102 Phil. 551

[G. R. No. L-11373. November 29, 1957]

HEIRS OF GBEGORIO LACHICA, ET AL., PLAINTIFF AND APPELLANTS, VS. FERMIN DUCUSIN, ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

BAUTISTA ANGELO, J.:

On September 24, 1953, the heirs of the late Gregorio Lachica filed an action in the Court of First Instance of La Union against Fermin Ducusin praying that they be declared owners of a parcel of land known as Lot No. 1895 of the Rosario cadastre situated in Rosario, La Union.

Fermin Ducusin, in his answer, claimed that he is the owner of the land by virtue of a homestead patent issued to him by the Bureau of Lands. He set up a counterclaim for damages and attorneys' fees.

In due time, the Director of Lands was made a party defendant and, by way of answer, reiterated the claim of Ducusin that he was granted a homestead patent for the land on March 11, 1953 and, therefore, the latter should be considered as the owner thereof. And considering that the complaint of plaintiffs on the basis of the averments contained therein does not state a cause of action, the Director of Lands filed a motion to dismiss.

Plaintiffs filed a written opposition to this motion, while defendant Ducusin submitted a memorandum fully justifying the motion of the Director of Lands. And after considering the averments and arguments contained in the pleadings of both parties, the court, on September 1, 1956, rendered decision dismissing the case with costs, but "without prejudice to the right of the herein plaintiffs to present their petition or protest with the competent administrative authorities under the executive department." Hence this appeal.

It appears that the lot in question was the subject of a cadastral proceeding had in the Court of First Instance of La Union in 1918 wherein Gregorio Lachica, father of plaintiffs herein,

filed an answer claiming to be the owner of said lot. Because of the failure of Lachica to press his claim, said lot was declared public land.

On February 2, 1947, Fermin Ducusin filed with the Bureau of Lands a homestead application for the lot in question which after a corresponding investigation was approved and given due course on October 19, 1949. On June 16, 1952, the Director of Lands, after having been satisfied that Ducusin had complied with the requirements of the law, caused the issuance of a patent for the land applied for and, accordingly, on March 11, 1953 Patent No. V-15483 was issued to him by the Secretary of Agriculture and Natural Resources. And on May 23, 1953, the Director of Lands transmitted this patent to the Register of Deeds for the issuance of the corresponding certificate of title in accordance with Section 122 of Act No. 496. It also appears that Gregorio Lachica also applied for the same lot with the Bureau of Lands but because he was found not to have occupied it nor introduced any improvement thereon, his claim was dismissed.

Appellants now claim that Fermin Ducusin has acted in bad faith in that he succeeded in obtaining a patent for the land in question through fraud by alleging that said lot was not occupied when in fact it was under the possession of the predecessor-in-interest of appellants. Appellants also invoke in their favor the curative provision of Republic Act No. 981 which took effect on June 20, 1953.

The claim that Fermin Ducusin obtained a homestead patent for the lot in question through fraud cannot be entertained. It appears that Gregorio Lachica, predecessor-in-interest of appellants, has applied for this same lot with the Bureau of Lands but that, after the corresponding investigation, his claim was disregarded, it having been proven that he had failed to comply with the requirements of the law regarding occupation and cultivation. It also appears that the lot was adjudicated to Ducusin because he succeeded in proving that he had occupied and cultivated the same as required by law. If Lachica’s claim as to fraud were true he should have proven it when he was informed of the claim of Ducusin before the Director of Lands but he failed to do so. And if he is not satisfied with the decision of this official, his recourse was to appeal to the Secretary of Agriculture and Natural Resources. This he also failed to do and for such failure he cannot now come to court for the reddress of a grievance which comes exclusively under the jurisdiction of the Bureau of Lands. As this Court well said: “If plaintiffs were aggrieved by the action or decision of the Director of Lands, their remedy was to appeal to the Secretary of Agriculture and Commerce. But it does not appear that they have done so. It does not even appear that they have pursued their protest to its conclusion in the Bureau of Lands itself. Having failed to exhaust their

remedy in the administrative branch of the government, plaintiffs cannot now seek relief in the courts of justice." (Eloy Miguel, et al., vs. Anaclota M. Vda. de Reyes, et al., 93 Phil., 542).

The claim of appellants that they can file their action in court under the curative provisions of Republic Act No. 931 cannot also be entertained. It is true that this Act grants to a person who has been deprived of the possession of a parcel of land which has been the object of a cadastral proceeding because of his failure to claim the same within the period established by law the right within five years after the approval of said Act to petition for a reopening of the proceedings wherein said land was declared part of the public domain, but said privilege is only granted to a person who has been *unable to file a claim*, in court for some justifiable reason and when the land has not as yet been alienated or disposed of by the government. This clearly appears in Section 1 of Republic Act No. 931 which provides:

> "SECTION 1. All persons claiming title to parcels of land that have been the object of cadastral proceedings, who at the time of the survey were in actual possession of the same, but for some justifiable reason had been unable to file their claim in the proper court during the time limit established by law, in case such parcels of land, on account of their failure to file such claims, have been, or are about to be declared land of the public domain, by virtue of judicial proceedings instituted within the forty years next preceding the approval of this Act, are hereby granted the right within five years after the date on which this Act shall take effect, to petition for a reopening of the judicial proceedings under the provisions of Act Numbered Twenty-two hundred and fifty-nine, as amended, only with respect to such of said parcels of land as have not been alienated, reserved, leased, granted, or otherwise provisionally or permanently disposed of by the Government, and the competent Court of First Instance, upon receiving such petition, shall notify the Government, through the Solicitor General, and if after hearing the parties, said court shall find that all conditions herein established have been complied with, and, that all taxes, interests and penalties thereof have been paid from the time when]and tax should have been collected until the day when the motion is presented, it shall order said judicial proceedings reopened as if no action has been taken on such parcels." (Italics supplied.)

Here it appears that the predecessor-in-interest of appellants has filed in due time a claim for the lot in the cadastral proceedings which were instituted for the registration thereof in 1918 but that he has failed to press his claim therefor and as a result the lot was declared a public land. It also appears that when this action was instituted the government had already issued a patent for this lot to Fermin Ducusin which was registered in his name by the Register of Deeds in accordance with the Public Land Act. Evidently, the provisions of Republic Act No. 931 cannot now be invoked by appellants.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Conception, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

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