

ROSALINA TONGSON, APPLICANT-APPELLEE, VS. DIRECTOR OF FORESTRY, ET AL., OPPOSITORS-APPELLANTS, MACARIO BERMEJO, ETC., OPPOSITOR.*G.R. No. L-34463. September 27, 1977*

Ponente: FERNANDO, J.

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the sole appellant in this application for registration of title 'or Lot 855 of the cadastral survey of Pilar is the Director of forestry, one of the oppositors. it assailed the lower court decision in favor of another oppositor, Macario Bermejo.[1] The question raised is one of law, whether or not a parcel of land, in the possession of the predecessors-in-interest and the oppositor Bermejo as far back as 1905, asserted to have originally been mangrove swamps, thereafter converted into a fishpond, may still be considered as part of the timber domain which is not disposable. As the sole issue is one of law, the Court of Appeals, where the matter was first elevated, certified the case to this Tribunal. The decision must be affirmed, the facts as found by the lower court being entitled to respect. As noted in the decision: "After examining very closely the testimonial and documentary evidence presented by Macario Bermejo in his capacity as judicial administrator of the estate of the late Santiago M. Bermejo, the Court arrives at the conclusions that the claims of possession and ownership of the heirs of said Santiago M. Bermejo are clearly supported by the evidence." [2]

The facts as found by the lower court follow: "The testimonial evidence shows that as early as the year 1905 the parcel of land which later became Lot 855 of the cadastral survey of Pilar, was under the exclusive possession of Francisco Borja who cut trees therefrom and converted them into firewood. He also established a salt factory and that he sold the firewood and the salt without having been disturbed by anybody. After the death of Francisco Borja, his son Arturo Borja took possession of the land, continued to cut trees and converted them into firewood without giving share of the products to anybody, up to the year 1910. On May 1, 1917 Antero Borja sold the land to Deogracias Gayacao as evidenced by a private document over thirty years of age, marked Exhibit ' 15-Bermejo.' The English translation is marked Exhibit '15-A-Bermejo.' Deogracias Gayacao took possession of the land and made use of the trees and the improvements therein. On January 4, 1940, Deogracias Gayacao sold five parcels of land to Santiago M. Bermejo and one for the parcels known as parcel No. 4 as cadastral Lot No. 855. The sale is evidenced by the notarial instrument marked Exhibit ' 14-Bermejo.' During his lifetime, Santiago M. Bermejo possessed said parcel of land, cut trees for the firewood purposes and also had a salt factory. Upon the death of Santiago M. Bermejo in 1951, his children took possession of this parcel of land and when Macario Bermejo was. appointed judicial administrator by the Court of First Instance of Capiz, in Special Proceedings No. V-689, this lot appeared in the Revised Inventory of the estate of the late Santiago M. Bermejo (Exhibit '13-Bermejo'). Paragraph 21 of said Inventory (Exhibit '13-A1 Bermejo' is Lot 855. During his lifetime!, Santiago M. Bermejo declared this land for taxation purposes as shown by tax declaration No. 10190, Exhibits '19-Bermejo,' '20-Befmejo,' '21-Bermejo,' '23-Bermejo, and '25-Bermejo.' During the cadastral survey of the land in the municipality of Pilar, Santiago M. Bermejo claimed Lot 855, and presented a cadastral survey of the land in

the municipality of Pilar, Santiago M. Bermejo claimed Lot 855, and presented a cadastral answer, a copy of which is marked Exhibit '29-Bermejo.' This cadastral answer was subscribed on March 6, 1951 ."[3] It was stated further: "At present Lot 855 is a completed and producing fishpond. When Macario Bermejo took possession of the land in 1953 he converted it into a fishpond and started to construct fishpond dikes. However, due to lack of funds, the construction of the fishpond-was not completed. On May 30, 1956,'Macario Bermejo, in his capacity as administrator of the estate of the late Santiago M. Bermejo, leased the land to Leopoldo L. Somes with the approval of the Court of First Instance of Capiz. Said lease contract is marked Exhibit '8-Bermejo.' At present Leopoldo L. Somes is in actual possession of Lot 855 by virtue of said lease contract (Exhibit '8-Bermejo'). x x x The possession of Francisco Borja, Antero Borja, Deogracias Gayacao, and Santiago Bermejo was peaceful, continuous, open, and adverse under claim of ownership. The possession of the children of the late Santiago M; Bermejo, represented by judicial administrator Macario Bermejo, started after the death of Santiago Bermejo on April 1951. Nobody molested them. Consequently, the possession of the heirs of Santiago M. Bermejo together with that of their predecessors-in-interest was likewise peaceful, continuous, open, adverse and in concept of owners for a period of not less than fifty years."[4]

As set forth at the outset, the appeal lacks merit, and the affirmance of the decision is called for.

1. It is admitted in the brief of appellant Director of Forestry that the lower court, in its decision, relied on *Montano v. Insular Government*,^[5] *Jocson v. Director of Forestry*^[6] and *Garchitorena Vda. de Contrera v. Obias*^[7] It is contented, however, that after the Administrative Code of 1917 took effect, mangrove swamps were included in the category of public forest.^[8] The Administrative Code became effective on October 1, 1917. *Jocson v. Director of Forestry* was decided in 1919. This Court, in the opinion of Justice Moir, was quite categorical: "In the case of *Mapa v. Insular Government* ***, this court said that the phrase 'agricultural lands' as used in Act No. 926 means those public lands acquired from Spain which are not timber or mineral lands. Whatever may have been the meaning of the term 'forestry' under the Spanish law, the Act of Congress of July 1st, 1902, classifies the public lands in the Philippine Islands as timber, mineral or agricultural lands, and all public lands that are not timber or mineral lands are necessarily agricultural public lands, whether they are used as nipa swamps, manglares, fisheries or ordinary farm lands. The definition of forestry as including manglares found in the Administrative Code of 1917 cannot affect rights which vested prior to its enactment."^[9] What is even more persuasive as to the correctness of the decision reached by the lower court is that in the *Garchitorena* decision, this Court, through Justice Ostrand, who was famed for his authoritative opinions on public land controversies, promulgated in 1933, more than fifteen years after the effectivity of the revised Administrative Code, was equally explicit: "This opposition rests mainly upon the proposition that in the land covered by the application there are mangrove lands as shown in this opponent's Exhibit 1, but we think this opposition of the Director of Forestry is untenable, inasmuch as it has been definitely decided that mangrove lands are not forests lands in the sense in which this phrase is used in the Act of Congress ***."^[10] It could be said, therefore, that even on the assumptions that the parcel of land in question could be characterized as mangrove swamps, the conclusion reached by the lower court is not without support in the applicable authorities.

2. Actually, it cannot be said with certainty that there was a finding in the appealed decision that to the disputed lot was originally mangrove swamps. As stated therein: "Mangrove swamps where only trees of mangrove species grow, where the trees are small and sparse, fit only for firewood purposes and the trees growing are not of commercial value as lumber, do not convert the land into public land. Such lands are not forest in character. They do not form part of the public domain."^[11] Based on such a finding which must be accorded due weight and is controlling, the sole question raised on appeal is one of law, the decision arrived at by the lower court is not open to any valid objection.

WHEREFORE, the appealed decision of April 5, 1962 is affirmed. No costs.

Barredo, Antonio, Concepcion Jr., and Santos, JJ., concur.

Aquino, J., took no part.

[1] He appeared in his capacity as judicial administrator of the Intestate Estate of the deceased Santiago M. Bermejo.

[2] Record on Appeal, 41.

[3] Ibid, 42-43.

[4] Ibid. 43-44.

[5] 12 Phil. 572 (1909).

[6] 39 Phil. 560 (1919).

[7] 58 Phil. 21 (1933).

[8] The first paragraph of Section 1820 of Act 926 reads as follows:

"Words and phrases defined. — For the purposes of this chapter, "public Forest includes, except as otherwise specially indicated, all unreserved public land including nipa and mangrove swamps and all forest reserves of whatever character

[9] 39 Phil. 560, 565.

[10] 58 Phil. 21. 24.

[11] Decision. Record on Appeal. 40.

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