

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT AND APPELLEE, VS. HEIRS OP PAULINO ABELLA ET AL., OPPONENTS; BARTOLOME SALAMANCA AND BROTHERS, ROSAURO AGONoy, CLEMENTE LAZAR...**

*G. R. No. 25009. September 08, 1926*

Ponente: STREET, J.

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**STREET, J.:**

In the cadastral expediente No. 10, G. L. R. O. Record No. 270, of the Court of First Instance of Nueva Ecija, Bartolome Salamanca claims lots Nos. 3001, 3002, 3003, 3009, 3017, 3056, 3057, 3058, 3086, 3089, 3090, 3092, 3093, 3094, 3095, 3097, 3102, 3108, 3110, 3112, and 3114, alleging that he inherited the same from his deceased father Anastacio Salamanca. Clemente Lazaro and Rosauro Agonoy together claim the undivided ownership of lots Nos. 1122, 3016, 3018, 3059, 3062, 3063, 3064, 3084, 3085, 3088, 3098, 3121, and 3009, the first alleging that he acquired his interest by purchase from Restituto Romero in 1907 and the second that he had inherited his share from his father Policarpo Agonoy, who in turn purchased from Restituto Romero in 1907. Emilio Eserjose claims lots Nos. 2991, 2992, 2993, 2994, 2995, 3115, 3117, 3118, 3119, 3120, 3122, 3199, and 3456, asserting that he acquired the same by purchase from Restituto Romero in the year 1907.

Upon hearing the cause on June 15, 1925, the trial court overruled the claims of the four individuals above-mentioned and declared the parcels in controversy to be public land, i e., lots Nos. 1122, 3016, 3018, 3059, 3062, 3063, 3064, 3084, 3085, 3088, 3098, 3121, 3001, 3002, 3003, 3008, 3009, 3017, 3056, 3057, 3058, 3086, 3089, 3090, 3092, 3093, 3094, 3095, 3097, 3102, 3110, 3108, 3112, 3114, 2989, 2990 to 2995, inclusive, 3115, 3117, 3118, 3119, 3120, 3122, 3456, and 3463. From this judgment Bartolome Salamanca, Clemente Lazaro, Rosauro Agonoy, and Emilio Eserjose have appealed.

Before entering into the merits of the case it is necessary to dispose of a question relating to the competency of the trial judge to hear and determine the cause in the court below. In this connection it appears that the judge who decided the case, namely, Judge Conrado Carballo, is the same person who, as Acting Director of Lands, caused an administrative investigation to be conducted in the year 1921 into the conflicting claims of Bartolome Salamanca and numerous homesteaders who, with the approval of the Director of Lands, had previously occupied much or all of the land now in question under the provisions of the Public Land Act. As a result of said investigation Judge Carballo, as Acting Director of Lands, dismissed the claim of Salamanca as unfounded and sustained the rights of the homesteaders to the property as public land. It further appears that the present cadastral was instituted in April, 1921; and the petition initiating the proceeding appears to be signed by the same Carballo, in the capacity of Acting Director of Lands.

When the controversy over these lots arrived at the stage for the submission of proof and the hearing of the cause, Judge Carballo was then presiding in the Court of First Instance of Nueva Ecija; and as no objection whatever had been raised by any of the appellants with respect to his competency, he proceeded to hear and determine the

cause.

After a decision had been made, adverse to the appellants, their attorneys filed a motion in the cause, asking the judge to inhibit himself as disqualified, on the ground that, prior to the initiation of the cadastral proceeding, he had conducted an administrative investigation with respect to the controversy between Salamanca and the homesteaders. At still later date another motion of inhibition was made, on the ground, alleged to have been then newly discovered, that the cadastral was initialed by the judge who had presided at the trial. These motions were overruled, and the court having adhered to its decision, and having overruled the motion for reconsideration, the cause was brought to this court, upon appeal, as previously stated.

We are of the opinion that the exception taken to the competency of Judge Carballo is not well founded. Even supposing that the situation was one where the trial judge, upon having his attention called to the matter, might properly have inhibited himself from acting in the matter, yet it is obvious that he had jurisdiction and power to act; and the failure of the appellants to interpose objection prior to the decision, is a fatal obstacle to raising any objection on this ground later. The attorneys for the appellants should have been familiar with the pleadings in the cause, as well as other documents in the record. Reference to these would at once have revealed the fact that Judge Carballo had participated administratively to the extent above stated. A litigant, having these facts before him, cannot be permitted to speculate upon the action of a court and raise an objection of this sort after decision has been rendered.

The grounds of disqualification specified in section 8 of the Code of Civil Procedure supply matter for preliminary exception, and timely objection should be submitted in writing as is required in said section. The inadvertent failure of the court to disqualify himself in the case there mentioned does not supply a ground for reversing the judgment; but of course if this court were of the opinion that the litigant had not had a fair trial, a new trial could be granted. In the case before us Judge Carballo had no personal interest in the controversy, and it is obvious that substantial justice has not suffered. In section 503 of the Code of Civil Procedure this court is prohibited from reversing any cause on merely formal or technical grounds not prejudicial to the excepting party.

With respect to the merits of the contention over the title to the land, the following facts are pertinent: In the year 1894 one Restituto Romero instituted proceedings to obtain a possessory information covering a tract of about 100 hectares of land located in what is now the barrio of San Agustin, municipality of San Jose, Nueva Ecija, with the Digdig River on the north, the Estero Tapirong on the east, the Estero Luyos on the west, and the Estero Tagaytay on the south. These proceedings terminated in the extension of the document, Exhibit B. In 1907 Romero executed deeds conveying to various individuals several parcels of land purporting to be of those included in said possessory information. One portion, of an area of 63 hectares, 91 ares, and 62 centares, was thus sold to Cornelio Ramos; and a sketch of the precise parcel sold to Ramos is printed in our decision in *Ramos vs. Director of Lands* (39 Phil, 175). Said parcel lies south of the land involved in the present dispute. Another parcel consisting of 81 hectares, 93 ares and 75 centares was sold by Romero to one Crisanto Sanchez. This parcel lies still further south than that purchased by Ramos; and both Ramos and Sanchez have in former proceedings procured the registration in their own names of the lands claimed by them under said deeds. This makes a total of nearly 146 hectares already registered, of the land covered by Romero's possessory Information.

The land in question in the case before us has an area of more than 180 hectares and it is located to the north and east of the tract acquired by Ramos. All of the appellants claim title directly or indirectly from Restituto Romero by virtue of conveyances made to them or their predecessors in interest in the year 1907 (Exhibits A, F, and O). The lands claimed by the different appellants together form a single mass as shown in the sketch plan of the Bureau of Lands, Exhibit No. 6. All of it seems to be now occupied by some fifteen homesteaders who entered upon the parcels, now severally occupied by them, in the year 1913.

The document relied upon by the appellants as their ultimate source of title is the Exhibit B, which, as already stated, is a possessory information extended in favor of Restituto Romero upon proceedings instituted by him in the year , 1894. This document is a possessory information only, as the proceedings necessary to the procurement of a royal decree do not appear to have been taken. Besides, the recitals of the possessory information are not such as to show that the conditions requisite to a royal decree were ever complied with. In *Ramos vs. Director of Lands* (39 Phil., 175), we pronounced this same instrument to be a mere possessory information.

There are two circumstances which, taken singly or together, are serious obstacles to the conclusion that the lands now claimed by the appellants are covered by the Exhibit B. The first consists in the fact that the possessory information calls for an area of only 100 hectares, while the lands claimed by the appellants together comprise some 182 hectares. As we have already seen, some 146 hectares of land have already been registered in favor of other claimants as comprised within the limits of said possessory information. The other consideration is found in the fact that the calls for boundaries in the possessory information have little relation to the natural limits of the land now claimed by the appellants. For instance, the Estero Tapirong now divides the land claimed by the appellants from east to west, instead of supplying the eastern boundary; while the Estero Luyos, called for as the western boundary in the possessory information, appears to be to the south, in proximity to the land registered by Crisanto Sanchez. Even after making all due allowances for changes effected by natural agents in course of time in the beds of the streams, it is difficult to believe that the lands now in controversy were, at the time the possessory information was extended, within the boundaries therein expressed.

Apart from these considerations we are of the opinion that there is no satisfactory proof of continuous possession on the part of the appellants and their predecessors in interest of the lands now claimed by them. It is certain that these lands were unoccupied when the homesteaders made their advent in 1913, and they appear to have been vacant for an indefinite period prior to that epoch. The appellants' claim of ownership therefore fails not only for lack of certainty upon the point of the inclusion of the land in the description of Exhibit B, but for lack of continuity of possession on the part of the appellants and their predecessors in interest.

Error in the conclusions of the trial court has therefore not been demonstrated, and the judgment appealed from must be affirmed. It is so ordered, with costs against the appellants.

Avanceña, C. J., Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.  
Johnson, J., reserves his vote.

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