

GLICERIA MARELLA ET AL., PETITIONERS AND APPELLANTS, VS. ELIAS AGONCILLO, OBJECTOR AND APPELLEE.

G.R. No. 10571. October 10, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

This appeal presents two questions only:

- Whether or not the lower court committed an error in excluding (a) a strip of land composed of 300 square meters, and (b) a public road 3 meters in width from lot No. 24. Lot No. 24 is represented by plan Exhibit G and is as follows:

(see image on Phil. Rep. Vol. 36 p.983)

- Whether or not one of several joint petitioners for the registration of land under the Torrens system may have a portion of the land registered as his sole and separate property.

In their first assignment of error the appellants alleged that the lower court erred in excluding the 300 square meters along the line 11-12 in favor of Elias Agoncillo. This assignment of error presents a question of fact only. The lower court found that a preponderance of the evidence supported the claim of Elias Agoncillo. We have made a careful examination of the evidence adduced concerning the right of Elias Agoncillo; and while there is some conflict in the same, we think that such evidence fairly preponderates in favor of the conclusions of the lower court.

The second assignment of error relates to the first, in that the lower court did not indicate what was the form of the said 300 square meters. Examining plan Exhibit G, we find that the line 11-12 is 162.72 meters long. That being true, and the 300 meters in question lying parallel with said line 11-12, its width would be something less than 2 meters. The lower court ordered that the plan Exhibit G be amended. In the amendment the exact width of the said 300 square meters may be easily ascertained and established.

The third assignment of error relates to the exclusion of "un paso de unos tres metros de ancho" along the lines 8, 9, 10, 11, and 12 of said plan Exhibit G. The lower court found from the evidence that a preponderance of the same clearly showed the existence of said "callejón" or road. After a careful examination of the evidence adduced pro and con, we are convinced that the lower court made a careful estimation of the same. An examination of the record discloses that there existed from time immemorial between the lands of the petitioners and the adjoining lands from points 8 to 12 of lot No. 24, a passage both for pedestrians and vehicles; that said passage formed the boundary line between the property of the petitioners and that of Anastasio Aniversario and Elias Agoncillo; that its width was about three meters; that there existed many signs of the existence of said "callejón," for example, camanchille trees are found on both sides of the same, as well as plants known as "reymoras." See declarations of Elias Agoncillo, Mariano Admana, Pedro Espinosa, and Domingo Mercado. Plan Exhibit G was prepared and presented by the petitioners. An examination of that plan discloses that the "callejón" in question is therein

represented; that the west side of said "callejón" from points 8 to 10 is represented by the black lines between points 8, 9, and 10, while the east side is represented by a dotted line running parallel with the first, beginning from an unmarked point east of point 8 and ending at an unmarked point southeast of point 10; that the north side of the "callejón" between points 10 and 11 is represented by the black line between said two points, while the south side is represented by a dotted line beginning from an unmarked point southeast of point 10 and ending at an unmarked point south of point 11. The plaintiffs admit that one of said "reymoras" plants is located 3 meters north of point 11. The surveyor who prepared plan Exhibit G established the line marking the boundaries of the "callejón" by using the trees and plants above mentioned as a guide. In our opinion the evidence produced by the petitioners on the trial is not sufficient to show that said "callejón" was a part of lot No. 24. The existence of the "callejón" was established by the declaration of several witnesses. The title deeds presented by the petitioners failed to show that their lands covered said "paso de unos tres metros de ancho." The evidence adduced fails to show by a preponderance that the petitioners were the owners of the land covered or occupied by said "callejón."

In the fourth assignment of error, the appellant Glicería Marella alleges that the lower court committed an error in not decreeing the registration of said lot No. 24 in her name alone. An examination of the petition presented by the plaintiffs discloses the fact that they asked for the registration of said parcel of land in the name of all of them jointly. No especial request for the registration of lot 24 was made in favor of Glicería Marella. There is no allegation in the petition to the effect that she was the sole and separate owner of said lot. Neither does it appear that the application was amended so as to include an allegation that she was the sole and separate owner of said lot. If Glicería Marella desired to register said lot in her own name as her sole and separate property, she should have filed a petition alone for that purpose. (*Tecson vs. Corporacion de PP. Dominicos*, 19 Phil. Rep., 79; *City of Manila vs. Lack*, 19 Phil. Rep., 324.)

In the case of *Lim Cumpao vs. Rodriguez* (24 Phil. Rep., 149), we held that the petitioners could not, by an agreement among themselves, in an action for the registration of land under the Torrens system, have the land registered in their several names. Of course, the foregoing conclusion could not prohibit the petitioners from partitioning the land among themselves after the registration under the Torrens system, either by a mutual agreement or by some judicial proceedings brought for that purpose.

After a careful examination of the entire record, we are fully persuaded that the judgment of the lower court should be and is hereby affirmed, with costs. So ordered.

Arellano, C. J., Araullo, Street, and Malcolm, JJ., concur.

Judgment affirmed.

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