officials, as the case might have been, or to the courts of justice in a plenary action for possession, for a year having elapsed since he was ejected from the premises, he could not maintain a summary action for possession.

The legal provisions hereinbefore quoted would be sufficient ground upon which to base the confirmation of the decision of the trial court, but on account of the facts involved in this case a question of law has been raised by the members of this court which has not been urged by the parties themselves. It is absolutely necessary to decide this question, which naturally arises from the facts alleged in the complaint. The question is whether, after the promulgation of the Civil Code, the *accion publiciana*, which had for its object the recovery of possession in a plenary action before an action for the recovery of title could be instituted, still existed. It is well known that under the legislation prior to the Civil Code, both substantive and adjective, there were three remedies which a party unlawfully dispossessed could avail himself of, to wit: The *accion interdictal*, which could be brought within a year, in a summary proceeding; the plenary action for possession in an ordinary proceeding, which could only be brought after the expiration of a year; and the action for title in an ordinary proceeding, which was brought in case the plenary action for possession failed. The *accion interdictal* had for its object the recovery of the physical possession; the plenary action for possession, the better right to such possession ; and the action for title, the *recovery of the ownership*.

We lay down as a conclusion that if the plaintiff, when he was deprived in October, 1898, of the possession which he had enjoyed quietly and peacefully for twenty years, more or less, had within a year instituted the *accion interdictal*, or summary action for possession, he would have been, necessarily and undoubtedly, restored to the possession of the land. It would have availed the defendant nothing to allege, as he now alleges, that he had merely recovered the possession which he improperly lost in 1877, when he dispossessed the plaintiff as he did. Any tribunal, in the same arbitrary manner in which the defendant dispossessed the party in possession, would have condemned the said defendant to return the possession to that party.

But a year elapsed and the plaintiff brought this summary action for possession, and we also lay down as a conclusion that such summary action for possession could not be maintained, either under the old Code of Civil Procedure or under the new Code of Procedure in Civil Actions. (Laws 1 and 2, title 34 of the *Novisima Recopilacion*; art. 1635 of the Spanish Code of Civil Procedure and sec. 80 of the present Code of Procedure in Civil Actions.)

This quiet and peaceful possession of twenty years, more or less, thus lost in a moment, could not be recovered in a summary action for possession after the expiration of one year, but possession could still be recovered through the *accion publiciana*, which involved the right to possess. This latter action would be then based upon the fact that he, having been in possession for twenty years, could not lose the same until he had been given an opportunity to be heard and had been defeated in an action in court by another with a better right (The same laws.) This fact of itself would have been sufficient to recover the possession, not in a summary, but in a plenary action, in which it would likewise have availed the defendant nothing to allege that all that he did was to recover a possession improperly lost in 1877. In one way or the other the plaintiff would have recovered such possession, in the first case the physical possession and in the second case the right to possess, which is not lost by the mere occupation of a third person, whether such occupation was effected violently, secretly, or arbitrarily.

But the doubt which now exists is whether, after the promulgation of the Civil Code, the *accion publiciana* continued to exist.

The doubt arises from the provisions of article 460 of the Civil Code, which reads as follows:

> "The possessor may lose his possession—
>
> "1. By the abandonment of the thing.
>
> "2. By transfer to another for a good or valuable consideration.
>
> "3. By the destruction or total loss of the thing or by the thing becoming unmarketable.
>
> "4. By the possession of another, even against the will of the former possessor, if the new possession has lasted more than one year."

The last provision of this article has given rise to the doubt whether possession which is lost by the occupation of another against the will of the former possessor is merely possession *de facto* or possession *de jure*.

The most powerful reason why it is thought that it refers to possession both *de facto* and de jure is that, whereas the two are equally lost in the manner indicated in the first three

provisions of this article, it would be rather strange that the fourth provision should only refer to possession *de facto*.

This, however, is not convincing because not only can the right of possession of any kind be lost in the aforesaid three ways, but the right of ownership as well. It could not be inferred from this, however, that the right of ownership can be lost in the fourth manner indicated. The legislation and the jurisprudence of all countries will allow a party after he has lost possession to bring an action to recover the ownership of the property—that is to say, to recover what belongs to him—except where he is barred by the statute of limitations. There is no law fixing one year and one day as the period of prescription of such actions.

Manresa expressly propounds this question and says:

> "Meditation upon the nature of possession, being convinced as we are of the fact that possession constitutes a right, a right *in rem*, whenever it is exercised over real property or property rights, has merely served to strengthen as far as possible our conviction of the existence of the *accion publiciana*. We confess, willing to rely only upon a sound basis, that a doubt has occurred to us as to whether or not such action should be exercised by the possessor, as we find nothing definite upon which to place such reliance, although we have noticed that most of the authors admit that he should, and we know that where there is a right there is a cause of action.
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> "We have later seen this question raised and the proposition advanced that although, as an exception to the general rule, such action is based upon equity, but as equity is not sufficient to allow the exercise of it such action, it would be necessary to have a legal provision, an article in the code, establishing the same, a provision and an article which do not exist, and their nonexistence shows that there is no such thing as the *accion publiciana*.
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> "That we have no knowledge of the existence of any legal text or recent provisions which expressly relate to such action, is true The same thing is true in France. However, the majority of the authors admit its existence. Among us its existence is also generally admitted by the authorities on civil and procedural law. But we do not desire to base our conclusions upon the arguments of the authorities, particularly when we note that Sanchez Roman is the only one who has attempted to support in any way his conclusions. It is sufficient, says this

author, that the right existing, there,should be an action to protect it. There is no necessity of any special declaration in the Civil Code.

"We are of the same opinion as the author in question, but certainly not because we believe that if the possessor is deprived of the *accion publiciana* his right ceases to be a right *in rem*. In regard to this matter we refer to what we have already said in our preliminary consideration of the question of possession.

"In regard to this matter the idea is present in the code that possession should be considered as an actual right and it is so stated in various articles of that code, as for instance in article 438. It would be impossible to admit that a mere physical act would confer all the rights which a possessor ordinarily enjoys.

"Article 445 presupposes that possession may be considered either as *de facto* or *de jure*, for when it refers to controversies arising from the possession *de facto*, it clearly indicates that other controversies may arise which would not relate to the possession *de facto*. Further it can not be conceived that had its intent been different it should have preferred actual possession to any other possession. The article in question ends with the following significant words: 'The thing shall be placed in deposit or judicial keeping until the *possession* or ownership there of is decided in the proper manner.' That is to say, the question of fact can not be determined until the question of law has been decided either in regard to the ownership or in regard to the possession (pp. 220-221).

"Further, let us take another subject, for instance, the subject of easements. It was generally, believed that the *accion confesoria* existed. Vain delusion! We have carefully examined all the provisions of the code relating to easements and we find absolutely nothing in regard to such an action. Then the *accion confesoria* is another error. It does not really exist. Then, if the owner of the dominant estate is denied the use of the easement, it would not be because he has not a right to such use of it The only thing that he has not is the action.

"No; such an absurdity can not be admitted. It is impossible to conceive that a person has a right which need not be respected by others, and such respect can not be exacted unless the law provides an adequate remedy for its enforcement. If a person has a right over any kind of property, such right would not be complete unless it could be enforced as against the whole world. The action is

> the recognition of the right; it is the weapon for its protection ; the right certainly does not arise from the action, but on the contrary the action arises from the right. There is a right recognized by the code—then this is sufficient! That right necessarily carries with it the action to enforce it, the life-giving force. The action is, under this aspect, the actual enforcement of the right, and these two things are so closely allied that if the action is denied the right is also virtually and actually denied The *accion publiciana,* therefore, exists, not for the sake of equity, but because it must necessarily exist if the right to possession exists or can exist as provided in article 445, and as is inferred from the other articles of the code dealing with this subject.
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> "There are not, in reality, any practical difficulties, for the courts consider as owners many who are simply possessors, and actions for title are maintained upon evidence which appears to be proof of ownership, but which in reality is not, for the reason that the title under which such ownership is claimed is not always in question, but merely its superiority over the claim of title of another. In a word, it is necessary to state the nature of the action but not the name by which it is known, and the claim being a just one, it is allowed in an action for title which in a multitude of cases would be nothing but an *accion publiciana* (plenary action for possession). Do not give the name of the action because it is not necessary; merely ask that the right be enforced. Who can reject the claim?" (Pages 223-224.)

Paragraph 4 of article 460 is not an innovation in the Civil Code, nor does it mean the modification or reformation of the old law. Law 17, title 30 of the third *Partida* contains the same provision: "One who holds property can not lose the possession thereof except in one of the following manners: (1) If he is ejected from it by force; (2) if another person occupies.it while he is absent and upon his return refuses him admission. * * * But although he may lose the possession in either of the aforesaid manners, he can, however, recover the same, and even the title thereto by an action in court." There is no doubt that paragraph 4 of article 460 is nothing but a repetition of the law in force prior to the Civil Code. He who loses possession in either of these ways may demand the return of the same in an action in court, as well as the ownership of the property, the glossator in expounding, the word *juizio* which appears in the law, saying, "by means of an action, *unde vi* namely, that of recovery, or by any such *restorative means*." So that the possession thus lost may be recovered not only in an action *unde vi* but by some other restorative means, such as the *accion publiciana*

or a penal action; this aside from an action for title.

Law 2, title 34, book 11 of the *"Novisima Recoplacion"* contains in its title the following prohibitive provision: "No one shall be deprived of his possession until he has had an opportunity to be heard and his right is defeated in accordance with the law."

As a legal precedent to paragraph 4 of article 460 we have law 3, title 8, of the same book 11, which says: "The laws of some cities provide that he who has been in possession of a building, vineyard, or other land for one year and one day, peacefully and adversely to the person claiming to be entitled to such possession who travels in and out of the village, shall not be held responsible therefor. There being doubt as to whether such possession for the period of one year and one day requires title in good faith, we, to dispell this doubt, do hereby order that he who holds such possession for the period of one year and one day *shall not be exempt from liability therefor while in possession* unless such possession of one year and one day was accompanied by *title in good faith*."

If the whole provision of article 460, paragraph, was contained in the old law and such was the meaning and efficacy that that possession of one year and one day had under the said old law, the courts must give some satisfactory and convincing explanation why the meaning and efficacy of such possession of one year and one day referred to in the code should be different. We are unable to give such explanation, because in the act which was the basis pf the present code nothing new was provided upon this subject, nor was any rule or procedure specified by which the various sections of the new law should be governed. Therefore the provisions of the code should be construed, as to the possession of one year and one day, as they were construed in the prior Iegislati6n, unless it appears that the intention of the legislature was otherwise—that is to say, unless it appears that the said legislature intended exactly the contrary of what had been established preceding the enactment of the code.

The right acquired by the person who has been in possession for one year and one day is the right that the former possessor lost by allowing the year and one day to expire. The right is lost by the prescription of the action. And the action which prescribes upon the expiration of the year is "the action to recover or to retain *possession*;" that is to say, the interdictory action. (Art. 1968, par 1.) Then the only right that can be acquired now, as before, by the person who was in possession for one year and one day is that he can not be made to answer in an interdictory action, but this is not so in a plenary action unless he had some title in good faith. The former possessor who had been in possession for twenty years, more

or less, was considered as owner, and unless he was given an opportunity to be heard, and was defeated in law, he could not be deprived of such possession; and notwithstanding all this, and in spite of such prohibition, the maintenance of a possession wrongfully taken from the former possessor by a willful act of the actual possessor had to be sustained.

The lessee, the depositary, the pledgee, the intruder, the usurper, the thief himself, after the expiration of a year would not be responsible for the possession of which the lawful possessor was wrongfully deprived, and if the latter could produce no evidence of his right of ownership—the only thing that he could do according to the contrary theory—it would be impossible for him to recover such possession thus lost by any other means.

If, in addition to the fact of possession, the action for the enforcement of which prescribes after the expiration of one year and one day, there exists without any doubt what-soever the right to possess (or more properly speaking in the case at bar, to continue to possess), which said right of possession would be a right in rent, such possession would not be on a less favorable footing than a mere possession *de facto*; and, if in the latter case the interdictory action lies, the action which existed prior to the enactment of the code, to wit, the *accion, publiciana*, should continue to lie in the former case. The code establishes rights and the Law of Civil Procedure prescribes actions for the protection of such rights, and we can not look to the code to find any provision defining the action which every civil right carries with it.

This is the reason why as a title of chapter 3 of the code in which article 460 is included, and as a sanction of the whole of title 5, book 2, which deals with possession, article 446 provides that every possessor has a right to be respected in his possession, and should he be disturbed therein, he must be protected or possession must be restored to him by the means *established in the laws of procedure.*

The code refers to the laws of procedure enacted in Spain in 1881 and extended to the Philippines in 1888. Article 1635 of the old Code of Civil Procedure makes provision for summary proceedings to retain or to recover, to protect or to restore, possession, provided the action is brought within a year, but after the expiration of this period the party may bring *such action as may be proper*. This latter action, as has been explained before, may be either the plenary action for possession referred to or an action for title. This assumed, and reading article 1635 of the old Code of Civil Procedure immediately before article 446 of the Civil Code, we are unable to conceive how that could be successfully denied after the 8th of December 1889, when the Civil Code went into effect, which could not be denied prior to

that date, to wit, the existence of the *accion, publiciana* to recover the right of possession, to enforce the right to possess, which although it could not be brought within the year as a mere interdictory action for the protection of the mere physical possession, there can be no valid reason why it could not be brought after the expiration of the year in order to protect the right and not the mere physical possession.

Article 1635 of the old Code of Civil Procedure not having been repealed by the Civil Code, if the *accion publiciana* existed prior to its enactment, it must necessarily exist after such enactment. We consequently conclude that the action brought by the plaintiff in this case to recover the possession of which he was unlawfully deprived by the defendant can be properly maintained under the provisions of the present Civil Code considered as a substantive law, without prejudice to any right which he may have to the ownership of the property, which ownership he must necessarily establish in order to overcome the presumption of title which exists in favor of the lawful possessor, the plaintiff in this case, who had been in the quiet and peaceful possession of the land for twenty years, more or less, at the time he was wrongfully dispossessed by the defendant.

Having reached this conclusion, the judgment of the court below is accordingly affirmed, with the costs of this action against the appellant. So ordered.

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

Johnson, J., dissents.

Date created: April 30, 2014