

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIONER AND APPELLEE, VS. FRANCISCO AVILA ET AL., OBJECTORS.

G.R. No. L-21269. September 13, 1924

Ponente: JOHNSON, J.

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JOHNSON, J.:

On February 15, 1921, the Assistant Director of Lands, in representation of the Government of the Philippine Islands, filed a petition in the Court of First Instance of the Province of Nueva Ecija, praying that the titles to the following described tract of land be settled and adjudicated in accordance with the provisions of section 50 of Act No. 2874 (Public Land Act).

"A tract containing 114,166,123 square meters, more or less, divided into 931 lots situated in the Province of Nueva Ecija, Philippine Islands, B. L. Case No. 53."

On December 12, 1921, Juana de la Cruz, a widow, and her two children, Jose Ador Dionisio and Isidra Ador Dionisio, filed their answer, claiming that 284 lots of the 931 mentioned in the petition belonged to them. The portion so claimed is described in their answer as follows:

"Terreno baldio realengo enclavado en los sitios llamados Parang ni Fabian, Parang Carromata, Lagalagy Morcon, de la comprension del Pueblo de Talavera, de la Provincia de Nueva Ecija, de una extensi6n superficial de quinientos dieciseis (516) quinones, y cuyos linderos son: al norte, Sapang Vaca tomando una linea recta de unos cuatro mil (4,000) varas hasta la intersection de los esteros Morcon y Tilapayong; al este, estero Morcon; al Sur, estero Morcon y Sapang Vaca; y al oeste, Sapang Vaca."

Later, on March 21, 1922, they amended their answer by excluding six lots from the 284 lots originally claimed, thus reducing the total number of lots claimed by them to 278.

The description of the land claimed by them was also amended with the addition to the original description of the following allegation:

"Que el limite divisorio del terreno reclamado por dichos opositores, por el lado norte, es una linea recta que parte de la confluencia de los esteros Morcon y Tilapayong, y que se extiende en direccion NO teniendo una extensi6n aproximada de 3,350 metros hasta el Estero Vaca en un punto que esta al Sur de la porci6n designada en el piano 'Vaca Site.'"

During the trial the attorneys for Juana de la Cruz and her children, Jose Ador Dionisio and Isidra Ador Dionisio, excluded from their claim 62 other lots and included one additional lot, thus ultimately reducing their claim to 217 lots. The description of the land ultimately claimed by Juana de la Cruz and her children was definitely given at the trial by their attorneys as follows:

"Para la informacion del Tribunal y a fin de que conozca exactamente lo que reclamamos vamos a manifestar ahora que reclamamos toda esta porci6n comprendida entre los esteros Sapang Morcon y Vaca hasta una linea

trazada desde la confluencia aquella de los esteros Tilapayong y Morcon hasta este punto Bahay Buaya indicado por el testigo Jose Ador Dionisio, y en cuyo punto se ha trazado ahora una raya en lapiz negro, y cerramos nuestras pruebas." (See Exhibit A, for the boundaries here given.)

Other oppositors claimed several lots contained in the parcel described by the Director of Lands in his petition, but as they did not appeal from the judgment of the lower court, no further mention of their claim will be made.

The hearing began on November 27, 1922, which was adjourned several times, at the conclusion of which, and on February 21, 1923, the Honorable Vicente Nepomuceno, judge, in an exceedingly well prepared opinion, after a thorough study of the evidence adduced pro and con, dismissed the claim of Juana de la Cruz and her children and declared that they had no right to the land claimed by them. From that judgment Juana de la Cruz and her children appealed.

EVIDENCE FOR OPPOSITORS

The claim of the oppositors and appellants, Juana de la Cruz and her children, Jose Ador Dionisio and Isidra Ador Dionisio, is based on a title (Exhibit B), alleged to have been acquired from the Government during the Spanish regime by her deceased husband, Fabian Ador Dionisio. Three witnesses—Juana de la Cruz, her son Jose Ador Dionisio and Rufino Biterbo—testified for the opposition. The testimony of Juana de la Cruz and Jose Ador Dionisio is in substance as follows:

That about the year 1873, Fabian Ador Dionisio, his wife, Juana de la Cruz, and their two children Jose Ador Dionisio and Isidra Ador Dionisio, moved from their home at San Miguel, Bulacan, to Santo Domingo, Nueva Ecija; that Fabian Ador Dionisio took possession of a big parcel of pasture and uncultivated land at Viga Chica, municipality of Talavera, about twelve hours' travel from Santo Domingo, and later acquired title thereto by purchase from the Government; that they lived in Santo Domingo, but they had a house in Viga Chica, where the husband used to stay to attend to the cultivation of the land; that they kept their cattle—about 55 head—in Viga Chica, which, later increased to about 800 head, but were decimated by the pest of 1888, and the remainder either turned wild or were eaten by the insurgents; that the title (Exhibit B) was acquired by purchase about fifteen years after the occupation of the land; that later they moved from Santo Domingo to Licab, also of the Province of Nueva Ecija; that while in Licab, Fabian Ador Dionisio used to go to Viga Chica to attend to the cultivation of the land; that while living in Licab, during the revolution against the American Government, they fled, leaving said title, with other papers, in a jar buried under ground, and when they returned they found the documents destroyed, the water having penetrated the jar; that while in Licab, Fabian Ador Dionisio took in lease some land from Don Casimiro Tinio, and upon his death in 1902 his son, Jose Ador Dionisio, continued to work said land in substitution of his father up to 1909, when he took possession of his father's land at Viga Chica, the land now in question.

The third witness, Rufino Biterbo, testified that he was cabeza de barangay and teniente de terna when Fabian Ador Dionisio was placed in possession of the land at Viga Chica, and that he, together with the juez de sementera and the other cabezas de barangay, went to Viga Chica to make delivery of possession of the land to Fabian Ador Dionisio, and that they delivered possession of the land to him. He further testified that he did not remember the year when they delivered possession, nor the names of the cabezas de barangay who went with them.

The oppositors presented documentary evidence Exhibits A and B in support of their claim. Exhibit A is the plan of the land. Exhibit B is a certified copy of the alleged title to the land in question, issued by the Government during the Spanish regime. Jose Ador Dionisio testified that Attorney Aurelio Cecilio secured for him, at his request, said Exhibit B from the Bureau of Lands, and that only from said attorney did he learn that there was a title to the land on file in the Bureau of Lands.

Exhibit B is a certified copy of an alleged title to a parcel of land issued on May 5, 1887, by the Intendente General de Hacienda, Don Segundo Gonzalez Luna, in favor of Fabian Ador Dionisio upon payment of P1,548.72 and 68.69 derechos de media annata. By Exhibit B it is made to appear that said title was issued pursuant to the decree of said official of February 24, 1885, whereby ownership of said land was adjudicated in favor of Fabian Ador Dionisio. Record of said title was taken at the office of the Administrador Central de Rentas y Propiedades in the corresponding book on folio 21, on May 7, 1887. Exhibit B was issued by the Assistant Director of Lands, Conrado Carballo, on September 20, 1921, at the supposed request of one Aurelio Cecilio. All the facts herein stated concerning this exhibit are taken from the contents of the exhibit itself.

An examination of the testimony of the witnesses for the opposition indicates that they do not seem to have knowledge of the subject-matter of their testimony. Upon cross-examination they could not answer questions relating to some definite information regarding the land, or the title thereto, or the circumstances attending the alleged possession by said Fabian Ador Dionisio. All of them, when pressed to give definite answers, replied evasively "No recuerdo," evidently in order to escape contradiction or to avoid exposing, by their own declarations, the falsity of their claim. Juana de la Cruz, upon cross-examination, testified, among other things, that during the Spanish regime, on several occasions when she went to visit the land in question, she passed by the farm of Don Manuel Tinio at Casile, and often saw Don Manuel there. It is a fact, however, that Don Manuel Tinio purchased his land only in 1906 and worked it in 1908 and built his house there in 1914.

EVIDENCE FOR THE GOVERNMENT

The evidence adduced for the Government was intended (1) to show that Exhibit B is false and that the original from which it was copied is fictitious; and (2) that neither Fabian Ador Dionisio nor his son took and held possession of the land claimed by the appellants.

(1) Exhibit B is false or copied from a fictitious original

Conrado Carballo, Assistant Director of Lands, testified that about June, 1922, he received information from the board of investigation of homesteads and land claims in Nueva Ecija, that in said province there were various certified copies of titles to big tracts of land, covering lots actually occupied by homesteaders, and that one of the holders of said titles was Fabian Ador Dionisio (Jose Ador Dionisio) ; that subpoenas duces tecum were issued to the holders of said titles in order to verify said certified copies of titles; that said certified copies, including Exhibit B, were examined, but their originals, which were supposed to be in the archives of the Bureau of Lands, could not be found; that in the search for the originals, conducted in the Bureau of Lands, it was noted that book No. 2 "de Tomas de Razon" was missing. Book "de Tomas de Razon" is a sort of registry, kept during the Spanish Government, of titles to public lands issued by the Government to private persons. That in view thereof, an administrative action was taken against the person in charge of said books, Macario Mariano, as a result of which said Macario was discharged and the case referred to the office of the city fiscal; that he (Conrado Carballo) signed the certificate at the bottom of said Exhibit B without having seen the original, because the initials of the chiefs of division and section appeared thereon, and such initials were in practice taken as sufficient guaranty of the correctness of the copy, and that such was the practice followed in the Bureau of Lands in regard to issuance of certified copies of documents; that he could assure the court that the original of said Exhibit B was not in the Bureau of Lands, and if such original existed anywhere else, it was false and unauthentic by reason of the fact that pursuant to the proceedings followed during the Spanish regime, every title to public land had to be registered in the book "de Tomas de Razon" and published in the Official Gazette, but that the title in question does not appear either in the "de Tomas de Razon" or in the corresponding Official Gazette.

Honorable Aurelio Cecilio, provincial governor of Nueva Ecija, testified that five or six years before he had been

counsel for Jose Ador Dionisio in a civil case, which did not have any connection with the land in question; that he knew nothing about Exhibit B, which, according to the testimony of Jose Ador Dionisio, was secured at his request by said Aurelio Cecilio; that he knew nothing about the original of said Exhibit B, and that he did not have any business relation with Jose Ador Dionisio after the termination of said civil case.

Bernardo Elayda, employee of the Bureau of Lands, testified that Macario Mariano was the employee in charge of the "titulos de composicion con el Estado" from 1918 up to November, 1922; that his (Elayda's) initials appeared on Exhibit B, but that he had no time to check it with the original when presented to him for his initials because of the amount of work he then had and because of the confidence he had in Macario Mariano; that by order of the Assistant Director of Lands, Mr. Carballo, he made a search for the original, but could not find it; that in his search he found six books "de Tomas de Razon" Nos. 1, 3, 4, 5, 6 and 7, and that No. 2 was missing; that according to the date in the clause at the bottom of Exhibit B, which says; "se tomo razon en esta Administration Central en el libro correspondiente, folio 21, Manila, 7 de mayo de 1887," said original should be found in book No. 7, folio 21; that folio 21 of book 7 shows another document; that had the original of Exhibit B been registered, it should appear on the reverse side of folio 23 of book 7, according to the date of registration shown at the bottom of said Exhibit B (May 7, 1887), because the document on folio 23 is dated April 2, 1887, and the document on folio 24 is dated June 15, 1887. This witness, however, admitted that in book No. 2, which was missing, there might be a document of the same date (May 7, 1887).

Aurelio de la Rosa, employee of the Bureau of Archives since 1900, testified that the Bureau of Archives kept a list of documents issued by the "Direccion General de Administration Civil sobre Titulos de Composicion con el Estado;" that said list (Exhibit 11) includes the "expedientes de composicion sobre terrenos de Nueva Ecija;" that the name of Fabian Ador Dionisio appears on the list in connection with expediente No. 332 "en tramitacion;" that they (employees of the Bureau of Archives) reviewed the Official Gazette to get the names of all persons who acquired unappropriated lands from July 11, 1880, to May, 1897; that in the Official Gazette of March 10, 1894, they found the name of Fabian Ador Dionisio; that among the persons to whom "titulos de composicion" were issued during the period 1885-1887, the name of Fabian Ador Dionisio does not appear.

At this stage of the hearing the attorney for the Government moved that the court take judicial notice of the procedure and regulations followed by the Spanish Government in regard to the issuance of "titulos de composicion," which were contained in Real Orden of June 25, 1880, Official Gazette of September 8, 1880, and Real Orden of October 26, 1881, Official Gazette of December 18, 1881, and presented Exhibits 14 and 15, containing said procedure and regulations. Special attention was called to the prohibition contained in Real Orden of October 26, 1881, as follows:

"1.[o] Que a fin de favorecer la division de propiedad, en las ventas de terrenos se tenga en cuenta lo prevenido en el parrafo 1 de la Real Orden de 25 de noviembre de 1880, para que no se verifique ninguna concesion que exceda de mil hectareas en terreno seco, de quinientas (hectareas) cuando esten poblados de arbolado y de dentro cuando sean terrenos que a poca costa puedan hacerse regadio" (Exhibit 15, p. 63.)

This motion of counsel for the Government was for the purpose of showing to the court that Fabian Ador Dionisio could not have acquired such a big tract of land, in view of the prohibition contained in said Royal Order. Counsel for the Government also called attention to the fact that Exhibit B shows that the land was adjudicated to Fabian Ador Dionisio by the Intendencia General de Hacienda pursuant to the General Decree of February 24, 1885. He then presented Exhibit 17, which is a list of final resolutions adopted by the Intendente General de Hacienda, published in the Official Gazette of April 9, 1885, relative to adjudications of lands made during the period, February 16 to February 28, 1885, which list does not show any adjudication to Fabian Ador Dionisio of the land referred to in Exhibit B.

Counsel for the Government also presented Exhibit 19, which is the official statistics of agricultural lands of private ownership in Talavera, Nueva Ecija, dated February 1, 1898, which statistics do not show any land in Talavera owned by Fabian Ador Dionisio.

The foregoing evidence shows that Fabian Ador Dionisio did not secure any title from the Government to the land now claimed by his heirs, the herein oppositors.

Remigio Dizon, a resident of Talavera, Nueva Ecija, testified that sometime in 1920 his father had a suit with one Genoveva Dulay regarding homestead and that Macario Mariano, an employee of the Bureau of Lands, offered to help his father, and told him "many things" till he was persuaded to secure his (Macario's) help; that he gave Macario 1*49 as compensation for the services offered; that after a lapse of several weeks he wrote to Macario in Manila, inquiring about Macario's promise; that in reply, Macario wrote him a letter which, in part, says:

"Si no te va a causar molestias, sirvase venir a mi casa y hablaremos los dos sobre todo aquello que desees que se haga, puesto que he hallado un nuevo procedimiento para que elios pierdan sin que puedan hacer prevalecer el que sea homesteader y mientras el titulo esta aun pendiente del cielo.

"Y lo que yo te digo es que apliquemos un titulo del tiempo de los espanoles si es lo que desees y al mismo tiempo pregunta a tu padre si esta conforme. Pero este asunto es muy delicado y es conveniente que no lo reveles mds que a tu padre.

"Trae tuya den pesos si es que te gusta esto que yo te digo y enseguida lo haremos y nuestro contrario sera echado sin muchos requisitos porque tendremos titulo real de ese terreno si asi lo desees;" that he did not give Macario the P100 demanded, because he believed that without the "titulo real" his father could get the land.

Patricio del Rosario, a resident of Talavera, Nueva Ecija, testified that sometime in 1920 he consulted Macario Mariano, then an employee of the Bureau of Lands, as to the title of a piece of land which he intended to buy from one Pedro del Rosario; that Pedro del Rosario's title to said land consisted only of an affidavit of ownership; that Macario Mariano offered to secure copy of an old title to said land, during the Spanish Government, in the name of Pedro del Rosario; that he paid Macario P150 for the copy of said old title; that he returned said title to Macario, because he consulted the municipal secretary, Marcos Valino, as to the strength and validity of said title, and the latter remarked to him that the land described therein is said to be located in the barrio of San Ricardo, when as a matter of fact said barrio was called "Casile" during the Spanish regime, and only recently was called San Ricardo; that he did not recover the money he had paid.

The foregoing testimony of Remigio Dizon and Patricio del Rosario tends to show that Macario Mariano was in the habit of issuing alleged certified copies of fictitious old documents, or of making certificates, and made money out of it. It may be inferred from their testimony that Macario Mariano, who was in charge of the old Spanish titles to lands in the Bureau of Lands, and of the issuance of certified copies thereof, somehow or other procured some false original from which Exhibit B was copied. As a matter of fact, the initials of Macario Mariano appear at the bottom of said Exhibit B.

(2) Neither Fabian Ador Dionisio nor his son, Jose, ever took possession of the land now claimed by the oppositors

Marcos Valino, 60 years old, farmer, resident of Talavera, Nueva Ecija, testified that he knew the land claimed by the oppositors, because he kept a corral for animals there and pastured his cattle in that place from 1883 to 1885, and that he did not see any cattle there belonging to Fabian Ador Dionisio. (Witness confirms the declaration of Patricio del Rosario in regard to the title given by Macario Mariano. He also says that he has been municipal secretary of Talavera for more than ten years.) He further testified that the land in question was public land and

that up to 1888 nobody claimed possession of said land.

Bernardo Hipolito, 78 years old, cabeza de barangay and teniente de terna during the Spanish regime, testified that he knew Fabian Ador Dionisio verywell, because they lived in Santo Domingo within one hundred meters from each other's house; that Fabian had only three carabaos; that the only land of Fabian was that located at Pulong Viga, about 15 hectares, which Fabian could not even cultivate in full; that in 1888 Fabian, who was then cabeza de barangay, was found dishonest in the discharge of his office and was prosecuted and imprisoned, and that after his release from imprisonment he did not return any more to Santo Domingo, but went to Licab, Nueva Ecija, and there worked as tenant of Don Casimiro Tinio; that about the end of October, 1922, Jose Ador Dionisio went to see him (Bernardo Hipolito) and asked him to be a witness for the oppositors herein in regard to the land now in question; that he objected because he knew that during the Spanish regime it was a public land, wild and uncultivated, the usual haunt of the notorious bandit "Tankad."

Nicolas Andres, 87 years old, cabeza de barangay during the Spanish regime, gave similar testimony to that of Bernardo Hipolito. He also testified that he had been approached by Jose Ador Dionisio in order to be a witness for the oppositors, but knowing the falsity of their claim, he refused.

Don Manuel Tinio, general of the revolution, ex-provincial governor and ex-Director of Lands, testified that since 1896 he knew the land in question and that he did not see any cattle there; that it was public land, uncultivated; that, as Director of Lands, he offered to lease it to Senor Felipe Buencamino, but he had to withdraw the offer because, later, people from the North entered the land as homesteaders; that in 1896, as general of the revolution, he and his soldiers used to scour (recorrer) said land; that at that time there were no signs of cultivation, and the land was partly forest and partly grown to cogon; that he knew Fabian Ador Dionisio and his son, Jose, as tenants of his brother Casimiro Tinio in Licab; that Fabian died from wounds in 1902 and Jose continued to work as tenant of Casimiro Tinio up to 1908 or 1909, when he invited Jose to go with him to Casile to obtain public lands there; that Jose went with him to Casile, on the western side of the Vaca creek and there stayed for two years, quarrelling and fighting with homesteaders from Cabanatuan, after which Jose passed to the eastern side of the creek; that he (Manuel Tinio) purchased his land at Casile in 1906, worked it in 1908 and built his house there in 1914.

Emilio Lagazca and Vicente Flores testified that they are homesteaders of some portions of the land in question; that Emilio settled there in 1917; that nobody objected to his occupation, and that he found the land uncultivated; that Vicente settled there about 1916; that he found the land un- cultivated; that nobody objected to his possession of the land; and that he came there with other homesteaders like himself.

(Counsel for Government and for oppositors agreed not to take the testimony of the other homesteaders, in view of the fact that they will give substantially the same testimony as that of Emilio and Vicente.)

Angel P. Miguel, employee of the Bureau of Lands, in charge of homesteads and land claims in Nueva Ecija, testified that Juana de la Cruz and Jose Ador Dionisio, in 1909, applied for homestead and also to buy public lands in the barrio of San Ricardo, on the west side of the Vaca creek, while the land claimed is on the east side; that their applications were cancelled because they failed to specify the boundaries of the lands in spite of demand made therefor by the Director of Lands.

These applications for homestead also tend to show that they did not possess or own the land now in question. Otherwise, they would have been disqualified to apply for homestead under section 12 of Act No. 2874 (Public Land Act), formerly section 1, Act No. 926, which provides that an applicant for homestead must not have more than 24 hectares of land in the Islands.

"ASSIGNMENTS OF ERROR

"I. The court erred in declaring that neither Fabian Ador Dionisio nor his wife and children have been in possession of the land in question.

"II: The court erred in declaring that the original title of Fabian Ador Dionisio to said land (Exhibit B) does not exist and never existed."

A review of the foregoing evidence and of the exhibits therein mentioned shows that there is no ground for these assignments of error. The judgment of the lower court is in conformity with the facts and the law thereto applicable, and should be affirmed, with costs. So ordered.

Street, Malcolm, Avancena, Villamor, Ostrand, and Romualdez, JJ., concur.

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