6 Phil. 556

[G.R. No. 2127. November 01, 1906]

INCHAUSTI & COMPANY, PETITIONERS AND APPELLEES, VS. THE COMMANDING GENERAL OF THE DIVISION OF THE PHILIPPINES, REPRESENTING THE UNITED STATES, RESPONDENT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:

This is an appeal by the commanding general of the Division of the Philippines. It appears that on the 2d of December, 1903, Inchausti & Company petitioned the Court of Land Registration for the inscription of certain land "situate on Calle Rosario, in the city of Iloilo; bounded on the north by the lands of Agustin Monasterio, there being between these properties the alley called 'Oppen;' on the east by Calle Rosario; on the south and west by the seashore,' and having an area of 6,861 square meters and 98 square centimeters; and there being erected on the same a warehouse of strong material, with walls of stone construction and roof and *medias aguas* of galvanized iron; and having an assessed value of 13,723.96 dollars for the land and of 12,500 dollars for the warehouse, in money of the United States. Notices were published and citations were made in particular to the municipal council of Iloilo, the chief quartermaster of Iloilo, the commanding general of the Division of the Philippines, and to the Attorney-General of the Philippine Islands, none of whom presented opposition except the aforesaid commanding general of the Division of the Philippines. The personality of his opposition was attacked by the petitioner in a motion in which, among other things, it was alleged that the commanding general of the Division of the Philippines was not the representative of the United States in the Philippines, which motion was overruled by the court, an exception being taken by the petitioner, the court admitting the opposition, to which ruling another exception was taken by the petitioner.

It also appears that the grounds of the opposition were:

1. That the President of the United States, on the 10th of October, 1903, reserved for

military purposes the lands situated in the vicinity of the *cotta* of Iloilo, which is now known by the name of "Fort San Pedro No. 22."

2. That the law enacted by Congress on the 1st day of July, 1902, separated from the authority of the Philippine Commission those public lands reserved by the President of the United States for military purposes, and therefore laws Nos. 627, 809, and 496 of the aforesaid Commission had no effect in so far as they granted title to land situated within the military zone of which the petitioner was not the absolute owner on the 1st of October, 1903.
3. That the title of Inchausti & Company was defective, inasmuch as the grant made to Juan Reyna by the governor of the Visayas in 1870 referred to land which is within the first military zone belonging to the before-mentioned *cotta* and that the land was not uncultivated land mentioned in the royal decree Of the 25th of June, 1880, or in any prior law, and therefore Juan Reyna could not transmit to his successors a better title than his own, which was defective.
4. That when the property of the nation is destined for public uses, it acquires the status of public property and is outside of the commerce of men, not being the object of prescription; that prescription can not run against the State as an owner in its public or private capacity, and that such property destined to the use of the Government is not subject to prescription.
5. That the laws in force at the time of the inception of the possessory proceedings in favor of Inchausti & Company on the '20th of November, 1890, granted no good title against the Government without its acquiescence; and in conclusion, that the first grant being defective, the land being public and property of the State, Inchausti & Company could not acquire, nor could any other person, title by prescription, the contestant asking that the title of Inchausti & Company be declared null and that the title of the land be vested in the United States.

It also appears, and was so stipulated, that the land for which inscription is asked, and which is the object of these proceedings, has been occupied and was occupied (the stipulation is dated the 25th of February, 1904) by the Army of the United States by virtue of a lease executed by the petitioners as owners of this property, renewing annually the contract which was entered into on the 30th of November, 1900, and which was to expire on the 30th of June, 1904, and that this was admitted between the parties without prejudice to the opposition presented by the representative of the United States on the one hand, and without prejudice to the objection to this personality to make opposition by such representative on the other.

And it appears that only a question of law having thus been raised, the Court of Land Registration decided it by decreeing the adjudication and registration of the land and buildings in question in favor of Inchausti & Company, without costs, which decision was appealed by the commanding general of the Division of the Philippines.

Entering now into an examination of the debated question in this appeal, we find that the title of the property which the petitioners claim is based upon perfect contracts transferring ownership, such acts and contracts being essentially civil in character transmissive of ownership and other real inherent rights, with the exception of the first contract, which was essentially administrative, but also a transfer of the ownership and other real rights to a specific property.

On the 20th of August, 1883, Tirso Lizarraga acquired from Francisca Garcia, its former owner, for Inchausti & Company, by virtue of a contract of sale, the land in question, executing a notarial instrument to this effect, and on the 14th of March, 1885, Francisco Garcia acknowledged having received from Inchausti & Company the purchase price of the same, executing a notarial receipt for this amount. Francisco Garcia had acquired this land in conjunction with Victor Gomez, from its prior owner, Juan Reyna, also by means of a contract of purchase, on the 10th of February, 1881, having executed a notarial instrument, and subsequently, on the 13th of September of the same year, the said Francisco Garcia acquired the share of his coowner, Gomez, becoming the sole owner of the land according to a notarial deed. Juan Reyna had acquired the land by administrative concession in the manner and form set out in the proceedings instituted to that effect.

On the 29th of December, 1870, the political-military governor of the Visayas issued the following decree:

> "Upon consideration of this petition, in which the Spaniard, Juan Delgado Reyna, asks for the land called '*Quema*' at the end and on the right hand side of the street which leads to the *cotta* from this capital in order to erect thereon his ironworks and foundry, with due regard to the damage which might be caused to the town by establishing this factory in its center, and this Government desiring to avoid a fire which might reduce to ashes the neighboring houses, and equally, on the other hand, to protect in every way possible a factory of such well-known utility to the province, this Government gives to the Spaniard, Juan Reyna, the land asked for in order that he may transfer the aforesaid works thereto, with the

> understanding that if at any time in the opinion of the Government it be necessary to use this before-mentioned land, he will be indemnified with other land suitable for his iron works and foundry. Let a copy of this, petition and decree be filed in the archives of this Government and let this document be delivered to the above-mentioned Sr. Reyna in order that he may as soon as possible make a plan of this land and remit it to this Government for its approval.— Rojas."

On the 4th of February, 1873, to a new petition of Reyna, the political-military governor of the Visayas required the report of the chief engineer of public works of that district, which he gave in the following terms:

> "In my Opinion," he said, "there is no objection to the granting of the title to the property to Reyna without that condition subsequent of the former decree in order that the manufactory may be enlarged and developed as required by the growth of this town, because at present there is no necessity to use this land for the erection of any public buildings, nor do I see, considering its situation, that it will prove to be needful in the future for that purpose, therefore this office does not find the least objection to your giving the petitioner that which he asks without other restriction than the absolute prohibition to construct any warehouse or building, and much less his dwelling house, of light or inflammable material thereon, since their proximity to the site designated for the public jail and to the houses of the barrio would place these in constant danger."

And on the 11th of February, 1873, the following decree was issued:

> "In view of all that appears in these proceedings, and in conformance with the opinion of the chief engineer of the Visayas, this government does definitely grant to Juan Reyna the land in the place called '*Quema*' occupied by his ironworks and iron foundry, according to the sketch accompanying this decree, and it may be utilized in the manner best suited to his interests, subject, however, to the conditions set forth in the report of the before-mentioned engineer, on which, report this grant is based. Let the *gobernadorcillo* of Iloilo and the *principalia* be notified so they may give formal possession of the above-

> mentioned land to the said Reyna under the conditions governing the concession, and this done, a record of all the proceedings had in connection therewith shall be kept at the tribunal and the original papers shall be delivered to the said Reyna for his own use.—Fajardo."

On the 15th of the same month and year, Reyna was given possession of the land by the municipality of Iloilo, the *gobernadorcillo* and *principales* signing the record of the proceedings.

Thus it was in 1881, as said before, that Reyna sold to Garcia and Gomez this land at the end of Calle Rosario, bounded by this street, by the house and lot of Jose Concolluela, and by the seashore, on which was then erected a warehouse, ironworks, and foundry provided with machinery, tools, and other appliances, and thus it was that in 1883 Garcia, after having acquired the share belonging to Gomez, sold all he had acquired from Reyna to Tirso Lizarraga, receiving the balance of the purchase price from Inchausti & Company, to whom he executed a receipt.

On the 15th of November, 1890, this property was recorded in the Registry of Property the same as the adjoining property (concerning which there is no question as to the validity of the title) by virtue of an order of the judge of the Court of First Instance of Iloilo made in the possessory information proceedings which were had before him by Inchausti & Company, and since then this property appears in the public register in the name of Inchausti & Company, according to the certificate bearing the date of the 25th of November, 1890, presented in the trial of the case.

All of these facts are admitted ,and undisputed.

It is also an admitted and undisputed fact that on the 13th of August, 1898, and upon the change of sovereignty by the treaty of Paris, Inchausti & Company possessed the land as owners, and from them the military authorities of the Army of the United States, in November, 1900, received a lease to this property and remained in possession thereof as lessees for more than three years up to June, 1904.

So that the cession by Spain to the United States of all the lands of the public domain could not have included this land, the treaty of Paris containing the following provision:

> "And it is hereby declared that the relinquishment or cession, as the case may be

> (cession in the case of the Philippines), to which the preceding paragraph refers *can not in my respect* impair the property or *rights* which by law belong to the *peaceful possession of property of all kinds*, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of *private individuals*, of whatsoever nationality such individuals may be." (Art. VIII, sec. 2.)

Inchausti & Company were in *peaceful possession* of this land, a fact which was well known to the contestant in the case who received the land from the said Inchausti & Company, and as lessee had been for more than three years in the peaceful possession thereof. The actual possession by Inchausti & Company dated from 1883 and the possession derived from its former owner began in 1870, making thirty-three years of peaceful adverse possession against the world, including the Government, as owner by virtue of acquisition for a valuable consideration by means of a civil contract essentially transferable of the ownership and other real rights protected by the civil laws.

The rights of the peaceful possessor, according to the law, are, among others: (1) That he "has a right to be respected in his possession, and should he be disturbed therein he must be protected or possession must be restored to him by the means provided in the laws of procedure;" (2) that "the peaceful possessor under claim of title has in his favor the legal presumption that he holds possession by reason of a sufficient title and he can not be forced to show it." (Civil Code, arts. 446 and 448.)

Inchausti & Company, therefore, had in their favor a well-defined legal status, even though no more than that of a peaceful *possessor*, and it must be respected and presumed to exist and they should be protected in the possession of that which is presumed to be theirs.

The Philippine bill enacted by Congress July 1, 1902, says:

> "That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the Government of said Islands, to be administered for the

benefit of the inhabitants thereof, except as provided in this act." (Sec. 12.)

This section does no more than to place under the control and administration of the Insular Government all the property and rights ceded by Spain to the United States— all that they *could* have acquired from Spain by the treaty of peace—with the exception of what may be set aside for military or other reservation. If, according to article 8 of the treaty of peace, only the public property of Spain could have been acquired by the United States, and such public property did not include that belonging to private individuals, then the title and rights of a peaceful possessor under the law could not be affected or impaired by this cession and the land of Inchausti & Company, which was not public but private land on the date of the treaty, would not come under the control of the Insular Government, nor could it be set aside as a military reservation.

This fact, *a priori* considering the legal status of affairs at the time the cession took place, does not preclude an action upon a just cause to claim the recovery and reversion to the State of property then considered private in order that it might be declared public and continue to the State. And in this sense we are disposed to consider the present opposition, but not without the following conclusion : The legal status of the land in question on the 10th of December, 1898, the date of the treaty of peace, was that of private property and not that of public property ceded by Spain to the United States, inasmuch as the land was peacefully possessed by Inchausti & Company, who continued in possession until the 23d of February, 1904, when this opposition was made.

The basis of this opposition was no other than the claim that this land was public property within the meaning of article 339 of the Civil Code, it lying in the first military zone, adjoining the "*cotta* of Iloilo," now known as "Fort San Pedro No. 22." (Facts 3, 6, and 8 of the answer.) It is expressly alleged by the opposition that it is not arable (*baldio*) land within the meaning of the royal decree of the 25th of June, 1880, nor of any prior law. (Fact 3.)

This being the only ground of the opposition, it can not be entertained because it is based upon a false assumption, to wit: That any land lying within a military zone is public land and should be considered, under the provisions of article 339 of the Civil Code, as are the walls, fortresses, and other defenses. The military zone provided for in article 10, title 2, part 6 of the military ordinances of the Spanish army, which extends over a radius of 1,500 yards from the fortifications, does not mean that the land included within that space belongs to the State. It simply creates a legal easement in that the owners of the land therein

embraced could not build without the necessary permit and without certain restrictions. The opposition, therefore, is groundless. It is upon the supposition that this was a polemic zone, and that all the land included within the 1,500 yards covered by said zone was public property, that it is claimed by the opposition that the land in question was public land. It has already been said that the oppositor expressly denied that the land in question was arable land—that is to say, that the land was public because it was arable.

But the court in disallowing the opposition based its decision upon the ground that the land was public land because it was arable, adding that it was granted by the political-military governor of the Visayas, who was not a competent authority to make such grant, the proper proceedings not being had. Notwithstanding this finding that the land in question was public land because it was arable, the court in its decision granted authority to have the said land registered in the name of Inchausti & Company upon the theory that the land had become private property because the transfer made by Juan Reyna on the 10th of February, 1881, to Francisco Garcia and Victor Gomez, and by the latter to the representatives of Inchausti & Company on the 20th of August, 1883, was undoubtedly considered by the court as a just and sufficient title to convey the ownership of the land under laws 9 and 18, title 29, partida 3, and article 1952 of the Civil Code, according to which, whether the period of possession is counted from the 10th of February, 1881, or from the 20th of August, 1883, not only the ten years required by law 13, title 29, partida 3, and article 1957 but more than twenty years had elapsed, there is no doubt, according to the court below, that title by ordinary prescription may have been acquired by the petitioners. It was thus attempted to establish the doctrine that arable land in the Philippine Islands, as all other property therein, may be acquired by ordinary prescription of ten years provided there is a just title, such as the contracts of sale in question, and good faith on the part of the possessor, such good faith being presumed to exist until the contrary is proven.

If the land in question was really public land in the sense of the decision of the court below, it would be necessary to reconsider the doctrine laid down by this court in a case in which the majority said: “We are of the opinion that from 1860 to 1892 there was no law in force in the Philippines under which the petitioner could have acquired title (to his land) by prescription without the intervention of the Government” (Valenton *vs*. Murciano.[1]) But it not being such public land, as will be shown later, there is no occasion for this court to reconsider this question as to which the majority has laid down that doctrine.

The contestant in his brief, disputing the theory as to the prescriptibility of arable lands in the Philippines laid down in the decision of the court below, seems to have changed his

views so as to conform with those of that court by asserting that the land was in fact arable land (in his answer the contestant expressly denied that the land was arable land within the meaning of the royal decree of the 25th of June, 1880, or of any prior law), because he says in conclusion that "the petitioner as well as his grantors lost whatever right they had to perfect his title on account of the failure to comply with the provisions of the royal decree of the *25th of June, 1880*, and subsequent decrees up to and including that of the 13th of February, 1894," which is equivalent to saying that he had not petitioned the Spanish Government for a patent as required by the legal provisions first cited, or that he had not instituted the possessory information proceedings which, in accordance with the last-mentioned decree of 1894, had come to substitute the adjustment (*composicion*) proceedings, all of which proceedings, according to the provisions of an administrative character above cited,v related to arable lands. For this reason the contestant asks that the judgment of the court below be reversed and that "the said land be declared to be public land, the property of the United States, in accordance with sections 5 and 7 of Act No. 627.of the Philippine Commission" (p. 10).

It would be very difficult to explain why the land in question should be considered as arable land when there is nothing in the record which would warrant such conclusion. Neither in the petition, nor in the description of the land, nor in the documents presented by either party, nor in the whole discussion of the case, is there an argument or indication that would suggest that this case related to arable land; on the contrary, it very plainly appears from the record that the case refers to land which could not be properly called arable land; a land as to which the chief of the bureau of public works of the district of the Visayas, in a matter within his absolute jurisdiction, said, "there is no necessity to use this land for the erection of any *public buildings*," neither then nor in the future; a land for the concession of which the first thing required was that no structures of light or inflammable material be built thereon in order that the danger of fire might be avoided; a land in "proximity to the site designated for the public jail and to houses of the barrio" abutting upon a certain street and adjoining a house and lot of another resident of the place and upon which there were buildings to the value of 25,000 dollars or more, and which had been expressly granted for the purpose of placing thereon a dangerous but useful enterprise such as would ordinarily have been erected outside of the town, We fail to see how such land can be termed arable land.

The last law on the subject in force in the Philippine Islands at the advent of the new sovereignty was the royal decree of the 13th of February, 1894, which embodied all prior legislation in regard to public land with a new and precise tendency to protect private

property and to insure the territorial credit, the main object of the mortgage law. It will be important to read the following from the preamble:

> "Since the incorporation of the Philippine Islands in the Crown of Castile, constant and special attention has been given to the development of private ownership in those most fertile territories; and although there is a large extent of land under *cultivation* this is not as yet in proportion to the population. * * * Although there will not be omitted the necessary forest reserves which, if placed under cultivation would be prejudicial to the public welfare, by directing that the necessary classification and survey of these , forests be made. * * * Attention is given to the common property of towns. * * * To the welfare and prosperity of the *agricultural* municipalities this measure will be beneficial, * * * insuring in future to the natives, wherever it may be possible, the necessary land for cultivation in accordance with the traditional usages of the country and the use of the products of the forest for the common benefit of the inhabitants. Great. facility is given for legalizing present holdings and the acquisition of lands by those who actually and under a claim of title have been cultivating them, while on the other hand an opportunity is given to take advantage of the provisions of the mortgage law and the proper registration of new private properties."

It is sufficient to fix our attention on this last paragraph in order to know to what class of land or property the provisions of the royal decree of the 25th of June, 1880, et seq,, in regard to the acquisition of public land and the provisions of the royal decree of the 13th of February, 1894, in regard to the possessory information proceedings which were substituted for the adjustment (*composicion*) proceedings, relate. All of them refer to alienable public lands which are arable. Article 19 of this last-mentioned royal decree, which provides for the possessory information as one of the means of legalizing such possession, is very clear.

> "Those in possession of alienable public lands *under cultivation* (and no others) who have neither obtained nor applied for a patent from the Government at the time of the publication of this decree in the "Gaceta de Manila" may secure such patent free of charge by means of a possessory information, in accordance with the law of civil procedure and the mortgage law, provided they prove any of the following circumstances, to wit: First, that they have or have had such land *under*

> *cultvation* uninterruptedly for a period of six years prior thereto; second, that they have been in possession uninterruptedly for a period of twelve years and that the land was *under cultivation* at the time the possessory information proceedings were instituted and during the three years immediately preceding; third, that they have been in the open and uninterrupted possession of the land for thirty years or more, although the land may not be *under cultivation*."

Of course the petitioners could not have availed themselves of these means of legalizing their rights, assuming that their possession was illegal, for the simple reason that the land in question was not arable land as to which they could have proven, even if they wanted to, any of the above three circumstances. The alienable arable land prior to the 17th of April, 1894, when the royal decree of the 13th of February of the same year was published in the Manila Gazette, and which could be acquired by adjustment (*composicion*) with the Government, as well as subsequent thereto, by means of a possessory information, were only the rural arable lands beyond the *legua comunal* and the forestry zone, the rural land and not the urban which already was a part of an organized town.

A famous legal writer, and a person of great experience on the subject, in treating in one of his works on "the methods prescribed for the transformation of simple occupation into the rights of ownership," says: "In the third place, the various provisions enacted for the purpose of issuing to the holders of land the corresponding titles of ownership by means of the procedure known to the old legislation of the Indies as adjustment proceedings. But these provisions did not produce the results that the Government expected, undoubtedly on account of their limited and casuistic nature." Further on he says: "Because, as a matter of fact, the only means of providing a firm basis to rural ownership, such as would offer to agricultural industries sufficient guaranties, stability, and progress, was to make it easy for those willfully or unconsciously in the wrongful possession of lands to bring themselves within the terms of the law. It was so understood by the Government when the important regulations for the adjustment of public lands, approved by the royal decree of the 25th of June, 1880, which contain the basis of the constitution of private territorial ownership in the far eastern Spanish possessions, the provisions of which have generally continued in force, were issued." (This was written in 1892. Oliver, 1, "Derecho Inmobiliario Espafiol," 818 and 819.)

In the preamble to the Reformed Mortgage Law of Cuba, Porto Rico, and the Philippines, the minister who counter-signed the royal decree of the 26th of May, 1893, and the

proposed act which provided for such reform, said: “Our mortgage law, which had numerous precedents in the Archipelago, will be improved with very slight changes which, together *with the reform* of the provisions relating to the *adjustment of public lands*, will facilitate the establishment of territorial banks, the principal basis of which is a good mortgage law and legally registered titles defining and protecting rights to real estate.”

The Land Registration Court in saying in its decision that the politico-military governor of the Visayas was not a competent authority to grant this land to Juan Reyna in ,1870, and that the necessary proceedings were not had, means to say that no proceedings were had in regard to the disposition and adjustment of an arable piece of land and that the governor in question, who, by the way, was not merely the governor of the Province of Iloilo but of all the Visayan Islands, was not the competent authority to institute any proceedings in regard to the disposition and adjustment of arable land. The court proceeds upon the assumption that the land granted to Reyna was arable land, thus begging the very question in dispute, because the very thing that should be proven is what the court did assume and there is not the slightest evidence in the record on this point.

The original proceedings instituted by two politico-military governors of the Visayas in regard to the grant of the land to Reyna, subject at first to a condition subsequent, and finally unconditionally, form a part of the record. This is certainly not a proceeding for the disposition or adjustment of an arable tract of land. These proceedings related to the disposition or grant of land which could at that time have belonged either to the municipality or the province (its exact nature does not appear). The report of the chief of public works in regard to this land sets out that the only question looked into was whether at that time or in future there would be any necessity of *using the land for public buildings*. This was undoubtedly, so far as the record shows, the only use to which the land could be devoted, and such was the use to which it was to be put as set out in the proceedings. Land destined for building purposes is *prima facie* urban property; a building lot differs from farm land.

According to the description of the land given in the petition and the nature of the property, it can not be said that the property in question is rural property. It is clearly urban property as shown by the notarial instruments executed relating to contracts concerning the land in question. In order to consider such land as arable land, it would be necessary that some proof or evidence be introduced to this effect, but as a matter of fact no proof of any kind was presented.

Whether the politico-military governors who had to do with the grant of the land exceeded their powers, both executive and administrative, with reference to the laws then in force, is not a question here in dispute and this court can not make any finding upon this point.

The only points decided by this court are: (1) That it does not appear that the land in question was within any military zone which in accordance with the Spanish military ordinances requires such a zone of defense; (2) that, even assuming that the land in question was within some polemic zone, publicly known as such, it could not for this reason be included in the class of lands devoted to general or special public use, thus considering the same as public or State land; (3) that, even assuming that the land in question was embraced within some polemic or military zone, it still remained private property, subject, however, to the legal easement created by the establishment of the polemic zone, which phrase, under the Spanish law, merely means an easement and not ownership; (4) that there is nothing in the record which would warrant a finding to the effect that the land in question was "public arable land" as it has been termed, unless there is a general presumption to this effect, something which we do not admit, because it is not provided for by any law, legal principle, doctrine, or authority; (5) that all the laws concerning the necessity of applying for adjustment of lands in accordance with the rules *ad hoc* approved by the royal decree of the 25th of June, 1880, which adjustment was subsequently substituted by the possessory information proceedings in order to furnish the necessary patent to those in possession who had none—a quitclaim title on the part of the Government being understood by such patent, according to the opinion of a majority of this court—relates to uncultivated land; that is to say, *arable land* such as farm land, and not urban land such as the land here in question, which was granted by the politico-military governors of the Visayas expressly for building purposes.

Aside from the titles of ownership derived from the original one under which Juan Reyna entered into possession of the land there was recorded in the Registry of Property as such on the 15th of November, 1890, a possessory information.

What force such possessory information would have had, the land in question being, as assured, arable land prior to the enactment of Act No. 809 by the Philippine Commission, would be a question open to debate; but since the passage of the said act on the 27th of July, 1903, there seems to be no doubt that, in accordance with section 1 thereof, which is an amplification of the provisions of section 19 of Act No. 496, the said possessory information has the same efficacy that all other titles enumerated in this act have.

Section 19 of Act No. 496, as amended, is in part as follows:

> "Application for registration of title may be made by the following persons, namely:
>
> * * * * * * *
>
> "Third. The person or persons claiming, singly or collectively, to own or hold any land under a possessory information title, acquired under the provisions of the Mortgage Law of the Philippine Islands and the general regulations for the execution of same." (Act No. 809, sec. 1 ,(c).)

For the reasons above set forth the judgment of the court below is affirmed and after the expiration of twenty days let judgment be entered accordingly, and ten days thereafter the record be remanded to the Court of Land Registration for execution thereof. So ordered.

Torres, Mapa, and *Johnson, JJ.,* concur.

DISSENTING

CARSON, J.:

I dissent..

This case is brought here under the provisions of section 14 of the Land Registration Act, the parties having agreed that there is no dispute as to the facts. Under these circumstances, this court is bound by the findings of the lower court.

The trial court was of opinion that the lands in question were public agricultural lands before being reduced to possession by the applicant's predecessors in interest.

This court rests its decision on a finding that the lands in question were not public agricultural lands but urban lands, and on this finding, which is in direct conflict with the finding of the trial court, sustains the judgment.

In the case of Mateo Cariño *vs*. The Insular Government[1] (4 Off. Gaz., 751), since the

majority opinion in this case was filed, this court reasserts the doctrine that prescription does not run against the Government and declares that the doctrine of presumptive grant can not apply to the Philippines in view of Spanish legislation for the Indies. It would appear; therefore, that the judgment of the trial court, which is based on the prescriptive title of the applicant, should not be maintained on the facts as submitted to us for consideration.

Other grounds for dissent are discussed at length in my dissenting opinion in the case of Clara Alfonso *vs*. The Commanding General of the Division of the Philippines,[2] No. 1935, and it is unnecessary to repeat them here.

The judgment of the trial court should be reversed.

---

[1] 3 Phil. Rep., 537.

[1] See Vol. VII, Phil. Rep.

[2] Page 600, post

Date created: May 05, 2014