

34 Phil. 416

[G.R. No. 10510. March 27, 1916]

**LEONCIO ZARATE, APPLICANT AND APPELLANT, VS. THE DIRECTOR OF LANDS
ET AL., OBJECTORS AND APPELLEES.**

D E C I S I O N

MORELAND, J.:

This is a proceeding to register the title to lands described in the petition. The Government of the Philippine Islands interposed an objection to the registration of title on the ground "that said parcel of land was part of the public domain and is occupied by Apolonio Gamido and Bibiana Olivite by virtue of applications made by them for homesteads Nos. 2061 and 5626, respectively." The Court of Land Registration found that a portion of the land belonged to the applicant, but that the remainder was public land and was occupied by Apolonio Gamido, Apolonio Zalazar, Leonarda Mayo, Bibiana Olivite, and Remigio Cauili; and that a part of it was occupied by a public highway. Registration of title to that portion of the land found to be occupied by the persons and highway named was denied; and from that judgment the applicant appealed.

The evidence demonstrates to, the complete satisfaction of this court that the lands in question are not, and, so far as the record discloses, never have been public lands; but, on the contrary, that they belong to the applicant who has shown by a strong preponderance of the evidence that he is the owner thereof. The testimony of the applicant and that of his witnesses Policarpo Zarate and Leoncio Bentillo and others, together with his documentary evidence, is sufficient to establish his ownership. The land in question not being public land, the Government of the Philippine Islands had no authority to declare it open for homesteads; and as a necessary consequence, whatever concessions the Government has made with respect to such land are without force and effect, except as to the homestead of Apolonio Gamido who, prior to the commencement of this proceeding, appears to have received his homestead patent from the Government. Under Act No. 926 a patent issued under the Homestead Law has all the force and effect of a Torrens title acquired under Act

No. 496; and that being the case, and no question having been raised here or in the court below as to the validity of that Act in connection with the proceedings for homesteads mentioned in this case, we must respect the title so secured, provided it be a fact that a patent has been secured in any of said homestead proceedings.

The Court of Land Registration found that the evidence demonstrated "that the land, although it originally really belonged to the applicant, has been abandoned for so many years that he had lost all right thereto and that the application for homesteads were proper." We cannot agree with this finding. It clearly appears that the applicant and his predecessors in interest were the owners of and had a good title thereto. There is nothing in the record which shows abandonment except the fact that the owners had ceased to cultivate it for a few years prior to the application. Their explanation of why it had not been cultivated was that, after the revolution, there were no work animals by which the land could be tilled and that from that time forward it had lain idle. They declare that they had no intention of abandoning it and that it was their intention to return to its cultivation as soon as they could reasonably do so. In our judgment the evidence falls far short of showing abandonment, the record discloses no acts of the owners on which abandonment can be based. Nor is there any claim of title by adverse possession.

Our attention is called to the case of *Fabian vs. Paculan* (25 Phil. Rep., 26). That case is not applicable. There it was simply held that a person who took possession of lands held by another as a homestead without right or title thereto was liable to the homesteader for the damages caused by such usurpation. In the case at bar the seizure, of the land, if any, was accomplished by the respondents against the applicant.

With respect to the homestead of Apolonio Garni do who, it is alleged, has a patent therefor, it appears that said patent, or a certificate of title based thereon, was offered in evidence by his counsel during the trial as exhibit No. 2; but it does not appear that the exhibit was received in evidence. Such exhibit is not found in the record. We therefore make no present pronouncement with respect to his right, but return the case for the purpose of the registration of all the lands described in the petition and plan; that, if the Court of Land Registration finds, on the return of this case, that said Gamido has a patent duly issued by the Government for that portion of the land which he claims, the Court of Land Registration will order the registration of the lands described in the petition, with the exception of the homestead claimed by Apolonio Gamido which will be excluded from such registration. If the Court of Land Registration finds, however, that said Gamido has *not* a patent to said land, then the said Court of Land Registration shall register in favor of applicant title to all

of the lands described in the petition.

The judgment of the Court of Land Registration is hereby modified and it is declared that the applicant has the right to register title to all of the lands described in the application, with the exception of that portion claimed as a homestead by Apolonio Gamido, which homestead shall be excluded from registration by the applicant provided the Court of Land Registration shall find that said Apolonio Gamido has obtained a patent for said land; but if the Court of Land Registration finds that said Gamido has not yet obtained a patent therefor, then the court shall register title in favor of the applicant to all the lands described in the application. So ordered.

Torres, Johnson, Trent, and Araullo, JJ., concur.

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