

[ G.R. No. 2402. April 26, 1906 ]

**APOLINARIO MODESTO ET AL., PLAINTIFFS AND APPELLEES, VS. CONOEPACION LEYVA ET AL., DEFENDANTS AND APPELLANTS.**

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

**MAPA, J.:**

In a civil action brought in the Court of First Instance of the city of Manila by Concepción Leyva against Roque Almario, apparently for the recovery of a certain sum of money, judgment was rendered in favor of the plaintiff, which said judgment was ordered executed on the 17th of August, 1903. In pursuance to the order of execution there was sold at public auction to Benito Mañalac, one of the defendants in this case, by the sheriff of the city of Manila, on the 30th of September following, a tract of land belonging to the said Almario on Calle Azcarraga, the superficial area and boundaries of which are described in the complaint. This sale was recorded in the Registry of Property on the 24th of October, 1903. There is also an entry in the same registry of certain possessory information proceedings relating to the land in question in favor of Roque Almario, which possession dated from the 29th of March, 1894.

The plaintiffs alleged that they were the sole owners of the land in question and asked the court that the sale made by the sheriff in favor of Benito Mañalac be declared null and void and that the entry made in the Registry of Property in regard to the said sale be canceled. The action was brought against Concepcion Leyva and Benito Mañalac. The court below rendered judgment in favor of the plaintiffs, directing that they be given possession of the land in question. To this judgment the defendant, Mañalac, excepted. He also made a motion for a new trial on the ground that the said judgment was plainly and manifestly against the weight of the evidence, and to the order overruling said motion he also excepted. In his brief presented to this court the appellant relies upon four assignments of error.

The first assignment of error is to the effect that the' finding of the court below that the plaintiff, Apolinario Modesto, and his predecessors have had the possession and use of the land in question for more than forty years, and that this possession and use had continued until the time the same was sold by the sheriff of the city of Manila in the month of August, 1903, is not sustained by the evidence.

The plaintiff, Apolinario Modesto, testified at the trial that the land in question had belonged to his father, who was in possession of the same when he, Modesto, was born (the witness was 45 years of age); that his father had been in possession of the land up to the time of his death; that upon the death of his father he succeeded him in the possession of the land and continued in such possession until it was sold by the sheriff; and that the possession by his father and himself for more than forty years was held by them either personally or through their tenants, who paid them rent. He further testified that Roque Almario was one of such tenants and paid rent for the use of the land.

His testimony is corroborated by that of Mariano Adriano, who testified that he had occupied the land as a tenant during the years 1882 to 1886; that among others Roque Almario was also a tenant during that time; that he, Almario, as well as the witness, paid rent for the particular parts of the land which they respectively occupied, at the rate of 50 cents per month; and that this rent was at first paid to Teodoro Modesto, the father of the plaintiff, Apolinario, and later to the plaintiff himself Candido Malpoc testified practically to the same effect. According to this witness he also was a tenant upon the land in question while Teodoro Modesto owned it. He further testified that he knew of his own knowledge that Roque Almario had also paid rent for the use and occupation of a part of the said land. The testimony of the witness Natalia Fabian, a woman 39 years of age, and the owner of land adjoining the tract in question, agrees in the main with that of the witnesses who preceded her on the stand. She testified that she had known since childhood that the land in question belonged to Teodoro Modesto, because her grandmother, Isidra Esguerra, paid him rent for the use and occupation of a part of the said land.

The appellant attempts to overcome the probatory force of this testimony with arguments which, whatever weight may be given them, can not affect such testimony except in certain details of minor importance. We, therefore, consider it unnecessary to discuss them.

The appellant further claims that the evidence introduced by the plaintiffs relates to a time prior to the date of the possessory title of Roque Almario, and that it is therefore insufficient to show that the plaintiffs had been in possession of the land subsequent to that date. This is

not true. The plaintiff, Apolinario Modesto, testified that he continued in possession of the land from the death of his father to the time it was sold at public auction by the sheriff. There is, therefore, no lack of proof as to this point.

The appellant also claims that the plaintiff, Apolinario Modesto, testified that the land was then occupied by several tenants and that his failure to present these tenants as witnesses without explanation for such failure is sufficient ground for the presumption that had they been called they would have testified adversely to the plaintiffs. The doctrine of such presumption has no application to the case at bar. The plaintiffs presented several witnesses, and evidently thought that their testimony was sufficient to prove what they intended to establish at the trial. If this is so, it was not necessary for them to present other witnesses. Parties litigant are not bound to present all the witnesses they may have if a lesser number is sufficient to establish the fact or facts which they desire to prove. In such a case the failure to call their remaining witnesses can not give rise to any unfavorable presumption against the party who, believing it unnecessary, does not present them.

To overcome the evidence introduced by the plaintiffs, the appellant presented no other proof as to the right of ownership of Roque Almario under whom he claims than the possessory information proceedings above referred to. These proceedings had certain defects, perhaps essential, which would affect their validity; for instance, the failure to cite the owners of the adjoining lands, it appearing that only one of them had been summoned; but this question is not before us and we refuse to pass upon it. The important question to be considered in this case relates to the force which the said possessory title in itself has under the law. The possessory information proceedings instituted by Roque Almario were approved with a proviso, *without prejudice to third persons with a better right*, as strictly required in such cases. This shows that the said proceedings did not constitute an unquestionable title of ownership or of possession. Furthermore, the possession therein alleged to have been held by Almario has not been supported by any other evidence in this case. After considering all the evidence introduced at the trial the court below found in its judgment that the plaintiffs and their predecessors had been in possession of the land for more than forty years. Whatever may be the respective value of the evidence introduced by the parties, it can not be said that the preponderance of the same is against such finding, which, therefore, can not be set aside on this appeal.

The second error assigned by the appellant relates to the admission by the court below of plaintiffs' Exhibit A. This document refers to a proceeding similar to those known under the old procedure as *informaciones para perpetuar memoria*. The proceedings referred to in the

said exhibit were had before a *gobernadorcillo* in December, 1887, and the purpose thereof was to establish by the testimony of five witnesses that Teodoro Modesto, the father of the plaintiffs, had been for a long time in possession of the land in question. The appellant contends that this document is null and void and that it should not have been admitted by the court below, alleging various reasons in support of this contention. It is not necessary to decide this question at this time, because in any event it could not affect the essential rights of the parties. This document would be at most but an additional proof of the possession alleged by the plaintiffs and their predecessor. It is not, however, the only and principal evidence of such possession. The most important evidence upon this point introduced by the plaintiffs was the testimony of the witnesses above referred to. This evidence was in itself sufficient to establish such possession, even discarding the document in question. Therefore, the rejection of this document, assuming that the same was null, void, and incompetent, would not affect the real issue in this case. The appellant further contends that the finding of the court below to the effect that the possessory title of Roque Almario was null and void, inasmuch as he was not a party to the suit, is contrary to law.

The possessory title in question was introduced by the appellant himself in support of his contention. To deny the court below the right to pass upon the validity and probatory force of the same (and this is what appellant's contention practically amounts to) would be absolutely unwarranted. It is a fundamental principle of procedure that the judge can pass upon all of the evidence introduced in a case and make such findings as he may deem proper and in conformity with the law. The question as to whether the findings made by the trial court can prejudice Roque Almario or not, he not being a party to the suit, we need not consider now. This is a question absolutely foreign to the case, and furthermore it is not incumbent upon the appellant to urge the same. He himself admits in his brief that it is not his duty to defend the right of Roque Almario.

The appellant finally contends that the court below erred in not dismissing the complaint, alleging that it was shown that he had legally, definitely, and irrevocably acquired the land in question. In support of his allegation that he acquired the land in question irrevocably, he invokes the provisions of paragraph 1, article 34, of the Mortgage Law, which provides as follows:

“Notwithstanding the statements contained in the preceding article, the instruments or contracts executed or covenanted by a person who, according to the registry, has a right thereto, shall not be invalidated with regard to third

persons after they have once been recorded, although later, the right of the person executing them is annulled or determined by virtue of a prior deed not recorded, or for reasons which do not clearly appear from the registry.”

Roque Almario did not record in the Registry of Property the ownership of the land in question, but merely the possession thereof under the proceedings authorized by article 390 of the Mortgage Law. According to the express provision contained in paragraph 3 of article 34 above cited, paragraph 1 thereof, above quoted, does not apply to this class of inscriptions. The citation of this provision by the appellant is, therefore, useless and of no avail.

The judgment appealed from is hereby affirmed, and the sale of the land in question made by the sheriff of the city of Manila on the 30th of September, 1903, in favor of the appellant, Benito Mañalac, is hereby declared null and void, and it is accordingly directed that the entry thereof made in the Registry of Property be canceled. The appellant shall pay the costs of this instance. After the expiration of twenty days from the date hereof let final judgment be entered in accordance herewith and ten days thereafter the case will be remanded to the court of First Instance for the execution of said judgment. So ordered.

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