

PASCUAL LIBUDAN, PETITIONER AND APPELLEE, VS. JOSE L. PALMA GIL, OPPOSITOR AND APPELLANT.

G.R. No. L-21163. May 17, 1972

Ponente: ANTONIO, J.

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ANTONIO, J.:

From the orders of the Court of First Instance of Davao, dated September 10, 1962, in Land Registration case No. 281, denying the petition for review, but granting the alternative petition for substitution, and ordering the issuance of a decree of registration in favor of the oppositors, heirs of Jose Palma Gil, over 31,040 square meters of the 188,725 square meters of land involved in the proceedings, and the issuance of another decree in favor of the applicants successors-in-interest of Pascual Libudan for the remainder, and that of October 27, 1962 denying applicants' motion for reconsideration, the oppositors appealed directly to this Court on pure questions of law;^[1] the applicants to the Court of Appeals insofar as the orders granted the alternative petition for substitution.^[2] But the appellate Court certified the appeal to Us after it found that applicants raised only questions of law.^[3] The dispositive portion of the order of September 10, 1962 states:

"WHEREFORE, the petition to review judgment is hereby denied, but the petition for substitution is granted.

"The Commissioner of Land Registration shall issue the decree of registration for 31,040 square meters of the land subject matter of this registration to the oppositors and another decree for the rest of the land to the successors-in-interest of Pascual Libudan.

"The oppositors shall file a plan of the 31,040 square meters duly approved by the Director of Lands and shall pay the fees which the Register of Deeds would collect in accordance with Section 114 of this Act, as amended, if the instrument of conveyance had been presented for registration in the office of the register of deeds after registration of the original certificate of title."^[4]

The cardinal questions raised by these two appeals are: (1) whether the facts alleged in oppositors' petition for review constitute fraud within the context of Sec. 38, Act 496 to warrant the reopening and review of the Registration Court's final judgment which incidentally bears the imprimatur of affirmance by the Appellate Court; and (2) whether the court a quo erred in granting without formal presentation of evidence but solely on the pleadings, the alternative petition of the oppositors for substitution under Sec. 29, Act 496 with respect to the 31,040-square-meter portion of the land previously adjudicated to applicants.

The factual setting stretches some 35 years back. On June 18, 1937, the late Pascual Libudan filed a petition for the registration of a 188,725-square-meter land in Barrio Babac, Island of Samal, Davao, (described in Plan SWO, submitted as Exhibit A, in Registration Case 281), asserting title thereto by inheritance from his late father, coupled with continuous, exclusive and notorious possession since time immemorial under a bona fide claim of ownership.^[5] Jose Palma Gil claiming that he purchased the entire land from one Mangob (Samal), opposed the petition.^[6] But later, on August 3, 1939, the oppositor amended his opposition by reducing his claim to only 15 hectares, delimited within points 1 to 4, 7 to 17 and 1 of the plan.^[7]

Three months after he filed his amended opposition in the registration case, Jose Palma Gil sought in Civil Case No. 204 before the Justice of the Peace Court of Samal, the ejectment of Libudan from the 15-hectare area claimed by the former in the registration case. Judgment was rendered by the Justice of the Peace Court on December 18, 1939 ordering Libudan (and his agents) to vacate the premises, restore the possession to Jose Palma Gil and pay him P320 for the value of the products taken therefrom plus P100 as damages for the illegal occupation.[8]

Nine months thereafter, or on September 7, 1940, the Davao Land Registration Court rendered judgment confirm-ing the title of Jose Palma Gil over the 15-hectare portion of the land, and awarding the remainder thereof or the 31,040-square-meter portion to Libudan.[9]

Libudan appealed to the Court of Appeals.

During the pendency of the appeal, the Sheriff of Davao, to satisfy the alias writ of execution issued in Civil Case No. 204 (the judgment having already become final) levied upon the 31,040-square-meter portion previously adjudicated to Libudan by the Registration Court, and on December 27, 1940, sold it at public auction to Jose Palma Gil.[10] Failure of Libudan to redeem the property within the one year statutory period resulted in the execution of the final deed of sale, followed by the delivery of the possession of the property to Jose Palma Gil. The deed of consolidation was registered in the Davao Registry of Deeds under entry No. 1297 on January 3, 1944.[11]

Meanwhile during the Second World War, the records of the land registration case pending with the Court of Appeals were destroyed, and, as said Court failed to reconstitute them, the case was remanded to the lower court for new trial on October 21, 1951.[12]

It is not clear from the records when the new trial in the registration case began. But in the interim, on February 21, 1950, the Administratrix of the estate of Jose Palma Gil commenced, before the Davao Court of First Instance against Palinkud Samal (widow and successor-in-interest of the deceased Pascual Libudan), and four others, an action for the recovery of the ownership and possession of the parcel of land located in Babac, Samal, Davao, with an area of 31,040 square meters, which land was previously conveyed by the Davao Sheriff to Jose Palma Gil. It was therein alleged that after the death of Palma Gil in December, 1944, the defendants, taking advantage of the chaotic conditions obtaining, illegally entered the land in question. This case was docketed as Civil Case No. 458.

The Davao Court of First Instance dismissed the case on the procedural technicality: that the action should have been instituted against the judicial administrator of the estate of the deceased Libudan. But on appeal, the Court of Appeals reversed, after finding that" * * * the land ordered regis-tered and title issued in the name of the late Pascual Libudan in Registration Case No. 281, G.L.R.O. Record No. 51986 * * * is the same as that described in the complaint as well as in the certificate of sale issued in Civil Case No. 204."[13]

Not satisfied with this decision, Palinkud Samal appealed to Us, but we sustained the Court of Appeals. The pertinent findings of this Court are quoted below for a more comprehensive overview of this case:

"On February 21, 1950, Gregoria Vda. de Palma Gil, as administratrix of the estate of her deceased husband Jose L. Palma Gil, later substituted by Emilio Palma Gil, as administrator of the same estate, commenced the present action in the Court of First Instance of Davao to recover possession and ownership of a parcel of land located in Babac, Samal, Davao, with an area of 31,040 square meters, against Palinkud Samal, widow of Pascual Libudan and four other defendants. * * *.

"In Civil Case No 204 entitled 'Jose Palma Gil vs. Pascual Libudan; et al.' of the Justice of the Peace Court of Samal, to satisfy the judgment obtained by plaintiff Palma Gil, the parcel of land in question was sold at public

auction by the Acting Provincial Sheriff of Davao to plaintiff Palma Gil himself on December 27, 1940. The land was supposedly the property of Pascual Libudan one of the defendants in the said case. Because of his failure to redeem the property the Sheriff issued the final deed of sale in favor of Jose Palma Gil sometime in December 1943, and possession thereof was delivered to him through his representative, said final deed of sale being recorded in the office of the Register of Deeds of Davao. Palma Gil died in December 1944, and the herein defendants taking advantage of his death and of the chaotic conditions therein obtaining just after the last Pacific war, illegally entered the land in question and gathered the coconut fruits therein. Pascual Libudan died in 1946.

"At the trial, the defense tried to prove that the land in question was covered by two free patent applications approved by the Director of Lands way back in 1934 in favor of Pascual Libudan and one Estandis Malise (Samal). The trouble according to the Court of Appeals is that the defense did not present any oral evidence to identify the land said to be covered by said two free patent applications to establish their relation, if any, to the land in question. The Court of Appeals further found that as a result of the application for registration filed by Pascual Libudan in Registration Case No. 281, G.L.R.O. Receipt No. 51986, the Court of First Instance of Davao in an order dated September 7, 1940, decreed the registration and issuance of a title in the name of said Pascual Libudan over a parcel of land, which judging from the boundary owners indicated in the Surveyor's plan, is the same parcel now in litigation; that although as already stated, this land was sold to Palma Gil by the Acting Provincial Sheriff in the execution sale in 1940, and the final sale was issued to him in 1943, followed by the delivery of possession, Pascual Libudan up to his death in 1946, did not contest the regularity or validity of the execution sale nor did his heirs do so up to the filing of the complaint in this case. From all this, it is clear that regardless of the claims of the defense that Pascual Libudan and Estandis Malise (Samal) had filed free patent applications later approved by the Director of Land in 1934, the fact is that the land in question was decreed and registered in the name of Pascual Libudan in the Court of First Instance of Davao in September 1940, and it was sold in December of the same year as his property by the Acting Provincial Sheriff to Jose Palma Gil, the final certificate of sale having been issued in 1943, followed by the delivery of possession to Jose Palma Gil. It is also clear that the defendants herein, particularly Palinkud Samal, had no right to enter the land in 1945 because all rights and interest thereto of Pascual Libudan had been legally transferred to Jose Palma Gil." [14]

Two years before the aforequoted decision of the Supreme court was promulgated, or on May 29, 1954, the Davao Registration Court, after holding a new trial in G.L.R.O. 281, adjudicated to Pascual Libudan's heirs, the entire parcel of land applied for (18.8725 hectares), thus:

"POR TANTO, el Juzgado decreta el registro y titulacion 'del terreno descrito en el plano-SWO (Exh. `A'), con todas las mejoras y edificaciones existentes dentro del mismo, a nombre de los herederos del finado Pascual Libudan alias Libudan (Samal), residentes en Babac, Davao." (Record on Appeal in C.A. G.R. No. 14628, p. 58). [15]

The Registration Court rejected the claim of oppositor Jose Palma Gil that the property claimed by him is part of the land he bought from Mangob. Thus:

"A la luz de los hechos obrantes en autos el Juzgado opina y asi declara, que el terreno objeto de esta solicitud no es parte del terreno adquirido en compra de Mangob por el opositor; que Libudan adquirio este terreno en concepto de herencia de su finado padre; que su posesion del terreno, unida a la de sus predecesores data desde tiempo inmemorial, de manera publica, abierta, en concepto de dueño, y adversa contra toda reclama-tion; * *

* " (Italics supplied) (Record on Appeal, L-21163, p. 4)

This was affirmed by the Court of Appeals in its decision promulgated on May 6, 1961, or five years after the Supreme Court confirmed Jose Palma Gil's ownership over the 31,040-square-meter portion of the land in controversy.

Parenthetically, on July 25, 1958, or during the pendency in the Court of Appeals of the registration case, Awad Samal, Tawang Samal, Intos Samal, Trining Cortes and Camayama Pacay, representing themselves to be the heirs of Pascual Libudan, were substituted as applicants.[16]

On December 6, 1961, or seven months after the affirmance by the Appellate Court of the judgment in the registration case, the substituted applicants filed two motions in the court below: one, for issuance of a registration decree; and, two, for a writ of execution.[17] But before the Court could act on those motions, the heirs of Jose Palma Gil filed a "Petition to Review Judgment and/or Substitution", dated January 5, 1962, and later amended on February 27, 1962.[18]

The first of the alternative remedies, i.e. review of judgment is based on alleged fraud and deceit recited as follows:

"(1) The applicant Pascual Libudan, while work-ing as a mere laborer for the oppositor Jose Pahna Gil on the subject parcel of land, surreptitiously with abuse of confidence of the latter who was then studying in Manila, procured the survey thereof in his own name way back in 1915 or 1916, and to hide the fact of survey from the real owner, the oppositor Jose L. Palma Gil, falsely placed the adjoining owner on the northern periphery of the said property as one Placida Quiñones, knowing fully well that the adjoining property on the north was (still) the property of the oppositor Jose L. Palma Gil, of which the subject parcel of land is a part;

"(2) At the new trial decreed by the Court of Appeals, supra the herein applicant and his successor-in-interest, Palinkud Samal, fabricated an entirely new Tax Declaration No. L-048, showing a greater area and improvements than the original Tax Declaration No. 1003, attached to the application in a determined effort to counteract the finding of this Court in its original decision dated September 7, 1940 that the property of the applicant actually contained only 3 hectares, 10 acres and 40 centares as declared in the earlier tax declaration;

"(3) The applicant Pascual Libudan and the present substituted applicants fraudulently based their claim of ownership on an alleged continuous and uninterrupted possession from time immemorial, when in truth and in fact, neither the applicant nor his alleged successor-in-interest have been in possession thereof. The indubitable proof of the applicant's prevarication is the motion filed by the applicant's counsel, dated December 6, 1961, supra, for the issuance of a writ of posses-sion for the subject parcel of land.

"(4) The present substituted applicants named Awad Samal, Tawang Samal, Intos Samal, Trining Cortes and Camayama Pacay, in connivance with one another fraudulently, and wilfully misrepresented themselves before the Court of Appeals on July 25, 1958 as the legal heirs of Pascual Libudan when in fact they are not; neither do they have any interest in the land subject of this registration."

The second alternative remedy — for substitution - is premised on the allegation that petitioners' predecessor Jose Palma Gil, acquired at the Sheriff's public auction sale of December 7, 1940, alt the rights, title, and interests of Libudan over the parcel of land applied for in the registration proceedings and that this right of ownership was confirmed by the Court of Appeals and by this Court.

Pascual Libudan's heirs, on March 3, 1962, moved to dismiss the petition for review and/or substitution, on the grounds that (1) the Petition for Review is not based on actual fraud; (2) the judgment of the Land Registration Court rendered on May 29, 1954, adjudicating the land to Libudan antedated the decision of the Court of Appeals in Civil Case No. 458 (CA-G.R. No. 10978-R) and, therefore, the matter was already res adjudicata, when the appellate Court rendered its decision in the latter case; and (3) the petitioners are now estopped from claiming ownership over a Portion of the land in question on a ground different from that alleged previously in the opposition of Jose Palma Gil, their predecessor-in-interest's application.

After a pre-trial conference, the trial court decided first to resolve the oppositor's Petition for Review and/or

Substitution before ruling on the applicants' motions for issuance of registration decree and for writ of possession.[19]

We affirm the appealed order.

I. We resort to the law. The pertinent portion of Section 38 of Act 496, reads:

"SEC. 38. * * * Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decree; subject, however, to the right of any person deprived of land or of any state or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest. * * *."

The basic elements for the allowance of the reopening or review of a decree, therefore, are: (1) that the petitioner has a real or dominical right;[20] (2) that he has been deprived thereof; (3) through fraud;[21] (4) that the petition is filed within one year from the issuance of the decree;[22] and (5) that the property has not as yet been transferred to an innocent purchaser.[23]

The purpose of the law in giving aggrieved parties, deprived of land or any interest therein, through fraud in the registration proceedings, the opportunity to review the decree is to insure fair and honest dealing in the registration of land. But the action to annul a judgment, upon the ground of fraud, would be unavailing unless the fraud be extrinsic or collateral[24] and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered.[25] Extrinsic or collateral fraud, as distinguished from intrinsic fraud, connotes any fraudulent scheme executed by a prevailing litigant "outside the trial of a case against the defeated party, or his agents, attorneys or witnesses, whereby said defeated party is prevented from presenting fully and fairly his side of the case." But intrinsic fraud takes the form of "acts of a party in a litigation during the trial, such as the use of forged instruments or perjured testimony, which did not affect the presentation of the case, but did prevent a fair and just determination of the case." [26]

Thus, relief is granted to a party deprived of his interest in land where the fraud consists in a deliberate misrepresentation that the lots are not contested when in fact they are;[27] or in applying for and obtaining adjudication and registration in the name of a co-owner of land which he knows had not been allotted to him in the partition;[28] or in intentionally concealing facts, and conniving with the land inspector to include in the survey plan the bed of a navigable stream;[29] or in willfully misrepresenting that there are no other claims;[30] or in deliberately failing to notify the party entitled to notice;[31] or in inducing him not to oppose an application;[32] or in misrepresenting about the identity of the lot to the true owner by the applicant causing the former to withdraw his opposition.[33] In all these examples the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case.[34] The fraud, therefore, is one that affects and goes into the jurisdiction of the court.[35]

The reason for the rule is to put an end to litigations.

" * * *. In fact, under the opposite rule, the losing party could attack the judgment at any time by attributing imaginary falsehood to his adversary's proofs. But the settled law is that judicial determination however erroneous of matters brought within the court's jurisdiction cannot be invalidated in another proceeding. It is the business of a party to meet and repel his opponent's perjured evidence." [36]

The averments in the petition for review (a) that the applicant Libudan, while working as mere laborer on the land of Palma Gil, surreptitiously procured its survey in his own name in 1915 or 1916, (b) that at the trial, the applicant and his successor-in-interest, Palinkud Samal, submitted a fabricated new tax declaration No. L-048, showing a greater area and improvement than that shown in the original tax declaration No. 1003, attached to the

application, to counteract the finding of the Land Registration Court in its original decision of September 14, 1940, that the property of the applicant actually contained only 3 hectares, 10 ares and 40 centares, as declared in the earlier tax declaration, or (c) that neither the applicant nor his alleged successors-in-interest have ever been in actual possession of the property in question since time immemorial, do not constitute extrinsic fraud. Neither is the act of the substituted applicants of allegedly representing themselves as the true heirs of Pascual Libudan when in fact they are not, the fraud envisaged by Sec. 38 of Act 496, as would warrant the reopening of the decree.

We have repeatedly held that relief on the ground of fraud will not be granted where the alleged fraud goes into the merits of the case,[37] is intrinsic and not collateral,[38] and has been controverted and decided.[39] Thus we have underscored the denial of relief where it appears that the fraud consisted in the presentation at the trial of a supposed forged document,[40] or a false and perjured testimony;[41] or in basing the judgment on a fraudulent compromise agreement;[42] or in the alleged fraudulent acts or omissions of the counsel which prevented the petitioner from properly presenting the case.[43]

II. This brings us to the issue of substitution.

a. Applicants would find fault in the trial court's finding that the 31,040-square-meter lot purchased by Jose Palma Gil in the sheriff's sale on December 27, 1940, forms part of the 18.8725-hectare land applied for by, and adjudicated to the heirs of Pascual Libudan by final judgment of the court in the registration proceedings, when no formal hearing and presentation of witnesses or submission of evidence was conducted in connection with the petition for review and/or for substitution, and the factual finding based solely on the pleadings. It is applicants' posture, that the trial court's reliance on the annexes to the petition for review and/or for substitution as basis of its factual findings is a reversible error, such annexes not having been formally offered in evidence in accordance with Section 72, Rule 123 (now Rule 132, Sec. 35).

One cannot, of course, quarrel over the need for a formal offer of evidence, the purpose of which is to inform the court about what is expected to be proved and "to preserve exceptions to the conclusion of the offered evidence." [44] Moreover, the judge has to build his factual findings and his judgment only and strictly upon the evidence offered by the parties at the trial.[45] Hence, documents that form no part of the proofs before the court will not be considered in disposing of issues before it.[46]

But that does not dispose of the question. For it should be noted that a pre-trial was held, and as a result thereof the trial court issued an order on July 28, 1962, granting the parties 20 days to file their respective memoranda, "after which the petition will be considered submitted for resolution." [47] The applicants concede that "the findings of fact of the Court as contained" in its order are not based "merely on the allegations of the appellants' petition for review judgment but on the set of facts brought out during the pre-trial." [48] Moreover, the applicants in their motion to dismiss did not deny the oppositors' allegations on the identity of the land or of the fact that the land (the registration and issuance of title of which was decreed in favor of Pascual Libudan by the Davao Registration Court in G.L.R.O. No. 51986) was subsequently sold at a Sheriff's sale on December 27, 1940 to Jose Palma Gil, and his title thereon confirmed by this Court. As a matter of fact, in their motion for reconsideration, dated October 18, 1962, applicants admitted that "the 31,040 square meters, subject-matter of Civil Case 458, is part of the land applied for in the present registration proceedings * * *." [49] Admissions by parties in the pleading do not require proof and cannot be contradicted.[50]

Aside from applicants' judicial admission, we have this Court's decision in *Palinkud Samal vs. Court of Appeals*. [51] There, we sustained Jose Palma's ownership over the 31,040-square-meter lot sold to him in 1940 at a public auction by the Sheriff of Davao to satisfy the judgment in his favor in Civil Case No. 204. Referring to

the identity of the land, We said:

" * * *. The Court of Appeals further found that as a result of the application for registration tiled by Pascual Libudan in Registration Case No. 281, G.L.R.O. Rec. No. 51986, the Court of First Instance of Davao in an order dated September 7, 1940, decreed the registration and issuance of a title in the name of said Pascual Libudan over a parcel of land, which judging from the boundary owners indicated in the Surveyor's plan, is the same parcel now in litigation that although as already stated, this land was sold to Palma Gil by the Acting Provincial Sheriff in the execution sale in 1940, and the final sale was issued to him in 1943, followed by delivery of possession, Pascual Libudan up to his death in 1946, did not contest the regularity or validity of the execution sale nor did his heirs do so up to the filing of the complaint in this case." [52]

This Court's finding in the Samal case that the 3-hectare land, the title of which was decreed to Libudan on September 7, 1940, by the Court of First Instance of Davao in Registration Case No. 281, G.L.R.O. Rec. No. 51986, "is the same parcel now in litigation" or the same land involved in Civil Case No. 458 has therefore judicially settled the question. We cannot now disregard this finding. This is the law of the case. [53] As previously held by Us, the "law of the case does not apply solely to what is embodied in our decision but to its implementation carried out in fealty to what has been by Us decreed." [54]

b. Applicants assail the lower court's reliance on Section 29, Act 496, in issuing the order of substitution on the theory that said section applies only to voluntary dealings. To draw from the language of the statute the facile interpretation that it refers only to voluntary dealings, is to encase its application in a semantic strait jacket. The use of the phrase "may be dealt with * * * as if no application has been made" could not be construed to exclude from its statutory context involuntary dealings of property for it makes no distinction between voluntary and involuntary transactions. *Ubi lex non distinguit, nee nos distinguere debemos*, is a well known maxim in statutory construction. [55]

c. Applicants further insist that (1) the judgment of the Davao Land Registration Court, as affirmed by the Court of Appeals (CA-G.R. No. 14628-R) adjudicating the entire parcel of land to the heirs of deceased Pascual Libudan is *res judicata* on the question of title over the 31,040-square-meter portion thereof; and (2) the decision rendered by the Court in Civil Case No. 458 on the reliance of which the order of substitution was granted, is null and void, because the Land registration court having previously acquired jurisdiction over the res retained it, and had the sole and exclusive authority to determine the question of title of the parties over the land involved to the exclusion of the other courts.

(1) Applicants' reliance on the doctrine of *res judicata* or estoppel by judgment is misplaced. At the time of the institution of Civil Case No. 458 on February 21, 1950, there was as yet no final judgment in the land registration case. On the contrary when the Court of Appeals in CA-G.R. No. 10978-R, confirmed the oppositors' title and right of possession over the 3-hectare land, which decision was affirmed by this Court in L-8579, on May 25, 1956, the decision of the Davao Land Registration Court of May 29, 1954, was still pending in the Court of Appeals. As a matter of fact the Court of Appeals only affirmed the Davao Land Registration Court's decision on May 6, 1961 or about four years after this Court's decision in L-8579 was published in the Official Gazette (53 O.G. No. 3, February 15, 1957, p. 682). The doctrine of *res judicata* is predicated upon the existence of a prior final and conclusive judgment over the same subject matter, cause of action and parties, at the time the second action is filed. [56]

Considering that the final judgment of this Court confirming Jose Palma Gil's ownership over the 3-hectare lot antedated by five years the decision of the Court of Appeals adjudicating the entire land to the successors-in-interest of Libudan, the effects of *res judicata* should be applied, if at all, in favor of the oppositors and against the applicants. For undoubtedly a prior decision in a civil case may constitute as *res judicata* in a land

registration proceedings.[57] And again, is the first judgment for the same cause of action that constitutes the effective defense, without regard to the order of time in which the suits were commenced or that they were both pending at the same time." [58]

(2) We cannot, in absolute fidelity to our trust, accord our stamp of approval to the belated attempt of applicants to question the jurisdiction of the Court of First Instance of Davao in Civil Case No. 458. Having voluntarily submitted their cause to said Court, they can not later on, after receiving an adverse verdict, now question its jurisdiction or authority.[59] The doctrine of estoppel by ladies bars them now from raising the question.[60] Moreover, the jurisdiction of the Court of First Instance over the subject matter in Civil Case No. 45 cannot be seriously disputed.[61]

d. On the claim of oppositors that they should be substituted to the entire 18-hectare land and not only to the 3-hectare portion thereof,[62] such claim, involving as it does factual questions, is deemed foreclosed, oppositors having directly appealed to this Court on pure questions of law.[63]

ACCORDINGLY, the orders of the court a quo dated September 10, 1962 and October 27, 1962, are hereby affirmed. Without costs.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.

[1] Record on Appeal (G.R. No. L-21163), Appellants' Brief (G.R. No. L-21163), p. 4.

[2] Record on Appeal (G.R. No. L-25495), pp. 58-59; Appellant's Brief (G.R. No. L-25495), p. 9.

[3] Rollo (G.R. No. L-25495), pp. 94-98.

[4] Record on Appeal (G.R. No. L-21163), pp. 53-54; Record on Appeal (G.R. No. L-25495), pp. 49-50.

[5] Record on Appeal (G.R. No. L-21163), pp. 4, 46; Rec. on Appeal (G.R. No. L-25495), p. 43.

[6] *Id.* *id.*

[7] *id.* *id.*

[8] Appellant's brief (G.R. No. L-21163), Annexes C and D, pp. 38, 43; Rec. on Appeal (G.R. No. L-21163), p. 46.

[9] Record on Appeal (G.R. No. L-21163), pp. 46-47. The dispositive portion reads:

"En vista de los hechos arriba ex puestos declaramos que el terreno comprendido entre los punto 1 al 4, al 7, y 7 al 17 del plano Exh. B y marcado con las letras 'P-1' con sus mejores, es de la propiedad del oppositor Jose L. Palma Gil, y declaramos, asimismo, quo el terreno comprendido entre los puntos 4, 5, 6 y 7, marcado com las letras 'P-2' del piano, Exh. B es de la propiedad del solicitante Pascual Libudan (Samal)."

[10] Record on Appeal, (G.R. No. L-21163), p. 47.

[11] Record on Appeal, (G.R. No. L-21163), p. 8.

[12] Record on Appeal, (G.R. No. L-21163), p. 47.

[13] Record on Appeal, (G.R. No. L-21163), p. 48.

[14] 99 Phil. 230.

- [15] Record on Appeal (G.R. No. L-21163), p. 14.
- [16] Record on Appeal (G.R. No. L-25495), p. 40; Record on Appeal (G.R. No. L-21163), p. 43.
- [17] Applicants' brief, (G.R. No. L-25495), p. 4.
- [18] Record on Appeal, (G.R. No. L-25495), p. 2; Record on Appeal, (G.R. No. L-21163), p. 2.
- [19] Rollo, (G.R. No. L-25495), pp. 59, 62.
- [20] Roxas vs. Cuevas, 8 Phil. 469, 475 (1907).
- [21] Palet vs. Tejedor, 55 Phil. 790, 798 (1931); Arceo vs. Valera, 89 Phil. 212, 216 (1951); Labayen vs. Talisay Silay, 68 Phil. 376, 384 (1939)
- [22] Sorongon vs. Makalintal, 80 Phil. 259 (1948); Valmonte vs. Noble, 85 Phil. 251, 260 (1949); Afalla vs. Rosauero, 60 Phil. 622, 627 (1934); Dizon vs. Banucs, 104 Phil. 407 (1958); Cabanas vs. Reg. of Deeds, 40 Phil. 620; Tiburcio vs. PHHC, 106 Phil. 477, 481 (1959).
- [23] Rublico vs. Orelana G.R. No. L-26582, Nov. 28, 1969, 30 SCRA 511, 513. Reyes ????
- [24] Republic vs. Sioson, G.R. No. L-13687, Nov. 29, 1963, 9 SCRA 533, 536; Anuran vs. Aquino and Ortiz, 38 Phil. 29, 38 (1918).
- [25] Javier vs. Paredes and Gregorio, 52 Phil. 910, 918 (1929); Labayen vs. Labayen, 68 Phil. 376, 383, (1939); Teodora Domingo et al. vs. David, 68 Phil. 134 (1939).
- [26] Palanca vs. American Food Mfg. Co., G.R. No. L-22822, Aug. 30, 1968, 24 SCRA 819, 826; citing U.S. vs. Throckmorton, 98 U.S. 61, 25 L.Ed. 93; Valera vs. Villanueva, 95 Phil. 248; Philippine Petroleum Co. vs. Jenkins, 91 F (2d) 183; Ohlinger's Federal Practice, revised Ed., Vol. 3-A, p. 448. See also Sterling Investment Corp. vs. Ruiz, G.R. No. L-30694, Oct. 31, 1969, 30 SCRA 38, 324.
- [27] Azurin vs. Quitariano, 81 Phil. 261, 265 (1948).
- [28] Arceo vs. Varela, 89 Phil. 212, 216 (1951). Palet vs. Tejedor, 55 Phil. 790, 798 (1931).
- [29] Republic vs. Sioson, (G.R. No. L-13687), Nov. 29, 1963, 9 SCRA 533, 536.
- [30] Angelo vs. Dir. of Lands, 49 Phil. 838, 840 (1926).
- [31] Salva vs. Salvador, 18 Phil. 193, 197 (1911).
- [32] Reyes vs. City of Manila, 38 Phil. 340, 350 (1918).
- [33] Marquiala et al. vs. Ybanez, 92 Phil. 911, 914 (1953).
- [34] 33 Am. Jur. 230-232; Varela vs. Villanueva, 95 Phil. 248, 258 (1954).
- [35] Labayen, et al. vs. Talisay-Silay Milling Co., 68 Phil. 376, 383; Palanca vs. The American Food Mfg. Co., G.R. No. L-22822, Aug. 30, 1968, 24 SCRA 819, 826.
- [36] De Almeda vs. Cruz, 84 Phil. 636, 641, 643; also Soriano vs. De Leon, 87 Phil. 551 (1950); Ramos vs. Albano, 92 Phil 834 (1958); Varela vs. Villanueva, 95 Phil 248 (1954); Escudero vs. Flores, 97 Phil 240 (1955); Koppel (Phil.) Inc. vs. Magallanes, 107 Phil. 926 (1960); Sterling Investment Corp. vs. Ruiz, 30 SCRA 318, 323 (1969).
- [37] Velasco, G.R. No. L-15129, June 3, 1961, 2 SCRA 736, 740.

- [38] Sterling Investment Corp. vs. Ruiz, *supra*.
- [39] Teodora Domingo, et al. vs. David, 68 Phil. 134 (1939); Labayen vs. Talisay-Silay Milling Co., *supra*; Government vs. Italia, 59 Phil. 713 (1934).
- [40] Melgar vs. Delgado, 54 Phil. 668, 683 (1930); Teodora Domingo, et al. vs. David, *supra*; Velasco, et al. vs. Velasco, *supra*.
- [41] De la Cruz vs. Quevedo, G.R. No. L-14430, March 29, 1950; 19 Velayo Digest (New Series) p. 307.
- [42] Sterling Investment Corp. vs. Ruiz, *supra*.
- [43] Palanca vs. American Food Mfg. Co., *supra*.
- [44] Francisco, Rules of Court, Evidence (1964), p. 997, citing 53 Am. Jur. 88.
- [45] Ayala vs. Valencia, 5 Phil. 182, 183 (1905); U.S. vs. Solana, 33 Phil. 582, 593 (1916); Dayrit vs. Gonzales, 7 Phil. 182 (1906).
- [46] Dayrit vs. Gonzales, *supra*.
- [47] Rollo, CA-G.R. 32167 (G.R. No. L-25495), p. 62.
- [48] Rollo SC-G.R. L-21163, p. 47. On the matter of pre-trial, it is said that "no proof need be offered as to any facts admitted at a pre-trial hearing." 1 Moran, Comments on the Rules of Court (1970 Ed.) p. 565.
- [49] Record on Appeal (G.R. No. L-25495), p. 53.
- [50] Rule 129 Sec. 2. "Admissions made by the parties in the pleadings, or in the course of trial or other proceedings do not require proof and cannot be contradicted unless previously shown to have been made through palpable mistake." This rule, not found in the old Rules, is culled from Supreme Court doctrines based on estoppel. Sta. Ana vs. Maliwat, G.R. No. L-23023, Aug. 31, 1968, 24 SCRA 1018, 1023, citing Irlanda vs. Pitargue, 22 Phil. 383, 5 Moran 57-59, 1963 ed. See also Cunanan vs. Amparo, 80 Phil. 227.
- [51] 99 Phil. 230.
- [52] *Id.*, at pp. 232-233.
- [53] Indochinoise vs. Deutsch-Australiasche, Dempschiffs Gesellschaft, 39 Phil. 474, 476 (1919); NAWASA vs. NWSA Consolidated Union, G.R. No. L-26894-96, Feb. 28, 1968, 27 SCRA 227, 231, Mesa vs. Bales, G.R. No. L-29784, May 21, 1969, 28 SCRA 263, 267; Balmes vs. Suson, G.R. No. L-27235, May 22, 1969, 28 SCRA 304, 310; Alumbra Industries vs. CIR, G.R. No. L-22219, Aug. 28, 1969.
- [54] Sanchez vs. Court of Industrial Relations, G.R. No. L-26932, March 28, 1969, 27 SCRA 500.
- [55] Robles vs. Zambales Chromite Mining Company, et al. 104 Phil. 688, 690 (1958); Guevara vs. Inocentes, G.R. No. L-25577, March 16, 1966, 16 SCRA 384-385.
- [56] Roman Catholic Archbishop of Manila vs. Director of Lands, 35 Phil. 339. Claridad vs. Novella, L-4207, October 24, 1952; 92 Phil. 1066, where motion to dismiss on ground of res judicata was denied, after it was shown that judgment in the prior action, although in favor of defendant, was still pending appeal.
- [57] Menor vs. Quintares, 56 Phil. 657, 665 (1932).
- [58] 50 C.J.S. Judgments, Sec. 602, p. 26.

[59] Tijam vs. Sibonghanay, G.R. No. L-21450, April 15, 1968, 23 SCRA 29, 36; and cases cited therein.

[60] Rodriguez vs. Court of Appeals, G.R. No. L-29264, August 29, 1969, 29 SCRA 419; Tijam vs. Sibonghanay, et al, *supra*.

[61] Sec. 44(b) Judiciary Act of 1948; Tarnate vs. Daza, 76 Phil. 842, 844 (1946).

[62] Brief for oppositor-appellant (G.R. No. L-21163), p. 24. The second assignment of error reads: "The lower court erred in the alternative in holding that, while the heirs of oppositor Jose L. Palma Gil are entitled to substitution as successors-in-interest to the late Pascual Libudan, they can only be substituted to a portion of the parcel of land in question measuring 31,040 square meters."

[63] Victorino vs. Lao, G.R. No. L-25273, May 28, 1970, 33 SCRA 61; Lanzar vs. Guerrero, G.R. No. L-21581, August 28, 1969, 29 SCRA 107; People vs. Raquinio, G.R. No. L-16488, August 12, 1966, 17 SCRA 914; Abuyo vs. Suazo, G.R. No. L-21202, Oct. 2, 1966, 18 SCRA 600; Perez vs. Araneta, G.R. No. L-18414, July 15, 1968, 24 SCRA 43; Miguel vs. Catalino, G.R. No. L-23072, Nov. 29, 1968, 26 SCRA 55. Findings of fact are deemed admitted in direct appeal to the Supreme Court from the Court of First Instance. Aballe vs. Santiago, G.R. No. L-16307, April 30, 1963, 7 SCRA 925; Savellano vs. Diaz, G.R. No. L-17944, July 31, 1963, 8 SCRA 586; De Comilang vs. Delenela, G.R. No. L-18897, March 31, 1964, 10 SCRA 598; Sotto vs. Sotto, G.R. No. L-20921, May 7, 1924, 1966; 17 SCRA 243; State Bonding Insurance Company, Inc. vs. Manila Port Service, G.R. No. L-22395, December 17, 1966; Pahang vs. Sotto, G.R. No. L-21175, July 15, 1968, 24 SCRA 33. Lucero vs. Loot, G.R. No. L-16995, October 28, 1968, 25 SCRA 687.

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