

5 Phil. 227

[G.R. No. 1284. November 10, 1905]

**THE CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. JACINTO DEL BOSARIO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

This is an action to recover the possession of the two lots described in the complaint, located in Calles Clavel and Barcelona, district of Tondo, at present occupied by the defendant.

The court below entered judgment in favor of the plaintiff and against the defendant for possession and damages in the sum of \$2,500, United States currency, and costs.

At the trial, after the plaintiff rested, the defendant moved for the dismissal of the case upon the ground that the plaintiff had failed to establish the allegations in the complaint. This motion was overruled by the court, to which ruling the defendant duly excepted. The question thus raised puts in issue the trial court's finding that the plaintiff was entitled to the ownership and possession of the land in question. We accordingly hold that this point is impliedly involved in the third and fourth assignments of error.

Plaintiff introduced both documentary and oral evidence. The latter consisted of the testimony of John R. Wilson, Eduardo Timoteo, Juan Villegas, Sotera Roco, Lorenzo del Rosario, and Modesto Reyes, the city attorney. The first witness testified that he did not know of his own knowledge if the land in question belonged to the city (p. 11 of the bill of exceptions). The next witness testified that the land included in Calles Clavel and Barcelona was formerly part of Plaza Divisoria,

which belonged to the Central Government (not the city), and that he did not know to whom it now belongs (pp. 12 and 13 of the bill of exceptions). It must be borne in mind that this witness referred to the land included in Calles Clavel and Barcelona, and not to the lots described in the complaint. These lots abut upon the streets referred to, but do not form a part of either. According to the complaint, they are building lots.

The third witness, Juan Villegas, testified that the land in question was formerly included in the Gran Divisoria, and that all the land included in it belonged to the city. In this particular his testimony is at variance with that of the preceding witness, who testified that the land belonged to the Central Government. Villega's testimony was merely hearsay. It consisted of what he had learned from some of the oldest residents in that section of the city. His testimony was introduced by the plaintiff apparently for the purpose of proving that the city was generally considered the owner of the land, drawing from this fact the presumption of actual ownership under paragraph 11, section 334, of the Code of Civil Procedure. Such testimony, however, does not constitute the "common reputation" referred to in the section mentioned. "Common reputation," as used in that section, is equivalent to universal reputation. The testimony of this witness is not sufficient to establish the presumption referred to.

Furthermore, this witness stated that the land in Calle Azcarraga had been partitioned between the municipality and the Central Government, share and share alike, and that the *Central Government* (not the city) retained Calles Gabriel de Rivera and Barcelona, which are precisely the streets on which the property abuts (bill of exceptions, pp. 15 and 16).

The fourth witness (Sotera Roco) testified merely that Lorenzo del Rosario had paid 100 pesos to her brother Cipriano Roco for the purpose of instituting a possessory information as to the property abutting on Calle Clavel. It appears that Lorenzo del Rosario acquired the land from Cipriano Roco and sold it to his brother Jacinto del Rosario, the defendant in this case. Notwithstanding this, and assuming that the

hearsay testimony of Sotera Roco is admissible, we do not see how it can be inferred from her testimony that the plaintiff is the real owner of the property.

The witnesses Modesto Reyes and Lorenzo del Rosario said nothing as to the ownership of the land. They simply testified as to the authenticity of some of the documentary evidence introduced by the plaintiff.

Of these documents the most important of all is the petition presented by Lorenzo del Rosario to the “mayor of the city of Manila” on the 26th of September, 1891, and the letter written by him on the 9th of October, 1901, to the Municipal Board of Manila. Lorenzo del Rosario, in his testimony, admitted the authenticity of both documents which contain an offer to the municipality of Manila to purchase the land on Calle Clavel. Lorenzo del Rosario admitted also that he signed the first document under the misapprehension that the land belonged to the city, but that he had been subsequently informed by some of the city officials that the land did not belong to the municipality, but to Cipriano Roco y Vera. He stated that he signed the second document because the President of the Municipal Board, Senor Herrera, advised him to do so in order to avoid litigation with the city. His testimony in this respect was not contradicted. We accordingly hold that the provisions of section 346 of the Code of Civil Procedure are applicable to the case at bar in so far as they declare that *an offer of compromise is not admissible in evidence*.

Again, Lorenzo del Rosario signed the first document before he acquired from Cipriano Roco y Vera the ownership of the land referred to therein, the second document being signed after he had transferred the land to the defendant Jacinto del Rosario, who took possession of the same and had it registered, as the plaintiff admits (par. 2 of the complaint), on the 23d of February, 1893. If this is so, whatever statements Lorenzo del Rosario might have made in the documents mentioned, they are not binding upon the defendant, because, under section 278 of the Code of Civil Procedure, “where one derives title to real property from another, the declaration, act, or omission of the

latter, in relation to the property, is evidence against the former only when made *while the latter holds the title*"

The plaintiff also introduced in evidence a map of the city of Manila. This map is not before us. It is sufficient to say, in order to show that it has no value as evidence, that the reliability of the map was not proven at the trial. The only witness examined with regard to it was the city attorney. He was unable to say who made it or who caused it to be made, or when it was made. He said only that he believed *the map had been drawn in the month of July, 1880, or prior to May, 1893*. Neither this nor his statement that the map was found among the archives of the city of Manila is of itself sufficient to show that the map is authentic. No one appears to certify as to its correctness.

The map identified by the witness John R. Wilson was introduced by the plaintiff for the sole purpose of showing the location of the land in question. It has, therefore, no value in establishing the right of possession claimed by the plaintiff.

On the other hand, the two public instruments executed on March 7, 1900, between the defendant and Telesfora Apostol y Perea, also introduced in evidence by the plaintiff, show that the defendant was in possession of the land under a good title and with the status of owner of the land. In the first instrument it is stated in so many words that the defendant *is the owner in fee simple of the land, he having repurchased it from Liberio de Aurteneche y Menchacatorre, whose title had been recorded in the property register*.

From the foregoing it appears that the evidence introduced by the plaintiff does not prove its claim of title to the land in question. Neither the testimony of the witnesses presented by the plaintiff nor the documentary evidence introduced show that the city of Manila is the owner of the land, or that it has a right to its possession as claimed in the complaint. Some of the documents introduced, as well as the two public instruments referred to as having been executed in 1900, tended to support the contentions of the defendant rather than those of the plaintiff. Furthermore, the plaintiff itself admits in the complaint

that the defendant's possession of the land in Calle Barcelona was recorded since March, 1901, and his possession of that in Calle Clavel since February, 1893. This shows that the defendant had been in the adverse possession of the land. According to article 448 of the Civil Code he must be presumed to hold under a just title, unless the contrary is shown.

In view of the foregoing, we hold that the defendant had a perfect right to ask for the dismissal of the case on the ground that the plaintiff had failed to establish the allegations in the complaint, and the court erred in overruling his motion to dismiss.

The order of the trial court overruling the motion of the defendant to dismiss and the judgment appealed from are hereby reversed. Let the case be remanded to the court of its origin for action in accordance herewith. The plaintiff shall pay the costs of the Court of First Instance. No special order is made as to the costs on appeal. After the expiration of twenty days from the date hereof let judgment be entered in conformity herewith. So ordered.

Torres, Johnson, Carson, and Willard, JJ., concur.

Arellano, C.J., did not sit in this case.