

5 Phil. 457

[ G.R. No. 2058. December 22, 1905 ]

**JOSE MAS, ADMINISTRATOR OF THE ESTATE OF FRANCISCA HILARIO, DECEASED, PLAINTIFF AND APPELLEE, VS. TIMOTBO LANUZA AND WIFE, ANDREA FLORES, ET AL., DEFENDANTS AND APPELLANTS.**

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

**CARSON, J.:**

Judgment was rendered in favor of the plaintiff for the possession of a certain lot of land described in the complaint as lot No. 120, Calle Clavel, Tondo, Manila, and declaring said lot to be the property of the estate of which the plaintiff is administrator.

The plaintiff introduced in evidence an agreement in writing executed on the 4th of July, 1882, and signed by the appellants and by Francisca Hilario, whereby the said Francisca Hilario, since deceased, gave the appellants permission to enter upon the land in question, and to occupy it for such time as the said Francisca Hilario or her heirs should permit, the appellants, on their part, expressly acknowledging the right and title of the said Francisca Hilario, deceased, to the possession and ownership of said property, and, among other stipulations, binding themselves to close the opening in the wall which divided the said lot from their own, should any question ever arise over the title thereto.

Plaintiff also introduced in evidence a transcript of the record of a criminal case in the Court of First Instance of Manila, during the course of which one of the appellants, Timoteo Lanuza, on the 11th day of January, 1900, declared under oath that the lot in question was the property of the said Francisca Hilario, and that he had been treating with her for the purchase thereof.

The defendants admit the execution of the above-described agreement, and that they took possession of the lot under and by virtue thereof, but they allege that they entered into it under the mistaken belief that Francisca Hilario was in fact the owner of the property, that they discovered later that she held the property merely as administratrix for the true owner, and that on the 7th of December, 1892, they loaned the true owner, one Joaquin Lao-Jico, 200 pesos, and took from him an agreement in writing whereby he promised to sell them the said property for 500 pesos, an agreement which was never consummated, however, because he died a short time thereafter.

The defendants offered in evidence this alleged agreement for the sale of the property, and certain other documents which tended to show that the title to said property was in the said Joaquin Lao-Jico, but the trial court, over the objection of the defendants, refused to admit these documents in evidence. These documents are made a part of the bill of exceptions, and we are of opinion that the trial court properly refused to admit them in evidence, as on the defendant's own showing the agreement to sell did not pass title or dominion over the property, and only gave the defendants a right to demand the fulfillment of the terms thereof, should it appear that the instrument is what it purports to be, and that the title was in fact in the said Joaquin Lao-Jico.

(Art. 1451, Civil Code.)

This evidence being excluded, we have before us only the above-described permission to the defendants to occupy the lot in question at the will of the deceased Francisca Hilario, her heirs, or legal representatives, and the plaintiff having made demand for possession, is entitled thereto in accordance with the terms of that agreement.

We do not think that the plaintiff affirmatively established title to the lot in question, and so much of the judgment of the trial court as undertakes to declare title to the said lot in the estate of which the plaintiff is administrator should be reversed.

No weight can be given to the defendants' claim to title by

prescription, for even if it were admitted that they had been in possession for the full prescriptive period, they took possession by virtue of the express permission of the deceased Francisca Hilario, and continued in possession by virtue of said permission until January 15, 1900, as appears from the above-mentioned certified copy of the statement under oath of one of the defendants, Timoteo Lanuza. (Art. 44, Civil Code.)

The judgment of the trial court should be modified in accordance with this opinion, by substituting for the finding of the trial court that the lot in question is the property of the estate represented by the plaintiff, a finding that neither plaintiff nor defendants have proven title to the property in question, but that the plaintiff administrator is entitled to possession thereof; thus modified the judgment should be affirmed, with the costs of this instance against the appellants, After the expiration of twenty days let judgment be entered in accordance herewith, and the record returned to the court wherein it originated for execution thereof. So ordered.

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

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