8 Phil. 745

[G.R. No. 2524. April 27, 1906]

CARMEN AYALA DE ROXAS, PETITIONER AND APPELLEE, VS. AGAPITA MAGLONSO ET AL., RESPONDENTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

On the 15th of March, 1904, Carmen Ayala de Roxas presented a petition to the Court of Land Registration asking that she be inscribed as the owner of a certain tract of land of 12,388.46 square meters in extent, fronting on Calle de San Miguel, in Manila. More than fifty people, who are occupying the land, appeared and opposed the granting of the petition. Judgment was entered in the court below on the 31st day of January, 1905. The oppositions of Agapita Maglonso and forty others were not sustained, and as to them judgment was entered in favor of the petitioner. The oppositions of Alejandro Francisco and seventeen others were sustained, and as to them the petition was denied.

Agapita Maglonso and her forty associates, whose petitions had been rejected, excepted to the judgment, and have brought the case here by a bill of exceptions. They, however, made no motion for a new trial in the court below. The petitioner, Carmen Ayala de Roxas, excepted to the judgment so far as it sustained the oppositions of Alejandro Francisco and his seventeen associates. She moved for a new trial in the court below, which was denied, and she has brought the case here by bill of exceptions.

(1) The appellants Agapita Maglonso and her forty associates not having moved for a new trial in the court below, we are not permitted to examine the evidence upon which the decision of the court below against them was based. The only question presented upon the bill of exceptions prepared by them is whether the findings of fact contained in the decision of the court below are sufficient to justify the judgment as to them. The court made separate findings as to each one of the objectors, and an examination of those findings shows that they support the judgment. It is claimed by these appellants in their brief in this court that

the court below found that certain of them acquired their interests in the land in question by inheritance or purchase, and that therefore to them is applicable the prescriptive period of ten years. When the whole of the decision is examined it is seen that the court did not make the finding claimed. The court said:

> "While there is a legal ground upon which to base the allegation that those who are able to prove a possession of ten years by hereditary title or by purchase can invoke the benefits of the ordinary prescription under article 1940 of the Civil Code, the evidence in the case relating to their status as heirs as well as to the fact of the purchase are too uncertain to justify the application of such a rule."

The appellants signed statements in August, 1901, recognizing the ownership of the petitioner. This interrupted the prescriptive period. The facts stated in the decision relating to threats made by the notary are not sufficient as a matter of law to make that recognition void.

No claim was made in the pleadings in the court below for the value of the improvements made by the appellants, nor was any evidence introduced as to such value. The judgment as to Agapita Maglonso and the persons who prepared and presented a bill of exceptions with her is affirmed, with the costs of this instance against the said appellants.

(2) As to the bill of exceptions prepared by the petitioner, it appears that she made a motion for a new trial in the court below on the ground that the evidence was not sufficient to justify the findings of fact stated in the decision of the judge. It is therefore necessary to discuss the evidence in relation to that part of the decision.

On the 26th of November, 1847, the grantors of the petitioner acquired the beneficial interest in the land in question by a deed of that date. On the 3d of September, 1887, the petitioner acquired the legal ownership of the land described in her petition, the beneficial ownership whereof had passed to her from the grantees of the deed of the 26th of November, 1847. The title deeds of the petitioner were inscribed in the registry of property in 1892. The evidence presented by her showed that at the time of the presentation of the petition she was the lawful owner of the land in question. The evidence presented by the objectors related solely to the possession of certain small tracts of land included in the land described in the petition. Their entire claim is based upon the statute of limitations. The court below held as to each of the appellees that each one of them had been in possession of

the land for more than thirty years; that the extraordinary period of prescription applied, and that they became the owners of their respective parcels. Each one of the defendants or objectors testified for himself. He presented no other evidence. The testimony was practically the same in all the cases, and was limited to a statement by the defendant that he went on the land at a certain time, had lived there ever since, had made improvements thereon by filling low places thereon, did not ask permission from anybody, and had not been disturbed in his occupation. In rebuttal the petitioner presented evidence which proved the following facts: When the land tax was established in 1901 the petitioner made a demand upon a notary public that he should visit the premises for the purpose of notifying the occupants of the land to abandon it within thirty days. In response to this requisition the notary visited the premises on the 31st of August, 1901, and delivered to each one of the occupants, including these appellees, such a written or printed notice. The notary testified that he limited himself to delivering a copy of this notice to each one of the occupants, and made no threats of any kind whatever. This testimony is corroborated by other evidence in the case. The appellees, however, practically all of them, testify that threats were made that if they did not recognize the petitioner as owner their houses would be torn down within three days. On the day when this notice was given no documents were signed by the appellees, and none were presented to them for signature. However, on the days following the 31st day of August, up to and including the 5th day of September, 1901, and even later, the occupants at different times during those days, and one by one, voluntarily as far as appears, went to the office of the agent of the petitioner and there signed written instruments, each of which described by metes and bounds the land occupied by the person who signed it, stated that the property belonged to the petitioner, and the person who signed the document promised to pay as rent a certain number of cents per square meter for the use of the property, and also to pay the land tax upon the house occupied by him.

We do not think that the evidence is sufficient to show title in the appellees by prescription. (See Veloso *vs*. Naguit,[1] April 2, 1904, 2 Off. Gaz., 527.)

Articles 444 and 1942 of the Civil Code are as follows:

> "ART. 444. Acts which are merely tolerated and those clandestinely executed, without knowledge of the possessor of a thing, or by force, do not affect the possession."
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> "ART. 1942. Acts of a possessory character, performed by virtue of a license, or

> by mere tolerance on the part of the owner, are of no effect for establishing possession."

The evidence in the case brings it within the provisions of these articles. The petitioner was the owner of the land. She collected rent from another part of the same land. She tolerated the presence of the defendants upon the small parcels of land which they occupied, not compelling them to pay any rent until the imposition of the land tax in 1901. The most persuasive evidence that the defendants were there by her tolerance, and that they knew it, is found in the fact that in 1901, when a demand was made upon them to pay rent, they did so, and recognized the ownership of the petitioner. The finding of the court below to the effect that the notary threatened to destroy their houses is not in our opinion supported by the evidence.

The judgment of the court below, so far as it is against the petitioner, is reversed. The case is remanded to the court below with instructions to enter judgment for the petitioner as prayed for in her petition. No costs in this court will be allowed on the appeal of the petition. So ordered.

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

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[1] 3 Phil. Rep., 604.

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