

3 Phil. 440

[G.R. No. 1353. March 22, 1904]

ANA MARIA ALCANTARA, PLAINTIFF AND APPELLANT, VS. MIGUEL MONTENEGRO, DEFENDANT AND APPELLEE.

D E C I S I O N

TORRES, J.:

On June 3, 1902, Señor Alfredo Chicote, as attorney for Doña Ana Maria Alcantara, filed a complaint against Don Miguel Montenegro alleging that the plaintiff was the owner of a house and lot situated in Calle Soledad, in the district of Tondo, which said lot is bounded on the right by the lot belonging to the defendant, on the left by an unnamed street, at the back by lots belonging to Don Hermogenes Fabian, Don Gavino Juanengco, and Don Clemente del Rosario; that the area of the said lot was 979.64 square meters; that it was in the form of a trapezoid and on the back part of the lot there was a projecting piece measuring 6.65 square meters on the right, and 6.45 square meters on the left; that the defendant, on or about the middle of December, 1901, exceeding the limits of his own land, willfully and intentionally took possession of part of the land of the plaintiff to the extent of 2.20 square meters, upon which he constructed part of the building erected on his lot adjacent to that of the plaintiff, and to her damage.

Upon these facts the plaintiff prayed for judgment against the defendant, declaring the 2.20 square meters of land referred to be her property; that the plaintiff be restored to her rights and that she recover of the defendant the sum of \$100 as damages for the wrongful possession by the defendant of the said land from the month of December, 1901, for the costs of suit, and such further relief as might

be just and equitable.

In his answer the defendant admitted the first part of the complaint, but alleged that he was unaware of the extent of the plaintiff's lot. He denied the statements in paragraph 2, and set up in defense that although it was true that he had constructed a building upon a lot belonging to him adjacent to that of the plaintiff he had not gone beyond the limits of the said lot, and had not taken possession of any part of tire plaintiff's lot; the defendant prayed for judgment that the plaintiff take nothing by her action.

The judge, upon these pleadings and in view of the documentary and oral evidence introduced by both parties, rendered judgment January 31, 1903, for the defendant, Montenegro, with the costs against the plaintiff.

In its decision the court held that the burden of proof being upon the plaintiff to establish the facts alleged by her, the evidence introduced in support of the complaint was insufficient to show that she was the lawful owner of the 2.20 square meters of land occupied by the house of the defendant claimed by her, and therefore directed that she take nothing by her action.

As no motion for a new trial was made by the appellant upon the grounds mentioned in the second part of paragraph 3 of section 145 and in paragraph 3 of section 497 of the Code of Civil Procedure, this court can not review the evidence taken in the court below, as in such a case the jurisdiction of the court is limited to determining questions of law raised by the appellant in the assignment of errors alleged to have been committed by the court below in the judgment appealed.

In this case the Supreme Court acts as a court of cassation and can not redecide the questions of fact. The plaintiff did not make a motion for a new trial, but simply excepted to the decision of the trial court, as appears from page 26 of the bill of exceptions. The court, in deciding questions of law raised by the bill of exceptions in the brief

of the appellant, is by the law bound to abide by the findings of the court below upon the evidence introduced by the parties.

The judge below having determined upon the evidence that the ownership of the plaintiff to the 2.20 square meters claimed by her was not proven, for the reasons above stated, the judgment of the court below must be affirmed, with the costs against the appellant.

Judgment will be entered accordingly twenty days from the date of the filing of this decision, and the case will be remanded to the court below. So ordered.

Arellano, C. J., Cooper, Willard, Mapa, McDonough, and Johnson, JJ., concur.
