2 Phil. 757

[G.R No. 505. April 08, 1902]

FRANCISCO GUTIERREZ REPIDE, GENERAL ADMINISTRATOR OF THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, PLAINTIFF AND APPELLANT, VS. MARTIN ASTUAR ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

On June 20, 1901, Baldomero de Hazanas, as attorney for the Philippine Sugar Estates Development Company, Limited, a corporation, presented to the Court of First Instance of the Province of Cavite a petition asking that said company be placed in possession of the lands described in said petition, in accordance with the provisions of Title XIII of book 3 of the Code of Civil Procedure then in force.

In the petition two estates were described, one called San Isidro Labrador, or Naic, and the other Santa Cruz, or Tanza. The first has an area of 7,978 hectares 75 ares and 99 centares. A part of it was devoted to the cultivation of palay, a part to cultivation of sugar cane, a part to building lots, and more than 3,000 hectares uncultivated. The area of the hacienda of Santa Cruz is not stated, but it appears from the petition that it was applied to the same uses as the hacienda of Naic, and that the petitioner had on it a stock farm which occupied part of the same.

The prayer of the petition is that: "The company be given judicial possession of the estates above described in the form prescribed by law, the act to be effected in the towns of Santa Cruz and Naic, and that the persons commissioned to that effect publish in said towns by placards the possession of the respective estates, in order that the tenants may be informed thereof, and that, more especially in the town of Naic, demand be made upon the military officers who occupy the principal building thereon and the warehouse, and to the occupant of tjie hydraulic mill, to recognize the said company as the possessor of the said properties." In the petition it was not asked that any such demand be made upon any other tenant or

occupant of the said estate.

On the 27th of June the court of Cavite made an order granting the prayer of the petitioner and directing that orders be issued to the justices of the peace of Naic and Santa Cruz, in compliance with the provisions of articles 2017 and 2018 of the said Code of Civil Procedure.

On the 17th of July the said justice of the peace of Santa Cruz notified the court that on the 15th of said month he had received the order addressed to him, and that before giving possession there appeared before him the local president and the military commander of the detachment stationed in that pueblo, and some of the inhabitants of the vicinity, in number 200, more or less, who protested that they would not recognize "as a representative of said company the said Don Francisco, and they also protested against the date of the order." In view of this appearance and statement, the justice of the peace stated that he had suspended further proceedings, and he asked instructions of the court.

By an order of the 17th of July, 1901, the court directed the justice of the peace that he should enter upon his record the protest which had been made by the parties prejudiced by the proceedings, who would have a right to make formal opposition before the court for the purpose of preserving their rights.

On the 20th of July, 1901, Don Eduardo Imzon y Ison, a resident of Santa Cruz, in the name of the people of that pueblo, presented to the Court of First Instance an objection to the granting of the prayer of the petitioner.

On the 20th of July, 1901, said court, by telegraph, ordered the justice of the peace to suspend the proceedings mentioned in the first order. It does not appear in the record that anything more was done in Santa Cruz looking to the fulfillment of the order of the court issued on the 27th of June.

On the 13th of August, 1901, the petitioner presented a motion asking the revocation of the above-mentioned order of suspension. On the 16th of the same month this motion was served upon the provincial fiscal, who, on the 28th of the same month, presented his opinion, saying that the objection made by the municipality ought to be sustained.

The order issued on the 27th of June directed to the justice of the peace of Naic was not received by the latter until the 21st of August, 1901. Upon receiving it the justice of the peace demanded, in writing, of the military commander who was in possession of the

dwelling house on the estate, and of the local president of the municipality who had in his possession the hydraulic machinery, that they should recognize the petitioner as the owner of said property. It does not appear that any answer was given to this document by the military officer who was in possession of the dwelling house upon the estate. The local president, however, following the instructions of the municipal council, refused, on the 30th of August, to deliver the possession of the machinery, or to recognize the petitioner as the owner of it. It appears that notices were published, in Naic as a preliminary, according to the justice of the peace, to the act of giving possession. In consequence of this publication there was presented to the justice of the peace on the 24th of August, 1901, a protest, signed by more than 200 residents of the pueblo, who stated in their protest that they were occupying a part of the land described in the petition; that they were opposed to the possession which the petitioner claimed, and they asked that the proceedings should be suspended, and that the company should be required to maintain their rights in an ordinary action.

On August 26 there was presented to the Court of First Instance of Cavite a formal protest, identical with that which had been presented before the justice of the peace.

In view of the presentation of this protest to the Court of First Instance the latter, on August 28, ordered the provisional suspension of the proceedings mentioned in the order of the 27th of June, and directed the justice of the peace that he should report if all the lands of the estate were included in the opposition. This order of suspension did not reach the justice of the peace until after the 30th day of August, and upon that date he proceeded to give possession in the following form:

“The justice’s court, convened in the public plaza of this town for the purpose of giving possession, as directed by the preceding order, after publication and formal notice, and there being present Don Peregrin Mestre, representing Don Francisco Gutierrez y Repide and Don Antonio Denhardt, the court gave possession to the former, reading the said order in an audible voice, and describing the lands of which possession is thus given with all solemnity, inviting the said Senor Peregrin Mestre to freely enter upon and depart from the lands which are the property of the company.”

The justice of the peace also says that in said act some of the inhabitants of the pueblo opposed the proceedings, and twenty-eight of them presented a written statement in which their protest appears.

It appears in the record that Francisco Gutierrez had been named as attorney for the petitioner in place of Don Baldomero de Hazanas, for the purpose of receiving said possession.

The petition is accompanied by a copy of a public document which apparently shows a right of property in the petitioner over the land described in the petition.

On the 6th of September, 1901, Don Baldomero de Hazanas presented a written answer to the opinion of the fiscal of August 28 above cited. In it he asked that the court grant the prayer contained in his first motion of August 13.

On the 12th of September, 1901, the court of Cavite entered the judgment declaring the matter contentious. On September 25 the petitioner appealed from this order, and his appeal was admitted on September 26. In the hearing before this court it was stated that in respect to the hacienda of Naic possession had been given before any protest was presented. This statement is not borne out by the record. The only possession which was attempted to be given was that made by the justice of the peace on the 30th of August; which was not only subsequent to the presentation to the Court of First Instance of the written objection, but also after that court had ordered the justice of the peace to suspend the proceedings.

Two questions are raised by the record: (1) Is article 1800 of the Law of Civil Procedure applicable to proceedings commenced under said Title XIII in such a way that when objection is made it is necessary to declare the matter contentious? (2) If objection could be made, was it properly done in this case?

1. Possession includes the idea of occupation, and except iu the cases mentioned in article 444, the possession can not exist without it. (Art. 430 of the Civil Code.)

It is true that it is not necessary that the proprietor himself should be the occupant. This occupancy can be lield by another in his name. (Art. 431.) But it is necessary that there should be such occupancy or there is no possession.

The owner of real estate has the civil possession, either when he himself is physically in occupation of the property, or when another person who recognizes his rights as owner is in such occupancy. Let us suppose that th« owner sells a tract of real estate. The purchaser, by virtue of that sale, does not immediately acquire the possession. The only direct transmission of possession is, that which is brought about by operation of law upon the

death of the opponent. (Art. 440) The purchaser can acquire the possession by the acts and legal formalities established for the purpose of acquiring such right. (Art, 438.) One of these formalities is that which is prescribed by Title XIII, book 3, of the Law of Civil Procedure in question. The possession which is mentioned in said title is the same possession mentioned in the Civil Code; that is, the possession which includes occupation. The object of the proceeding is to confer upon the petitioner that occupation. This can be done in two ways. If the real estate is vacant, the purchaser can without difficulty be placed in possession of it. The judicial proceeding clothes the act with more solemnity and the proof of the same is better preserved than if the purchaser should take possession by himself. If the real estate is found in the actual possession of a third person, and that third person, upon being so requested by the officer of the court, recognizes the purchaser as the owner, the latter acquires the complete civil possession, because, although he himself does not actually occupy the real estate, there is another person who does so in his name. But in no case can possession be acquired by means of this proceeding when there exists a third person who is in occupation of the property and who is opposed to it. "Every occupant has the right to be respected in his possession." (Art. 440 of the Civil Code.) "He who believes that he has a right to deprive another of the possession of a thing must seek the aid of the proper authority if the occupant objects to the delivery." (Art 441.)

From the very nature, then, of the case, it appears that proceedings of voluntary jurisdiction must necessarily terminate if the person who is in possession refuses to abandon the real estate or to recognize the petitioner as owner.. Let us suppose that there is an estate in the active occupation of A, The petitioner obtains from the judge an order that he be placed in the possession of this estate possessed by A. The bailiff, assisted by the clerk, appears upon the property and requires A to abandon it, in order that they may place the plaintiff in possession of it. A refuses to do so. They then demand of him that he recognize the petitioner as the owner of the estate. He refuses to do this. The bailiff has no right to evict him by force. He can do no more than return to the court and inform the judge that he could not give the petitioner possession. With this action, the proceeding also terminates. It would make no difference what titles or rights A was able to present, or if he had no right at all, It would he sufficient that he was in the actual occupation of the estate, and that he refused to abandon it or recognize the petitioner as owner. It can not be correctly said that, in such a ease, the competent authority whose aid the petitioner has to invoke in accordance with article 441, above cited, is the court which has taken cognizance of these proceedings of voluntary jurisdiction. Article 446 would be entirely disregarded if, by means of a judicial procedure of this character, in which he was not a party and in which he had no opportunity

to be heard, the actual occupant could be evicted from the estate. The bare possessor, if he is disturbed in his possession, has the right to commence against the person who is interfering with his possession the action to “retain” or to “recover,” according to the circumstances, both by article 446 of the Civil Code and by article 1646 of the Law of Civil Procedure.

Title XIII can not authorize the dispossession of the occupant when this very act of eviction would confer upon the occupant the right to commence an action to be restored to the possession. The competent authority, mentioned in said article 441, is the court which would have jurisdiction in a suit between parties.

It is claimed by the appellant that the law does not authorize any opposition in this suit of voluntary jurisdiction, because the act ordered io be done by the judge constitutes only a modification. The language of the law does not support this claim. The law does not say that the bailiff shall notify the tenants of the change of ownership. What it does say is that he shall give the petitioner the possession and require the tenants to recognize as such the new owner. If by reason of the opposition the possession can not be given, the suit of voluntary jurisdiction produces no effect. Its whole effect rests upon the consent given by the person when his consent is demanded. If that consent is refused, nothing can be done in the suit of voluntary jurisdiction, since he can not be deprived of his rights without being heard in court.

The phrase “without prejudice to third persons” must be interpreted in the sense that, if the proceedings in the suit of voluntary jurisdiction are made effective by the consent of the tenant, they do not prejudice persons other than the petitioner and the tenant. By this proceeding the possession is either conferred upon the petitioner or is not conferred. If it is not conferred, the proceeding produces no effect. If the possession is given, by that very act the person who was in possession is evicted, and therefore is necessarily prejudiced by the act. It is impossible to give the possession to the petitioner without taking it from him who was in possession, to the prejudice of the latter. The phrase, then, “without prejudice to third persons who have a better right,” in article 2016, must refer to third persons other than the occupant.

Under the provisions of the Civil Code the objection of the occupant puts an end to the voluntary suit. If there is any provision in Title XIII which is opposed to this right it must be considered as repealed by the provisions of the Civil Code; but there is no such provision. Article 1 0 says that, if opposition is made by anyone who has an interest in the matter, the

suit will be made contentious. Under article 446 it is evident that the mere occupant has an interest in the matter, and that, in accordance with article 441, his opposition is sufficient to put an end to the suit of voluntary jurisdiction, and, under article 1800 of the Law of Civil Procedure, sufficient to justify the action of the court in making the suit contentious.

The supreme court of Spain has decided that article 1800 is applicable to Title XIII. (Judgment of March 24, 1896.) Manresa is of the same opinion. (Commentaries on the Law of Civil Procedure, vol. 6, pp. 117, 481, 482, 483.)

We therefore hold that if, either before or in the act of giving possession in accordance with Title XIII, the bare possessor objects to the proceeding, it must be made contentious. It is not necessary that this opposition should be made in any particular form. It is sufficient, for the purposes of article 441, that the occupant is opposed to tlie delivery.

2. Was the opposition which was made in this case sufficient? We think that it was. If the petitioner had asked that each one of the persons recognize him as owner, as we believe he ought to have done, the tenants would then have had an opportunity of refusing such consent and of refusing to deliver possession of the land. That, as we have seen, would have been sufficient. This, in fact, took place with respect to the pueblo of Naic as the possessor of the hydraulic machinery.

The other tenants, to whom no such opportunity was given, did all that they were able to do. A great number of them—the record says the pueblo in a mass—made their opposition known to the justice of the peace. More than two hundred of them presented in the Court of First Instance their protest in writing.

It has not been claimed that those persons who made opposition, and who appeared before the court and presented their formal objections, were not real occupants of the land. As such occupants they had, as we have seen, an interest in the matter, and the right to make their opposition, in accordance with article 1800. We decide that the opposition made was sufficient, without considering that made by the municipality of Santa Cruz.

When the protest of two hundred and more tenants was presented to the Court of First Instance on the 28th of August, that court ordered a suspension, of the proceedings for the purpose of ascertaining if the opposition included all the lands.

On the 3rd of September the petitioner was notified of this order. The order which made the matter contentious was not entered until the 12th of September. We think that it was not

the duty of the defendants, nor of the court, to ascertain if the opposition extended to all the lands. A sufficient opposition had been made with respect to part of them. If the petitioner did not wish that the whole suit be made contentious, he should have asked for an amendment of his petition, omitting those lands to which the opposition related. Not having done this, the fact that tlie entire matter was made contentious must be attributed to him. And in this court it has not been claimed that the judgment of the lower court was wrong because the whole matter was declared contentious, Avhen this declaration ought to have been made only in respect to a part of it.

The order appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Cooper, Mapa, and *Ladd, JJ.,* concur.

Date created: April 15, 2014