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[G.R. No. 452. April 30, 1902]

**GAUDENCIO SIMPAO., PLAINTIFF AND APPELLEE, VS. JOAQUIN DIZON,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Pampanga, rendered on the 8th day of June, 1901, in favor of the plaintiff, in a summary proceeding instituted by Don Gaudencio Simpao against Don Joaquin Dizon, to recover possession of two tracts of land located in the municipality of Porac.

The judgment appealed from restored to the possession of the plaintiff the two parcels of land in question, and adjudged that the defendant should pay plaintiff all such damages as he might have sustained and costs, reserving to both parties such rights as they might have to the ownership of the land in question, and to the final possession thereof, which rights they may exercise in due time.

The plaintiff alleged in his complaint that he was the sole owner of the two parcels of land, and that he had been in possession of said lands since June, 1888, having acquired the same at said time from Gaudencio de' Mesa by sale with right of repurchase, which title has never since been questioned; that he leased same to Cecilio Lacsamana, of the same town, who has been cultivating the premises during the last two years, but, on account of the unsettled condition of affairs, landowners could not take care of their property; and that the defendant, Don Joaquin Dizon, had taken possession of the land in September last, in spite of the opposition of the tenant, Cecilio Lacsamana, and the plaintiff asked that he be restored to the possession of the farms in question.

The answer of the defendant states that he took charge of the cultivation of the land by the express order of the owner, Miguel de Mesa; that Cecilio Lacsamana held it as tenant of

Miguel de Mesa, and has refused to pay the rent; that the captain commanding the post at Porac directed the land to be turned over to Miguel de Mesa; that Lacsamana was the person who was ejected from the premises, and that he was the only one who could bring suit for its recovery; that the action can not be maintained against the defendant, Joaquin Dizon, for the reason that the defendant is but the agent of Miguel de Mesa, in charge of the cultivation of the farm, and that what he did was in pursuance of instructions from Mesa.

On the trial of the case the plaintiff offered as evidence a document signed by Gaudencio de Mesa on the 18th of June, 1889, showing a conveyance, with right of redemption (*venta con pacto de retro*), of the land from the said Gaudencio de Mesa to the plaintiff and in which the tenancy of the lands was acknowledged by Gaudencio de Mesa. The plaintiff also introduced in evidence the certificate from the registrar to the effect that a possessory information had been filed by the plaintiff, and judicial possession awarded him of the two parcels of land on October 18, 1895. The property was again registered in the same office October 12, 1896, as the repository of documents had been destroyed by fire.

The plaintiff also offered in evidence a lease dated September 25, 1898, by which the two parcels of land were leased to Cecilio Lacsamana.

Defendant introduced in evidence a lease made by Anastasio de Mesa and Ariston Jaime to Don Ciriaco Austria of the two parcels of land under consideration, by which the latter was to pay the former the amount of 120 pesos per annum, the lease to cover the property from 1897 to 1898, and after the crop for that year had been harvested.

Both plaintiff and defendant introduced testimony of witnesses as to their respective possession of the property. The plaintiff's witnesses testified as to the dispossession of Lacsamana by Joaquin Dizon. Cecilio Lacsamana stated that he leased the land from plaintiff, and not from Miguel de Mesa. Defendant offered evidence of many witnesses to the effect that on the death of Gaudencio de Mesa, the father of Miguel de Mesa, the latter remained in the possession of the land, and that he leased the land to Lacsamana; that Lacsamana paid a stipulated rent to Miguel de Mesa; that defendant, Joaquin Dizon, was the agent of Mesa, and that it was by order of Miguel de Mesa that he had entered into the possession of the farm and cultivated it.

The testimony of the witnesses for the plaintiff and the defendant is irreconcilable. We think the witnesses for the plaintiff have been corroborated by the documentary evidence referred to. The testimony of Lacsamana shows very clearly that the plaintiff was in possession

through him, and that he was dispossessed of the property by the defendant. The documentary evidence corroborated, as stated, the testimony of this witness. The only admissible evidence in summary proceedings of this character is that which has reference to the two issues referred to in article 1634 of the old Code of Civil Procedure, which are: (1) That the claimant was actually in possession or tenancy of the property, and (2) that he had been molested or disturbed in such possession or tenancy by the defendant, or some other person at the instance of said defendant.

The question is presented by the defendant as to whether an action in summary proceedings can be maintained by the owner or lessor. Unquestionably he has a right to maintain the action. Otherwise he might lose his civil possession, and suffer serious inconvenience.

By article 460 of the Civil Code, possession is given to another, even against the will of the former possessor, if the new possession has lasted a year. It is important that the owner should have the right to institute summary proceedings to protect himself against such result. Article 446 of the Civil Code provides that every possessor has the right to be protected in his possession, and should he be disturbed in it he will be protected, or possession restored to him by the means established in the laws of procedure.

Possession of things or rights is exercised either by the same person who holds and enjoys them, or by another in his behalf. (Art. 431 of the Civil Code.) If possession is once acquired, either by material occupancy of the thing or right possessed, or by the fact that the same remains subject to the action of one's will, it continues in the possessor, and he only loses such possession in one of the modes mentioned in article 460 of the Civil Code.

Article 1554 relates to the rights and obligations of lessor and lessee, and makes it the duty of the lessor to maintain the lessee in the peaceable enjoyment of the lease during all the time of the contract.

By article 1559 the lessee is bound to give notice to the owner, with the least possible delay, of any usurpation or injurious alterations which any person may have done or is openly preparing to do to the thing leased. It may be well inferred that the purpose of this notice was to enable the owner to maintain his civil possession, by suit if necessary. The acts of dispossession were committed by the defendant. He can not avail himself of the plea that in committing the wrong he was acting under the directions of some other person. The action will lie both against the party who commits the trespass and against another person at the instance of whom the trespasser is acting. The testimony offered by the plaintiff is sufficient

to support the material issues: (1) That the claimant was in actual possession or tenancy of the property, and (2) that he was molested or disturbed in such possession or tenancy by the defendant. The judgment of the lower court should be affirmed with costs, which is accordingly done.

Arellano, C. J., Torres, Willard, Ladd, and Mapa, JJ., concur.

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