

Serrano Vs. United States

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Decided On : 1866

Appeal No. : 72 U.S. 451

Appellant : Serrano

Respondent : United States

Judgement :

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Serrano v. United States

72 U.S. (5 Wall.) 451

APPEAL FROM THE DISTRICT

COURT OF CALIFORNIA

SYLLABUS

Long-continued and undisturbed possession of land in California, whilst that country belonged to Spain or Mexico, under a simple permission to occupy it from a priest of an adjoining mission or a local military commander, did not create an

equitable claim to the land against either of the governments of those countries, nor is a claim based upon such possession entitled to confirmation by the tribunals of the United States under the Act of Congress of March 3d, 1851.

This was a proceeding, under the Act of March 3, 1851, for the confirmation of a claim to a tract of land in California known as the rancho of "Temescal," of four square leagues in extent. The petition to the board of land commissioners asked for the confirmation on two grounds:

1st. By virtue of an alleged grant of the premises by the authorities of the King of Spain to Leandro Serrano, the testator of the claimants, and

2d. By virtue of long-continued and uninterrupted possession of the premises.

The proof negated the existence of a grant, but showed that Serrano had received the written permission of the priest of the mission of San Luis Rey (to which mission the land originally belonged), or of the military commander of San Diego, to occupy the premises, and that under such permission he took possession of them, and occupied them, or a portion of them, from about 1818 or 1819 until his death, which occurred in 1852.

The present claim was presented by his executrix (the widow) and his executor.

The deceased Serrano, made some improvements on the premises, consisting principally of two or three adobe houses, and he had a vineyard and fruit orchard. He had also several acres under cultivation, and was the owner of cattle, horses, and sheep in large numbers which roamed over and grazed on the hills and in the valleys surrounding his residence to the extent of the four leagues claimed by him.

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His possession was continuous and undisputed until the cession of the country to the United States.

The land commission rejected the claim, but the district court, on appeal, reversed the action of the board, and by its decree adjudged the claim valid, and confirmed

it to the extent of four leagues. From this decree the United States appealed to this Court.

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MR. JUSTICE DAVIS delivered the opinion of the Court.

The court below confirmed the claim of the appellees to the rancho known as "Temescal," embracing five leagues, and situated in the County of San Bernardino.

It is insisted by the United States that this judgment was wrong, because Leandro Serrano, under whom the appellees claim, had no title, legal or equitable, to the land in controversy.

It can serve no useful purpose to review the voluminous testimony in the record, for there is no substantial difference in it on any point material to the decision of the cause, and hardly any portion of it but what can be readily reconciled. It is clear that Serrano occupied a portion of the property which was confirmed to his widow and heirs continuously from 1818 or 1819 until his death, which occurred in 1852. The improvements on the place consisted of two or three adobe houses, a small vineyard and fruit orchard, and a few acres in actual cultivation. At different periods of his occupancy, he was the owner of cattle, sheep, and horses, which subsisted on the unenclosed valleys and hills that surrounded his residence. That his possession and occupation were undisturbed and undisputed during the whole period of Mexican sovereignty in California until our acquisition of the country is fully established. It is not so easy to determine

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the extent of his possession, but in the view we take of the case, the question is unimportant.

The petition presented to the board of land commissioners asked for the confirmation of this claim on two grounds -- first because a provisional grant was

made, and second by virtue of long-continued and uninterrupted possession. The proof not only negatives the existence of a grant, but clearly shows that Serrano occupied the premises by a written permission from the priest of the mission or the commandante of San Diego, or from both conjointly. The only witness who pretends ever to have seen a paper concerning a grant was Villia, an ignorant man, unable to write, with very little knowledge of reading, and who, on being shown some writing in order to test his ability to read, was unable to tell what it was. It is impossible to escape the conclusion that this witness was mistaken, without discrediting all the remaining evidence, including the repeated declarations of Serrano that he had no title. Villia evidently saw a paper in the hands of Serrano in relation to this land, but it was not a title of concession by Governor Sala, but the written permission to occupy given by the commandante and priest. The archives of the country are totally silent on the subject of this pretended grant, and there is no record evidence even of an application for a grant, which exists in ordinary cases. If Serrano even thought he had such a grant, why did he reply to Wilson (who was his friend and relative by marriage), on being advised of the necessity of perfecting his title, if he had any, "that he had no title, but had been living on the place ever since the settlement of California, and everybody respected his claim."

It is apparent from the testimony produced by the claimants, without considering that offered by the United States, that the grant was a fiction and that Serrano occupied by a written permission given to him by the priest, and perhaps by the commandante. It is equally certain that this permission was the paper sent by him to Governor Echanda for the purpose of obtaining from him a title. Under the government of Spain in California, the commandante or priest

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had no authority to grant lands or to make contracts that could bind the Spanish government to grant them. The governors of the country only had this power. If Serrano had an imperfect grant, it would show that he was in possession, claiming title, but a possession under a simple permission to occupy could not raise even an equity against the government. [*](#)

It is clear, therefore, that there was nothing done which estopped the Spanish government from denying Serrano's title, and his bare possession did not bind the Mexican government, during its dominion in California, from 1823 to 1846, not to deny it. The colonization laws of Mexico were exceedingly liberal, and yet they were never invoked by Serrano to aid him in getting a title.

If, then, Spain and Mexico never granted this land or contracted to grant it or were under obligations to grant it, the claim has surely no validity as against the United States.

But it is insisted that if the legal title fails, yet the notorious and long-continued possession establishes an equitable one.

The actual possession in this case was limited to a very small quantity of ground, but conceding that it embraced five leagues, no equities attached to it, considering the manner in which it was obtained and continued. There is no adverse holding here, but the possession was a permissive one, and consistent with the proprietary interest of Spain and Mexico, and the fact that those governments did not terminate the possession, which was a mere tenancy at will, cannot create an equity entitled to confirmation. Serrano held under a license to occupy, and that license could be revoked at any time. The failure to revoke it cannot change the original character of the possession into an adverse one. If Serrano had entered into possession under a claim of right and had title papers, though imperfect, he might say that the length of his possession entitled him to the favorable consideration of the court. Not so, however, where he had

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no interest in the land, never applied for any, either to Spain or Mexico, and was content with a permission to occupy it for the purposes of pasturage.

The judgment of the court below is reversed and the case remanded to the District Court of California, with directions to enter an order dismissing the petition.

MR. JUSTICE FIELD did not sit in this case nor take any part in its decision.

* [*Peralta Case*](#), 19 How. 343; [*United States v. Clarke*](#), 8 Pet. 436.

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