

THE MANILA RAILROAD COMPANY, PLAINTIFF AND APPELLANT, VS. ASUNCION MITCHEL VDA. DE SY QUIA, DEFENDANT AND APPELLANT.*G. R. No. 25488. December 24, 1926*

Ponente: OSTRAND, J.

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The present proceedings were instituted on February 18, 1918, for the condemnation of several parcels of land adjacent to the plaintiff's terminal station in the District of Tondo, Manila, and shortly afterwards, upon the deposit of a sum equal to the assessed valuation of the land, the plaintiff was placed in possession. One of the parcels, designated as lot No. 1, was the property of the estate of the deceased Pedro Sy Quia of which the defendant Asuncion Mitchel was the administratrix. Commissioners of appraisal were appointed, but on June 22, 1918, before the appraisal was made, the defendant Asuncion Mitchel, filed an answer in which she denied the right of the plaintiff to expropriate the lands in question. This question was decided adversely to the defendant's contention by the Court of First Instance, and upon appeal to this court, the decision of the lower court was affirmed in case G. R. No. 19280[.1] Upon the return of the record to the court below, commissioners of appraisal were again appointed, who, upon hearing and after receiving much testimony, rendered a report on April 25, 1925 in which lot No. 1, with the improvements thereon, was appraised at P427,822.85. To this valuation, both the plaintiff and the defendant Asuncion Mitchel objected. Upon hearing, the Court of First Instance approved the report with slight modification increasing the appraised value of lot No. 1 with improvements to P434,794.20. On December 15, 1925, an additional report was filed by the commissioners in regard to certain stone walls and a camarin alleged to have existed on the land when the plaintiff took possession of the same, and which were given the value of P4,591.23. The additional report was also approved by the court with a minor modification increasing the amount awarded to P4,601.33. The total amount awarded to the estate of Sy Quia was therefore P439,395.53. Both parties duly excepted to the orders approving the commissioners' report and filed separate bills of exceptions, and the case is now for the second time before this court on appeal, the plaintiff contending that the value of the property in question did not exceed P288,985.00, while the defendant insists that she is entitled to an award of not less than P1,575,771.50.

The plaintiff-appellant presents six assignments of error all of which, except the fourth, relate only to questions of fact and to the reasonableness of the appraisals made by the commissioners. Bearing in mind the rule laid down in the case of Manila Railroad Company vs. Velasquez (32. Phil., 286), that this court will not substitute its own estimate for that of the commissioners unless the evidence is clear and convincing and the amount allowed by the commissioners is grossly inadequate or excessive, there appears to be no sufficient grounds for disturbing the findings of the commissioners and of the court below in the present case.

Under the plaintiff-appellant's fourth assignment of error, it is argued that the court below exceeded its jurisdiction in extending the commissions of the commissioners for the period of fifteen days in order to enable them to appraise the stone walls and camarin referred to in their additional report of December 15, 1925.

Inasmuch as section 246 of the Code of Civil Procedure expressly authorizes the court to recommit the report of the commissioners for further report of facts and to accept the report in part and reject in part, we do not think the court in the present case exceeded its jurisdiction by exercising the lesser, but analogous, power of extending the commissions or terms of the commissioners and calling upon them for a further report of facts without formally recommitting the original report.

The defendant-appellant makes the following assignments of error:

"I. The lower court erred in approving that part of the report of the commissioners of appraisal dated April 27, 1925, in which the land designated as lots 1 and 3 in the map Exhibit I is valued at P60 a sq. m. for 2,582.60 sq. m. included in a strip of 57.43 m. between Azcarraga and Antonio Rivera Streets, and at P40 a sq. m. the remaining 3,022 sq. m.

"II. The lower court erred in approving that part of the report of said commissioners, in which the two-story house designated with letters 1-E in Exhibit 1 (destroyed by the Railroad Company) is appraised at P60 a sq. m, instead of at P80 a sq. m. which should have been the proper appraisal.

"III. The lower court erred in giving no weight to the evidence introduced by the defendant, particularly Exhibits 7 and 7-A which are supported by Exhibits 8 to 54, the report of Mr. Sullivan, Exhibit 73 and the testimony of that witness and Mr. Jose Velasco.

"IV. The lower court erred in approving the valuation made by the commissioners in their second report of December 15, 1925, on the warehouse designated with letters 1-F and on the walls that surround the property, at P4,591.33 only, instead of at P6,990.25 as they were appraised by the architect Isidoro del Valle.

"V. The lower court erred in denying the defendant's motion of October 8, 1924 (B/E ps. 16 & 20) asking that the deposition of Mr. Francisco Perez de Munoz, one of the most important witnesses of the defendant-appellant, be taken. (B/E ps. 18 to 20.)

"VI. The lower court erred in denying the issuance of a subpoena duces tecum addressed to the president of the board of directors of the plaintiff-appellant to exhibit before the commissioners the plan and other records on the project which the plaintiff had to build a hotel on the land now object of these proceedings. (B/E ps. 21-26.)

"VII. The lower court erred in denying the defendant's motion of November 24, 1925, asking the court to authorize the commissioners to receive the testimony of the witness Domingo Basa, about an offer of P400,000 made by him to the defendant for, the land and improvements object of these proceedings. (B/E ps. 105-109.)

"VIII. The lower court erred in not allowing the defendant-appellant the whole amount of her claim, or P1,575,771.50."

The first, second, and fourth of the assignments of error quoted relate only to questions of fact in regard to which, the findings of the court below appear to be sufficiently supported by the evidence.

Under the third assignment of error, the admissibility of certain evidence, offered by the defendant-appellant and rejected by the court, is discussed: Exhibits 7 and 7-A is a list of real estate situated on several of the principal business streets of the City of Manila, with the prices obtained for each property. None of the properties so listed were situated in the vicinity of the property herein in question or on the same street. The exhibits were clearly inadmissible in evidence and properly rejected by the court. In order that such evidence may be admitted, it is necessary that the properties sold be in the immediate neighborhood or within the zone of the commercial activity with which the condemned property is identified. (*City of Manila vs. Estrada and Estrada*, 25 Phil., 208.) In the same connection, the testimony of one Mr. Sullivan was rejected by the court on the ground that the witness had not qualified as an expert. Mr. Sullivan presented the record of his service with the Government, showing that he,

at different times, had been chief of the land tax division of the Manila City Government, chief clerk of the department of assessment and collections, agent of the Bureau of Internal Revenue, and finally had been a temporary clerk in the same Bureau, where he, for some time, had nominal control over the Division of Real Property, but that he only on one occasion had taken direct part in the valuation of real property, which property consisted of a lot and a building situated on Calle Real, Intramuros.

The question as to qualifications to give expert testimony is left largely in the discretion of the trial judge and notwithstanding the long and honorable service of Mr. Sullivan in various employments, we are not prepared to say that the court below abused its discretion or committed any reversible error in holding that the witness had not qualified as an expert on land valuations in the vicinity of the property herein in question.

Under the same assignment of error, counsel also argues that the court erred in sustaining the plaintiff's objection to a question directed to the witness Jose Velasco, who was the owner of some real property situated a short distance from the land expropriated. He was asked: "If a person desires the property from you, and supposing you were not under the necessity to sell it, how much would you ask per square meter for the land and how much per square meter for the buildings?" The question speaks for itself, and was clearly objectionable; what the witness would ask for his property under the circumstances stated is no criterion of its market value.

The fifth assignment of error has reference to a motion presented by the defendant for the issuance of a commission to the American Consul or Vice-Consul at Almeria, Spain, for the taking of the deposition of an engineer by the name of Francisco Perez de Munoz who was supposed to be familiar with the value of the expropriated property. The motion was not presented until October 8, 1924, over six years after this action was brought and it was denied by the court on the ground that it was presented too late. In our opinion the ruling of the court was correct, especially so as it does not appear that the witness was the only available witness upon the point to be proven. (See sections 355 and 359, Code of Civil Procedure.)

One of the arguments advanced by the defendant for the increase of the award was that the land, being situated near the railroad station, was a suitable site for a hotel and business building which it was hoped would produce a large income. To show the feasibility of the plan, the defendant desired to prove that the plaintiff company had taken the matter under consideration and had prepared the plans for such a building. She therefore moved the court to issue a subpoena duces tecum to the president of the board of directors of the railroad company requiring him to exhibit before the commissioners a copy of a certain resolution adopted by the board some time in 1920, and certain plans for the building, which plans were alleged to have been prepared by an architect at the instance of the board, and which the defendant proposed to use as rebuttal evidence. The court below denied the motion on the ground that inasmuch as there was nothing in the plaintiff's evidence in regard to the proposed building which required rebuttal, the evidence offered by the defendant was not admissible. The defendant and appellant has made the denial of the aforesaid motion the subject of her sixth assignment of error. The ruling of the court was in our opinion entirely correct. Not only was there no occasion for bringing in the documents in question as rebuttal evidence, but it also appears that the damages sought to be established by said evidence were purely speculative. Evidence on that point was therefore properly rejected.

The seventh assignment of error relates to a petition for a new trial for the purpose of taking the testimony of one Domingo Basa to the effect that he sometime in 1913 or 1914 offered to pay P400,000 for the land here in question and the improvements thereon. This petition was denied by the court below on the ground that the evidence was not newly discovered, and that it, in any event, was immaterial. Conceding that the failure to present the evidence in time was due to an oversight or to the forgetfulness of the defendant, the rule is that "forgotten facts do not constitute newly discovered evidence, and that the want of recollection of a fact, which by due diligence and attention might have been remembered, is not ground for a new trial." (20 R. C. L., 293.) There was

consequently no abuse of discretion on the part of the trial court in denying the petition.

The eighth assignment of error is sufficiently refuted by what has already been said. The findings and conclusions of the court below seem fair and the amount of the award does not appear to be unreasonable.

The appealed judgment is affirmed without costs. So ordered.

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

[1] Manila Railroad Co. vs. Mitchel, promulgated March 16, 1923.

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