

3 Phil. 567

[ G.R. No. 1432. March 30, 1904 ]

**MANUEL ARAULLO ET AL., PLAINTIFFS AND APPELLANTS, VS. SALUSTIANO ARAULLO ET AL., DEFENDANTS AND APPELLEES.**

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

**WILLARD, J.:**

This is an action for partition brought under the provisions of the Code of Civil Procedure. (Sec. 181, et seq.) The parties, both plaintiff and defendant, are apparently members of the same family. The complaint alleged that the plaintiffs and defendants had been in possession of the lands in question for many years. The defendants answered, admitting all the allegations of the complaint. A trial was had, at which, the defendants not appearing, the court found that the plaintiff had a legal right to the property, and on June 21, 1902, entered the order provided for in section 184. On the 4th of February, 1903, two of the commissioners so appointed (the third one having died) reported that when they examined the twenty-one parcels of land described in the complaint, they found that nine of them were in the possession of persons not parties to the suit, who claimed to be the owners thereof by title adverse to that of the plaintiffs and defendants. The commissioners stated in this report that they did not think that the partition could be carried on under the circumstances, but submitted the matter to the court. The latter, on February 5, made an order which, after referring to the report of the commissioners, directed the plaintiffs to show to the court that the persons then in the possession of the lands recognized the plaintiffs as the owners. On the 30th of March the plaintiffs presented a petition in response to this order, which contained the following prayer:

“7. That by virtue thereof the plaintiffs pray the court that in view of the foregoing reasons it order a compliance with the judgment, compelling the occupants of the land to submit to the partition which is ordered therein, without prejudice to their right to exercise a proper action for the recovery thereof should they believe themselves injured thereby.”

On June 12, 1903, the court made an order, the commencement and conclusion whereof are as follows:

“ORDER.

“The attorneys for the plaintiff, in the document of the 30th of March last, prayed this court to order the execution of the judgment rendered the 21st of June, 1902, wherein the legitimate right of the parties in this proceeding was declared in the undivided ownership of the lands possessed by them, and a partition of the same was ordered.

“Wherefore I reverse the judgment rendered by this court on the 21st of June, 1902, and deny the petition of the plaintiffs which occasions this order. So ordered.

“Felix M. Roxas,  
*“Judge of the Fifth  
District.*

“Juan Bernales,  
*“Clerk of  
Rizal”*

To this order the plaintiffs excepted, and have removed the case to this court by a bill of exceptions.

The bill of exceptions must be dismissed, because no final judgment has been entered in the court below. Section 123 of the Code of Civil Procedure is as follows:

“Sec. 123. *Interlocutory and incidental orders.*—No interlocutory or incidental ruling, order, or judgment of the Court of First Instance shall stay the progress of an action or proceeding

therein pending, but only such ruling, order, or judgment as finally determines the action or proceeding; nor shall any ruling, order, or judgment be the subject of appeal to the Supreme Court until final judgment is rendered for one party or the other.”

Section 143 provides as follows:

“Sec. 143. *Perfecting bill of exceptions.*—Upon the rendition of final judgment disposing of the action, either party shall have the right to perfect a bill of exceptions for a review by the Supreme Court of all rulings, orders, and judgments made in the action, to which the party has duly excepted at the time of making such ruling, order, or judgment.”

Neither one of the things accomplished by the order of June 12 put an end to the action. The refusal to grant the motion of the plaintiffs that the execution be proceeded with and the tenants be compelled to submit to the partition certainly was not a final judgment in favor of one party or the other. Nor was that part of the order which vacated the order made on June 21, 1902. The vacation of that order left the case as if no such order had ever been made. It replaced it in the condition in which it was before the order was entered, and left the action still pending for such further proceedings therein as either party might desire to take. The validity of that order can be attacked in this court only when a final judgment has been rendered and the case removed here. At that time, by the terms of section 143, all orders made during the progress of the case which were duly excepted to can be reviewed.

In view of further proceedings in the case, we will say, however, that in our opinion, when in an action for a partition such as this there is no agreement between the parties, and commissioners have to be appointed, and it appears that the property is in the actual adverse possession of third persons, who claim to be the owners thereof, and who are not parties to the suit, the proceedings can not go on. Whether

the persons should be made parties to the partition suit and their claims there determined, or whether an independent action must be brought against them, we do not decide. There is considerable conflict in the American authorities as to whether adverse claims to ownership can be determined in a partition suit. As said above, we do not touch that question. We do, however, decide that before the commissioners can make a partition the adverse claims of these actual occupants must be settled. If this were not done it would be physically impossible for the commissioners to perform their duties. They are by section 185 required to "view and examine the estate after due notice to the parties to attend at such view and examination." In making the partition they must have "due regard to the improvements, situation, and quality of the different parts thereof "Section 446 of the Code of Civil Procedure provides that every possessor must be respected in his possession. In the case at bar the commissioners and the parties had no right to go upon the nine parcels adversely occupied, for the purpose of making the examination required by the law. In this case and in all other similar cases where commissioners have to be appointed, and the land is adversely held by third persons, it would be impossible to comply with the law. In the absence of any express provision to the contrary, this is a sufficient reason for holding that the law did not intend to allow a partition in such cases. Not only is there no such express provision, but on the contrary section 183 requires the complaint to "name each tenant in common, coparcener or other person interested therein as defendants."

The bill of exceptions is dismissed without costs.

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

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*DISSENTING*

**McDONOUGH, J.**, with whom concurs **COOPER, J.**,

The material allegations of the complaint in this action for partition are not controverted by the answer. They are therefore admitted, and, upon the admitted state of facts, the court below had authority to find and did find at the trial that the plaintiff had a legal right to a part of the estate; and the court had a right, and it was its duty to order partition among the parties in interest. (Sec. 184, Code of Civil Procedure,)

The court appointed three commissioners, whose duty it was “to make partition and set off to the plaintiff and to each party in interest such part and proportion of the estate as the court shall order.”

Evidently “parties in interest,” mentioned in this section, are the same as mentioned in section 181, which names those who may maintain a partition suit, viz, “a person having or holding real estate with others, in any form of joint tenancy, or tenancy in common.”

It has been held by many courts that it is of the very essence, therefore, of an action for partition that the holding of the real estate be a joint holding with others as joint tenants or tenants in common, or coparceners; and that where one person owns all the estate or title in a given piece or parcel of land, there can be no partition as to that piece.

In the case at bar it appears that the parties are joint possessors or tenants in common of all the pieces of property described in the complaint—twenty-one parcels. There was no legal proof before the court of any other claim of ownership. It is true that two of the commissioners (one having died) reported to the court below that a person, not a party to this action, claimed to hold nine pieces of the real property by adverse title, and the judge of the Court of First Instance thereupon, acting on this report, set aside the judgment for partition, alleging that he was deceived in ordering such judgment. There was no legal proof whatever before the court upon which this order could be based.

The order amounted practically to a dismissal of the case, not only as to the pieces alleged to be claimed adversely, but also as to the other parcels of land which were conceded to be held in common, and the order or judgment had the effect of staying the progress of the action of partition. It was therefore appealable, and, as it was granted without proper proof, it should be reversed.

The commissioners were not authorized-and had no legal right to inquire into the question of ownership or possession of the property in question or any part of it. It does not appear in their report that they took the sworn testimony of any witness or party relating to the ownership or possession of this property. If the practice followed here is to prevail, any squatter on real property could prevent a partition without any proof whatever, but by simply saying to the commissioners "I claim this property; I hold it by adverse possession."

If such hearsay, such unsworn statements, made out of court are to be considered sufficient cause to stop the progress of a partition suit, the equitable jurisdiction of the court would be placed at the mercy of every profligate or unconscientious person who, without proving any title or interest whatever in or to the property in suit, simply says to the commissioners: "Get off this land; I own it."

Without passing on the question whether or not the question of adverse title, one claiming all of the property, can be tried in a partition suit, the decisions of the courts of the States being at variance on this point, I am of opinion for the reasons above stated the order of the court below should be reversed.

The right, title, and interests of one claiming to own property by adverse title, and who is not a party to the action, are amply protected by the provisions of section 196 of the Code of Civil Procedure, for as against such a party the judgment in partition is not binding.

