

FABIAN B. S. ABELLERA, PLAINTIFF AND APPELLANT, VS. FELICIANO GARCIA, DEFENDANT AND APPELLEE.*G.R. No. L-2404. December 29, 1949*

Ponente: BENGZON, J.

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In the Court of First Instance of La Union, Fabian B. S. Abellera sued Feliciano Garcia in 1918 to recover a parcel of land situated in the town of Aringay, same province, (civil case No. 936). As the lot was included in the cadastral survey and both parties had claimed it in the cadastral proceedings, the civil case was dismissed and the parties were directed to litigate in the cadastral court. The conflict about the lot (numbered 4973) was subsequently heard by Hon. Meynardo Farol, Judge, who, in due time awarded it to Feliciano Garcia in cadastral case No. 5.

Abellera appealed to the Court of Appeals. However, due to the loss of the stenographic notes, the case was returned in 1943 by the appellate court for new trial under the provisions of section 64 of Act 3110. Nothing seems to have been done, until January, 1946, when Fabian B. S. Abellera began in the La Union Court of First Instance another action (the present proceedings) against the same opponent, asserting ownership over the land, damages due to defendant's occupation thereof, and asking for restitution of possession plus damages.

The defendant Feliciano Garcia moved for dismissal, partly upon the ground that there was another action pending between the same parties, expressly referring to the case returned by order of the Court of Appeals. After hearing the motion, Judge Alejandro Panlilio granted the motion and dismissed the case, saying:

"There is no question that the appeal had been taken by plaintiff herein from the decision adjudicating lot No. 4973, the contested land, rendered in cadastral case No. 5 of Aringay, La Union, and there seems to be no question, either, that the only reasons that moved the Court of Appeals, *motu proprio*, to order the return of the case to this Court for a new trial, was the fact that the stenographer who had taken the notes of the hearing of the case could not be located. And such being the case, it is clear that the sole purpose of the Court of Appeals in returning the case was to give an opportunity to plaintiff to reconstruct the evidence, originally introduced at the hearing, in accordance with section 64 of Act No. 3110, and not to allow or give him a free hand to start a new action. In other words, the Court of Appeals ordered a new trial specifically in cadastral case No. 5 of Aringay, La Union, as regards lot No. 4973, and then, for the sole and specific purpose of reconstructing the evidence introduced at the original hearing, and did not, otherwise, authorize plaintiff to institute a new action. Courts will never encourage multiplicity of suits."

When his motion to reconsider was denied, Abellera perfected an appeal to the Court of Appeals, which in turn endorsed the expediente to us, as no question of fact is involved.

It is obvious that the order of dismissal was correctly entered. The cadastral proceedings were pending, and Abellera may not be permitted to start another litigation. He asserts that the expedientes in La Union had all been destroyed and seems to hold the impression that the cadastral proceedings may not be reconstructed. But his impression does not seem to be correct, as may be seen from an endorsement of the Chief of the General Land

Registration Office:

"* * * all the plans, decisions, orders and all other records of Aringay cadastre (cad. case No. 5, G.L.R.O. cad. record No. 248) were lost during the last war. However, said Aringay cadastre cadastral case No. 5 can be reconstituted if this Office can. be furnished again with the plans, technical descriptions of all the cadastral lots, decisions, orders and all the data needed for said reconstitution.

"In this connection, it is necessary to ascertain first from the Bureau of Lands whether the plans and technical descriptions were among the records salvaged in that Office, and to request the reproduction of said plans."

The appellant has not shown that the Bureau of Lands is unable to furnish the required data and there is no reason now before us to presume that the cadastral proceedings could not be reconstructed.

And unless it is definitely demonstrated that the cadastral expediente may not be sufficiently reconstituted to permit adjudication of appellant's litigation therein, this new proceeding should not be countenanced.

Wherefore, the appealed order of dismissal will be affirmed, with costs without prejudice to further proceedings in the cadastral case. So ordered.

Moran, C.J., Ozaeta, Paras, Pablo, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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