

MARIANO DE LOS REYES, PLAINTIFF AND APPELLEE, VS. PABLO RAZON ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 12464. August 20, 1918

Ponente: FISHER, J.

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FISHER, J.:

This is an appeal from a judgment in favor of plaintiff in an action of ejectment. Defendants excepted, moved unsuccessfully for a new trial, excepted to the order denying their motion, and removed the cause to this court by bill of exceptions.

It is averred in the amended complaint that plaintiff is the owner of the land here in question, and that he has been unlawfully deprived of its possession by defendant. These averments are denied by the answer and it is alleged on behalf of the defendant Liongson that he is the lawful owner of the land, and that the title upon which plaintiff relies was obtained by deceit and in fraud of the true owner of the property.

As proof of his title to the land here in dispute plaintiff offered in evidence a certificate of title issued by the register of deeds of the Province of Tarlac pursuant to section 122 of the Land Registration Act and chapter one of Act No. 926, and the acts supplemental thereto, governing the homesteading of portions of the public domain, from which it appears that on the 23d day of August, 1913, the Governor-General of the Philippine Islands granted to plaintiff a homestead patent to the tract of land described in his complaint. It was admitted in open court that plaintiff's witnesses would testify that the defendants took possession of the land in question in May, 1915, and continue to be in possession thereof; and that the annual revenue from the land is P250.

Plaintiff then rested. Defendants offered in evidence a registered possessory information, issued in 1895 to one Juan Ysais, and which, it is contended by defendant, included in the larger tract therein described, the land described in plaintiff's homestead patent. They also offered documentary proof tending to show that the rights of Ysais to the land had been conveyed to them. Defendants then sought to prove by the testimony of witnesses that plaintiff had been in possession of the land during the proceedings leading up to the grant of the homestead patent as a mere tenant of defendants' grantors, and had obtained the patent surreptitiously and in fraud of defendants' grantors. This evidence was rejected by the trial court upon the ground that the certificate of title was conclusive proof of the ownership of the land and that no evidence, oral or documentary, tending to show title in any other person than the registered owner was admissible.

It will be noted that one of the averments of the special defense set up by the answer is that the title upon which plaintiff relies was obtained by deceit, in fraud of the true owner of the land. The case, therefore, squarely presents the issue as to whether such a certificate of title as that upon which plaintiff relies is as incontestable as are those based upon decrees of the Court of Land Registration or of the Courts of First Instance rendered in land registration cases.

It is settled conclusively in this jurisdiction that the titles issued by virtue of final decrees of the Court of Land Registration or of the Courts of First Instance in accordance with the provisions of the Land Registration Act (Act

No. 496) are conclusive and binding upon all the world. But the proceedings by which the title to land is determined in the courts under that act are judicial. Process is served by publication upon all persons who may have an interest in the land, and they are given an opportunity to appear and oppose the petition for registration if they desire to do so. The action is one in rem, and the court acquires jurisdiction over the res by the service of its process in the manner prescribed by the statute. (Tyler vs. Court of Registration, 175 Mass., 71; City of Manila vs. Lack, 19 Phil. Rep., 324; Grey Alba vs. De la Cruz, 17 Phil. Rep., 49; Legarda and Prieto vs. Saleeby, 31 Phil. Rep., 590; American Land Co. vs. Zeiss, 219 U. S., 47.)

The proceedings by which titles to portions of the public domain are granted to homesteaders in accordance with the provisions of the Public Land Act, on the contrary, are purely administrative.

Assuming that the statements of the applicant for a homestead are false and that the land to which he is endeavoring to obtain title is not in fact unoccupied public land, but is the private property of some other person, are the rights of the lawful owner of the land divested by the issuance and registration of the patent if he fails to appear before the Director of Lands to contest the issuance of the patent?

The provisions of the Public Land Act which pertain to the matter now under consideration are to be found in sections 2, 3, 5, 7 and 8. Section 2 requires the Director of Lands, upon receipt of a homestead application to "Summarily determine, by inquiry of the Chief of the Bureau of Forestry, and from the available land records, whether the land described is prima facie subject under the law to homestead settlement, and if he shall find nothing to the contrary, the applicant * * * shall be permitted to enter the quantity of land specified." Section 3 provides that in not less than five nor more than eight years from the date of the filing of the application the applicant may make proof, by two credible witnesses, that he has resided upon and cultivated the land for the term of five years immediately succeeding the application. Section 5 authorizes and requires the Director of Lands to cancel the homestead entry if it is made to appear to him, upon notice to the homesteader, that "the land entered is not under the law subject to homestead entry * * * and the land thereupon shall become subject to disposition as other public lands of like character." Sections 7 and 8 are as follows:

"Sec. 7. Before final proof shall be submitted by any person claiming to have complied with the provisions of this chapter, due notice, as prescribed by the Chief of the Bureau of Public Lands, with the approval of the Secretary of the Interior, shall be given to the public of his intention to make such proof, stating therein the time and place, and giving a description of the land and the names of the witnesses by whom it is expected that the necessary facts will be established.

"Sec. 8. Any person may file an affidavit of contest against any homestead entry, charging that the land entered was not unoccupied, unreserved, or unappropriated agricultural land at the time of filing the application, alleging disqualification of the entryman, noncompliance with law as to residence or cultivation, or any other matter which, if proven, would be just cause for the cancellation of the entry, and upon successful termination of the contest, the contestant, if a qualified entryman, shall be allowed a preference right of entry for sixty days from said date.

"The Chief of the Bureau of Public Lands or any public official becoming aware of the existence of any of the grounds above stated, for impeaching or canceling the entry, may file formal complaint against the entry on any such ground which, if proven, shall cause the cancellation of the entry."

It will be observed that, while provision is made for notice to the public of the intention of the homesteader to apply for a patent upon final proof of occupation and cultivation of the land, and for the hearing of objections to the application upon various grounds, including the contention that the land in question was not "unoccupied" at the time of filing the application, the statute nowhere undertakes to declare that the decision of the Director upon

such contest shall be conclusive, or that the failure of the real owner to contest the application shall have the effect of forfeiting his title by making the director's decision as to the public character of the land final and conclusive. The provisions of the Public Land Act (Act No. 926) in this respect are similar to those by which title to the public domain in the United States is granted to settlers. But it has never been held that the proceedings in the United States Land Office which lead up to the issuance of a patent have the effect of divesting prior valid titles. On the contrary, it has been expressly decided that they have no such effect. In the case of *Best vs. Polk* (85 U. S., 112 at p. 117), the Supreme Court of the United States said:

"It has been repeatedly held by this court that a patent is void which attempts to convey lands that have been 'previously granted, reserved from sale, or appropriated.' (*Stoddard vs. Chambers*, 2 How., 284; *U. S. vs. Arredondo*, 6 Pet, 728; *Reichart vs. Felps*, 6 Wall., 160; 73 U. S., XVIII, 849.) 'It would be a dangerous doctrine (says the court in *New Orleans vs. U. S.*, 10 Pet., 731) to consider the issuing of a grant as conclusive evidence of right in the power which issued it. On its face it is conclusive, and cannot be controverted; but, if the thing granted was not in the grantor, no right passes to the grantee. A grant has been frequently issued by the United States for land which had been previously granted, and the second grant has been held to be inoperative.'"

In the case of *Northern Pac. R. Co. vs. McCormick* (72 Fed. Rep., 736), the Circuit Court of Appeals for the Ninth Circuit said:

"The decisions in the land department in contested cases are conclusive only as to matters of fact which come within their jurisdiction, and a patent is not evidence of title to land which was not subject to disposition by the United States. (*Barden vs. Railroad Co.*, 154 U. S., 327; 14 Sup. Ct, 1030; *Best vs. Polk*, 18 Wall., 112; *Morton vs. Nebraska*, 21 Wall., 660; *Sherman vs. Buick*, 93 U. S., 209; *Wright vs. Roseberry*, 121 U. S., 488; 7 Sup. Ct, 985; *Mining Co. vs. Campbell*, 135 U. S., 286; 10 Sup. Ct., 765.)"

The same opinion is again clearly enunciated in the recent cases of *Wright vs. Roseberry* (121 U. S., 488, 519), and *Davis vs. Wiebbold* (139 U. S., 507, 529). In *Wright vs. Roseberry*, *supra*, the court said:

"The doctrine that all presumptions are to be indulged in support of proceedings upon which a patent is issued, and which is not open to collateral attack in an action of ejectment, has no application where it is shown that the land in controversy had, before the initiation of the proceedings upon which the patent was issued, passed from the United States. The previous transfer is a fact which may be established in an action at law as well as in a suit in equity. As we said in *Smelting Co. vs. Kempt* (104 U. S., 641 [26; 876]) ; 'When we speak of the conclusive presumptions attending a patent for lands, we assume that it was issued in a case where the department had jurisdiction to act and execute it; that is to say, in a case where the lands belonged to the United States and provision had been made by law for their sale. If they never were public property, or had previously been disposed of, or if Congress had made no provision for their sale, or had reserved them, the department would have no jurisdiction to transfer them, and its attempted conveyance of them would be inoperative and void, no matter with what seeming regularity the forms of law may have been observed. The action of the department would, in that event, be like that of any other special tribunal not having jurisdiction of a case which it had assumed to decide. Matters of this kind, disclosing a want of jurisdiction, may be considered by a court of law. In such cases the objection to the patent reaches beyond the action of the special tribunal, and goes to the existence of a subject upon which it was competent to act.'"

"And again, in the same case, we said (p. 646) : 'A patent may be collaterally impeached in any action, and its operation as a conveyance defeated, by showing that the department had no jurisdiction to dispose of the lands; that is, that the law did not provide for selling them, or that they had been reserved from sale or dedicated to special purposes, or had been previously transferred to others. In establishing any of these particulars the

judgment of the department upon matters properly before it is not assailed, nor is the regularity of its proceedings called into question; but its authority to act at all is denied, and shown never to have existed.'

" 'There are cases,' said Chief Justice Marshall, 'in which a grant is absolutely void; as when the State has no title to the thing granted, or when the officer had no authority to issue the grant. In such cases the validity of the grant is necessarily examinable at law.' (Polk's Lessee vs. Wendal, 13 U. S., 85; 9 Cranch, 87, 99 [3; 665, 669]). Indeed, it may be said to be common knowledge that patents of the United States for lands which they had previously granted, reserved for sale, or appropriated are void. (Easton vs. Salisbury, 62 U. S., 426; 21 How., 426 [16; 181]; Reichert vs. Felps, 73 U. S., 160-166; Wall., 160 [18; 849]; Best vs. Polk, 85 U. S., 112-120; 18 Wall., 112 [21; 805]). It would be a most extraordinary doctrine if the holder of a conveyance of land from a State were precluded from establishing his title simply because the United States may have subsequently conveyed the land to another, and especially from showing that years before they had granted the property to the State, and thus were without title at the time of their subsequent conveyance. As this court said in New Orleans vs. United States (10 Pet., 663, 731): 'It would be a dangerous doctrine to consider the issuing of a grant as conclusive evidence of right in the power which issued it. On its face it is conclusive, and cannot be controverted; but if the thing granted was not in the grantor, no right passes to the grantee. A grant has been frequently issued by the United States for land which had been previously granted, and the second grant has been held to be inoperative.' "

In Davis vs. Wiebbold, supra, the Supreme Court emphatically reiterated its former statements of the rule, saying:

"We agree to all that is urged by counsel as to the conclusiveness of the patents of the land department when assailed collaterally in actions at law. We have had occasion to assert their unassailability in such cases in the strongest terms, both in St. Louis Smelting, etc., Co. vs. Kempt (104 U. S., 636, 640-646), and in Steel vs. St. Louis Smelting, etc., Co. (106 U. S., 447, 451, 452). They are conclusive in such actions of all matters of fact necessary to their issue, where the department had jurisdiction to act upon such matters, and to determine them; but if the lands patented were not at the time public property, having been previously disposed of, or no provision had been made for their sale, or other disposition, or they had been reserved from sale, the department had no jurisdiction to transfer the land, and their attempted conveyance by patent is inoperative and void, no matter with what seeming regularity the forms of law have been observed."

There being nothing in the Public Land Act to indicate that it was the purpose of the Legislature to vest the Director of Lands with authority to divest valid outstanding private titles by his decision that the land embraced within the homestead application is public, and that a patent should issue to the patentee, what reasons are there to support the conclusions that a patent issued by the Director of Lands here has any greater effect than a patent issued by the Land Office in the United States? As we have seen, it is unquestionable that in the United States the patentee gets a good title if the land was really part of the public domain, and therefore subject to disposal by the Government, but that, on the contrary, if it transpires that the Government had no title to the land when the patent was issued, no title passes to the patentee by the issuance of the patent. The procedure under our Public Land Law being substantially the same as that prescribed by similar statutes in the United States, and the purpose being identical, the conclusion is irresistible that the grantee of such a patent, up to the time of its execution by the Governor-General, is in no better position than is the holder of such a patent in the United States, and that if the land to which the patent relates was not in fact public, but was the property of a third person, the rights of that person have not been divested or affected.

When a patent to public land in the United States is signed on behalf of the Government by the official authorized by the statute to do so, it is delivered to the patentee, and the legal title to the land, so far as it was subject to disposition by the Government, vests in the grantee from the date of the execution of the patent, and he is entitled to have the patent delivered to him. But the Philippine Public Land Law (sec. 73, Act No. 926; sec. 122, Act No.

496) directs that the patent, after execution, shall not be delivered by the Governor-General to the patentee, but shall be delivered to the register of deeds of the province where the land lies, and section 122 of the Land Registration Act (No. 496) makes it the duty of that official to register the patent "like other deeds" and to issue to the patentee a duplicate certificate of the entry in the register. It is declared that the act of registration, not the issuance of the patent, shall be "the operative act to convey and affect the land * * *" and that upon the registration of the patent, and the issuance of the duplicate certificate of title to the patentee, "such land shall be registered land for all purposes under this Act."

The full text of this section of the Land Registration Act is as follows:

"SEC. 122. Whenever public lands in the Philippine Islands belonging" to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument, before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate only as a contract between the Government and the grantee and as evidence of authority for the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the lands, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration and issue of the certificate and owner's duplicate such land shall be registered land for all purposes under this Act."

The trial judge was of the opinion, and so held, that the effect of the registration of the homestead patent and the issuance of a duplicate certificate of title to the patentee was to vest in him an incontestable title to the land, precisely as though his ownership had been determined by the final decree of a competent court under the Land Registration Act, and that the title so issued is absolutely conclusive and indisputable.

We are of the opinion that section 122 of the Land Registration Act is not susceptible of this interpretation.

It will be observed that the section under consideration expressly determines the class of land to which its operation is limited. This is declared to be "public land * * * belonging to the Government * * *."

There is nothing in the section to warrant the conclusion that it was intended to apply to private property erroneously included in a government patent, as to which the Government has no right at all. The statement in the last paragraph of the section that upon the registration of the patent and the issuance of the title "such land shall be registered land for all purposes under this Act" must be read in the light of the antecedent language. The words "such land" are evidently used to refer to the only class of land to which the section in terms refers, which is, "public land * * * belonging to the Government * * *." As to such land the issuance of the certificate vests an absolute title in the homesteader, but as to land which is not public and does not belong to the Government, it can have no such effect.

This conclusion is strengthened by consideration of the fact that there is no express declaration in section 122 of any intention on the part of the Legislature to give to the act of registration of the patent—a mere ministerial act by an administrative official—the effect of divesting all outstanding titles, or to convert a void patent into a valid title by the mere act of registration.

The incontestable and absolute character of the Torrens titles issued after judicial proceedings under the Land Registration Act is conferred by the language of sections 38 and 39. Section 38 declares that the "decree of registration" entered by the court shall bind the land and "be conclusive upon and against all persons." Section 39 establishes the incontestable validity of certificates of title issued "in pursuance of a decree of registration." Nowhere in these sections or elsewhere in Act No. 496 is it declared that similar conclusive validity is to attach to certificates not based upon a "decree of registration." Certainly the mere ministerial act of transcribing a homestead patent in a book and issuing a certified copy of the entry is not such a decree.

We are, therefore, of the opinion, and so hold, that neither the patent issued by the Director of Lands to applicants for homesteads/nor the certificate of title issued by the register of deeds upon the patent are conclusive with respect to the title of the patentee as against private individuals claiming the land against the patentee "under title anterior to the issuance of the patent, although the possession of such a certificate carries with it the presumption that the land to which it relates was public land at the time of the issuance of the patent to the original holder and casts upon the opposing litigant the burden of overcoming that presumption, as well as any unfavorable inferences to which his contentions may be open should he have been guilty of laches in the assertion of his rights.

The decision of the lower court is reversed, and the case is remanded for a new trial. No costs will be allowed on this appeal. So ordered.

Torres, Johnson, Street, Malcolm, and Avanceña, JJ., concur.

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