

ALLISON D. GIBBS ET AL., APPLICANTS AND APPELLEES, VS. LUIS PEREZ SAMANILLO, OPPONENT AND APPELLANT.

G.R. No. 7959. October 02, 1913

Ponente: TORRES, J.

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TORRES, J.:

This appeal was raised by counsel for Luis Perez Samanillo, through a bill of exceptions, from the decision of December 23, 1911, which ordered that the property referred to in the application should be registered in the name of Allison D. Gibbs and Eva Johnson Gibbs, in equal shares, in accordance with the provisions of the Land Registration Act.

By a petition of July 21, 1911, the said applicants alleged that they were the owners of three lots therein mentioned and prayed for their inscription in the property registry. Their description is as follows:

Lot 1.—A piece of land, with buildings of strong material, situated at No. 28 Calle David of the district of Binondo, containing an area of 1,851 square meters, and bounded on the northeast by the De la Reyna estero, on the southeast by the property of Luis Perez Samanillo, on the southwest by the property formerly belonging to the heirs of Antonio Enriquez y Sequera and now to the applicant A. D. Gibbs. All the points indicated are marked on the plan, in which true bearings were followed. The survey was made on February 26, 1911.

Lot 2.—A piece of land situated on Calle David, Binondo, of the city of Manila, containing an area of 15.14 square meters, and bounded on the northeast by the property of A. D. Gibbs, on the northwest by lot No. 5, and on the southwest by Calle David. All the points indicated are marked on the plan, drawn with true bearings. The survey was made on July 10, 1911.

Lot 3.—A piece of land situated on the said Calle David, Binondo, containing an area of 7.57 square meters, and bounded on the northeast by the property of A. D. Gibbs, on the southeast by lot 2, and on the southwest by Calle David. All the points indicated are marked on, the plan, drawn with true bearings. The survey was made on July 10, 1911.

The application for registration recited that, at the last assessment, the above described lands were appraised at P54,160, for the purpose of the payment of the land tax; that, to the applicants' best knowledge and belief, no person other than themselves claimed any right or share in the said properties, nor was there any encumbrance whatever thereon except a mortgage for the sum of P25,000 on lot 1, in favor of the Augustinian Recollect Corporation of these Islands, according to the public instrument of November 6, 1908, executed before the notary, Barrera y Caldes; that the property described as lot 1 was acquired by purchase from the spouses Vicente Gonzalez and Manuela Eugenia Salvador, as shown by the public instrument executed in this city on February 2, 1911, before the notary Emilio Mapa and entered in the registry on page 28, volume 27, Binondo section, and on page 100 of the register, as property No. 1138, inscription 7; and that lots 2 and 3 were acquired through exchange with the city of Manila, as evidenced by the public instrument executed before the notary last above named, on July 14, 1911; that the said vendors, in turn, acquired the said properties by purchase from their predecessors in

interest, and that the applicants and their predecessors in interest had been in continuous, quiet and peaceable possession, without interruption, as owners in good faith and with just title, for more than thirty years; that the applicants, by themselves and by their predecessors in interest, had been occupying and holding the said properties in open, continuous, exclusive and notorious possession in good faith for more than ten years prior to July 26, 1904; that the said properties were neither mineral nor forestal lands; that lot 1 was occupied by the merchants Stahl & Rumcker, as tenants; that lots 2 and 3 were vacant; and that apparently the mortgage creditor assented to the registration of lot 1, subject to the said encumbrance, and subscribed the said application in his capacity as procurator of the Recollect Order.

Counsel for Luis Perez Samanillo opposed the applicants claim and contended that they should recognize and respect the existing easements of right of way and right of eaves drip. He further asked through a written petition that the registration sought be denied, alleging that the opponent was the owner of the parcel designated in the plan as comprised between the lines 3 and 4 and a line parallel to line 4, running from the point marked No. 5, and that the petitioner and his predecessors in interest had, from time immemorial, been in peaceable possession of the said strip of land as the owners thereof.

On August 17, 1911, the applicants notified the spouses Vicente Gonzalez and Manuela Eugenia Salvador y Padilla that, since these latter had, in the instrument executed on February 2, 1911, before the notary public Emilio Mapa, guaranteed as vendors the title of the property sought to be registered, they should appear and defend the warranty, inasmuch as counsel for Luis Perez Samanillo, the owner of the adjacent property on the right of the applicants', facing the same, had come before the Court of Land Registration to oppose the application applied for, unless easements of light, right of way, and eaves drip were recognized in favor of his client's property.

Therefore, on August 22, 1911, the attorney Lucas Gonzalez, in representation of the spouses Vicente Gonzalez and Manuela Eugenia Salvador, presented a petition wherein he stated that he denied generally and specifically the allegations contained in paragraphs 1 and 2 of the opponent Luis Perez Samanillo's petition, and in special defense alleged that the said strip of land, comprised between the points Nos. 2, 3, 4, and 5, had belonged to the aforementioned spouses and to its original owners, Narciso Padilla and Maria Barbara Padilla, from 1835 to the time it was sold to the applicants; that the said spouses Gonzalez and Salvador had quietly and peaceably held the strip of land in question since 1835, in the capacity of owners, for, by a final decision rendered by the Honorable Supreme Court on November 19, 1910, published in 17 Phil. Rep., 343, the said strip of land was adjudged to belong to the aforementioned spouses, precisely against the claims of the opponent, Luis Perez Samanillo, made in case No. 4548 of the Court of Land Registration; and that the opponent had not up to date and within the period allowed of forty days presented an amended plan excluding such land therefrom as he was directed to do by the Court of Land Registration on January 9, 1911. He therefore asked that the adverse claim filed by Luis Perez Samanillo be denied, and that the latter be directed to pay the costs and to comply with the said order of January 9, 1911, given in case No. 4548 aforementioned.

After the hearing and the introduction of evidence by both parties the judgment before referred to was rendered, to which counsel for Perez Samanillo excepted and asked for a new trial. This motion was denied and the proper bill of exceptions having been presented, the same was approved and forwarded to the clerk of this court with a transcript of the evidence.

The object sought in this case is the inscription in the Court of Land Registration of three adjoining parcels of land, situated on Calle David, Binondo, and belonging to Allison D. Gibbs and Eva Johnson Gibbs, who acquired one of them, Lot 1, with the building thereon, by purchase from the spouses Vicente Gonzalez and Manuela Eugenia Salvador, and the other two parcels, described as lots 2 and 3, by exchange with the city of Manila.

The said application for the registration of the aforementioned property was opposed only by the counsel for Luis Perez Samanillo, who alleged that his client was the owner of the parcel or strip of land comprised, in the plan presented, between the lines 3 and 4 and a line parallel to line 4, drawn from the point No. 5, and that this property had been held in peaceable possession by the opponent and his predecessors in interest from time immemorial.

This same strip of land has already been the subject matter of a suit maintained by the herein opponent, Luis Perez Samanillo, who applied for the registration of his property situated on Calle Escolta and bounded on the rear by the property previously owned by the spouses Vicente Gonzalez and Manuela Eugenio Salvador y Padilla and afterwards, on February 2, 1911, sold by them to the present applicants, Mr. and Mrs. Gibbs. The said strip of land lies between the property of Luis Perez Samanillo, in its northwest side, and that which formerly belonged to the said Vicente Gonzalez and Manuela Eugenia Salvador, on its southeast side. Upon the trial of the case before the Court of Land Registration, it was held in the judgment rendered on December 27, 1909, that the piece of land in dispute was an integral part of the applicant Perez Samanillo's lot, in whose name it was ordered to be registered, and Vicente Gonzalez' adverse claim was rejected; but the Supreme Court, in its decision of November 19, 1910, upon affirming the judgment appealed from, ordered the exclusion of the said disputed strip of land, for the reason that it was held to belong to the opponent, Vicente Gonzalez, without prejudice to any rights of easement which might encumber the small excluded lot in favor of the registered property. The findings which, among others, served as a basis for the aforesaid decision of this court, are those herein below transcribed:

"By an examination of the plan and technical description accompanying the application and of the description of the opponent's property given in his title inscribed in the registry of property, page 129, it is observed that, while the division line of the two properties consists of two straight lines with one short perpendicular line crossing them at their point of meeting, as shown in the said plan, in the aforesaid title this division appears as a broken line composed of five straight lines with two chamfers, the first line 19.95 meters long, the second line, the first chamfer, 4.50 meters long, the third 27.40 meters long, the fourth, the second chamfer, 2.60 meters long, and the fifth, 2.38 meters in length. From these two contradictory descriptions it is deduced that, if the applicant's plan is taken as correct, the space of land in litigation forms a part of his property, while to judge from the text of the opponent's title the said fractional lot is comprised within his title and cannot be a part of the applicant's property. It is impossible that the divisional line of the two adjoining lots could be formed at the same time by two straight lines on one side and by five straight lines and two chamfers on the other.

"When the applicant's building was erected in 1887, for many years, since before 1883, the opponent's building, with its stone wall and a door opening into the small disputed lot, had been in existence, and in the two titles of the two adjoining lots, on which the applicant's building was erected no record appears of the form and configuration of the lots on the side adjacent to the opponent's property, while in the latter's title there is shown the configuration of his lot and the different forms in which the same adjoins the two immediate lots, surrounded by their respective stone walls, before their sale to the applicant's father. From all of these facts it is concluded that the small lot in question belongs to the opponent and forms a part of the land on which his building is constructed, inasmuch as the detailed description of its boundaries coincides with the configuration of the said land on the side thereof which is adjacent to the applicant's lots, according to the plan in the trial record, and the wall of the said opponent's building, from the first central chamfer, runs in a straight line, parallel with the wall of the applicant's building, toward the estero, with the little disputed lot between them both; moreover, it does not appear that the said wall of the opponent had two chamfers and lay in five straight lines, assuming the configuration described in the applicant's plan and title: Wherefore it is unquestionable that the said disputed lot is of the form described, on its side adjacent to the applicant's property.

"The lots pertaining to each one of the said buildings, Nos. 37 and 39 of Calle Escolta, which were destroyed by the fire, must have been surrounded by a wall on their boundary line adjoining the lot of the building at No.

28 Calle David; whence it is that, in the instrument of sale, at least of the lot occupied by the building numbered 39 before the fire, mention is made of walls and stone pavement, an important detail, because the space of land in question, in nearly its entire length, adjoins this lot and does not appear to be included in the aforesaid instrument of sale (pp. 109 to 116 of the record), and therefore it must be found that the said disputed strip of land was not comprised in the sale made to Perez by Keller's representative, in March, 1886.

"The opponent averred that the said disputed lot belonged to him and, since 1833 or 1834, had been in his possession and that of his wife and her predecessors, which was confirmed by one of the latter, Maria Barbara Padilla, who declared in an affidavit that when her father, Narciso Padilla, acquired the building at No. 28 Calle David in the year mentioned, the strip of land in dispute formed a part of the lot on which the said building stood and that the disputed land was used and enjoyed ever afterwards by her father and herself, without any objection on the part of the owners of the two adjoining properties. This witness added that when she first began to live in the said building she was seven years of age; that, to provide a means of entrance to the land in controversy, a doorway, which still existed, had been opened through the wall of the said building, No. 28, the eaves of the roof of which shed water onto the said lot, where her father and her family were accustomed to store lumber and other things and where they kept hogs and other animals; that there was also a window with a projecting iron grating in the upper story of the building and which overlooked the lot in litigation without objection or complaint by anybody.

"The existence of the said door, which allowed entrance to the little lot from the opponent's house, appears to be confirmed by the testimony of Jose M.a Arriola, the applicant's attorney in fact, and of Otto Mur, the manager of the firm of Sprungli & Co., the tenants of the opponent's building, and by the evidence obtained during the ocular inspection held by the court on the said small lot and on the adjoining properties. Moreover, the said Arriola testified that, when the water-closet was built on the end of the disputed strip of land, toward the estero, the inclosing partition was constructed on the side away from the estero, and on a diagonal line, for the purpose of respecting the said door opened in the wall of the opponent's building, a detail confirmed by the proceedings of inspection.

"The petitioner Perez having erected his building in 1887, if he were the owner of the strip of land in question he would at least have constructed his walls on the part of this strip on which the water from the eaves of the opponent's house did not fall; and if he did not do so, it was because he then believed that he should respect another's real property in the same manner that he did the door opened in the opponent's wall.

"The small area of land in litigation is approximately two meters and some few centimeters in width, and the successive owners of the house No. 28 of Calle David and their tenants have exercised acts of dominion over the said land, for the eaves of this house extended over it and shed the rain water thereupon, the iron grating of a window opened in the upper story of the said house projects half a meter over the said land and from this space receives light, and the said owners and tenants have been in the habit of entering upon the property by passing through the door before mentioned, for the purpose of enjoying the full and free use thereof, while no exit whatever existed from the applicant's building to the said strip of land, and if sometimes his tenants were obliged to enter the same they had to pass through the lot on which the opponent's house stands, after obtaining permission from the latter's tenants, and through the only door there which was opened in the wall of this house.

"Article 582 of the Civil Code prescribes:

" 'Windows with direct views, or balconies or any similar openings projecting over the estate of the neighbor, can not be made if there is not a distance of, at least, two meters between the wall in which they are built and the said estate.

" 'Neither can side nor oblique views be opened over said property, unless there is a distance of sixty centimeters.'

"Article 586 of the same code also provides:

" The owner of a building is obliged to construct his roofs or coverings in such a manner that rain water may fall on his own land or on the street or public place, and not on the land of his neighbor. Even if it falls on his own land, the owner is obliged to collect it in such manner that it will not injure the adjoining estate

"Had the applicant or some of his remote predecessors owned the strip of land in question, they would not have consented to the opponents' house, No. 28, being constructed with a roof and window grating projecting or extending over their property, nor would they have permitted the rain water from such a roof to fall onto it to the detriment of their rights and interests, which are protected by the civil law, both ancient and modern, in accordance with the prein serted articles of the code.

"If for more than seventy-five years, up to the date of the commencement of this suit, the opponents' building has been maintained with the said projections and entrance door to the land in question without objection or complaint on the part of the successive owners of the two adjacent properties, it is because the said strip of land forms an integral part of the opponents' property and never belonged to the applicant's predecessors, and the trial record shows not even circumstantial evidence that the applicant or his predecessors ever were in possession of or exercised any acts of ownership over the said strip of land."

* * * * *

The recent act of the applicant's representative in having opened a door affording entrance from his property to the fractional lot in question, as appears by the written notice given to this court by the opponent on the 28th of July of this year, does not affect the reasoning herein set forth, but, on the contrary, confirms the conclusion that the said lot does not belong to the applicant, but is the property of the opponent." (17 Phil. Rep., 343.)

The foregoing findings are perfectly applicable to the present suit and determine the proper and just resolution of the issues in controversy between the parties.

On the hearing of this case before the Court of Land Registration, on August 17, 1911, Miguel Rosales, as the attorney in fact of Perez Samanillo, exhibited a plan and stated that his opposition was based solely on his claim that the easements of right of way and eaves' drip should be recognized and respected by the applicants (record, p. 51); but by a written petition presented on the following day (record, p. 53) counsel for the opponent Perez Samanillo asked for the denial of the application for registration, in so far as the said strip of land was concerned, for the reason, as he alleged, that the opponent was the owner of this strip of land, comprised between the lines 3 and 4 and a line parallel to line 4, running from point No. 5, and that he and his predecessors in interest had held the same in peaceable possession as its owners, from time immemorial.

The evidence adduced at trial shows that, on the proposal of the opponent's attorney, the parties agreed that the strip of land in question was the same trip that was the subject of controversy in case No. 4548 of the Court of Land Registration and No. 5897 of this court, wherein the said Perez Samanillo was the applicant for the registration of that piece of property.

The plan, Exhibit 1 (presented by the opponent's attorney, page 177 of the record, for the purpose of proving that the strip of land in litigation is not shown to be included therein, notwithstanding that it was exhibited by Vicente Gonzalez in the Bureau of Internal Revenue as the basis for the assessment of the property, lot No. 1, now sought to be registered), is admitted by this court at its face value and in spite of the applicant Gibbs' objection on the ground that it is not duly authenticated; however, from a subsequent certificate issued by an official of the Bureau of Internal Revenue (record, p. 131) it appears that the said plan, Exhibit 1, was on file in his department, though there was no record as to who presented it there on the 20th of January, 1902, the date of the memorandum of its receipt, while the sworn declaration of August 30, 1901 (record, p. 27), which served as a basis for the

computation of the land tax for 1902, shows that the said strip of land was comprised therein, according to the rough sketch drawn on its reverse side. It is, therefore, unquestionable that when the tax was paid on the entire property, the proportional amount thereof pertaining to this strip was included in that payment.

The opponent's witness, Jose Arriola, testified that the present buildings of the opponent were constructed sometime between 1885 and 1886; that the wall or partition, designated on the plan, Exhibit A, as between the letter C, written in pencil, and the point No. 5, and the doorway opened in the said wall and which serves as a means of communication between the applicant's lot and the strip of land in question, were both very old, for they were already in existence before the opponent's buildings were erected; that the new doorway, opened between the points 4 and 5, was constructed subsequent to the rendition of the judgment of the Court of Land Registration, in the previous case, and because without it there was no means whatever of ingress from the opponent's property to the strip of land in dispute, so that, in order to clean this ground of mud and rubbish, it was necessary to enter the zaguan or interior porch of the applicants' house and thence pass through the said old doorway indicated on the plan, Exhibit A, between the No. 5 and the penciled letter.

From the preceding evidence it is concluded that the strip of land in question now belongs to the applicants, the successors in interest of the spouses Vicente Gonzalez and Manuela Eugenia Salvador who in the former decision of this court, before mentioned, were adjudged to be its owners. Such ownership, moreover, was admitted by the opponent himself in the proceedings had before the Court of First Instance for the issuance of an injunction, initiated by the said spouses and predecessors in interest of the applicants.

So that, even though it would have been possible in law to decide this suit in accordance with the merits and proofs found in the record, upon duly examining and weighing them in conformity with the rules of sound judgment and common sense and with entire independence of the previous decision of this court declaratory of the rights of the applicants' vendors in the strip of land in question, our final conclusions would undoubtedly not have been in favor of the opponent who, in this second litigation as in the first, did not succeed in proving that he was the owner and proprietor of the portion of land expressly excluded, by the former decision, from the registration of his property.

The applicants have proved in a satisfactory manner that they acquired by a lawful deed of conveyance the three parcels of land, together with the buildings thereon, the registration of which they have applied for and have furnished a description of their respective areas and boundaries for the purpose of their indispensable registration; consequently, the opponent's petition must be denied.

With respect to the easements, also referred to in the judgment appealed from, it is not deemed necessary to treat of them in this decision, inasmuch as the appellant has not alleged the commission of any error in respect thereto by the lower court in the judgment appealed from.

For the foregoing reasons, whereby the errors assigned to the trial judge are deemed to have been refuted, we should affirm, as we do hereby, the judgment appealed from, with the costs against the appellant.

Mapa, Moreland, and Trent, JJ., concur.

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