

THE DIRECTOR OF LANDS, AND ADRIANO CARPIO, MARTIN AGUILAR AND PEDRO AGUILAR, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND MARIANO RAYMUNDO, RESPONDENTS.

G.R. No. L-29575. April 30, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for review of the decision of the Court of Appeals, in its Case CA-G. R. No. 29461-R, recognizing the registerable title of respondent Mariano Raymundo over certain parcels of land in Mabitac, Laguna, on the basis of an unsigned copy of a deed of sale, the original of which was said to have been lost.

The records show that on 16 June 1950, Mariano B. Raymundo filed in the Court of First Instance of Laguna an application[1] for registration of his imperfect or incomplete title over five parcels of land (Lots Nos. 461, 462, 463, 480 and 483, Mabitac Cadastre) situated in Mabitac, Laguna, allegedly acquired by actual, open, adverse and continuous occupation of the properties, by himself and by his predecessors-in-interest since time immemorial.

The application for registration was opposed by several parties, specifically, (a) by the Director of lands, on the ground of applicant's lack of registerable title; and (b) by Adriano Carpio, Martin Aguilar and Pedro Aguilar, as regard the northern portion of Lot No. 463, for the reason that they were the actual possessors thereof and had filed homestead applications therefor since 1935.

After hearing, the registration court rendered judgment declaring applicant Raymundo to have established proprietary rights over Lots Nos. 461, 462, 480, 483 and the southern portion of Lot No. 463; and ruling oppositors Carpio and Aguilar brothers to have likewise proved their title as regard the northern portion of Lot No. 463, with an area of 72 hectares.

Both Raymundo and the Director of Lands appealed to the Court of Appeals. In its decision of 11 July 1968, the appellate court modified the judgment of the trial court, by recognizing Raymundo's registerable title, not only over Lots Nos. 461, 462, 480, 483 and the southern portion of Lot No. 463 but even over the northern part of Lot No. 463 adjudicated to oppositors Carpio and Aguilar brothers. Raymundo's claim over the whole Lot No. 463 was declared proved by a Deed of Absolute Sale (Exhibit "E-1") dated August, 1936, covering 10 hectares, executed in his favor by Gerardo Olarte, and by a deed of sale (Exhibit "O") involving around 80 hectares, allegedly executed by Mariano Castro on 18 September 1929. Overruling the objection of the oppositors to the admissibility of Exhibit "O", which is merely an unsigned copy of the supposed deed, the Court of Appeals said:

"..... However, applicant Raymundo satisfactorily explained the presentation of said copy in lieu of the original by proving that the original document together with other pertinent papers were entrusted by him to his lawyer, Judge Mariano C. Melendres, sometime before the war in connection with registration proceedings over the said parcels of land. Unfortunately, these documents were burned during the last World War and no official copy could be obtained from the Register of Deeds of Mabitac, Laguna. (Exhibit K, certification of Municipal Treasurer). The testimony of Raymundo was corroborated by Judge Melendres on the witness stand

when he declared that he was indeed entrusted with the custody of these papers and that upon his appointment to the Judiciary he turned over all these papers to a certain Atty. Facundo San Agustin who was killed by the Japanese during the war and no trace of the aforesaid documents has been found. Moreover, Raymundo submitted a receipt, duly signed by Mariano Castro attesting to the fact that the latter received the amount of P100.00 as down payment on the purchase price of the property sold by him to Raymundo on 27 August 1929 (Exhibit O-1). This receipt, taken in conjunction with the copy of the deed of sale and the testimony of Judge Melendres, clearly indicates that applicant Raymundo did in fact buy some 80 hectares of land from Castro of Lot No. 463."

The Director of Lands and oppositors Adriano Carpio, Martin Aguilar and Pedro Aguilar then came to this court, questioning the correctness and legality of the above ruling of the Court of Appeals, affecting solely the northern portion of Lot No. 463, that was allegedly made in contravention of the express provisions of the Rules of Court.

Section 51 of the old Rule 123, Rules of Court, referred to by herein petitioners, reads as follows:

"SEC. 51. Secondary evidence when original is lost or destroyed. - When the original writing has been lost or destroyed, upon proof of its execution and loss or destruction, its contents may be proved by a copy, or by a recital of its contents in some authentic document, or by the recollection of witnesses."

There is merit in the petitioners' contention. From the enactment of Act No. 190 to the present Rules of Court, the rule governing the sale of real property has remained unchanged: it can be proved only by the very instrument reciting the transaction, duly subscribed by the proper party or his authorized agent, or else by secondary evidence of the contents of such document.[2] However, before the terms of a transaction in realty may be established by secondary evidence, it is necessary that the due execution and subsequent loss of the original instrument evidencing the transaction be proved.[3] For it is the due execution, and loss thereafter, of the document that would warrant or constitute basis for the introduction of secondary evidence to prove the contents of such document.[4] And the due execution of the document should be proved through the testimony of (1) the person or persons who executed it; (2) the person before whom its execution was acknowledged; or (3) any person who was present and saw it executed and delivered, or who, after its execution and delivery, saw it and recognized the signatures, or by a person to whom the parties to the instruments had previously confessed the execution thereof.[5] Thus, in one case,[6] the admission of the certified copy of the record of a deed in a public registry as secondary evidence of the terms of the deed of sale, was declared improper and invalid, the Court pointing to the party's failure to present the notary and those persons who must have seen the signing of the document as witnesses to testify on its due execution.

In the present case, the declaration of applicant Raymundo's former counsel, Mariano C. Melendres, does not satisfy the requirements of the Rules. As mentioned in the decision of the Court of Appeals, this witness testified that the alleged original deed of sale, together with other pertinent papers, were entrusted to him by applicant sometime before the war that upon his appointment to the bench all those papers were turned over to one Attorney Facundo San Agustin; that Attorney San Agustin, however, was killed by the Japanese and no trace of the documents could be found thereafter. It may be noted from the foregoing finding of the Court of Appeals that Judge Melendres did not state that he was present when the deed of sale was supposedly executed by Mariano Castro, or that the fact of its execution was acknowledged or admitted to him by the latter. It appears simply that the deed, perhaps then already accomplished, was delivered to him by applicant, together with other papers. Even assuming, therefore, that this witness could have read the contents of the document, yet if it is considered that there is no showing that the witness knew and recognized the signatures affixed thereon, such knowledge of the terms would not qualify him to testify on the due execution of the document. The same thing may be said of the receipt signed by Mariano Castro, acknowledging payment by Raymundo of the sum of P100.00. It has nothing to do at all with the execution of the supposed deed of sale. Hence, the Court of Appeals clearly committed

reversible error in declaring Raymundo's title over the northern portion of Lot No. 463 to have been proved, on the basis of the foregoing evidence.

The applicant, having failed to establish his right or title over the northern portion of Lot No. 463 involved in the present controversy, and there being no showing that the same has been acquired by any private person from the Government, either by purchase or by grant, the property is and remains part of the public domain.[7]

WHEREFORE, the decision of the Court of Appeals under review is reversed, only insofar as it decreed to applicant Mariano Raymundo title to and ownership of the northern portion of Lot No. 463, Mabitac Cadastre, subject of this proceeding, which is hereby declared part of the public domain, subject to the possessory rights of oppositors Adriano Carpio, Martin Aguilar and Pedro Aguilar. No pronouncement as to costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] The application was amended on 21 November 1950.

[2] *Gorospe vs. Ilayat, et al.*, 29 Phil. 21.

[3] Section 51, Old Rule 123, now Section 4, Revised Rules of Court.

[4] *Hernaez vs. McGrath, et al.*, 91 Phil. 565.

[5] *Michael & Co. vs. Enriquez*, 33 Phil. 87; *Bersabal vs. Bernal* 13 Phil. 463.

[6] *Government of the Philippine Islands vs. Martinez*, 44 Phil. 817; *Hernaez vs. McGrath*, ante.

[7] *Oh Cho vs. Director of Lands*, 75 Phil. 890, citing *Cariño vs. Insular Government*, 212 U. S. 449, 53 Law ed., 594.

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