

**CAPITOL SUBDIVISION, INC., PLAINTIFF AND APPELLEE, VS.
PROVINCE OF NEGROS OCCIDENTAL, DEFENDANT AND APPELLANT.***G.R. No. L-6204. July 31, 1956*

Ponente: REYES, A., J.

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The Provincial Hospital of Occidental Negros, located in the City of Bacolod, capital of the province, was built in 1924 at a cost of about P200,000. But subsequent improvements brought the total cost to more than half a million pesos.

The Hospital was erected on a parcel of land of more than 22,000 square meters identified as lot No. 378 of the Bacolod Cadastre and claimed by the province of Occidental Negros as its property by virtue of a deed of sale with donation executed in its favor by Jose Benares, former owner, as a result of expropriation proceedings. It does not appear that a transfer certificate of title has been issued to the province. But the lot has for many years stood in the records of the assessment office as the property of the Province or the Hospital and enjoyed exemption from the realty tax as such.

In 1949, the Capitol Subdivision, Inc., a real estate company, claiming to be the owner of the lot, questioned the right of the Hospital to occupy it, and when its claim of ownership was rejected, it brought the present action in the Court of First Instance of Occidental Negros to recover possession of the lot and reasonable rents for its use. But before filing the action, it had, in May, 1950, the lot declared in its name for assessment purposes.

It would appear that the lot in question was part of a large tract of land known as the Hacienda Mandalagan, formerly owned by Agustin Amenabar and Pilar Amenabar. The land consisted of several lots. In 1926 the lots were purchased by Jose Benares, who later mortgaged them to the Philippine National Bank. The mortgage having been foreclosed, the Bank bought the lots at a foreclosure sale and had transfer certificates of title issued to it in 1934. In 1935 the Bank signed a contract agreeing to sell the lots to Carlos Benares for P400,000, payable P30,000 down and the balance in ten equal installments, the title to remain in the Bank until the price had been fully paid. In an instrument signed on the same date, Carlos Benares, on his part, assigned to the Subdivision the rights acquired by him under his contract with the Bank. With the payment of the last installment in 1949, a deed of absolute sale was executed by the Bank in favor of the Subdivision, and as a result the latter was issued the corresponding transfer certificates of title for the lots, of which transfer certificate of title No. 1798 pertains to lot No. 378, the one here in question.

In resisting the action of the subdivision, the Province put up the defense that it had acquired the lot in question from its former owner, Jose Benares, and that the subdivision was aware of that fact when it bought the hacienda. In support of this defense, the province endeavored to prove that in compliance with Act No. 3144, as amended, which required the Province to provide a site for the hospital before the funds for its construction could be released, the Province instituted condemnation proceedings, (Civil Case No. 3041) in 1924 or 1925 against Jose Benares for the acquirement of the lot in question, took possession of the same and began the construction of the

hospital; that pending trial the case was amicably settled, with the Province paying to Benares the assessed value of the lot and Benares donating to the Province so much of the purchase price as was in excess of the assessed value; that to give effect to the settlement Benares executed a deed of sale with donation in favor of the Province, which deed was delivered to the clerk of court and attached to the record of the case; that as a result of this transaction the lot became the property of the province; that the court record of the case, including the deed of sale and donation, was totally destroyed during the last war; that the subdivision had constructive notice of those facts and was therefore not an innocent purchaser, knowing fully well that at the time it bought the lot this was already occupied by the Hospital and the Hospital had been in full operation as a public institution for many years prior to the date of the alleged acquisition; and that Mr. Alfredo Montelibano, the controlling stockholder and president and general manager of the subdivision, had knowledge of those facts because during his incumbency as first city mayor of Bacolod, the city was contributing a large sum yearly for the support, operation, and maintenance of the Hospital.

After trial, the lower court rendered judgment in favor of plaintiff requiring the defendant to restore possession of the lot to plaintiff subject to the latter's right to exercise the option granted in Article 361 of the old Civil Code and further requiring the defendant to pay rents from November 8, 1935, which all in all would amount to P151,706.29. From this judgment defendant appealed directly to this court. For some unknown reason the record was elevated to the Court of Appeals, but that court, upon motion of the plaintiff-appellee, certified the case here, for involving more than P50,000.

The questions for determination are (1) whether the defendant had already acquired right or title to the lot as a result of the alleged expropriation proceedings and deed of sale with donation, and (2) whether plaintiff had actual or constructive knowledge of such fact at the time it bought the property.

After going over the record, we do not feel that those questions could be justly decided on the somewhat limited evidence actually admitted by the trial court. With the record of expropriation proceedings destroyed together with the deed of sale and donation attached thereto, secondary proof of such proceedings and deed should have, been allowed. But presentation of that proof was effectively barred when the trial court refused to give the provincial fiscal sufficient time to resubpoena two important witnesses, who had failed to come on the day of the continuation of the trial for lack of notice. Those witnesses were Mr. Jose Benares (the person from whom the Province allegedly acquired the lot) and Mr. Ildefonso Coscolluela, who, as former treasurer of the Province, had knowledge of such acquisition. Considering the amount of the public funds and the public interest involved, the trial court should have granted the fiscal sufficient time to produce the said witnesses. A delay of two or three days for that purpose would not have amounted to much, and the plea that the adverse party was incurring heavy expenses for its attorneys' continued stay in Bacolod could have been met with a ruling that those expenses, if reasonable, should be taxed against the party that caused them. Liberality should be exercised in granting postponements of trial to obtain presence of material evidence and to prevent miscarriage of justice. (*Canal Oil Co. vs. National Oil Co.* Cal Appeal, 66 P. 2d 197.) A litigant is entitled to reasonable delay and opportunity to get his witnesses. (*Moran vs. Leone*, 129 So. 398, 1, Aa. App. 45; footnote 82, 17 C. J. S. 224.) While the granting or refusal of motions for continuance is discretionary, that discretion must be exercised wisely with a view to substantial justice.

Other evidence of vital importance to the case also appears to have barred.

On the question of the subdivision's good or bad faith, Mr. Montelibano, the president and general manager and controlling stockholder of the Subdivision, pretends that the Subdivision had no knowledge of the expropriation or deed of sale with donation at the time it bought the land. The fiscal's efforts to cross-examine him on those matters were frustrated by plaintiff's counsel's objections and the trial court's rulings sustaining those objections.

The court reasoned that Mr. Montelibano was then on the stand as plaintiff's own witness and could not be questioned in such a way as to make him the defendant's witness. But the fact alone that Mr. Montelibano was then testifying as plaintiff's witness is no justification for not permitting the fiscal to cross-examine him on any matter that would elicit all important facts bearing on the issue. As former Chief Justice Moran puts it—

In this jurisdiction, section 87 above quoted provided that the adverse party may cross-examine a witness for the purpose among others, of eliciting all important facts bearing upon the issue. From this provision it may clearly be inferred that a party may cross-examine a witness on matters not embraced in his direct examination. But this does not mean that a party by doing so is making the witness his own accordance with section 83." (Ill Moran, Rules of Court, 3rd ed. 587.)

The trial court refused to allow the witness Jose Marco, a former deputy clerk of court, to say anything about the expropriation proceeding in question on the excuse that his testimony on this matter would be immaterial and incompetent. The loss of the records of said expropriation proceeding had already been established, and section 51, Rule 123, expressly permits proof by secondary evidence.

The trial court, after thus preventing defendant from proving the existence of the expropriation case through the testimony of Jose Marco, willingly acceded to the presentation in rebuttal of a witness who testified to the non-existence of the said expropriation case, thus permitting plaintiff to prove in rebuttal what he had refused defendant to substantiate in defense.

The trial court appears to have had no justification in refusing to admit most of the exhibits offered in evidence for the defendant. Those exhibits have direct bearing on the issue of ownership.

In fine, we are persuaded that the interests of justice demand that there be further trial in this case.

Wherefore, the judgment appealed from is set aside and the case ordered remanded to the court of origin for further trial in order that the defendant may have an opportunity to fully prove its case, with equal opportunity to the plaintiff to meet such further evidence as the defendant may present, it being understood that the evidence already taken need not be reintroduced. No pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Eendencia, and Felix, JJ., concur.

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