

THE MUNICIPALITY OF DUMANGAS, ILOILO, APPLICANT AND APPELLEE, VS. THE ROMAN CATHOLIC BISHOP OF JARO, OBJECTOR AND APPELLANT.

G.R. No. 10778. March 29, 1916

Ponente: TORRES, J.

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TORRES, J.:

This appeal by bill of exceptions was raised by counsel for the Roman Catholic Bishop of Jaro from the judgment of December 22, 1914, wherein the judge of the Court of First Instance ordered the inscription in the registry of property in the name of the applicant municipal corporation, of lot 3 of parcel 3, of lot 2 of parcel 5, and of lot 1 of parcel 4, and therefore disallowed the objector's adverse claim with respect to said lot 1 of parcel 4.

By a written application of November 1, 1913, counsel for the municipality of Dumangas, Province of Iloilo, petitioned the Court of First Instance of said province, in conformity with the law, for the registration of six parcels of land of which said municipality claimed to be the absolute owner. These lands are situated in the barrio of Balabag of the pueblo of Dumangas, Iloilo; their description and boundaries are given in detail in the plans and technical descriptions which were made a part of the application, and they contain a total area of 41,815 square meters. The applicant alleged that it had acquired said lands by possession dating from time immemorial; that it was occupying one of said parcels as a public market, the rest of them being unoccupied, etc., etc.

The application for registration was opposed by the Director of Lands, several private parties, and the Roman Catholic Bishop of Jaro who, in a writing of December 8, 1914, set forth that he objected to the registration of lot 2, described in the technical plan Exhibit A, and to that of lot 1 of parcel 4, specified in detail in the plan Exhibit B. He stated that his objections were based on the ground that said lots absolutely and exclusively belonged to the Roman Catholic Apostolic Church, which had been in quiet and peaceable possession of same since time immemorial, and therefore prayed that the petition for registration be denied.

During the hearing of this case, the applicant municipality requested that there should be stricken out of its application for registration certain parcels of land mentioned in its verbal petition, found on page 152 of the record. For this reason all the oppositions that had been filed with respect to those portions were considered withdrawn, save that of the Roman Catholic Bishop of Jaro with regard to lot 1 of parcel 4. After the close of the trial the court rendered the judgment aforementioned, to which counsel for the objector excepted and from which after taking the proper legal steps, he duly appealed.

In this case the only issue raised and submitted for our decision is whether the applicant municipality of Dumangas, Iloilo, is or is not entitled to have inscribed in its name in the registry of property lot 1 of parcel 4, which lot, according to the application and technical plan, Exhibit B, contains a total area of 2,183 square meters and is adjoined on the northeast by lands of the Roman Catholic Church, on the southeast, by lands of the same Church and by those of Crisostomo Divinagracia, and on the southwest and northwest, by streets without names.

The record shows it to have been duly proven that the disputed lot 1 of parcel 4, is adjacent to the same wall that

forms the side of the church of the pueblo of Dumangas; that in said wall or partition there is a side door through which the faithful pass in order to enter the church, and that in order to do so they are compelled to cross the land in question. The applicant municipality claims to be the exclusive owner of the said lot 1, while the objector, the Church, also alleges itself to be the owner, inasmuch as it has been exercising acts of ownership over the said property; that the applicant's contention is unfounded, in that it maintains that said church of Dumangas was constructed on the very edge of the land belonging to the church, without leaving a reasonable space for the use of the faithful, who are accustomed to enter the building by means of said door; and that, inasmuch as its own lands lie on the other side of the church, the most logical thing would have been for it to have built the church in the middle of its own land.

However reasonable may be the contention of the objecting corporation, the evidence does not justify its claim, inasmuch as the record shows it to have been conclusively proven that the municipal government of the pueblo of Dumangas has been in possession of the lot in question for more than thirty years, and during this period of time has performed thereon acts of indisputable ownership, such as that of erecting a flag-staff for the use of the municipality and that of using said land as a corral for branding cattle; as a public square, it served as a place for posting the lists of persons called up as military conscripts and also as a place for the recognition or identification of malefactors killed by the guardia civil, and it was here where on holidays small mortars were placed for firing salutes. After the revolution, the applicant municipality constructed on said land a building that served first as a theatre, then as a school, and finally as a cockpit. On none of these occasions did the Church object to or oppose such acts of the applicant municipality during the former Spanish or the present American sovereignty. The record also shows that the disputed land is now occupied by a billiard hall and by several houses belonging to private parties who pay a rental to the municipality of Dumangas; that the billiard hall was erected by a concessionary who obtained the necessary permit from said municipality of Dumangas itself, in 1912, without opposition on the part of the objector to these acts of ownership. These facts are proven by the testimony of Quintin Salas, 44 years of age, who says that since he was 7 years old, he has known that the land in litigation belonged to the municipality of Dumangas, and by that of Celestino Dominado, 52 years of age, who stated that from the time of his earliest recollection he has known that the applicant corporation was the owner of the disputed property. The weight of this testimony was not over-balanced by that of the witnesses presented by the adverse claimant.

The circumstance that the priests in charge of the parish church of Dumangas consented to the performance by the municipal council of said pueblo of acts of possession and ownership over the lot of land in dispute, without their having protested against and objected to the same, clearly shows that the parish church did not then consider that it had a right to the portion of land it now claims, and for this reason we accept the conclusions of fact contained in the judgment appealed from. Besides; it must be remembered that the trial judge had an opportunity to see the witnesses, to observe their manner of testifying and to determine their relative credibility; and the weight of evidence does not always lie on the side of the party who presents the most witnesses.

The record shows that the church of the pueblo of Dumangas was constructed in or about the year 1887; that its wall on the southeast side adjoins the building lot in question ; and that since the construction of the church there has been a side door in this wall through which the worshippers attending divine service enter and leave, they having to pass over and cross the land in question. It is therefore to be presumed that the use of said side door also carries with it the use by faithful Catholics of the municipal land over which they have had to pass in order to gain access to said place of worship, and, as this use of the land has been continuous, it is evident that the Church has acquired a right to such use by prescription, in view of the time that has elapsed since the church was built and dedicated to religious worship, during which period the municipality has not prohibited the passage over the land by the persons who attend services customarily held in said church.

The record does not disclose the date when the Government ceded to the Church the land on which the church building was afterwards erected, nor the date of the laying out of the adjacent square that is claimed by the municipality and on which the side door of the church, which is used as an entrance by the people who frequent this building, gives. There are good grounds for presuming that in apportioning lands at the time of the establishment of the pueblo of Dumangas and in designating the land adjacent to the church as a public square, this latter was impliedly encumbered with the easement of a right of way to allow the public to enter and leave the church—a case provided for by article 567 of the Civil Code—for the municipality has never erected any building or executed any work which would have obstructed the passage and access to the side door of the church, and the public has been enjoying the right of way over the land in question for an almost immemorial length of time. Therefore an easement of right of way over said land has been acquired by prescription, not only by the church, but also by the public which, without objection or protest, has continually availed itself of the easement in question.

For the foregoing reasons, by which the errors assigned to the judgment appealed from have been refuted, said judgment should be, as it is hereby, affirmed. The land in litigation shall, however, be understood to be burdened with an easement of right of way to allow passage to and from the side door of the church of Dumpings, to such extent as may be necessary for the transit of persons and four-wheeled vehicles. No special finding is made as to costs. So ordered.

Johnson, Moreland, Trent, and Araullo, JJ., concur.

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