

CORPORACION DE PP. DOMINICOS, APPLICANT AND APPELLANT, VS. MARIA LAZARO, OBJECTOR AND APPELLEE.*G. R. No. 16077. September 10, 1921*

Ponente: STREET, J.

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The petitioner in this case, Corporacion de PP. Dominicos, instituted several years ago in the Court of Land Registration a proceeding to register the Hacienda de Navotas, a property of considerable extent owned by said petitioner and located in the barrio of Banculase, in the municipality of Navotas, Province of Rizal. Said proceeding was terminated favorably; to the petitioner, and a decree was entered registering said hacienda in its name, according to the plan of survey perfected and adopted in that proceeding. Among the parcels of land comprising the estate thus registered is the parcel K, which adjoins on its northeastern side a property owned by Maria A. Lazaro; and in making the official plan, according to which registration was effected in that proceeding, the Government surveyor laid down a straight line as the boundary between said parcel K and the property of Maria A. Lazaro, which line was so drawn as to connect directly two large and ancient stone monuments (mojones) located respectively at points 5 and 1 of plan A of the petitioner in the present proceeding, said line being identical with the line connecting point 37 with point 1 in the plan Exhibit 2 of Maria A. Lazaro.

After the registration of the Hacienda de Navotas had been thus accomplished, Maria A. Lazaro in the year 1915 proceeded to place barbed wire, mounted on bamboo stakes, along the line 5-1, as aforesaid. The representative or administrator of the petitioner thereupon discovered, so it is alleged, that the line 5-1 is not the true boundary in this area between parcel K of the petitioner and the property of Maria A. Lazaro, and that a mistake had been made in the survey used in the registration proceeding above-mentioned, whereby a strip, containing 2,338 square meters, and lying along the eastern side of line 5-1, had been inadvertently omitted. Accordingly the present proceeding was instituted to register said strip in the name of the petitioner. Opposition was made by Maria A. Lazaro, and the trial court having sustained the opposition, the petitioner appealed.

The petitioner claims that the true line between parcel K and the property of Maria A. Lazaro is not the straight line directly connecting the points 5 and 1 of the plan A but a sinuous line to the east thereof, coinciding approximately with the border of a Canaveral, lying on the premises of Maria A. Lazaro. In this connection it appears that the parcel K is low-lying land, covered by water in the rainy season, if not at all times, and used for a fishery. The low level exhibited in parcel K extends for a few meters eastward of the line 5-1, at which point the general level rises perceptibly and sharply, making it possible for bamboo plants to thrive; and the canaveral already referred to is located upon this ground, forming a higher fringe to the lower land.

The petitioner supposes itself to be the owner of all the low land, including the strip lying to the east of line 5-1, up to the crest of the rise and to the line formed by the margin of the bamboo grove. This contention is rested upon the claim of continuous possession by the petitioner for more than thirty years.

We are of the opinion that the claim of the petitioner cannot be sustained and that the trial judge committed no

error in sustaining the opposition. The two stone monuments at points 5 and 1 are of course conclusive as to where the true boundary was at the time beyond the recollection of living men when those monuments were placed; and it would be nonsense to suppose that the boundary between those points was then intended to follow the sinuous course now marked by the bamboo grove. There being no intermediate stone or natural monument between those points the connecting line must be taken to be a straight line.

What has actually happened since those monuments were placed is evidently this, namely, that as time has passed the water covering parcel K has gradually eaten away the margin of the higher ground, and this process of detrition has been assisted by the rains falling on the higher ground as well perhaps as by the action of cattle in passing to and fro between the water and the higher ground. The border of the canaveral has thus retreated until its present course coincides with the sinuous line which the petitioner now supposes to mark the true boundary. The retreat, however, of the canaveral did not confer title upon the petitioner to the area thus reduced to the lower level; nor is the case changed by supposing, as the petitioner claims, that it has exercised possession for more than thirty years over the questioned strip. Mere possession under these circumstances is ambiguous; and, as is well recognized, continued possession does not confer title unless it be adverse, and under claim of title exclusive of any other right (sec; 41, C. C. P.). The two stone monuments, standing as sentinels at points 5 and 1, served as a perpetual reminder of the true limits of the land of the petitioner, and it must be assumed that both proprietors of the two adjacent parcels intended to hold as owner to the true boundary and no further.

Judgment affirmed, with costs. So ordered.

Johnson, Araullo, Avancena, and Villamor, JJ., concur.

Judgment affirmed.

ON MOTION FOR RECONSIDERATION

December 13, 1921.

STREET, J.;

The attorney for the appellant has moved for a reconsideration of our decision of September 10, 1921, insisting that the applicant in this proceeding had acquired title to the strip of property in question by prescription and that such title had become perfected under the Spanish law before the Code of Civil Procedure came into effect. Considering the novelty of the case as well as importance of the question from the juridical point of view, it is believed that the discussion contained in the opinion of the court may be extended to advantage; and we shall accordingly supplement our former opinion, with a few observations designed to show that, regardless of the period of time during which the applicant corporation may have occupied this strip of land, it has not acquired a prescriptive title thereto either by extraordinary prescription under Spanish law, or by prescription for ten years under the Code of Civil Procedure (sec. 41).

It is not to be denied that the applicant corporation exhibits a documentary title, showing continued ownership of the Hacienda de Navotas in itself and one predecessor for a great length of time; and it may be admitted, as a matter of historical rather than practical interest, that this title dates from the year 1627. Certainly, the Dominican Fathers—here represented by the applicant "Corporacion de PP. Dominicos"—have owned this hacienda since 1843, when they acquired it from the College of Santo Tomas of Manila, whose title in turn is said to go back to 1627. But the document (Exhibit B), under which the present applicant holds, does not contain any detailed description of the boundaries or limits of said hacienda. All that is conveyed by said document is the "land composing the

hacienda known as Navotas." To discover what was conveyed under this general description it is necessary to have recourse to external evidence, the most important item of which, so far as relates to this controversy, consists of the two stone monuments (5 and 1) that have immemorially marked the limits of the hacienda along its line of contact with the land now claimed by Maria A. Lazaro.

It would be puerile in the extreme to pretend that the Hacienda de Navotas proper ever comprehended a foot of ground outside of the straight line connecting the points 5 and 1, or to say that the true boundary between those points was ever intended to be the sinuous line indicated by the canaveral to which reference is made in the opinion. Indeed, the applicant's own surveyors in making a plan of the said hacienda have uniformly plotted the boundary of the hacienda on the northeast side of parcel K as a straight line connecting points 5 and 1. Reasonably stated, the contention of the applicant must be understood to be that the applicant has acquired by prescription an independent title to the questioned strip by occupation and use in connection with the adjacent portion of the hacienda proper.

From an observation contained in the brief of the appellant corporation, it seems to be supposed that the case of the appellant can be advanced by pointing out defects in the proof of Maria A. Lazaro, the opponent, to show title to the controverted strip in herself. Chiticism of this sort directed against the position of an opponent in a registration proceeding is undoubtedly sometimes legitimate and effective; but it must be remembered that in the end the case of an applicant for registration depends upon whether he is able to show a satisfactory affirmative title in himself. Hence, where the basis of applicant's title is disclosed, it is a mere question of law whether affirmative ownership is proved for the purposes of registration; and in order to defeat the application the opponent is not required to prove title in himself.

As already indicated, the evidence submitted in this case must be interpreted as showing, first, that the Hacienda de Navotas is now and always has been bounded by a straight line on the northeast side of parcel K, which line is defined by ancient monuments 5 and 1; secondly, that parcel K is a flat, covered by water in the rainy season, if not at all times; thirdly, this flat is not confined strictly to parcel K, but extends irregularly for a short distance beyond that line, with the result that the submerged area, which constitutes the dominating feature of parcel K, takes in the questioned strip, having a Canaveral for its fringe; fourthly, that inasmuch as the flat covering parcel K has been occupied and used by the appellant corporation and its predecessors in interest, and inasmuch as the water covering this ground has not been restrained by an embankment of any sort along the line of the true boundary (5-1), it results that the appellant probably has used most of the questioned strip in connection with parcel K for more than thirty years. It is not to be admitted as a certain fact that the appellant has thus used all of the questioned strip for more than thirty years, because we are confident that the area of the submerged land, constituting the questioned strip, has not always been the same, and that it has been enlarged by the erosion and detrition of its borders, as explained in our former opinion. There can be no certainty, therefore, in asserting that the whole area now in dispute has been used in the same way for more than thirty years by the appellant and its predecessors in interest. But for the purpose of solving the problem before us, we shall assume such to be the case.

The only additional fact that remains to be noted is that there is no evidence tending to show that, apart from occupation and use, the appellant or its predecessors in interest ever did a single act which could be interpreted as an assertion of exclusive ownership of the questioned strip. No fence or other obstruction has at any time been placed by any of them along the sinuous border of the low-lying land,—no act done to impede the free ingress of other persons into the questioned area. But during all the long period of nearly three hundred years, since the estate came into existence as the Hacienda de Navotas, the stone monuments have stood at points 5 and 1, defining with undeniable certainty the true limits of the appellant's land. Primarily, of course, monuments are

placed on the boundaries of land as a means of protection against unlawful encroachment from others; but they also have the effect of inhibiting the owner from encroachment upon his own neighbor. The imprecation of Holy Writ rests upon the man that removeth his neighbor's land-mark (Deuteronomy XXVTI, 17); and such mark should be esteemed no less sacred by the man who places it than by his neighbor.

Moreover, it is obvious that the occupation of the disputed strip by the appellant and his predecessor in interest must have resulted in a measure from the absence of a breakwater along the true boundary, and the encroachment on the lands of the adjacent proprietor was in a sense casual or accidental.

Occupation of this character, totally unconnected with any positive act excluding the true owner, though continued indefinitely would not confer title; and the conclusion must be the same whether the question be considered with reference to article 1959 of the Civil Code or with reference to section 41 of the Code of Civil Procedure.

In article 1959 of the Civil Code, it is declared that ownership shall prescribe by uninterrupted possession for thirty years without the necessity of title or good faith; but even this provision must be applied in subjection to article 1942 of the same Code which declares that acts of a possessory character exercised by virtue of mere tolerance of the owner do not constitute possession. In other words, even for extraordinary prescription under the Civil Code occupation must be adverse, which implies in law an attitude of hostility to the right of the true owner. In *Cortes vs. Yu-Tibo* (2 Phil., 24, 38), this court, speaking through Mr. Justice Mapa, said:

"The provision of article 1942 of the Civil Code to the effect that acts which are merely tolerated produce no effect with respect to possession is applicable as much to the prescription of real rights as to the prescription of the fee, it being a glaring and self-evident error to affirm the contrary, as does the appellant in his motion papers. Possession is the fundamental basis of the prescription. Without it no kind of prescription is possible, not even the extraordinary. Consequently, if acts of mere tolerance produce no effect with respect to possession, as that article provides, in conformity with article 444 of the same Code, it is evident that they can produce no effect with respect to prescription, whether ordinary or extraordinary. This is true whether the prescriptive acquisition be of a fee or of real rights, for the same reason holds in one and the other case; that is, that there has been no true possession in the legal sense of the word."

Judged by the criterion of section 41 of the Code of Civil Procedure, the answer is equally decisive. By that section, before the prescriptive right can become effective, it must appear that the person asserting' the prescriptive title claimed to be owner and that the possession exerted by him was under a claim of title exclusive of any other right, and adverse to all other claimants.

It is well-settled in American law that, under a provision of this character, mere occupation and use, however long continued, will not suffice to confer the prescriptive title. (1 R. C. L., 705.) "Possession, no matter how long continued, is no bar to recovery by the true owner, if the party in possession entered upon the land without any claim of title, did not acquire nor assert title to the land at any time, nor claim to hold it adversely to the true owner." (*Baber vs. Henderson*, 156 Mo., 566; 79 Am. St. Rep., 540. To the same effect see *Smeberg vs. Cunningham*, 96 Mich., 378; 35 Am. St. Rep., 613; *Hess vs. Rudder*, 117 Ala., 525; 67 Am. St. Rep., 182.)

It is not to be denied that long continued occupation, accompanied by acts of a possessory character, affords in itself some evidence that possession has been exerted in the character of owner and under claim of right. But this presumption, if such it can be called, may be refuted by the conditions under which those acts are done. (1 R. C. L., 705.) In *Morse vs. Churchill* (41 Vt., 649), it appeared that the true boundary between two proprietors consisted of a straight line, having well-established corners. Along the general direction of this boundary, but in part not coinciding with it, one of the proprietors had built an irregular fence, apparently as convenience, determined by the topography of the ground, required. It was held that the conditions involved in this situation

were such as to rebut the presumption that occupation beyond the true line was under claim of right. Said the court: "It is true that, as a general rule, when one is shown to have been in possession for fifteen years, apparently as owner, and such possession is not explained or otherwise accounted for, it will be presumed to have been adverse. But this presumption may be rebutted by proof that the possession in its origin was not adverse, but permissive; and sometimes the condition of the property and the circumstances accompanying the occupancy itself will rebut the presumption that it was adverse or under a claim of right. In this case, both concur to rebut this presumption." (Morse vs. Churchill, 41 Vt., 649, 652.)

In the case under consideration it is very evident that the appellant and its predecessors in interest were occupying the questioned parcel, prior to 1915, not only without right in fact but without the slightest pretense of having any right. Prescription therefore has not become effective, and the application for registration was properly denied. Motion overruled.

Johnson, Araullo, Avancena, and Villamor, JJ., concur.

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