

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SATURNINO R. ARICHETA, DEFENDANT AND APPELLANT.***G.R. No. L-15589. May 31, 1961*

Ponente: LABRADOR, J.

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This action was brought by the Republic of the Philippines to eject defendant from a parcel of land which the latter is occupying or squatting on in the East Triangle of the Quezon Memorial Park, Diliman, Quezon City.

It is alleged in the complaint that the Republic of the Philippines owns the said park, having been established under Proclamation No. 42 dated July 5, 1954, as amended by Proclamation No. 373 dated December 21, 1956, both of the President of the Philippines. The defendant alleges in his answer that the land subject of the action formerly belonged to Marcelino Tiburcio, who was granted a Spanish grant on March 25, 1877; that defendant purchased the same from the former owner in good faith, the deed of sale having been registered in Quezon City under the provisions of Act 3344; that as the plaintiff had no valid title and, on the other hand, it belonged to Marcelino Tiburcio, plaintiff acquired title thereto merely by presidential proclamation; that there is a pending action between Tiburcio and the plaintiff, through the People's Homesite and Housing Corporation, over the parcel of land in question.

It appears from the record that a pre-trial was had, during which plaintiff presented a photostat copy of its title (Exhibit "A"), a copy of Proclamation No. 42 of the President of the Philippines (Exhibit "B"), copies of letters of demand to vacate dated July and September, 1955 (Exhibits "C" and "C-1"). Defendant, in turn, presented a copy of Act 3915 (Exhibit "1"), a copy of deed of sale executed by Filemon S. Custodio in favor of the defendant (Exhibit "2"); a copy of the defendant's petition for registration of real property under Act 3344 (Exhibit "3"), photostat copy of the agreement between Tiburcio and the Custodio (Exhibit "4"), technical description and survey plan of the land (Exhibits "5" and "6") and the receipts for payment of registration fees (Exhibit "3-a"). All these documents were admitted without objection. The defendant also called attention to the fact that the land in question was acquired by him from Tiburcio, who had applied for registration of the same under Act No. 496, and that he (defendant) had acquired it by virtue of a deed of sale executed by Tiburcio in his favor.

To rebut the evidence for the defendant, plaintiff presented Exhibits "D", "F", and "G" to show that the Commissioner of Parks and Wildlife had opposed the application for registration of Tiburcio and that the court afterwards denied Tiburcio's application for registration in its resolution dated October 17, 1955, which resolution has become final.

Upon consideration of the evidence as above described, the court rendered judgment declaring that plaintiff is registered owner of the land as shown by Certificate of Title No. 1356, Exhibit "A"; that the portion in question has been converted into the Quezon Memorial Park by virtue of Presidential Proclamation No. 42, as amended by Presidential Proclamation No. 473; that the park is administered by the National Parks and Wildlife Office; that the defendant has been occupying the premises for more than one year after the filing of the action, and that the

said Proclamation No. 42 is constitutional.

After a denial of a motion for reconsideration and new trial, the defendant perfected an appeal to this Court.

The first assignment of error, i. e., that the complaint is defective because it is not verified in accordance with Section 1 of Rule 72 of the Rules of Court, is without merit. The action, as the evidence shows, is one for the recovery of title and possession of property. As a matter of fact, the defendant alleged that he is the owner of the land, having presented a deed of sale in his favor executed by one Marcelino Tiburcio. Be that as it may the supposed defect in the complaint can not be raised on appeal, the same not having been raised at the opportune time in the trial court.

The supposed second error is that there is a pending action between the parties for the same cause. It may be true that a civil case No. Q-2623 entitled "Marcelino Tiburcio vs. Republic of the Philippines" had been presented, but at the trial it was shown that the action had already been decided, as proved by Exhibits "D", "F" and "G", Exhibits "G" the last being the order of the court denying registration, which order had already become final.

In the third assignment of error, it is claimed that error is committed in holding that the property is covered by a valid title of the People's Homesite and Housing Corporation, the title Exhibit "A" having been anomalously and fraudulently obtained. This is mere allegation without evidence to support the claim.

In the fourth assignment of error, it is claimed that the court should have found him a possessor in good faith. The defendant is an attorney at-law; he should have known that no property around the City of Manila or in Quezon City is as yet not covered by Torrens Title. Furthermore, his vendor had no Torrens Title and the deed of sale states that the vendor bound himself to issue a clear title to the land. This shows that the vendee must have doubted the validity of his vendor's title to the property.

In the fifth assignment of error, appellant questions the validity of the presidential proclamation. As the whole land constituting the park is covered by a certificate of title in the name of the People's Homesite and Housing Corporation and is, therefore, a property of the Government of the Philippines, the authority of the President to convert the same into a park can not be questioned.

Finding absolutely no merit in the appeal, which is frivolous, and considering that the defendant-appellant is an attorney at law, the decision appealed from is hereby affirmed, with treble costs against the defendant-appellant.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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