

FELIPE JUAN AND FAUSTINA CHUONGCO, APPLICANTS, VS. JUAN ORTIZ LUIS, PETITIONER AND APPELLANT; SANTIAGO GALLARDO ET AL., PURCHASERS AND APPELLEES.*G. R. No. 24701. August 25, 1926*

Ponente: STREET, J.

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These two cases involve a controversy over a strip of land located in the barrio of Poblacion, municipality of Jaen, Province of Nueva Ecija, separating two parcels admittedly belonging to the respective claimants, Juan Ortiz Luis and Gallardo Brothers. The parcel in question is in the shape of a wedge, resting on a short base constituting its southern boundary and extending to an acute apex more than 500 meters away. It has an area of precisely one hectare. Both the adjoining parcels, together with the questioned strip, were in times past owned by Sr. Ortiz Luis, who long ago sold the part west of the questioned strip to Leon Buhay Matias. The parcel thus sold had an area of 15 cavans of seeding palay, or about 31 hectares. Its boundary on the west consists of the stream called Sapang Nabao. A part of the eastern boundary of the same parcel is indicated by the straight line connecting the points 8 and 9 of Exhibit 1 of the defendant, the same being identical with the line connecting the points 12 and 14 of Exhibit A of the plaintiffs, in R. G. No. 24735. For the purpose of marking this boundary a hedge was planted, consisting of alibangbang, madre cacao, and anonas.

Many years ago Matias in turn sold the same lot to Felipe Juan and Faustina Chuongco, who in 1913 caused it to be surveyed and instituted proceedings for the registration of the same pursuant to the Land Registration Act. At the hearing of the petition in that proceeding Sr. Ortiz Luis appeared as a witness for the applicants; and no trouble was experienced by them in establishing their title to the main body of the land which was the subject of the application. However, the court found that in surveying the parcel the applicants had caused the western boundary line to be run along the middle of the bed of the Sapang Nabao; and on this point he sustained the contention of the fiscal, who represented the municipality, to the effect that the entire stream should be excluded from the lot. An order was accordingly entered requiring the applicants to submit an amended plan with a western boundary to be run along the eastern side of said stream. A surveyor was therefore called in; and a new line was run along the eastern bank of the stream in order to mark the western boundary to this part of the parcel. By this process the applicants lost about one hectare of land, and apparently with a view to recovering the loss on the other side of the parcel, they caused the surveyor to extend the plan on the east side so as to include the wedge-shaped parcel which is now in controversy. This was done by establishing the eastern boundary so as to run from point 12 to point 13, as indicated in Exhibit A. Sr. Ortiz Luis was cognizant of the making of this survey; and he protested that the land newly inclosed in the survey on the east belonged to him, being a part of the property which he had retained when he sold to Matias the larger parcel lying on the west. The questioned parcel is therefore shown in Exhibit A as "Lot A, claimed by Juan Ortiz Luis." Notwithstanding this protest, the amended plan was submitted to the court, and there being no opposition from the fiscal, said amended plan and the accompanying description were approved by the court in April, 1916. Thereafter the certificate was issued to

the applicants in the usual form. Sr. Ortiz Luis was not a party to the record in this proceeding, and he was given no notice of the motion asking for the approval of the amended plan. In this connection we note that the notification of motion served on the fiscal contains an unsigned addendum to the effect that "Copy was served on the provincial fiscal of Nueva Ecija in representation of the municipality of Jaen, N. E., and upon Sr. Juan Ortiz Luis of Jaen, N. E." However, the official certificate of service on the reverse side shows service on the fiscal only. The approval of this plan by the court was of course treated as a mere formality, as there was no opposition from any source and the attention of the court was doubtless not called to the fact that the amended plan contained the strip now in question, a thing not authorized by the previous order of the court. But, as already stated, the certificate of title was issued to Felipe Juan and Faustina Chuongco, who presently sold the registered parcel for a valuable consideration to Gallardo Brothers, the latter receiving the transfer certificate No. 400.

At the time Gallardo Brothers effected this purchase Sr. Ortiz Luis was still in possession of the parcel which he had retained when he sold the western portion of his holding to Leon Buhay Matias, including the questioned strip. Moreover, Gallardo Brothers were undoubtedly informed that the property which they were acquiring extended no further than the hedge which had been placed along the line 12-14 (Exhibit A) ; because in 1921 they placed one Reyes in possession as their manager, informing him that the division line between their property and that of Ortiz Luis consisted of said hedge. Accordingly, Reyes, as tenant under Gallardo Brothers, did not attempt to disturb the possession of Ortiz Luis during the years 1921, 1922, and 1923. In the year 1924 Gallardo Brothers caused the property described in their certificate of title to be surveyed and they then ascertained that, according to the calls of their certificate and the amended plan under which the property was registered, their occupancy should extend to the eastern boundary of the wedge-shaped lot now in question. But as Ortiz Luis was in possession of this, it was necessary to go into court; and therefore a civil action was instituted by them on July 23, 1924, in the Court of First Instance of Nueva Ecija, against Sr. Ortiz Luis (R. G. No. 24735). A few months thereafter Sr. Ortiz Luis filed a motion in the land registration proceeding entitled "Felipe Juan y Faustina Chuongco, Expediente No. 47, G. L. R. O. Record No. 10451," asking that the certificate of title issued to Gallardo Brothers should be cancelled and a new certificate issued from which the questioned parcel should be excluded.

The two causes were heard contemporaneously in the lower court, with the result that the revindicatory action was decided favorably to Gallardo Brothers; and judgment was entered requiring the defendant Ortiz Luis to surrender possession to the plaintiffs and to pay to the plaintiffs P200, as damages during each year that should elapse after March, 1923, until delivery of the land should be effected, and, in the land registration proceeding, denying the petition of Sr. Ortiz Luis for the modification of the certificate of title. From these judgments Sr. Ortiz Luis appealed, and the causes have been heard together in this court.

From the foregoing statement it will be noted that the registration proceeding (Expediente No. 47), instituted by Felipe Juan and Faustina Chuongco, was conducted throughout without formal opposition, except on the part of the municipality as to the bed of the estero. Furthermore, no publication whatever was made when the official plan was amended in such manner as to include the questioned strip. It is therefore obvious that the court of registration had no jurisdiction whatever over this strip.

In *Philippine Manufacturing Co. vs. Imperial* (page 122, ante), we pointed out that an order of court amending the official plan so as to inclose land not previously included therein is a nullity unless new publication is made. Publication, it is there said, is one of the essential bases of the jurisdiction of the court in land registration and cadastral cases, and additional territory cannot be included by amendment of the plan without new publication. If Ortiz Luis had been a formal party to the proceeding and had been given notice of the motion seeking the approval of the amended plan, the court would no doubt have acquired jurisdiction over the strip in question, as

against him; but such was not the case. It results that Felipe Juan and Faustina Chuongco acquired no title to this strip, although actually covered by their certificate. Gallardo Brothers are admittedly purchasers in good faith, so far as the payment of value is concerned, from Felipe Juan and Faustina Chuongco; but it must be remembered that the vendors had never had possession of the questioned strip; and until a new survey was made in 1924, Gallardo Brothers did not even know that the land was included in their certificate. They are therefore not in a position to make their claim to the questioned parcel effective. The decree of the court of land registration being a mere nullity as to this strip, Gallardo Brothers acquired no title thereto by virtue of transfer certificate No. 400.

The judgments appealed from will be reversed, and Ortiz Luis, the defendant in the civil case, will be absolved from the complaint, while the respondents to the motion in the land registration proceeding will be required to surrender their certificate in order that it may be cancelled and a new one issued from which the questioned strip shall be excluded; but Ortiz Luis will be required to pay the expenses incident to the procurement of a new certificate in Expediente No. 47. So ordered, without costs.

Avanceña, C. J., Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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