

DOLORES EVANGELISTA, ET AL., PLAINTIFFS AND APPELLANTS, VS. PERPETUO MENDOZA, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 15522. January 28, 1961

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal from an order of the Court of First Instance of Oriental Mindoro, dismissing plaintiffs' complaint.

It appears that on February 7, 1955, Dolores, Eufemia, Francisco, Felix, Simeon, Justina, Manuela, Rafael and Francisco, all surnamed Evangelista, filed in the court below a complaint against the Director of Lands and Perpetuo Mendoza for the annulment of the homestead application of the latter, it being alleged that the same covers a portion of land which is part of Lot No. 2443, Naujan Cadastre, Mindoro, Case No. 11, G.L.R.O. Record No. 953, which portion of land had been adjudicated in 1930 by the Court of First Instance of Mindoro to plaintiffs' predecessors in interest, Eugenio Evangelista and Petrona Lim, but that the Director of Lands subsequently refused to subdivide the lot in accordance with the court's decision. Answering the complaint, the Director of Lands claimed that Lot No. 2443 is of the public domain, over a portion of which defendant Mendoza filed his homestead application before the war; and that said application was approved and given due course in a regular manner. Defendant Mendoza, on the other hand, alleged in his answer that the homestead he applied for was disposable public agricultural land and the same was adjudicated to him after he had complied with all legal requirements for the acquisition of a homestead. Thereafter, plaintiffs amended their complaint to include Ruperta Bool de Robles, Wenceslao Bool and Mateo Macaraeg as defendants, the last named defendant being the purchaser of the land covered by the homestead. Perpetuo Mendoza filed another answer and Mateo Macaraeg also answered, but Ruperta Bool de Robles and Wenceslao Bool both defaulted.

After trial, during which plaintiffs presented evidence, the lower court granted the request of the Director of Lands and Macaraeg that they be granted 15 days to move for dismissal. These two defendants subsequently filed a joint motion to dismiss, with the homestead patent attached thereto, alleging that plaintiffs' complaint states no cause of action and that assuming the contrary to be true, the same has already prescribed. Defendant Mendoza in a separate motion also moved to dismiss the complaint, alleging the same grounds averred by the other defendants in their motions to dismiss.

Acting upon the motion to dismiss, the lower court, on September 27, 1958, dismissed the complaint. The dismissal was, however, not based upon any of the grounds alleged in the motion but on the ground that "plaintiffs did not introduce as evidence the homestead patent issued to Perpetuo Mendoza." Reconsideration of the order of dismissal having been denied, the plaintiff's appealed directly to this Court.

We find the appeal to be meritorious.

It is true that at the trial, plaintiffs-appellants did not present a copy of the homestead patent sought to be annulled. Defendants Director of Lands and Macaraeg have, however, attached said patent to their joint motion to dismiss,

making it part of their pleading and thereby rendering unnecessary the presentation thereof by plaintiffs. Even if appellants, therefore, failed to present the homestead patent at the trial, the lower court has, nevertheless, been afforded the chance to examine the same, it having been submitted as an annex to the motion to dismiss. In the circumstances, we do not think the lower court acted correctly in dismissing the complaint upon the ground stated in the order complained of.

Wherefore, the order of dismissal appealed from is hereby set aside and the case remanded to the lower court for further proceedings. Without pronouncement as to costs.

Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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