

4 Phil. 555

[G.R. No. 984. June 23, 1905]

**ISIDORA BERMEJO, PLAINTIFF AND APPELLEE, VS. MAGDALENO DORADO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

This case relates to the possession of the land described in the complaint, and does not involve the question of title.

There was no motion for a new trial in the court below, and we can not, therefore, review the evidence. The only question to be decided is whether the facts stated in the decision and those admitted by the pleadings sustain the judgment in favor of the plaintiff.

The judge finds as facts that on the 1st day of September, 1887, Narciso Bermejo sold and conveyed the land in question by a public document to the plaintiff and to her husband, Palmo Davidas, since deceased. The grantees then took possession of the land, and during the time of such possession made a verbal agreement with the defendant and his wife, Alejandra Bermejo, since deceased, by the terms of which the plaintiff and her husband transferred to the defendant and his wife the land in question and certain carabaos with the understanding that they should use them for the purpose of supporting themselves from the products thereof, and should return the land and carabaos to the plaintiff and her husband whenever the latter should need them. The court finds that the defendant and his wife entered into possession of the property under this arrangement.

In an action such as this, which relates, as has been said before, to the possession of the property, these facts are sufficient to

support a judgment for the plaintiff, and no other facts are stated in the decision which are in conflict with them.

The defendant, in the court below, relied upon a private document executed by Victoriano Bermejo and his brothers to the defendant's wife two years after the execution of the deed by Narciso Bermejo to the plaintiff and her husband. By this document the grantors undertook to convey the land in question to the wife of defendant, saying in it that they had inherited the property from their mother, Clotilde Base. The court, however, finds that neither Victoriano Bermejo, nor his brothers, nor Clotilde Base ever were in possession of the property, and that there was no evidence in the case to show that any of them ever had any interest therein.

The defendant in the court below also relied upon a public document executed in 1898, after the death of his wife, by her mother, Rafaela Posadas, by which the grantor undertook to convey to the defendant a certain tract of land. In this deed the grantor says that her title to the property is derived from her daughter, the wife of the defendant. But inasmuch as the court finds that the only right which the defendant's wife had in the property, so far as the evidence in this case shows, was the right which she acquired by virtue of the contract made between herself and her husband and the plaintiff and her husband, it is apparent that this deed could, under the findings of the court, convey no interest whatever to the defendant. The right which the wife of the defendant acquired by virtue of the arrangement aforesaid was a mere right to possess the property until the plaintiff desired to use it, and that right terminated of necessity at least when the plaintiff commenced this suit. Rafaela appeared as a witness at the trial according to the findings of the court, and testified that she never executed this document. The court made no definite findings as to whether the document was genuine or not, and it is apparent, in view of the opinion of the court upon other branches of the case, that such finding was not at all necessary.

The appellant also claims that the document executed by Narciso Bermejo to the plaintiff and her husband should not have been received

in evidence against him to his prejudice because he was a third person within the meaning of various articles of the Mortgage Law. Without deciding whether these articles of the Mortgage Law thus cited have any application to the case or not, it is sufficient to say that the court stated as a fact in its decision that this document had been duly recorded. The proofs in the case upon which this finding was based are not before us, and if they were, we would, as has been said before, have no right to review them. We are bound to assume, therefore, that this document was properly recorded.

The appellant finally claims that the land described in the document executed to him in 1898 by Rafaela Posadas is not the same land as that described in the document executed by Narciso Bermejo to the plaintiff and her husband in 1887. The judgment does not describe any land, but speaks of the "land in question" and says that the documents presented by the defendant relate to the same land. The complaint does not describe any land, but it has attached to it as a part thereof the aforesaid public document executed by Narciso Bermejo in 1887. In his answer the defendant says that he "entered into possession of the land the object of the suit" by virtue of the document executed by Rafaela Posadas. This document was not attached to the answer as a part thereof. It was a part of the proof presented by the defendant during the trial. In our opinion the difference in the description of the two tracts of land, if there is such a difference, makes worse the situation of the defendant, since he has not proven the allegation in his answer to the effect that this deed from Rafaela to himself conveyed the land which was the object of the litigation.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days judgment will be entered in accordance herewith, and the cause remanded to the lower court for execution. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.
Mapa, J., did not sit in this case.

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