

VICTOR DE LOS REYES, PLAINTIFF AND APPELLEE, VS. PIO PASTORFIDE, DEFENDANT AND APPELLANT.*G.R. No. 14516. June 30, 1961*

Ponente: BARRERA, J.

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In a complaint filed on August 15, 1950, with the Court of First Instance of Basilan, Victor de los Reyes, registered owner of Lot No. 52 (Zamboanga de Basilan Cad. No. 74) situated in Lamitan, Basilan City, charged Pio Pastorfide with having illegally occupied a portion of his (Reyes) aforementioned lot, with an area of 1 hectare more or less, since August, 1945, continuing such Unlawful occupation notwithstanding his demand for the return thereof, and that defendant Pastorfide, appropriated for himself the fruits of the coconut trees planted thereon, at the rate of 1,000 nuts per quarter, with a total value of P1,200.00. It was, therefore, prayed that defendant be ordered to vacate the property and possession be restored to plaintiff; to pay a monthly rental of P5.00, for the use of the land, from August, 1945 to May, 1950 or a total of P290.00; to deliver the sum of P1,200.00 realized from the sale of the nuts, with legal interest thereon from the filing of the complaint to the date of actual payment; to pay attorney's fees in the sum of P300.00 and costs.

Defendant, in his answer, claimed ownership of the land in question, alleging that he acquired the same through purchase from the government; that he had been in open, public and continuous possession thereof since 1927, in the concept of an owner and without interruption from anybody; and that all existing improvements on the land were introduced by him.

On October 10, 1957, the court, finding that the lot in question (a portion of Lot No. 52, Zamboanga de Basilan Cad. No. 74) was covered by a torrens title in the name of plaintiff, rendered judgment for the latter, ordering defendant to vacate the same, pay plaintiff the sum of P1,470.00 as back rentals for the occupation and use of the land for the period from August, 1945, to October, 1957, and a monthly rental of P10.00 until he vacates the same, reimburse, the sum of P220.00 spent for the re-survey of the property, and pay attorney's fees in the sum of P300.00, and costs. From this decision, defendant has directly appealed to us.

It has been duly established that the track of land occupied by defendant-appellant actually forms part of Lot No. 52, originally covered by OCT No. 330, issued in the name of Mora Amsia pursuant to a homestead patent granted to her in 1922, and currently covered by TCT No. 38-(T-1459) in the name of plaintiff-appellee, successor-in-interest of the original patentee (Exhs. A, B, and X). However, it also appears that notwithstanding such previous grant, the Bureau of Lands in 1935, acting upon the sales application of the defendant-appellant, sold after public bidding, the same lot to the latter who, accordingly, paid the required charges. This awarding of the land to appellant in 1935, however, conferred unto him no right, because said property, having been previously adjudicated to a patentee, who obtained a corresponding certificate of title therefor, had thus already become private property, was released from the control and supervision of the Director of Lands,^[1] and could no longer be the subject of another adjudication. In fact, defendant's Sales Application No. 18589 (E-3540) by virtue of which the lot was sold to him, was later ordered cancelled by the Director of Lands for being within the private

property of the plaintiff.

Neither could appellant's alleged adverse and continuous occupation of the property be the basis of the claim of ownership. The land having been brought under the operation of the torrens system, the same cannot be acquired by prescription or adverse possession. (Sec. 46, Act 496, as amended).

Defendant-appellant questions the decision of the lower court awarding back rentals for the occupancy of the lot. It having been established that plaintiff had been deprived of the use thereof, the trial court did not err in awarding a reasonable rent for the occupancy and utilization of the land in question. But defendant claims that he had introduced improvements consisting of 60 fruit-bearing coconut trees, and, therefore, is entitled to retain possession of the land until he is reimbursed for the value thereof. But this contention involves a question of fact and we can not go over the evidence to verify the truth of the claim of defendant that he really introduced these improvements. Indeed, the conclusion (although not categorical) of the trial judge is that defendant had made no improvement and that the coconuts were the plaintiff's. Said the court a quo:

"It is to be noted, however, that although the defendant in open court declared that he bought the portion of Lot 52 from Imam Jahal with the improvements sometime in July, 1927 and that title was given to him after the same was fully investigated, no such title, nor deed or transfer was exhibited by the defendant; that the certificate of title for Lot 52 was issued on November 13, 1922; that the sales application of the defendant is dated October 24, 1935; that the Bureau of Lands required defendant to file a sales application on July 1, 1935, the first payment made on May 27, 1935, the yearly installment payments were all in arrears; that Tax Declaration No. 1515 (in the name of defendant covering the lot in question) is only for P100.00 without indications of either the 60 coconut trees nor of the ricefield and neither the tax payments for 1949, 1950 and 1951 likewise indicated any additional improvements of coconuts and ricefield; and that the Tax Declaration No. 2468 showed ricefield unirrigated of 1.50 hectares assessed at P380.00 with no indication of other improvements and referred to therein that the same was reassessed from the anterior tax declaration."

Defendant-appellant also assails the correctness of the decision ordering him to pay the plaintiff the re-survey fee of P220.00, and attorney's fees. We agree with appellant on this point.

With respect to the re-survey fee, it may be gathered that the services of the surveyor were contracted by plaintiff for the purpose of determining the exact boundaries of his property (Lot No. 52). It is thus unfair that this expenditure, which was not even included in the complaint, be charged to another.

Similarly, attorney's fees can not be awarded to appellee simply because he established his ownership over the property in litigation. There being no proof to the contrary, it may be presumed that appellant's refusal to accede to appellee's demand, which led to the institution of the present case, was motivated by no other than an honest conviction or belief that he (defendant) had a valid cause under the law.

With the above modifications, the decision appealed from is hereby affirmed, without costs. So ordered.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon and Natividad, JJ., concur.

[1] Sumail vs. CFI of Cotabato, et al., 96 Phil., 946; 51 Off. Gaz., [5] 2413; Republic vs. Heirs of Ciriaco Carle, 105 Phil., 1231. Director vs. De Luna, 110 Phil., 28.

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