

MONTANO VITAL, PLAINTIFF AND APPELLANT, VS. FRANCISCO ANORE, PETRA DE LOS SANTOS AND THE DIRECTOR OF LANDS, DEFENDANTS AND APPELLEES.*G.R. No. L-4136. February 29, 1952*

Ponente: PADILLA, J.

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On 13 December 1945, Montano Vital brought an action against Francisco Anore, Petra de los Santos and the Director of Lands praying that he be declared owner of a parcel of land containing an area of 1 hectare, 36 ares and 44 centares, described in the seventh paragraph of his complaint, and granted such other and further relief as justice and equity warrant. This prayer is based on the following averments: That he and his predecessors-in-interest have been openly, continuously, notoriously, exclusively and adversely in possession under a bona fide claim of ownership since time immemorial of a parcel of land described in the fourth paragraph of his complaint containing an area of 1 hectare, 67 ares, the hilly part, and 60 ares and 42 centares, the part planted to rice, or a total area of 2 hectares, 27 ares and 42 centares which comprises the parcel of land described in the seventh paragraph of the complaint; that sometime in November 1945, he found out in the office of the Registrar of Deeds in and for the province of Rizal that the parcel of land described in the seventh paragraph of the complaint had been granted as free patent to Ambrosio Arabit, who died intestate on 24 March 1929; that on 28 October 1944, transfer certificate of title No. 46833 for the same parcel of land was issued by the Registrar of Deeds in and for the province of Rizal in the name of the defendant Francisco Anore; that during his lifetime the late Ambrosio Arabit had never been in possession of the parcel of land granted to him as free patent and knew that the plaintiff and his predecessors-in-interest had been in possession thereof; and that the defendant Francisco Anore long before the transfer or conveyance to him of the parcel of land knew that it never belonged to, nor was it ever in possession of, the late Ambrosio Arabit or his heirs as owners and that the same has been in possession of the plaintiff and his predecessors-in-interest as owners openly, peacefully, continuously, adversely and exclusively from time immemorial to the present day.

The averments as to the Director of Lands need not be restated, the plaintiff having expressed in his motion for reconsideration dated 28 January 1947 his readiness to strike out the Director of Lands as party defendant and prayed to be allowed to amend his complaint for that purpose.

The answer of Petra de los Santos, the widow of the late Ambrosio Arabit, admits all the allegations as to possession by the plaintiff and his predecessors-in-interest of the parcel of land covered by the free patent granted to Ambrosio Arabit and described in the original certificate of title issued in his name and in the transfer certificate of title registered in the name of the defendant Francisco Anore; that her late husband was never in possession of the parcel of land; and that the defendant Francisco Anore knew that the parcel of land had never been in the possession of the late Ambrosio Arabit in his' lifetime.

The defendant Francisco Anore filed a motion to dismiss on the ground that the action is barred by the statute of

limitations, more than ten (10) years having elapsed from 20 January 1934, the date the free patent issued to Ambrosio Arabit was registered and original certificate of title No. 535 was issued to him by the Registrar of Deeds in and for the province of Rizal, to 13 December 1945, the date of the filing of the complaint in this case.

The Court of First Instance of Rizal dismissed the complaint on the ground that more than ten years had elapsed from 20 January 1934, when the original certificate of title No. 535 was issued in the name of Ambrosio Arabit, to 13 December 1945, the date of the filing of the complaint; and upon the further ground that the widow of the late Ambrosio Arabit would be incompetent to testify against her husband without his consent. A motion for reconsideration having been denied the plaintiff appealed.

Whether a Torrens title, based on a free patent granted by the Government under the provisions of the Public Land Act (Act 2874) and issued under the provisions of the Land Registration Act (Act 496), has the validity and effect of a Torrens title issued as a result of judicial proceedings need not be passed upon. The rule laid down in *Ramoso vs. Obligado et al.*, 70 Phil 86, that "a homestead patent, once registered under the Registration Act, becomes as indefeasible as a Torrens Title, * * *" is only true and correct if the parcel of agricultural land patented or granted as homestead by the Government, after the requirements of the law had been complied with, was a part of the public domain. If it was not but a private land, the patent granted and the Torrens title issued upon a patent or homestead grant are a nullity.[1]

A Torrens title issued upon a free patent may not be cancelled after the lapse of ten years from the date of its registration because the statute of limitations bars such cancellation. But if the registered owner, be he the patentee or his successor-in-interest to whom the free patent was transferred or conveyed, knew that the parcel of land described in the patent and in the Torrens title belonged to another who together with his predecessors-in-interest has been in possession thereof, and if the patentee and his successor-in-interest were never in possession thereof, then the statute barring an action to cancel a Torrens title issued upon a free patent does not apply, and the true owner may bring an action to have the ownership or title to the land judicially settled, and if the allegations of the plaintiff that he is the true owner of the parcel of land granted as free patent and described in the Torrens title and that the defendant and his predecessor-in-interest were never in possession of the parcel of land and knew that the plaintiff and his predecessors-in-interest have been in possession thereof be established, then the court in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens title issued upon the patent, may direct the defendant, the registered owner, to reconvey the parcel of land to the plaintiff who has been found to be the true owner thereof.

The plaintiff in this case avers that he and his predecessors-in-interest have been in possession of the parcel of land from time immemorial to the date of the filing of the complaint; that the patentee, from whom the defendant Francisco Anore derived his title, had never been in possession of the parcel of land granted to him as free patent; and that the defendant Francisco Anore knew that his predecessor-in-interest had never been in possession of the parcel of land. If the averments be established, the defendant, as successor-in-interest of the patentee, could not claim to be a purchaser in good faith and for value to protect his title to the parcel of land acquired by him from the patentee. Justice and equity require that he should reconvey the parcel of land to the plaintiff. The prayer of the plaintiff in his complaint that he be declared the owner of the parcel of land described in the transfer certificate of title issued in the name, of the defendant-Francisco Anore, which had been granted as free patent to the late Ambrosio Arabit, together with the general prayer that he be granted such further relief and remedy as equity and justice warrant, would justify a judgment directing the defendant to reconvey the parcel of land to the plaintiff.

The statute of limitations which would bar an action by the plaintiff could not be availed of by the defendant, because a motion for dismissal being an admission of all the material allegations of the plaintiff's complaint the role a demurrer in the old Code of Civil Procedure, Act 190, played in judicial proceedings the plaintiff's

allegation that the defendant and his predecessor-in-interest have never been in possession of the parcel of land and knew that the plaintiff and his predecessors-in-interest have been in possession thereof since time immemorial is deemed admitted. If at the trial the defendant should prove that he and his predecessor-in-interest have been in possession of the parcel of land for 10 years or more, then the plaintiff's cause of action would be groundless and the complaint would have to be dismissed. The admitted allegations of the complaint constitute a cause of action.

As to whether Petra de los Santos would be allowed to testify against the interest of her late husband, it seems that the court below took an erroneous view of the matter. What the law prohibits is for a spouse to testify in an action or proceeding in favor or against the other without the latter's consent. The court below tried to cross the bridge before reaching it, as the common saying goes, because the fact alleged by the widow of the late Ambrosio Arabit in her answer that the plaintiff and his predecessors-in-interest have been in possession of the parcel of land from time immemorial to the present time and that her late husband was never in possession of the parcel of land granted to him as free patent and later on transferred to the defendant Francisco Anore, may be proved by the testimony of other competent witnesses.

The order dismissing the plaintiff's complaint is hereby reversed, and the case remanded to the lower court for further proceedings in accordance, with law, with costs against the defendant Francisco Anore.

Feria, Pablo, Bengzon, Reyes, Jugo, and Bautista Angelo, JJ., concur.

[1] Rodriguez vs. Director of Lands et al., 31 Phil., 272, 277; Zarate vs. Director of Lands et al., 34 Phil. 416, 418; De los Reyes, vs. Razon, 38 Phil. 480, 491; Philippine National Bank vs. Ortiz Luis, 53 Phil. 649, 653; Monte de Piedad vs. Velasco, 61 Phil. 467, 470.

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