

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PAULINO ABELLA ET AL., CLAIMANTS; MARIA DEL ROSARIO, PETITIONER AND APPELLANT.*G. R. No. 25010. October 27, 1926*

Ponente: JOHNSON, J.

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This is a petition for the registration of a certain parcel or tract of land located in the municipality of San Jose, Province of Nueva Ecija, Philippine Islands. It appears from the record that on the 21st day of September, 1915, the appellant Maria del Rosario presented a petition in the Court of First Instance for the registration under the Torrens system, of the very land now in question by virtue of her appeal. In that case, after issue joined and after hearing the evidence, the Honorable Vicente Nepomuceno, judge, denied the registration of all of the northern portion of the land included in her petition represented by Exhibit 1, which was the plan presented in that action, upon the ground that said portion was more valuable for timber purposes than for agricultural purposes. From that judgment Maria del Rosario appealed.

The Supreme Court after a consideration of the evidence affirmed the decision of the lower court. In the course of that decision the Supreme Court, speaking through Mr. Justice Moir, said: "We have examined the plans and all the evidence presented in this case and are of the opinion that the trial court was correct in its declaration that this senda did not mean the old road to Boñgabon. The fact that nearly all the northern property is forestry land is a further indication that the applicant's possessory information title did not include the land running up to the road to Boñgabon, because all the papers which the applicant has regarding this property call the land palayero" [1]

Judge Nepomuceno in his decision directed that the appellant herein present an amended plan in that case, showing the particular part or parcel of the land in question which she was entitled to have registered. We have no evidence before us showing that that order of Judge Nepomuceno was ever complied with.

Nothing further seems to have occurred with reference to the registration of the land included in the former case until the 26th day of April, 1921, when the Acting Director of Lands presented the petition in the present case for the registration, under the cadastral survey, of a portion of land located in the municipality of San Jose, which included the very land claimed by Maria del Rosario in the former action. She presented her opposition in the present action, claiming the very land which she claimed in the former action. The only proof which she presented in support of her claim in the present action was the proof which she had presented in the former action. No proof was adduced in addition thereto, which in the slightest degree showed that she was entitled to the registration of any other parcel of land than those which had been conceded to her in the first action.

Upon the issue and the proof adduced in the present case the Honorable C. Carballo, Auxiliary Judge of the Sixth Judicial District, ordered registered in the name of Maria del Rosario, under the cadastral survey, lots 3238, 3240, 3242, and 3243, which are the very lots which had been ordered registered in her name in the former action. From that judgment she appealed to this court upon the ground that the lower court committed an error in not registering

all of the land included in her opposition in her name.

In this court she presented a motion for rehearing and in support thereof presents some proof to show that the northern portion of the land in question is not forestry land but that much of it is agricultural land. With reference to said motion for rehearing, it may be said that all of the proof which is presented in support thereof existed at the time of the trial and might, with reasonable diligence, have been presented. It cannot, therefore, be considered now. It is not newly discovered evidence. And moreover if it should be accepted it would not be sufficient to justify the granting of a new trial.

After a careful examination of the entire record and the evidence adduced during the trial of this cause as well as that adduced during the trial of the first cause, we are fully persuaded that no error has been committed. Whether particular land is more valuable for forestry purposes than for agricultural purposes, or vice versa, is a question of fact and must be established during the trial of the cause. Whether the particular land is agricultural, forestry, or mineral is a question to be settled in each particular case, unless the Bureau of Forestry has, under the authority conferred upon it, prior to the intervention of private interest, set aside for forestry or mineral purposes the particular land in question. (*Ankron vs. Government of the Philippine Islands*, 40 Phil., 10.) During the trial of the present cause the appellant made no effort to show that the land which she claimed, outside of that which had been decreed in her favor, was more valuable for agricultural than forestry purposes. For all of the foregoing, the judgment appealed from is hereby affirmed, with costs. So ordered.

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

[1] *Del Rosario vs. Director of Lands*, R. G. No. 13226 promulgated January 27, 1919, not reported.

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