

MARIANO G. SISON, PLAINTIFF AND APPELLANT VS. FELICIANO MAZA, DEFENDANT AND APPELLEE.*G.R. No. L-14219. December 29, 1960*

Ponente: PADILLA, J.

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On 21 May 1958, in the Court of First Instance of Pangasinan the plaintiff brought an action to compel the defendant to reconvey two hectares on the west of a parcel of land described in the complaint, damages and costs. In support of his prayer he claims and avers that sometime in 1937, the defendant caused to be surveyed a parcel of land situate in Barrio Salomague, municipality of Bugallon, province of Pangasinan, comprising an area of 9 hectares, 83 ares and 99 centares, bounded on the north by the property of Francisco Maza y Madrid; on the east by the property of Victor Espiritu; on the south by the property of Jose Corpus; and on the west by the property of Victor Espiritu (plan Psu-76190); that about two hectares on the west of the parcel of land, with an approximate assessed value of P200, belongs to him and has always been in his possession; that on 20 December 1937 he and the defendant executed a document whereby the latter acknowledged that said two hectares were erroneously comprised in the survey, recognized the former's right and ownership thereto, and promised to have plan Psu-76190 amended to exclude the two hectares- therefrom; and that sometime in May 1958 he discovered that through fraud, deceit and misrepresentation, illegally and in bad faith, the defendant had secured in his name a free patent title (original certificate of title No. 2626, issued by the Registrar of Deeds in and for the province of Pangasinan) comprising the whole parcel of land delimited in plan Psu-76190. Upon the foregoing averments he prays that after hearing, judgment be rendered ordering the defendant to execute the corresponding and necessary deed or document conveying unto him the two hectares on the western part of the parcel of land delimited in plan Psu-76190, to pay him the sum of P500 as damages and the costs of the suit, and granting him other just and equitable relief.

On 5 June 1958 the defendant filed a motion to dismiss on the ground of lack of jurisdiction of the defendant and the subject matter of the action, and that the plaintiff's cause of action is barred by the statute of limitations.

On 9 June 1958 the plaintiff filed an objection thereto.

On 24 June 1958 the Court entered an order dismissing the complaint. The plaintiff has appealed.

The Court correctly dismissed the appellant's complaint on the ground that his cause of action is barred by the statute of limitations. Section 40, Act No. 190[1] provides: "An action for recovery of title to, or possession of, real property or an interest therein, can only be brought within ten years after the cause of such action accrues." On 9 November 1937, the Secretary of Agriculture and Commerce, by authority of the President of the Philippines, issued a free patent to the appellee comprising the entire parcel of land described in the free patent and original certificate of title No. 2626 and delimited in the plan Psu-76190 (Annex I). The document embodying the agreement by and between the appellant and the appellee whereby the latter acknowledged the former to be the owner of two hectares on the south of the parcel of land belonging to the appellee, the common boundary

being a straight line from east to west, was executed on 20 December 1937. (Annex A).. From this date to 21 May 1958, when the appellant brought the action in the Court of First Instance of Pangasinan, almost twenty-one years already had elapsed. The statute of limitation bars his action. The parcel of land with an area of two hectares claimed by the appellant to belong to him lies not on the west but on the south of the appellee's parcel of land, as may be inferred from the situation or location thereof described in the document marked Annex A.

The order appealed from is affirmed, with costs against thfe appellant.

Paras, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Order affirmed.

[1] Section 40, Act No. 190, and not the provisions of the new Civil Code, which took effect on 30 August 1950 (Lara vs. del Eosario, 94 Phil., 778; 50 Off. Gaz., 1975; Casabar vs. Cruz, G. R. No. L-6882, 29. December 1954; Velayo vs. Shell Co. of P.I. Ltd., 100 Phil., 186; 54 Off. Gaz., 63; Estayo vs. de Guzman, 104 Phil., 1038; 55 Off. Gaz., 7653; Altomonte vs. Philippine-American Drug Co., 106 Phil., 137,) is the law applicable, in view of the provisions of articles 1116 and 2252 of the new Civil Code.

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