

DOMINGO LAO AND ALBINA DE LOS SANTOS, APPLICANTS AND APPELLANTS, VS. THE HEIRS OF LORENZA ALBURO, OBJECTORS AND APPELLEES.

G.R. No. 10372. December 24, 1915

Ponente: TORRES, J.

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TORRES, J.:

This appeal by bill of exceptions was taken from the judgment of August 17, 1914, in which the honorable judge of the Court of Land Registration decreed that, after the description of the parcel of land No. 2 should have been amended in the manner indicated, the parcels of land in the case at bar should be registered in the name of the applicants, Domingo Lao and his wife Aibina de los Santos. It was held in this decree that the wall, called a stone wall in the plan of the said parcel No. 2, was a party wall between the said parcel and the property adjoining it on the northwest. Counsel for the applicants excepted to this finding and moved for a new trial. His motion was overruled, whereupon the applicants excepted and duly filed their bill of exceptions, which was approved and transmitted to this court.

On May 8, 1914, counsel for the said husband and wife filed a written application in the Court of Land Registration for the registration of four parcels of land, together with the buildings thereon, of which they claimed to be the absolute owners. The first of said parcels, Lot No. 1, comprising a house and three other buildings known as accesorias, all of strong materials, is situated in. Calle Juan Luna, formerly Calle Jolo or Anloague of the district of Binondo, and has an area of 175.08 square meters; the second parcel, Lot No. 2, comprising a house of strong materials erected thereon, likewise situated in Calle Juan Luna, formerly Calle Jolo or Anloague, Binondo, is 212.05 square meters in area; the third parcel of land, Lot No. 3, comprising two. houses and sheds of strong materials is located in Calle Elcano, San Nicolas, Binondo, and measures 596.06 square meters in area; and the fourth parcel of land, Lot No. 2, containing two buildings of strong materials, one of them of three stories, situated in Calle Elcano, San Nicolas, Binondo, 813.01 square meters in area. The street numbers of the two latter properties appear in the said judgment, and their boundaries are given in both the said plan No. 1 and in their respective technical descriptions.

The application recites that the first of the four abovementioned properties was appraised in the last assessment, the land at P4,664 and the buildings at P4,000; the second parcel, the land at P5,492 and the buildings at P3,600; the third parcel, the land at P6,329 and the buildings at P4,000 ; and the fourth parcel, the land at P8,529 and the buildings at P22,500; and that the said properties are all unencumbered and no one has any right or share therein except the applicants, who acquired them by purchase, the first parcel from Felix Zalvidea, by a public instrument of June 11, 1912; the second parcel, from Clara Lichauco and her husband Catalino Arevalo, by a public instrument of September 12, 1912; the third parcel, from Antonio Abraham Brimo, by a public instrument of March 28, 1911; and the fourth parcel, from Marcela Lao, by a public instrument of April 17, 1914. The application recites the names of the tenants who occupy the first three properties and states that the applicants occupy the fourth. The names and addresses of the owners or proprietors of the adjoining properties are also

given.

After due service of notice, counsel for the administrator of the estate of the deceased Lorenza Alburo filed in court a written objection, alleging that in the part of the application relative to the second parcel of the plan No. 1, a stone wall shown in that plan to be northeast of the said parcel had been improperly included; that this wall had belonged to the 3aid Lorenza Alburo, for it had existed since March 8, 1881; that the principal timbers of the building that had belonged to the said deceased had rested on it for more than thirty-five years, and the latter's successors had been and were now in the quiet, peaceable and uninterrupted possession of the said wall.

At the trial of the case both parties thereto introduced documentary and oral evidence, and the judge of the Court of Land Registration made a personal inspection of the wall in question and of the respective properties of the applicants and the objectors.

In the judgment appealed from it is held that the applicants, Domingo Lao and Albina de los Santos, conclusively and satisfactorily proved that they were, and had been for about forty years, the lawful owners and possessors of the four properties sought to be registered; wherefore the court decreed the registration thereof in their names, but ordered that record be made in the decree that the wall marked on the plan of the parcel No. 2 as a stone wall was a party wall.

Hence the question to be decided relates solely to the matter of the said wall of the property designated as parcel No. 2—the subject matter of the objection filed by the administrator of the estate of the deceased Lorenza Alburo, owner of the property adjoining that designated on the said plan as parcel No. 2—inasmuch as the said administrator alleges in his objection that the said stone wall forms a part of the property that belonged to the said deceased while the applicants claim that this wall is theirs, being a part of the strong-material house constructed on the said parcel of land, Lot No. 2 according to the plan, Exhibit A.

Article 572 of the Civil Code provides that the easement of party walls is presumed, unless there is a title or exterior mark or proof to the contrary in the dividing walls of adjoining buildings up to the common point of elevation. As the court held in the judgment appealed from that the wall which lies between the properties of the applicants and the objectors was a party wall, and as the applicants appealed from this ruling, it devolves upon us to decide whether it is in fact a party wall, as counsel for the administrator of the estate of the deceased Alburo or for her heirs finally admitted that it was in assenting to that decision, although he averred in his written objection that it was the exclusive property of the objectors; or whether, on the contrary, this wall is a part of property marked No. 2 on the plan Exhibit A, as the applicants claim.

Article 573 of the Civil Code also declares that it shall be understood that there are exterior signs which conflict with the easement of party wall, when, among other circumstances, the entire wall is built on one of the lots and not on the line dividing the two adjoining parcels; when the dividing wall, being constructed of stone and cement, has stones projecting at intervals from the surface on one side only and not on the other; and when it supports joists, beams, floors, and the roof timbers of one of the houses but not of the adjoining building.

The record shows it to have been duly proven that the enclosing wall of Lot No. 2 of the plan Exhibit A, belonging to the applicants, is much higher than the adjoining building of the objectors; that along the top of the said wall there is a gutter which catches the rain water from the eaves of the roof of the applicants' building and carries it thence to Calle Juan Luna through an iron pipe fastened to the said wall; that one-half of the top of the said wall is covered by the roof of the applicants' building; that the supports of the said wall project toward the side of the applicants' land and that none of the buttresses are on the side of the objectors' lot; that the stones of the wall in dispute are bound or inset in the rear enclosing wall of the applicants' property in such wise that the two walls that inclose the lot form but a single construction, the exterior signs of which show that the wall in question

is not a party wall, but that it forms a part of the applicants' building and belongs to them.

Besides the signs just referred to, the evidence also shows that on the objectors' land and flanking the disputed wall there is another and lower wall which has no connection with the one in question. Cayetano Argiellles, a master builder, who climbed to the top of the wall in question and examined it, testified that the aforesaid drain caught the rain water from the eaves of the applicants' roof, and that from the outside the division or space between the applicants' wall and the wall on the objectors' land could be seen; that the lower part of this latter wall had two archlike hollows; that according to the testimony of the objector, Irineo Mendoza, the latter wall was that of an old building that had belonged to the said deceased and was destroyed by an earthquake; and that in the rear of the objectors' land were the ruins of a wall which had also flanked the wall in dispute, and these ruins, according to the said witness Mendoza were what was left of the wall of a latrine formerly existing there.

These exterior signs contrary to the existence of a party wall easement cannot be offset by the circumstance that the disputed wall projects into Calle Juan Luna 74 centimeters farther than the applicants' building, and neither can the fact that the face of this projecting wall is on the same street line as the objectors' building, for the reason that, in view of the said signs contrary to the existence of the easement of party wall, the projection of the wall does not prove that it was a party wall belonging in common to the applicants and the objectors and that the latter shared in the ownership thereof.

The objectors have not proved that a part or one-half of the wall in litigation was erected on the land that belonged to the deceased Lorenza Alburo. The fact that the owners of the objectors' property may have surreptitiously inserted some of the timbers or joists of their building in the wall belonging to the applicants is not enough to convert this latter into a party wall, when there are so many exterior signs to indicate the exclusive ownership of the wall and to conflict with the existence of the easement that the objectors endeavor to establish. The wall in litigation is fully proven by the record to belong exclusively to the applicants.

All of the applicants' properties, including the wall in question, should therefore be registered.

For the foregoing reasons the judgment appealed from is affirmed, but the decree of registration of the property designated as Lot No. 2 shall include the disputed wall as belonging exclusively to the applicants, and that part of the judgment appealed from in which it was held that the said wall is a party wall is hereby reversed; without special finding as to costs. So ordered.

Arellano, C.J., Johnson, Carson, Moreland, Trent, and Araullo JJ., concur.

Judgment modified.

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